

Federal Court



Cour fédérale

**Date: 20170228**

**Docket: IMM-3112-16**

**Citation: 2017 FC 243**

**Ottawa, Ontario, February 28, 2017**

**PRESENT: The Honourable Mr. Justice Southcott**

**BETWEEN:**

**WUFEI HUANG SU  
(A.K.A. WU FEI HUANG SU)  
ERIC SU  
SIMON SU**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. 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' arguments related to the RAD's credibility and nexus findings do not represent a basis for the Court to find the RAD's decision unreasonable.

## II. Background

[3] The principal Applicant, Wufei Huang Su, is the mother of the minor Applicants, Eric and Simon Su. All three are ethnic Chinese citizens of Guyana and claim fear of persecution in Guyana on the basis of their race. Ms. Su went to Guyana in December 2000 as a visitor and subsequently met her husband, also a Chinese national. They were married in February 2007, and had their two sons in 2009 and 2011. In 2007, Ms. Su's husband opened a Chinese restaurant in Georgetown connected to their home. In May 2011, the couple became naturalized citizens of Guyana.

[4] In June 2011, while pregnant with her second son, Ms. Su was robbed by two Guyanese men. The Applicants submit that violence in Guyana was on the rise throughout 2013 and 2014. A carwash located at the back of their property was robbed, and in March 2014, Ms. Su learned that a Chinese restaurant had been robbed and the owner seriously injured.

[5] On August 6, 2015, their own restaurant was broken into by several Guyanese men. The minor Applicants witnessed their mother being beaten into unconsciousness. When she regained

consciousness, she realized that her husband had been killed. Ms. Su gave information to the police and they investigated, but no one has been arrested for the attack and the murder of her husband.

[6] After her release from the hospital, the Applicants stayed at the home of a friend, Ms. Jian Ping Che, in Georgetown. Ms. Su says that Ms. Che informed her that two black Guyanese men had visited her home and asked whether a Chinese woman and two children lived there. Ms. Che denied this and the men left.

[7] Ms. Su then hired a smuggler to help her and her children flee Guyana. They left Guyana on September 17, 2015, and first went to the US on transit visas before arriving in Canada and claiming refugee status. Their claim was heard on January 8, 2016 by the RPD, which issued a negative decision on March 3, 2016, finding that the Applicants had not established a serious possibility of persecution on a Convention ground, or that, on a balance of probabilities, they would personally be subjected to a danger of torture, or face a risk to life, or risk of cruel and unusual treatment or punishment, upon return to Guyana. The Applicants appealed this decision to the RAD, which confirmed the RPD's conclusions in the decision that is under review in this application.

### III. Issues

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

- A. Did the RAD err in finding that Ms. Su was not credible with respect to whether the two black Guyanese men visited her friend's home to look for her?
- B. Did the RAD err in finding that there was no nexus between the Applicants' race and the violence that they witnessed or suffered?

IV. Standard of Review

[9] The Respondent submits that the standard of reasonableness applies to the Court's review of decisions of the RAD. The Applicants have taken no particular position on standard of review. I agree that the Court should apply the standard of reasonableness to the issues raised in this application for judicial review (see *Canada (Citizenship and Immigration) v Huruglica*, 2016 FCA 93, at para 35).

V. Analysis

- A. *Did the RAD err in finding that Ms. Su was not credible with respect to whether the two black Guyanese men visited her friend's home to look for her?*

[10] The RAD found Ms. Su credible regarding the circumstances of the robbery, beating and murder on August 6, 2015. However, the RAD found that she was not credible with respect to the evidence that two black Guyanese men had come looking for her at the house of her friend, Ms. Che, and found on a balance of probabilities that this visit by the alleged perpetrators of the

crime never occurred. Its reasons for the adverse credibility finding include the fact that Ms. Su did not report this incident to the police or make efforts to move her family to another location.

[11] The Applicants challenge the reasonableness of the RAD's credibility analysis and also argue that the RAD erred in failing to admit into evidence on the appeal a letter from Ms. Che, dated March 29, 2016, in which she referred to the alleged visit by the two black men at her home and further stated that she had seen the two men on other subsequent occasions in a taxi parked near her house. The RAD accepted that this letter met the test in s. 110(4) of IRPA for the admission of new evidence on appeal, as it post-dated the RPD decision of March 3, 2016. However, relying on the additional analysis prescribed by the Federal Court of Appeal in *Singh v Canada (Citizenship and Immigration)*, 2016 FCA 96, the RAD did not accept the letter into evidence because of concerns about its credibility. Again, the Applicants challenge the RAD's credibility analysis.

[12] It is not necessary for the Court to reach a conclusion on these credibility arguments. The RAD found on a balance of probabilities that Ms. Su's allegations that she was being sought by the two perpetrators of the murder of her husband were not credible. However, the RAD also concluded that, even if the RAD had found Ms. Su's allegations credible, it was speculative on her part that the two people who allegedly came looking for her were the perpetrators of that crime.

[13] The Applicants' written submissions did not challenge this latter conclusion. However, when raised by the Court at the hearing of this application, the Applicants referred to the

narrative in support of Ms. Su's Basis of Claim form [BOC ] and in particular an amendment in which she stated that, while in hiding, her friend told her the two unknown Guyanese men had asked her if a Chinese woman with two children lived at her home. The Applicants submit that the knowledge by these men of the composition of her family and the fact she was in hiding demonstrate a relationship between them searching for her and the crime.

[14] I cannot find, based on this argument, that it was outside the range of possible, acceptable outcomes, and therefore unreasonable, for the RAD to conclude that Ms. Su was speculating that the two people who were allegedly looking for her were the perpetrators of the initial crime. As such, even if the RAD's credibility findings were overturned, this conclusion by the RAD would remain and would undermine the Applicants' argument that the fact the perpetrators of the crime were looking for Ms. Su, to eliminate witnesses, personalizes the Applicants' risk under the section 97 analysis. The Applicants' arguments related to the RAD's credibility findings therefore do not represent a basis for the Court to find the RAD's decision unreasonable.

B. *Did the RAD err in finding that there was no nexus between the Applicants' race and the violence that they witnessed or suffered?*

[15] In conducting its section 96 analysis, the RAD found that criminality in Georgetown, Guyana was extremely high but that there was no documentation in the article submitted by the Applicants to suggest that ethnic Chinese were being targeted because of their race. The RAD noted that the articles seemed to focus on the fact that people of perceived wealth were targeted. The RAD found on balance that the ethnic Chinese community is not targeted because of their ethnicity; rather they are targeted because of perceived wealth.

[16] The Applicants argue that the RAD relied on outdated case law in reaching its conclusion, as it referred to *Bacchus v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 821 and *Vickram v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 457 as support for the finding that ethnic Chinese are not specifically targeted in Guyana. I agree with the Applicants' position that country conditions can change and that each claim for refugee protection must be assessed on its own merits. However, I do not consider it to be a reviewable error for the RAD to have referred to the support of these authorities, as it also conducted its own analysis of the documentary evidence.

[17] The Applicants also argue that the RAD erred by engaging in a selective review of the country condition evidence before it. In support of this position, the Applicants rely principally on two articles that were in evidence. The first, entitled "Chinese Nationals being targeted; Police Patrols to increase – Rohee" [the Rohee Article], refers to a surge in criminal attacks on Chinese nationals and businesses and reports that Home Affairs Minister Clement Rohee has drawn the conclusion that the business people in the Chinese community appear to be easy targets because they are foreigners. The second article, entitled "Guyana's new president should avoid being baited by Chinese investors, says author", reports on opinions expressed by a Guyana born author, researcher and journalist, who describes Chinese investors in Guyana as commercial exploiters who are plundering the country and suggests that the President of Guyana should not meet with them.

[18] I find no merit to the Applicants' arguments surrounding the documentary evidence. This is the same argument that was advanced before the RAD in the Applicants' appeal of the RPD's

decision. The RAD expressly referred to the two above-referenced articles and to the Applicants' submission that the RPD had engaged in a selective review of the contents of those articles. However, the RAD then reached the conclusion that the ethnic Chinese community is targeted because of perceived wealth, not because of their ethnicity. With respect to the second article referenced above, the RAD specifically noted that the author is described as "sometimes controversial", that the article represents his opinions, and that it does not negate the documentation regarding the general criminality of Georgetown and the focus on business owners. The RAD's conclusions from the review of the documentary evidence are within the range of possible, acceptable outcomes and do not represent a basis for the Court to interfere with the decision.

[19] The Applicants have also advanced an argument based on *Gonzales v. Canada (Minister of Citizenship and Immigration)*, 2011 FC 648 [*Gonzales*], which considered the possibility that violence can have mixed motives. In that case, the Indo-Guyanese applicants claimed refugee protection due to their fear of ethnically motivated violence at the hands of Afro-Guyanese criminal gangs. Justice Zinn noted at paragraph 29 that, where at least one of the motives for attacks is based on a Convention ground, nexus might be established. Because there was some evidence before the RPD in that case as to the possibility of mixed motives, the Court found that the RPD had erred in failing to consider whether there were mixed motives and, if so, whether the motives could constitute the Convention nexus required.

[20] My conclusion is that *Gonzales* does not assist the Applicants in supporting their position that the RAD's decision was unreasonable, because the evidence before the RPD in that matter,



and the RPD's reasoning that resulted in its decision being set aside, are quite different than in the present case. In *Gonzales*, there was evidence of racial slurs made against the applicants during the incidents they alleged, which supported the conclusion that the motive was not purely economic. There is no similar evidence in the present case. Justice Zinn found the RPD's conclusion, that the incidents in that case were economically and not racially motivated, to be unreasonable, because it approached the issue of motive as a yes or no question. The RPD had referred to opinions being divided over whether Indo-Guyanese are disproportionately targeted by criminals because of their economic or racial status and then preferred the explanation of economic influence. In the present case, the RAD did not conclude that there were divided opinions on motive and improperly choose one without deciding whether the other was also applicable. Rather, it reviewed the evidence and reached the conclusion that the motive was economic.

[21] Finally, the Applicants raised at the hearing of this application an argument that the RAD failed to consider the possibility that the Convention nexus resulted from racially motivated complicity of the police in the crimes perpetrated against the Applicants and the Chinese community. They rely on the decision in *Cao v. Canada (Minister of Citizenship and Immigration)*, 2016 FC 1393 [*Cao*], in which Justice Bell held a decision by the RAD to be unreasonable, because it did not address the issue whether the applicants in that case became soft targets because of police racism against persons of Chinese ethnicity.

[22] The Respondent noted that this argument had not been raised prior to the hearing of this judicial review application but nevertheless made submissions in response. The Respondent

acknowledged that the Applicants' written submissions to the RAD made some allusion to lack of attention given by the police to crimes against ethnic Chinese Guyanese. Those submissions referred to the Rohee Article alluding to the fact that the Guyanese police have not focused their attention on crimes that are perpetrated against ethnic Chinese, as a result of which Chinese Guyanese are particularly easy targets of crime. The Applicants submitted that this was consistent with their experience, in that Ms. Su had reported her husband's murder to the police and followed up with them on three occasions, but she had seen no indication that they were investigating the murder.

[23] However, the Respondent argues that this submission represents only one paragraph in the Applicants' overall argument and submits that *Cao* is distinguishable, because that case involved specific allegations and evidence of racism on the part of the police, who had repeatedly made statements to the effect that Chinese people always brought a lot of trouble.

[24] In response, the Applicants refer to the narrative in Ms. Su's BOC, in which she stated she has no faith in the ability of the Guyanese police to protect the Applicants. As noted by the RAD, Ms. Su made contact with the Guyanese police three times before she left Guyana and three more times after her arrival in Canada. The Applicants submit that it is understandable that repeatedly being told only that the police were investigating the crime would not give her confidence in the ability of the police to provide protection. The Applicants also refer to an article in the documentary evidence which described a shooting of a Chinese national in Georgetown during an attempted robbery. The article reports another Chinese national expressing disappointment that the police were not on the road in usual numbers.

[25] I agree with the Respondent's submission that the evidence in the present case differs significantly from that in *Cao*. There is nothing in Ms. Su's evidence of her own personal experiences which appears to suggest that the Guyanese police were racially motivated not to investigate the murder of her husband. I also do not read the article reporting on the attempted robbery and shooting of the Chinese national as supporting a conclusion that the police were deliberately providing inadequate protection to ethnic Chinese in Guyana. Nor does the Rohee Article, which the Applicants reference in their submissions to the RAD, support such a conclusion. Rather, it reports Minister Rohee stating that, in response to the surge in criminal attacks against Chinese nationals and businesses, the Chinese business community has been assured by the police that patrols will intensify in the Georgetown area.

[26] In *Cao*, Justice Bell found that the RAD had conflated the concepts of state protection and persecution based on race, by concluding that the evidence of comments from police with racial undertones represented localized failures which did not support a finding that Guyana did not provide adequate state protection. The Court therefore set the RAD's decision aside, because it failed to assess the evidence of police racism in establishing a nexus to a Convention ground. Given the different evidentiary record before the RAD in the case at hand, I cannot conclude that the fact the RAD did not engage in the sort of analysis, which Justice Bell found to be required in *Cao*, makes the RAD's decision in the present case unreasonable.

[27] Having identified no reviewable error on the part of the RAD, this application for judicial review must be dismissed. Neither of the parties proposed a 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”

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-3112-16

**STYLE OF CAUSE:** WUFEI HUANG SU (A.K.A. WU FEI HUANG SU) ERIC SU, SIMON SU v THE MINISTER OF CITIZENSHIP AND IMMIGRATION

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