

Federal Court



Cour fédérale

Date: 20180221

Docket: IMM-843-17

Docket: IMM-844-17

Citation: 2018 FC 191

Ottawa, Ontario, February 21, 2018

PRESENT: The Honourable Mr. Justice O'Reilly

BETWEEN:

**BAI LIANG LI
LI XIN CAO
ZHI YANG LI BY HIS LITIGATION
GUARDIAN BAI LIANG LI**

Applicants

and

**THE MINISTER OF IMMIGRATION,
REFUGEES AND CITIZENSHIP**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The applicants are a Chinese family who arrived in Canada in 2011. The family consists of Ms Li Xin Cao, her husband, Mr Bai Liang Li, and their child, Zhi Yang Li. The applicants claimed refugee status here, but a panel of the Immigration and Refugee Board refused their

claim primarily because of a lack of credible evidence supporting it. The applicants subsequently sought permanent residence through an application on humanitarian and compassionate grounds (H&C), and also applied for a pre-removal risk assessment (PRRA). An immigration officer dismissed both of their applications.

[2] The applicants argue that the officer erred on the H&C by conducting an unreasonable assessment of the evidence supporting their application, in particular, evidence relating to their establishment in Canada, the best interests of their children (including two Canadian-born children), and the hardship that Ms Cao would face in China as a member of an evangelical Pentecostal church. They ask me to quash the officer's decision and order another officer to reconsider their H&C. I agree with the applicants that the officer's decision in respect of Ms Cao's religious affiliation was unreasonable, and I will therefore grant their application for judicial review on the H&C.

[3] With respect to the PRRA, the applicants argue that the officer applied the wrong legal test and, once again, that the officer unreasonably assessed the risk to Ms Cao in China as a Pentecostal Christian. I am satisfied that the officer's decision on the latter point was unreasonable, and I will therefore grant the applicants' application for judicial review of the PRRA on that basis.

[4] There are two issues in play:

1. Was the officer's decision on the H&C unreasonable?
2. Was the officer's decision on the PRRA unreasonable?

[5] The applicants also raised a question whether the officer applied the correct legal test on the PRRA. Given my conclusion that the officer's decision was unreasonable, it is unnecessary to consider this supplementary argument.

II. The Officer's H&C Decision

[6] The officer reviewed the evidence relating to the applicants' establishment in Canada and found that their ties were not strong. The officer also considered the circumstances of Ms Cao's and Mr Li's two Canadian-born children. He found that there would unlikely be any adverse consequences for the family if they returned to China with multiple children, potentially in violation of China's policy on family planning.

[7] The officer considered the impact on the Canadian-born children if they were removed from Canada to China. They would either have to give up their Canadian citizenship or have their parents pay for private schools and medical care in China. The evidence provided by the applicants did not show an inability to make those payments.

[8] With respect to Zhi, who was born in China, the officer concluded that he would likely adapt well to his return. Similarly, the Canadian-born children, aged 4 and 2, would likely develop appropriate language and social skills in China.

[9] The officer considered evidence about Ms Cao's religious activities and concluded that she had not shown that she actively proselytized on behalf of the Living Stone Assembly church, although she had handed out flyers on one occasion. After reviewing the documentary evidence,

the officer concluded that Ms Cao would be free to practice her faith within the limits of Chinese law.

[10] Overall, in dismissing the applicants' H&C, the officer concluded that the best interests of the children was a positive factor, but not dispositive.

III. The Officer's PRRA Decision

[11] The officer considered only new evidence, not matters that had been considered on the applicants' refugee claim. Accordingly, the main issue was whether Ms Cao's claim of persecution on religious grounds, a so-called *sur place* claim that arose after her arrival in Canada, was supported by the evidence.

[12] The officer considered the documentary evidence relating to the treatment of evangelical Christians in China and concluded that Ms Cao would be able to practice her religion in China without persecution.

[13] The officer also found that the applicants would not have problems with family planning officials in China.

IV. Was the officer's H&C decision unreasonable?

[14] The Minister submits that the officer's decision was reasonable overall, but particularly on the issue of the risk to Ms Cao of religious persecution. The officer noted that Chinese officials allow many Christians to practice their faith freely.

[15] I disagree.

[16] The documentary evidence before the officer suggests that churches in Ms Cao's home province of Guangdong are subject to police harassment. Further, the officer failed to appreciate Ms Cao's actual religious affiliation. He describes her as a protestant Christian who could adapt to worshipping in a state-sanctioned church. However, Ms Cao claimed to be a member of an evangelical Pentecostal church, which has no state-sanctioned equivalent in China. To practice her faith, she would have to worship in an underground church, at risk of police raids and arrest.

[17] Based on the documentary evidence, I find the officer's decision to be unreasonable.

V. Was the officer's PRRA decision unreasonable?

[18] Essentially, the same arguments arise on the PRRA as in the H&C.

[19] The Minister maintains that the officer's decision was reasonable based on the documentary evidence. For the same reasons set out above, I disagree. The officer failed to take

account of documentary evidence relating to persons in Ms Cao's particular circumstances. That failure resulted in an unreasonable conclusion.

VI. Conclusion and Disposition

[20] The officer's decisions on the H&C and the PRRA were unreasonable as they failed to take account of the hardship and risk that Ms Cao would face in China based on her religion. Therefore, I must allow the applications for judicial review in respect of both the H&C and the PRRA. Neither party proposed a question of general importance for me to certify, and none is stated.

JUDGMENT IN IMM-843-17 AND IMM-844-17

THIS COURT'S JUDGMENT is that the applications for judicial review are allowed,
and no questions of general importance are certified.

"James W. O'Reilly"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: IMM-843-17 AND IMM-844-17
STYLE OF CAUSE: BAI LIANG LI, LI XIN CAO, ZHI YANG LI BY HIS
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APPEARANCES:

Aadil Manglji FOR THE APPLICANTS

Christopher Ezrin FOR THE RESPONDENT

SOLICITORS OF RECORD:

LONG MANGALJI LLP FOR THE APPLICANTS
Barrister and Solicitor
Toronto, Ontario

Deputy Attorney General of FOR THE RESPONDENT
Canada
Ottawa, Ontario