

Federal Court



Cour fédérale

Date: 20160826

Docket: IMM-5464-15

Citation: 2016 FC 972

Ottawa, Ontario, August 26, 2016

PRESENT: The Honourable Mr. Justice Zinn

BETWEEN:

YONG WANG

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] Mr. Wang's refugee claim was dismissed by the Refugee Protection Division [RPD]. In accordance with subsection 107(2) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 the RPD concluded that there was no credible or trustworthy evidence upon which it could have determined that he was a Convention refugee or person in need of protection, and it therefore found that there is no credible basis for his claim. Consequently, Mr. Wang has no right of appeal to the Refugee Appeal Division.

[2] Mr. Wang, a Chinese citizen, sought protection on the basis that he was being persecuted in China due to its family planning policy.

[3] He says that he is married and has two children. After the birth of his second child, his wife was forced to wear an intrauterine device [IUD] and have regular IUD check-ups. On August 29, 2013, he received a call that his wife had been found to be pregnant during one such check-up and that she was having an abortion.

[4] His wife was to be sterilized, but she was found to have arrhythmia and a gynaecological disease that made it impossible. Accordingly, Mr. Wang would have to be sterilized. He went into hiding and later made arrangements to leave China.

[5] Through an agent, Mr. Wang applied for and obtained a temporary resident visa [TRV]. He arrived in Canada on December 25, 2013, and made his claim for protection on March 27, 2014.

[6] Mr. Wang challenges a number of the findings of the RPD as being unreasonable, specifically:

1. Its finding at paragraph 11, concerning whether the second child exists;
2. Its finding at paragraph 26, concerning inconsistencies between his refugee claim form and the TRV form;
3. Its finding at paragraph 32, regarding re-availment;

4. Its finding at paragraph 27, regarding wide spread fraud in documents from China;
and
5. Its no credible basis finding.

[7] The issue concerning the existence of the second child is this. The Basis of Claim does not state, as Mr. Wang did at the hearing, that his wife gave birth to the second child while in hiding. The RPD found that his explanation for the omission, being focused on the third child, was not reasonable as the central element of the claim was the persecution due to China's family policy. It further noted that he submitted at the hearing that he had no problems with the authorities until his wife became pregnant with their third child, but the RPD found that he did have problems as he had to hide to have the second child born and then had to pay a fine.

[8] Based on these inconsistencies the RPD writes: "The Panel finds that this omission undermines the claimant's overall credibility and undermines whether the second child exists."

[9] I do not accept the submission of the Applicant that it is a "gross stretch" to conclude on the basis of the discrepancy that there is doubt whether the second child exists. In addition to the inconsistent evidence, the RPD also notes that the father's name is not on the second child's birth certificate. In any event, nothing turned on whether or not Mr. Wang did have two children. The issue here was obviously the damage to his credibility due to differences in his evidence regarding this child.

[10] The RPD noted that there were differences between the Basis of Claim form and the TRV application relating to his employment and education, residence, marriage details, and children's names, such that it concludes at paragraphs 25 and 26:

The Panel finds that these inconsistencies undermine the claimant's general credibility, undermine the employment and educational history of the claimant, undermine the place of residence of the claimant, undermine the claimant's marriage, undermine the number of children he has in China and undermine whether the claimant worked in Malaysia.

...

The Panel finds that it does not know what his profession is, what his employment is, what his education history is, if he is married, if he has children and if he has travelled to Malaysia.

[11] The explanation offered for these inconsistencies was that the TRV was filled out by the smuggler. I agree with Mr. Wang that a refugee claimant may need to lie in order to obtain a visa to get to Canada and make a refugee claim, but when he does so, he ought to immediately correct the record and most certainly not later than when the refugee claim is made. Here no such corrective measures were taken and I cannot find that the view of the RPD on the innumerable inconsistencies was unreasonable.

[12] At paragraph 32 of the decision, the RPD writes that "the re-availment of China is determinative of the claim." Mr. Wang submits that this is an unreasonable finding, because earlier the RPD stated that it did not know if he in fact had worked in Malaysia. This submission is devoid of merit. Here the RPD is stating no more than this: Mr. Wang asserts that he left Malaysia for China before coming to Canada. He himself says he re-availed himself to China. It is this re-availment that shows he has no subjective fear in China. It is determinative of the

claim for protection. That finding was reasonable and one I would have made myself based on Mr. Wang's evidence.

[13] The observation of the RPD, at paragraph 27, regarding the proliferation of fraudulent documents in China is reasonable. Further the rejection of the documents was not made on this basis alone. Rather the RPD stated that it did so because of the proliferation of fraudulent documents "as well as the other credibility concerns raised in these reasons." This finding is not objectionable.

[14] Lastly, seldom have I seen a situation where virtually every aspect of the story told by a claimant is accompanied by other evidence, often from his own, mouth that tells a different or inconsistent story. The no credible basis finding here was warranted and is unassailable.

[15] No questions were proposed to be certified.

JUDGMENT

THIS COURT'S JUDGMENT is that this application is dismissed and no question is certified.

"Russel W. Zinn"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-5464-15

STYLE OF CAUSE: YONG WANG v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

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APPEARANCES:

Ashley Fish FOR THE APPLICANT

Stephen Jarvis FOR THE RESPONDENT

SOLICITORS OF RECORD:

Kaminker Weinstock Associates FOR THE APPLICANT
Barristers and Solicitors
Toronto, Ontario

William F. Pentney FOR THE RESPONDENT
Deputy Attorney General of Canada
Toronto, Ontario