Federal Court  Cour fédérale

Date: 20170216

Docket: IMM-3114-16

Citation: 2017 FC 176

Toronto, Ontario, February 16, 2017

PRESENT: The Honourable Mr. Justice Southcott

BETWEEN:

YUANWEN LIN
YOUZHONG KUANG
HAOBIN KUANG

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

Overview

[1] This is an application for judicial review of a decision by the Refugee Appeal Division [RAD] dated June 28, 2016, confirming the Refugee Protection Division [RPD] decision which determined that the Applicants are not Convention refugees pursuant to section 96 of the

Immigration and Refugee Protection Act, SC 2001, c 27 [IRPA], nor persons in need of protection pursuant to section 97 of IRPA.

[2] For the reasons explained in greater detail below, this application is dismissed, because the Applicants have not demonstrated that the RAD erred in respect of the standard of review it applied to the RPD's decision, afforded too much deference to that decision, or itself made a decision that is unreasonable.

Background

[3] The Applicants are citizens of the People's Republic of China. The adult Applicants, Youzhong Kuang and Yuanwen Lin, met in China in early 2013. The minor Applicant, Haobin Kuang, is Mr. Kuang's child from a previous relationship. In June 2013, Ms. Lin discovered she was pregnant with Mr. Kuang's child. On September 30, 2013, family planning officers came to the couple's home to take Ms. Lin for examination, as they had received a report that she was pregnant. This was confirmed, and she was forced to have an abortion the same day. She was also forced to pay a fine, and to wear an intrauterine device [IUD] and attend pregnancy checkups every three months.

[4] Ms. Lin experienced pain and discomfort with the IUD and requested to have it removed in November 2013, but this request was denied. She was told by the family planning office that, once she was married, she would be allowed to have one child, but would then be sterilized after the child was born. The couple was married on December 25, 2013, and on January 20, 2014,

Ms. Lin had her IUD removed by the family planning office, who again informed her that one of them must be sterilized after they had one child together. As the couple wanted to have more than one child and feared sterilization, they obtained tourist visas for Canada and arrived on October 2, 2015. The couple do not currently have any children together.

Issues

[5] The Applicants articulate the following issues for the Court's consideration:

A. Whether the RAD provided adequate reasons for its decision;

B. Whether the RAD applied the correct standard of review, that is the standard of reasonableness, to issues of plausibility, and whether the RAD afforded the RPD too much deference.

Analysis

Whether the RAD provided adequate reasons for its decision

[6] The Applicants submit that the analysis portion of the RAD's decision is brief, consisting of only one page, and does not contain adequate reasoning which permits an understanding of the basis for the RAD's agreement with the conclusions of the RPD and its dismissal of the appeal. They argue that the RAD merely recited the facts and arguments and then reached conclusions without any intervening analysis. The Applicants rely on decisions of this Court which have held that such an approach does not constitute a reasoned decision (see *Weng v Canada (Minister of*

Citizenship and Immigration), 2011 FC 1483, at para 25; *Espino v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1255, at para 11; *Sisman v Canada* (*Minister of Citizenship and Immigration*), 2015 FC 930, at para 28).

[7] The Respondent notes that adequacy of reasons is not a stand-alone ground for judicial review. Rather, the reasons must be read together with the outcome and serve the purpose of showing whether the result falls within a range of possible outcomes (see *Newfoundland and Labrador Nurses Union v Newfoundland and Labrador (TB)*, 2011 SCC 62, at para 14). The Respondent submits that a review of the RAD's reasons demonstrates a reasonable decision, with an analysis which, while brief, reveals the basis for the RAD's conclusions.

[8] Subject to circumstances such as assessments of credibility where the RPD enjoys a meaningful advantage over the RAD, the RAD is required to review decisions by the RPD on a standard of correctness (see *Canada (Citizenship and Immigration) v. Huruglica*, 2016 FCA 93 [*Huruglica*], at paras 78 and 103). The RAD's decision itself is to be reviewed by the Court on a standard of reasonableness (*Huruglica*, at para 35; *Sinnaraja v. Canada (Citizenship and Immigration)*, 2016 FC 778, at para 13).

[9] The RAD noted that the Applicants claim that they would be at risk of persecution in China because they can have only one child together (in addition to the minor Applicant) before they would risk exposure to forced abortion, sterilization or mandatory IUD use. However, the RAD also noted the RPD's statement that the documentary evidence indicates that, in October 2015, the Chinese government announced that it was ending its one child policy and that all

couples would be allowed to have two children The RPD asked Ms. Lin whether this change in policy would impact their situation, and she responded that it did not make a difference, as she would still have to be sterilized even if she had one child.

[10] The RAD then noted that the Applicants said this statement was made to them on two occasions while they were in China. The RAD observed that the statement was made prior to the new policy coming into effect and that, if they had one child together at that point, they would be considered to have had the one child then allowed under that policy. However, the RAD then concluded that there is no persuasive evidence that the threat of sterilization would be carried out under the new policy. It therefore agreed with the RPD's finding that, on a balance of probabilities, the Applicants would not be subject to sterilization after the birth of a child.

[11] While admittedly brief, this portion of the decision demonstrates an analysis of the Applicants' claim and a reasoned one. The RAD did not consider the Applicants to be at risk based on the threats of sterilization made prior to their departure from China, as those threats were made in the context of the one child policy, and there was no persuasive evidence that the threat would still apply under the new policy.

[12] The Applicants argue that there was documentary evidence before the RAD which raised uncertainty as to how the minor Applicant, the existing child born to Mr. Kuang, would be treated under the new two child policy. While the decision refers to the Applicants' argument that the minor Applicant would be treated as one of the two permitted children, the Applicants

submit that the RAD's decision does not demonstrate any consideration of the documentary evidence to which they refer.

[13] It is trite law that a decision-maker is not required to refer to all evidence that is contrary to its findings. However, the more important the contradictory evidence, the easier it may be to infer that such evidence has been overlooked (see *Cepeda-Gutierrez v. Canada (Minister of Citizenship and Immigration)*, (1998), 157 FTR 35, at paras 16-17). The Applicants referred the Court to the country condition documentation upon which they rely. A Response to Information Request [RIR] published by the Immigration and Refugee Board of Canada dated October 30, 2015 refers to information that, despite the change in policy, Chinese women will remain at risk of intrusive forms of contraception and coerced or forced abortions. This document also refers to expressions of concern that children born out of wedlock would continue to be penalized by the government. Another RIR dated March 4, 2015 referred to reports of forced abortions continuing to be performed in China since 2012. The country condition documentation also includes a statement by Amnesty International that referred to the Chinese state's explicit statement that married couples from now on can have two children but noted there was no reference to single parents or to all second, third and fourth children (out of quota children) now being acceptable.

[14] The RAD's finding was that there was no persuasive evidence that the threat of sterilization would be carried out under the new policy. I do not find the documentary evidence relied upon by the Applicants to contradict that conclusion. The Applicants characterize that evidence as raising a lack of clarity surrounding the treatment of a child born out of wedlock. As

the Respondent submits, such evidence cannot be characterized as persuasive and therefore cannot represent a basis to find the RAD's conclusion unreasonable.

[15] The RAD also agreed with the finding of the RPD that Ms. Lin was permitted to stop using an IUD and was not required to attend a regular pregnancy test for two years prior to leaving China. The Applicants do not take issue with this finding. It appears that the RAD's subsequent conclusion, that there was no persuasive evidence that Ms. Lin would have to wear an IUD or attend regular pregnancy tests if she returned to China, was based on this finding. While again brief, the RAD's reasoning is intelligible and transparent and does not fall outside the range of acceptable outcomes. My conclusion is that the RAD's reasons demonstrate a reasonable decision.

> *Whether the RAD applied the correct standard of review, that is the standard of reasonableness, to issues of plausibility, and whether the RAD afforded the RPD too much deference*

[16] In the Applicants' articulation of this issue, and in their oral submissions, they argued that the standard of reasonableness is applicable to the RAD's review of what they characterize as plausibility findings by the RPD. They nevertheless take the position that the RAD afforded the RPD too much deference. In their written submissions, the Applicants argue instead that either the standard of correctness should apply to the RAD's review of such findings or that, at the very least, limited deference should be applied.

[17] While it is difficult to reconcile the Applicants' different articulations of their position, at least with respect to the standard of review, they amount to an argument that the RAD was

improperly deferential to what the Applicants consider to be plausibility findings by the RPD. At the hearing of this application, the Applicants advised that the plausibility finding to which they refer is the finding by both the RPD and the RAD that the Applicants would not be subject to persecution under China's new two child policy.

[18] In its decision, the RAD relies on *Huruglica* for its articulation of the standard applicable to its review of the RPD's decision. Its articulation is consistent with that of the Federal Court of Appeal in *Huruglica.* The Applicants' argument is not that the RAD expressed the standard incorrectly but that it improperly applied it, by being excessively deferential to the RPD's decision and failing to respect the principle that plausibility findings should be made only in the clearest of cases (see *Lin v Canada (Minister of Citizenship and Immigration)*, 2014 FC 683 [*Lin*], at para 19; *Valtchev v Canada (Minister of Citizenship and Immigration)*, 2001 FCT 776 [*Valtchev*], at para 7).

[19] However, the principle expressed in the decisions in *Lin* and *Valtchev* upon which the Applicants rely is that adverse credibility findings based on the implausibility of an applicant's story can be made only in the clearest of cases. The decision by the RAD in the present case does not involve findings of this nature. It did not base its decision on credibility findings, derived from a plausibility analysis or otherwise. Rather, it found that there was no persuasive evidence supporting the risks the Applicants alleged. While the Applicants argue that the RAD made these findings without performing an independent analysis, and therefore deferred excessively to the RPD, I have found above that the RAD's analysis demonstrates the basis on which it reached its conclusions and is reasonable.

[20] I therefore find no basis to interfere with the RAD's decision, and this application for judicial review must be dismissed. The parties proposed no question for certification for appeal, and none is stated.

JUDGMENT

THIS COURT'S JUDGMENT is that this application for judicial review is dismissed.

No question is certified for appeal.

"Richard F. Southcott"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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