

Federal Court



Cour fédérale

Date: 20120518

Docket: IMM-6874-11

Citation: 2012 FC 608

Ottawa, Ontario, May 18, 2012

PRESENT: The Honourable Mr. Justice Near

BETWEEN:

JIAN HUA ZHENG

Applicant

and

**MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The Applicant, Jian Hua Zheng, contests a decision by the Refugee Protection Division of the Immigration and Refugee Board (the Board), dated September 6, 2011, that determined she was neither a Convention refugee nor person in need of protection within the meaning of sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27.

I. Facts

[2] The Applicant is a citizen of China. In 1996, she became pregnant and was forced to have an abortion because she could not legally marry at that time. Shortly thereafter, she fled the country intending to meet her boyfriend in the United States (US). However, they lost contact and she continued to the US without him.

[3] In 2008, the Applicant met a Canadian man and again became pregnant. In August, she joined him in Toronto and stayed with him until December of that same year. They never married, but the child was born in Canada. She subsequently met and had a second child with another man in Canada.

II. Decision Under Review

[4] The Board made the following observations with regard to documentary evidence: family planning policies vary by region and it is reasonable to assume “remedial measures” in Fujian refers to social compensation fees; the children could be registered in her hukou and not denied basic social support provided the required social compensation fee was paid; there are no reports of couples experiencing difficulties with children born overseas; and evidence regarding forced sterilizations in China is mixed.

[5] The Board also gave no weight to a Sterilization Certificate and letter from her cousin alleging prejudicial treatment of a son on return from the US, given issues associated with the dates and contrary documentary evidence.

[6] The Board concluded:

In the context of the country documentary evidence cited above, I find, on a balance of probabilities, that the claimant and her children can return to China without jeopardy, that she is not at risk of sterilization in Fujian province and that her children will be registered in her *hukou*, either on the payment of a social compensation fee, or, as indicated in country documentary evidence cited above, without a penalty since they were born overseas.

III. Issues

[7] The general issue before this Court is whether the Board committed a reviewable error in the assessment of the Applicant's claim.

IV. Standard of Review

[8] Questions of fact, discretion and policy as well as questions where the legal issues cannot be easily separated from the factual issues generally attract a standard of reasonableness (see *Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190 at para 51).

[9] Under this standard, the Court will only intervene where a decision lacks justification, transparency and intelligibility or does not represent an acceptable outcome defensible in respect of the facts and law (*Dunsmuir*, above at para 47).

V. Analysis

[10] The Applicant contests the Board's main finding at paragraph 6 of its reasons where it states:

[6] [...] However, a number of other provinces, including Fujian province, are specifically noted as requiring unspecified remedial measures. The U.S. Congressional Annual Report cited above indicates that remedial measures are used synonymously with compulsory abortion. However, in the context of no recent evidence of forced abortion or forced sterilization in Fujian province, I find, on a balance of probabilities that it is reasonable to assume that remedial measures refers to the Fujian provincial system of social compensation fees noted above.

[11] The Applicant asserts that the Board misconstrued the evidence of "remedial measures" in Fujian as not including forced sterilization despite evidence that this was the case.

[12] I am inclined to agree with the Applicant's position under the circumstances. It was unreasonable for the Board "to assume that remedial measures refers to the Fujian provincial system of social compensation fees." Since the country documentation, notably the US Congressional-Executive Commission on China Annual Report 2009, clearly shows that reference to "remedial measures" includes forced sterilization, the Board's finding that such measures would only imply a social compensation fee in Fujian province does not reflect the evidence presented or meet the criteria of justification, transparency and intelligibility. On this basis alone, the matter will be sent back for reconsideration.

[13] As to the evidence of a similarly situated person based on the letter from the Applicant's cousin and Sterilization Certificate, however, I do note the Board is entitled to find it lacking in credibility or attribute no weight to it as was done in this particular case. The Board found the "requirement for sterilization before a woman with one child is allowed to marry is neither plausible nor credible." This conclusion was reasonably open to the Board as there was no credible evidence in relation to the issues regarding the dates from the Sterilization Certificate.

VI. Conclusion

[14] For these reasons, the application for judicial review is allowed. The matter is remitted back to a newly a constituted panel of the Board for re-determination.

JUDGMENT

THIS COURT'S JUDGMENT is that this application for judicial review is allowed. The matter is remitted back to a newly constituted panel of the Board for re-determination.

“ D. G. Near ”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-6874-11

STYLE OF CAUSE: JIAN HUA ZHENG v MCI

PLACE OF HEARING: TORONTO

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**REASONS FOR JUDGMENT
AND JUDGMENT BY:** NEAR J.

DATED: MAY 18, 2012

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