

Federal Court



Cour fédérale

**Date: 20121012**

**Docket: IMM-8229-11**

**Citation: 2012 FC 1193**

**Ottawa, Ontario, October 12, 2012**

**PRESENT: The Honourable Mr. Justice Rennie**

**BETWEEN:**

**JIA XIN YU  
XIAO FENG SUN**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] The applicants seek judicial review of a decision of a Senior Immigration Officer (Officer), dated October 1, 2011, refusing their application for permanent residence on humanitarian and compassionate (H&C) grounds pursuant to section 25 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (*IRPA*). For the reasons that follow the application is dismissed.

***Facts***

[2] The applicants are Chinese citizens who met in Canada. They entered into a common law relationship in 2007 and have three Canadian children. At the time of the H&C decision the children were four years old, two years old and ten months old. Mr. Sun also has one adult child living in China.

[3] Ms. Yu entered Canada in 2003 and Mr. Sun arrived in 2004. Each unsuccessfully claimed refugee protection on the basis of religious persecution, Ms. Yu as a Christian and Mr. Sun as a practitioner of Falun Gong.

[4] Mr. Sun also had a negative Pre-Removal Risk Assessment (PRRA). He failed to appear for removal in 2009 and was arrested and released shortly after.

***Decision Under Review***

[5] The applicants advanced several grounds in support of a favourable H&C decision; the effect of the one-child policy, their inability to practice their religion, the family's establishment in Canada and the best interest of their minor children.

[6] On the issue of risk, the Officer concluded that the applicants had not established that they would be at risk of religious prosecution. In coming to this conclusion, the Officer had regard to the following considerations:

- Ms. Yu applied for refugee protection on the basis of her Christian faith. She alleged that the Public Security Bureau (PSB) had raided her underground church. Her claim was denied on the basis of identity.
- In his refugee application, Mr. Sun claimed that the PSB had raided his Falun Gong group. His claim was denied on the basis of credibility.
- In Canada, Ms. Yu and Mr. Sun are practicing Christians.
- China is officially atheist but Protestant Christianity is one of the five recognized religions. Unregistered churches are considered illegal.

[7] With respect to the risk of forced sterilization or abortion, the Officer noted that: China's family planning policies generally restrict families to one child, but families may legitimize extra-policy births by paying a fee. In Guangdong Province, the monetary penalty has increased. Some local officials resort to forced abortion and sterilization to meet birth targets. Chinese couples who have children abroad may not be subject to this policy, and documentary evidence stated that they can return to China with more than one child without any serious problems

[8] Regarding establishment, the Officer gave positive consideration to their employment, home ownership, community involvement, education activities and their letters of support. However, the Officer noted that the applicants' prolonged stay in Canada was within their control. The Officer concluded that this factor would not lead to unusual, undeserved or disproportionate hardship.

[9] The Officer also considered the best interests of the applicants' minor children. The children have dual citizenship and are quite young and adaptable. They had been exposed to

Chinese culture and Cantonese by their parents. Additionally, they have family in China to facilitate their adjustment. The Officer determined that the applicants did not establish that relocating and resettling in China would cause a significant negative impact on their children.

[10] The Officer determined that the applicants could re-establish themselves in China. Though the family may experience hardship, the evidence did not establish that the hardship would be unusual, underserved or disproportionate.

### ***Issue***

[11] The issue for this judicial review is whether the Officer reasonably decided to deny the H&C application: *Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190.

### ***Analysis***

#### ***Risk Relating to Religion***

[12] The applicants submit that the Officer failed to adequately consider the risk they may face in China as a result of practicing Christianity.

[13] The Officer summarized the submissions and issues in respect of the practice of both Christianity and Falun Gong in China. That summary noted that Protestant Christianity is a recognized religion and there are registered Christian churches. Private bible study and prayer groups are permitted.

[14] The Officer acknowledged that unregistered churches may be raided as illegal gatherings. However, the applicants are not members of an unregistered Chinese church. There is no evidence that their Canadian congregation has any affiliation to a Chinese church and that it would be speculative to presume that the applicants might choose to join an unregistered, as opposed to a registered, church.

[15] Contrary to the applicants' submission, the Officer did make a finding on whether the applicants faced a risk as a result of their religion. The Officer concluded that the applicants had not established that they would be at risk for any reason in China.

#### ***Risk Relating to Family Size***

[16] The documentary evidence stated that Chinese families who have more than one child outside of the country can return without serious problems. The Officer was entitled to give this evidence significant weight in concluding that the applicants had not established that they faced risk in China.

[17] The applicants submit that the Officer did not specifically address the risk of forced sterilization. However, the Officer did consider the evidence on this issue and noted that forced sterilization is infrequent. Other than the general fact that forced sterilization still sometimes occurs, the weight of the evidence was in respect of tolerance in the case of foreign born children.

[18] Finally, the applicants argue that many sanctions for breaking the one-child policy are extralegal and not amenable to "tidy predictions." This is true, but cannot be a reason to engage in

speculation. The Officer could only consider the available evidence. That evidence reasonably led him to conclude that the applicants do not face risk.

***Best Interests of the Children***

[19] The applicants submit that the children may be unable to “exercise their Canadian nationality if they travel to China with their parents.” The applicants speculate that China’s exit controls may prevent them from ever returning to Canada and that the social and educational consequences of moving to China would constitute undue hardship. The applicants also submit that the Officer failed to consider that the children would face challenges resettling in Canada.

[20] These arguments would require the Officer to engage in speculation. There is no evidence that the children would ever be personally targeted by exit controls. There is also no evidence as to when or if they might wish to return to Canada or under what circumstances, assuming that they now leave with their parents.

[21] The applicants also submit that China does not recognize dual citizenship. While China may not recognize that the children are also Canadian, the applicants have not demonstrated that the children will be forced to give up that status or otherwise be negatively affected by China’s policy in this regard.

[22] Contrary to the applicants’ arguments, the Officer gave full and careful consideration to the best interests of their children. The findings in this regard are reasonable.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that** the application for judicial review be and is hereby dismissed. No question for certification has been proposed and none arises.

"Donald J. Rennie"

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Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

**DOCKET:** IMM-8504-11

**STYLE OF CAUSE:** JIA XIN YU and XIAO FENG SUN v THE MINISTER  
OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** Toronto

**DATE OF HEARING:** September 25, 2012

**REASONS FOR JUDGMENT  
AND JUDGMENT:** RENNIE J.

**DATED:** October 12, 2012

**APPEARANCES:**

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