

Federal Court



Cour fédérale

**Date: 20190129**

**Docket: IMM-2583-18**

**Citation: 2019 FC 120**

**Ottawa, Ontario, January 29, 2019**

**PRESENT: The Honourable Madam Justice Strickland**

**BETWEEN:**

**CHAOSONG HUANG**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] This is an application for judicial review of a decision of the Refugee Appeal Division of the Immigration and Refugee Board of Canada [RAD], dated May 14, 2018, which upheld the decision of the Refugee Protection Division [RPD] finding that the Applicant is not a Convention Refugee or person in need of protection pursuant to s 96 and s 97, respectively, of the *Immigration and Refugee Protection Act* S.C. 2001, c. 27 [IRPA].

## **Background**

[2] The Applicant, Chaosong Huang, is a citizen of China.

[3] The Applicant claims that the birth of his daughter in 2011 was in violation of China's family-planning policy because he and his wife had married when he was under the requisite age of 22. For that reason, his daughter was sent to live in secret with his wife's aunt. A second child, a son, was born in 2012 after he and his wife had registered their marriage. His son was entered into the Hukou. In 2015 the Chinese family planning authorities discovered the existence of the Applicant's daughter and demanded that the Applicant's wife undergo sterilization and pay a fine. The Applicant and his wife went into hiding. The Applicant had previously retained a human smuggler to obtain an entry visa for the United States. He travelled there in June 2015, anticipating that his wife would follow when the smuggler could arrange a visa for her.

[4] However, while the Applicant was in the United States, his wife was found by the Chinese family planning authorities. The authorities determined that she could not be safely sterilized due to a chronic medical condition. The Applicant claims that he returned to China because of his concern for his wife's health. Further, because his wife could not undergo sterilization, the family planning authorities issued a notice requiring him to be sterilized by September 10, 2015. The Applicant obtained a Canadian visa with the assistance of a smuggler and, on October 27, 2015, travelled to Canada where he applied for refugee protection.

[5] The RPD denied the Applicant's claim in a decision dated July 12, 2017. The RPD determined that the determinative issues were credibility and the absence of an objective basis for the Applicant's subjective fear. The RPD's decision was upheld by the RAD.

### **Decision Under Review**

[6] The RAD first considered the RPD's treatment of the Applicant's corroborative documentation. The RAD held that the RPD had erred by failing to assess the documents individually. The RAD then assessed each of the documents rejected by the RPD.

[7] The RAD determined that the Applicant's Resident Identity Card and his son's birth certificate were not, on a balance of probabilities, fraudulent. The RAD also determined that the intrauterine device booklet [IUD Booklet] was similarly genuine. It went on, however, to find that the IUD Booklet established that the Chinese family-planning authorities knew in 2012 of the existence of both of the Applicant's children. This finding undermined the Applicant's claim that his daughter was only discovered by the Chinese authorities in 2015. The RAD found that the fine receipts, diagnosis certificate, sterilization notices, and list of confiscated items were all fraudulent. In arriving at this conclusion, the RAD noted that it was neither reasonable nor plausible that the Chinese authorities would subject the Applicant and his wife to punitive measures several years after becoming aware of the existence of their daughter, an illegal child.

[8] Based on the finding that the Chinese authorities knew of the daughter's existence in 2012 and the fraudulent nature of several of the documents, the RAD determined that the

Applicant was not credible in relation to core elements of his claim. The RAD determined that the Applicant had not established on a balance of probabilities that he left China in order to avoid being subject to punitive measures, including the payment of fines and forced sterilization, because of the discovery of his daughter by the authorities.

[9] The RAD then considered the RPD's finding that the Applicant did not have an objectively well-founded prospective fear of persecution. The RAD determined that the RPD did not err in this finding. The RAD assessed the evidence and found that the Applicant had not established on a balance of probabilities that he would be forced to undergo sterilization upon return to China. The RAD acknowledged that the Applicant may be fined, but held that this does not constitute persecution.

[10] The RAD concluded that there is not a serious possibility that the Applicant would be subject to persecution, or would be subject to a risk to life, a risk of cruel and unusual treatment or punishment, or a danger of torture, if he is returned to China.

### **Issue and Standard of Review**

[11] The Applicant submits that the sole issue in this matter is whether the RAD misconstrued the objective evidence regarding the implementation of the family planning policy in China. More specifically, the Applicant argues that the RAD unreasonably found that the Applicant does not face a serious risk of persecution as a result of the family planning policy.

[12] A standard of reasonableness applies to this Court's review of the RAD's analysis of evidence (*Denbel v Canada (Citizenship and Immigration)*, 2015 FC 629 at para 29). In judicial review, reasonableness is concerned with the existence of justification, transparency and intelligibility within the decision-making process and whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law (*Dunsmuir v New Brunswick*, 2008 SCC 9 [*Dunsmuir*] at para 47; *Canada (Minister of Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 59).

### **Analysis**

[13] The Applicant submits that the RAD's decision was unreasonable because the RAD misconstrued the objective documentary evidence in relation to the implementation of family planning policies in China. The Applicant acknowledges that family-planning policy in China has changed and that couples may now have two children. He submits, however, that contrary to the RAD's determination, the documentary evidence does not suggest that this change reflects an easing of the implementation policy. And while the RAD correctly found that China's provinces retain discretion as to the manner in which family-planning policy is implemented, it mischaracterizes the documentation pertaining to Applicant's home province of Hebei. This actually indicates that the policy is harshly enforced in Hebei, which has not updated its regulations to reflect the modernized policy, and which regulations instruct officials to implement forced abortions. Additionally, the documentation indicates that despite changes to the family planning laws in China, coerced abortions and sterilizations continue to be frequently carried out. Accordingly, the Applicant submits the RAD's finding that he would only face a

fine in Hebei province as a result of its family planning policy violation is made without regard to this evidence.

[14] The Respondent submits that there is no evidence that any coercive measures under the old policy have been imported into Hebei's new regulations and that a proper examination of the objective evidence demonstrates that fines are typical for those who violate family-planning policies. Further, the jurisprudence establishes that it was open to the RAD to dismiss a claim based on a fear of family planning policies where there is a lack of objective evidence documenting a particularly harsh implementation of those policies (*Rong v Canada (Citizenship and Immigration)*, 2018 FC 358 at paras 10-13; *Chen v Canada (Citizenship and Immigration)*, 2018 FC 608 at paras 8, 10). This is not saved by a general history of heavy handedness (*Mai v Canada (Citizenship and Immigrations)*, 2017 FC 486 at paras 14, 25-26, 29), nor can a lack of clarity about the policy provide a basis to find its conclusion unreasonable (*Lin v Canada (Citizenship and Immigrations)*, 2017 FC 176 at paras 10-12, 14). Finally, the Respondent points out that the Applicant has not challenged the RAD's determination that several of the documents are fraudulent.

[15] As a preliminary point, I note that in his written submissions the Applicant submitted that the RAD erred in fact when it found that the 2016 Congressional Research Service [CRS] Report stated that Hebei is not included amongst the provinces cited as continuing to promote family planning that entailed harsh and invasive measures. However, when appearing before me, the Applicant acknowledged this assertion is in error and abandoned this argument. In fact, in its reasons the RAD made reference to the 2013 Australian Migration Review Tribunal Background

Paper on China and accurately stated that this did not cite the Applicant's home province, Hebei, as one that includes coercive birth control measures in its regulations.

[16] With respect to the country conditions documentation, the US DOS Country Reports on Human Rights Practices for 2016 indicate that in 2016 China changed its family planning policy to adopt a two-child policy. Further, that under the law and in practice there continue to be financial and administrative penalties for births that exceed birth limits or otherwise violate regulations. The National Health and Family Planning Commission announced that it would continue to impose fines, called social compensation fees, for policy violations. Women with an unauthorized pregnancy are required to abort or pay the social compensation fee. Regulations requiring women who violate the family planning policy to terminate their pregnancies still exist and were enforced in some provinces including Hubei, Hunan and Laioning. However, as noted by the RAD, Hebei is not listed as one of these provinces or amongst other provinces that maintained provisions that require remedial measures, a term for abortion.

[17] And, having read the country documentation evidence in whole, I do not agree with the Applicant's assertion that the RAD misconstrued that evidence. Rather, there was no clear evidence in the record before the RAD to support the Applicant's claim that the family planning regulations in Hebei have not been changed since the new family planning policy came into effect or, that after the implementation of the two child policy, coerced sterilization was being affected there. That is, the Applicant failed to meet his onus of adducing convincing evidence in support of his claim.

[18] I can find no error in the RAD's conclusion that there was no evidence before it regarding incidents of forced sterilization in Gaocheng City, where the Applicant is from, or evidence of local regulations that include forced sterilizations. The RAD's conclusion that the preponderance of the documentary evidence indicates that the penalty for having an out of plan child would be a fine, which the RAD found not to be persecutory in nature, is also sustainable on the record before it.

[19] This is not a situation such as *Ou v. Canada (Citizenship and Immigration)*, 2018 FC 968, relied upon by the Applicant, where the officer failed to engage with country condition evidence that directly contradicted his findings. Rather, the Applicant seeks to have this Court re-weigh the evidence, which is not its role (*Moya v. Canada (Citizenship and Immigration)*, 2016 FC 315 at para 33).

[20] In my view, the RAD's decision is intelligible, justifiable, and flows logically from the evidence. It falls well within a range of possible, acceptable outcomes. Accordingly, this application for judicial review must be dismissed.



**JUDGMENT IN IMM-2583-18**

**THIS COURT'S JUDGMENT is that**

1. The application for judicial review is dismissed;
2. There shall be no order as to costs; and
3. No question of general importance for certification was proposed or arises.

"Cecily Y. Strickland"

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Judge

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

**DOCKET:** IMM-2583-18  
**STYLE OF CAUSE:** CHAOSONG HUANG v MCI  
**PLACE OF HEARING:** TORONTO, ONTARIO  
**DATE OF HEARING:** JANUARY 24, 2019  
**JUDGMENT AND REASONS:** STRICKLAND J.  
**DATED:** JANUARY 29, 2019

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