

Federal Court



Cour fédérale

Date: 20211006

Docket: IMM-3044-20

Citation: 2021 FC 1034

Ottawa, Ontario, October 6, 2021

PRESENT: The Honourable Mr. Justice Zinn

BETWEEN:

YUNYAO WU

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] This is an application for judicial review of the July 6, 2020, decision of the Minister's delegate [the Delegate] denying the Applicant's application for permanent residence from within Canada on humanitarian and compassionate grounds.

[2] The Delegate failed to consider one of the significant concerns raised in the application regarding the best interests of the Applicant's child. Moreover, the Delegate's analysis of the

willingness of local authorities in China to assist the Applicant and her daughter if the feared consequences occurred is speculative and does not accord with the evidence. For these reasons, the decision is not reasonable and this application is allowed.

[3] In May 2016, the Applicant, a Chinese national, entered Canada with her mother and while in Canada she met and entered into a relationship with a Canadian citizen of Chinese origin. He is the son of a friend of the Applicant's mother.

[4] Shortly after moving in with this man, the Applicant became pregnant and gave birth to a daughter in April 2017.

[5] There is evidence that this man became abusive towards the Applicant and she left him, taking her daughter. The Applicant and her daughter lived in a women's shelter for approximately two months before relocating to the Greater Toronto Area. They have a restraining order against the man.

[6] On October 23, 2018, the Applicant applied for permanent residence. She sought an exemption allowing her to apply from within Canada on humanitarian and compassionate grounds. On July 7, 2020, the Delegate informed the Applicant that her request for an exemption was denied.

[7] The Applicant raises a number of grounds in her memorandum attacking the reasonableness of the decision; however, at the oral hearing she restricted her submission to matters relating to the Delegate's analysis of the best interest of the child.

[8] The Applicant submits that the Delegate addressed risks posed to the Applicant if she is required to return to China, but failed to address the risks to the child. The Delegate treated them as if they were the same. The Respondent submits that no specific hardship factors were raised in the application with respect to the child and the Delegate was therefore not required to consider the child's risk factors separately from the Applicant's.

[9] I do not accept the Respondent's submission. While the hardship and risk factors raised at the hearing by the Applicant are not as clearly set out as one might wish, on a careful reading of the submission and supporting documents, they may be found.

[10] It is trite that a decision-maker must properly engage with the arguments raised by the parties. "[A] decision maker's failure to meaningfully grapple with key issues or central arguments raised by the parties may call into question whether the decision maker was actually alert and sensitive to the matter before it": *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 128.

[11] The requirement that the Delegate meaningfully grapple with the risk and harm to the child, who will accompany the Applicant if she must return to China to apply for status in

Canada, is critical when assessing the best interests of a child affected by the decision being made.

[12] The Delegate and others making humanitarian and compassionate decisions should keep front of mind the observation of the Federal Court of Appeal in *Hawthorne v Canada (Minister of Citizenship and Immigration)*, 2002 FCA 475 at para. 9 that “[c]hildren will rarely, if ever, be deserving of any hardship.”

[13] Although the applicant seeking humanitarian and compassionate relief in *Kanthisamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 was himself a minor, the observation of Justice Abella at para 41 is also apt here. She wrote that “children may experience greater hardship than adults faced with a comparable situation” such that circumstances which may not warrant humanitarian and compassionate relief when applied to an adult, may when applied to a child.

[14] I will first outline the Delegate’s decision on the hardship and risk factors, then outline the submissions thereon that relate specifically to the child, closing with the unreasonableness of the Delegate’s decision vis-à-vis the child.

[15] The Delegate considered the Applicant’s risk of harm due to her ex-partner’s family members in China. The Delegate considered the evidence that vicious comments about the Applicant had been painted on the walls of the Applicant’s family’s residence along with slanderous posters referring to the Applicant [the June 2018 Incident]. The Delegate

acknowledged the Applicant's testimony that her family members were concerned about her and her daughter's safety.

[16] The Delegate considered the redress available to the Applicant. The Delegate summarized country information documentation outlining the policing organizations in China and their structure, and the treatment of domestic violence in China. This included evidence that Chinese law considered domestic violence to be a civil offence and societal sentiment was that it was a private matter. The evidence also showed that there were government supported shelters for victims of domestic violence and court protective orders were available. However, the evidence showed that public security forces often ignored domestic violence and police regularly failed to collect evidence in domestic violence cases.

[17] The Delegate acknowledged that some victims of domestic violence do not receive police assistance in China. The Delegate noted however that the Applicant's brother was able to lodge a complaint regarding the June 2018 Incident with a local police station and it was accepted. The Delegate found that there was "little objective and corroborative evidence to suggest that the police would be unable or unwilling to lend assistance to the applicant or her family members if approached." The Delegate found that if the Applicant needs protection "or that she and/or her daughter face(s) risk of being attacked by her former partner or his family members, a reasonable option would be for her to approach state authorities." If these authorities were unwilling to assist, she could escalate the matter, for example by making a complaint to the Minister of Public Security.

[18] As earlier noted, the child's hardship is raised in the materials before the Delegate.

[19] In the Applicant's submissions, under the heading "Best Interests of the Child", the Applicant's representative noted that the common law partner had sent someone to harass the Applicant's family in June 2018, and then wrote: "if Ms. Wu had to take her daughter to China, the mother and the child would be easily to be reached and harassed and there is [*sic*] lack of protection from the local police."

[20] In her letter of support, the Applicant's mother expresses that she is concerned following the June 2018 Incident and the harassment the family has experienced. She writes that the child's father's family might "come to grab and take the child away."

[21] The Delegate, in addressing the risk and hardship from these persons in China, did not address the concern that the daughter may be taken away from her mother, nor that she may be personally harassed by these persons. Instead, the Delegate focused on the Applicant's risk and hardship and concluded that the redress mechanisms mentioned in the decision "greatly mitigate the adversity that she may face upon return to China." The Delegate, after referencing the fact that the Applicant's brother lodged a complaint with the local police regarding the June 2018 Incident, found that there was "little objective and corroborative evidence to suggest that the police would be unable or unwilling to lend assistance to the applicant and her family members if approached." This finding is completely at odds with the evidence.

[22] The Applicant's submissions to the Delegate indicated that there was a lack of protection from the police and that after reporting the June 2018 Incident to the police no further action was taken. The Applicant submitted a letter from her mother in which she writes that, after reporting the incident to the police, they "completed the case simply by giving us a receipt, they did not even come to the scene." The Applicant's aunt also provided a letter in which she writes that in response to reporting the incident "[t]he police in China did not do much except for the issuing [sic] a regular notes [sic] of the report."

[23] There is no evidence that the police took any steps to investigate, to address the concerns raised by the family in the complaint, or to prevent a repetition of the harassment.

[24] The Delegate took the fact that the Applicant's brother was able to make a report as evidence that the police would be willing to help. However, the evidence of what the police actually did in response to the report is consistent with the country documentation, which indicate that China "public security forces often ignored domestic violence" and "a recurring problem in the prosecution of domestic violence cases was a failure by authorities to collect evidence." This is not supportive of the Delegate's conclusion that the police would be willing to assist the Applicant.

[25] There is no justification for the Delegate's finding that, if local authorities are unwilling to assist, the Applicant "has the option to escalate the matter and make a complaint to the Minister of Public Security, for example." The only country documentation pointed to by the Delegate supporting this conclusion was the hierarchical structure of policing in China. There is

no evidence regarding the availability of any complaint mechanisms. Indeed, the country documentation indicated that local corruption was widespread, that in terms of oversight, “upper-level public security organs lack effective mechanisms to constrain lower-level public security organs”, and that “oversight of civilian municipal security forces was highly localized and *ad hoc*.” Given the *ad hoc* nature of oversight, it is impossible to understand the basis on which the Delegate concluded that the Applicant would have recourse to the Minister of Public Security.

[26] For these reasons, this application is allowed. No question was posed for certification.

JUDGMENT IN IMM-3044-20

THIS COURT'S JUDGMENT is that this application is allowed, the decision under review is set aside, the Applicant's application for humanitarian and compassionate relief is to be determined by a different decision-maker, and no question is certified.

"Russel W. Zinn"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3044-20

STYLE OF CAUSE: YUNYAO WU v THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: HELD BY VIDEOCONFERENCE

DATE OF HEARING: SEPTEMBER 9, 2021

JUDGMENT AND REASONS: ZINN J.

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APPEARANCES:

Maxwell Musgrove FOR THE APPLICANT

Margherita Braccio FOR THE RESPONDENT

SOLICITORS OF RECORD:

Chaudhary Immigration Law Professional Corporation FOR THE APPLICANT
North York, Ontario

Attorney General of Canada FOR THE RESPONDENT
Department of Justice
Toronto, Ontario