

Federal Court



Cour fédérale

Date: 20190403

Docket: IMM-3160-18

Citation: 2019 FC 398

Ottawa, Ontario, April 3, 2019

PRESENT: The Honourable Mr. Justice Annis

BETWEEN:

**KWON WOO CHO,
SOO MIN PARK
EUN BYEUL CHO BY WAY OF THEIR
LITIGATION GUARDIAN,
KWON WOO CHO**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] This is an application for judicial review pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the IRPA] of a Refugee Protection Division [Board or RPD] decision dated June 13, 2018. In this decision, the Board determined that the Applicants

would not be subject to risk of persecution, danger of torture, risk to life or risk of cruel and unusual treatment or punishment if removed to Korea. Only the male Applicant is pursuing this application.

[2] For the reasons that follow, the application is dismissed.

II. Background

[3] Kwoon Woo Cho also known as Gyongmin Cho or Kwongmin Cho [the Applicant], his wife, Soo Min Park also known as Eunju Park [the Applicant's wife], and their daughter, Eun Byeul Cho are citizens of South Korea. They claim to have a well-founded fear of persecution at the hands of a Mr. Kim of the National Intelligence Service [NIS] under sections 96 and 97 of the IRPA.

[4] The Applicants initially stated in their Personal Information Forms [PIF] that they were from North Korea and came to Canada via the People's Republic of China. The Applicant indicated that he was working in a mine in North Korea but since his village was close to the Chinese border, he would cross it in order to obtain food. The Applicant stated that he was arrested and imprisoned for a time. He and his wife along with the minor Applicant crossed into the People's Republic of China and came to Canada from Beijing.

[5] The Applicants then changed their narrative in an amended narrative after being advised of a biometrics report that indicated that they were citizens of South Korea and initially left from that country travelling to the United States and from there, came to Canada.

[6] The new narrative is that the Applicant, after being in South Korea for a few months, started to work as a spy for the NIS by going to the People's Republic of China and North Korea to obtain information about the North Korean army. The Applicant stated that he also went to North Korea but was caught but managed to escape back to South Korea and reunite with his family. The Applicant stated that on another occasion, he had entered North Korea without authorization and that Mr. Kim of the NIS accused him of being a dual spy and the only thing that the Applicant could do to redeem himself was to go back to North Korea and damage a statue of Kim Il Sung. The Applicant stated that he could not accept this offer by Mr. Kim and arranged to come to Canada via the United States arriving on or about July 6, 2012 and filing their refugee protection claim in August 2012.

[7] While the Board could properly rely upon country condition documents to dismiss the matter, I conclude that the adverse credibility findings are sufficient to support the rejection of the Applicant's claim. The Board made no reviewable errors that can justify judicial review. In essence, the Applicant is requesting the Court to reweigh the evidence, which it cannot do.

III. Standard of Review

[8] The parties agree that the issues raised by the Applicants require a high level of deference from the Court as they pertain to the Board's negative credibility determination and to the weighing, interpretation and assessment of the evidence. I agree. The standard of review applicable to both of the issues raised by the Applicants of a finding of fact is that Court can only intervene in the clearest case of error" *Odia v. Canada (Citizenship and Immigration)*, 2018 FC 363 at para 6.

IV. Analysis

[9] In this case, the Applicants began by misstating that they were from North Korea and came to Canada via the People's Republic of China. This fact alone entitles the Board to draw a negative inference as to the Applicants' credibility: *Gulabzada v Canada (Citizenship and Immigration)*, 2014 FC 547 at para 9; *Ren v Canada (Citizenship and Immigration)*, 2009 FC 973 at paras 15-16; *Sanaei v Canada (Citizenship and Immigration)*, 2014 FC 402 at paras 37-38; *Polasi v Canada (Citizenship and Immigration)*, 2012 FC 897 at para 13. The additional fact that the Board found the Applicants' explanation for the omission and the motives behind their decision to reveal the truth after obtaining the biometrics report was unconvincing and further renders the Board's decision on credibility findings reasonable.

[10] In addition, the Applicant's wife was found not to be credible and did not challenge these findings. This corroborates the Board's conclusions that the Applicant was not credible. He was aware of her false statement, and yet did not bring this to the attention of the Officer.

[11] The RPD reasonably found that the principal Applicant's testimony concerning his fear of risks in South Korea was inconsistent with his amended PIF evidence. In his amended PIF narrative, the Applicant indicates that he feared being forced to deface a statue in North Korea and being accused of being a double spy. In contrast, when questioned by the RPD, the Applicant alleged that he feared having to continue to work for the NIS generally on account of the negative effect this would have on his health.

[12] The Applicant also stated that he would be sent to prison if he did not continue to work for the NIS as he had violated the law in returning to North Korea without authorization. The Applicant did not advance this allegation in his original PIF, or that he had been accused of being a double spy and was instructed to deface a statue in North Korea. These allegations were only contained in his amended PIF. It was reasonable for the Board to draw a negative inference from the Applicant's failure to mention such significant facts in his original statement.

[13] The Applicant also indicated at one point in the hearing that he would be required to gather intelligence about the North Korean army and smuggle propaganda flyers into North Korea, which was also inconsistent with previous statements.

V. Conclusion

[14] The application is dismissed. No questions are certified for appeal.

JUDGMENT in IMM-3160-18

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed and no question is certified for appeal.

“Peter Annis”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3160-18

STYLE OF CAUSE: KWOON WOO CHO ET AL v MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

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