

Federal Court



Cour fédérale

Date: 20140430

**Dockets: IMM-1280-13
IMM-1281-13**

Citation: 2014 FC 386

Ottawa, Ontario, April 30, 2014

PRESENT: The Honourable Mr. Justice Zinn

BETWEEN:

YONGPING FENG AND REN ZHONG

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] These reasons relate to applications for review of two decisions by Citizenship and Immigration Canada [CIC]. IMM-1280-13 relates to the decision that Yongping Feng's son, Ren Zhong, should be removed from her application for permanent residence on the grounds that he was not a dependent because he had married and had a daughter after the application for permanent residence had been submitted. IMM-1281-13 relates to a decision denying the application for

permanent residence of the principal applicant, Yongping Feng, and rendering her and her son inadmissible for two years for misrepresenting or withholding the change in her son's marital status contrary to paragraph 40(1)(a) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

[2] The Respondent has consented to an extension of time for the filing of these applications.

[3] For the reasons that follow, both applications are dismissed. A copy of these reasons shall be placed in each of the Court files.

Background

[4] In 2007, Ms. Yan Yue Ren, a Canadian Citizen, applied to sponsor her father, Mr. Yi Tong Ren, his wife, Yongping Feng and their son, Mr. Ren Zhong. At that time, Mr. Zhong was 21 years old, single, financially dependent on his parents, and continuously enrolled in a post-secondary institution.

[5] Mr. Ren was murdered on September 7, 2010, and Ms. Feng then took over the application as the principal applicant. CIC asked for and received a Record of No Marriage Registration for Ren Zhong dated March 21, 2012. It was issued by the Marriage Registration Office of Gulou Bureau of Civil Administration, Fuzhou City, Fujian Province, and reads in relevant part as follows:

According to investigation, it is found that Ren Zhong, male ... has never registered for marriage in this authority from October 27, 2005 to March 21, 2012.

Note: Not including the marriage registration record in other districts.

[6] On March 1, 2012, CIC received an email message from Ms. Ying Lin who claimed that she and Ren Zhong were married on January 10, 2011, and they had a child born July 30, 2011. It reads, in relevant part, as follows:

My name is Ying Lin, a citizen of Australia, I am yet to raise a serious fraud in the application of YONGPING FENG and ZHONG REN ...

I would like to raise the fact that under the application, the fact that ZHONG REN is married to me on the 10.01.2011 (evidences are attached) and we have a baby girl named Charlynn Ren who is born in Sydney of Australia on the 30.07.2011 (Birth Certificate is attached). As a wife of Zhong Ren, I am here to plea for help from the Canadian embassy to reject his application for permanent residence into Canada as I wanting him to go to Australia with me and our baby. Could you please understand that as a wife and mother, myself has gone all the way alone to Australia giving birth to Zhong Ren's baby, despite that he has not provide any financial support what so ever, and as I return to china, he has in fact in another relationship with another girl, and has been constantly asking me for money. All the above that I've stated is true and can be attested. [*sic*]

[7] Attached to the email were eight photos. Six were photos of Ren Zhong and Ying Lin and others at a banquet; one was of Ren Zhong and Ying Lin out-of-doors, in formal attire, holding hands; and one was of Ren Zhong holding a young baby (which CIC determined was his daughter, Charlynn Ren). Ying Lin is dressed in a western style wedding dress and veil in the five pictures she is in. In six of the seven pictures Ren Zhong is dressed in a business suit with a boutonniere. In one of the six pictures, Ren Zhong is in a white suit, while in the other five, he is in a black suit. Also attached to the email was a notarized birth certificate of Charlynn Ren listing Ren Zhong as the child's father and informant.

[8] Upon receipt of this information, CIC on March 7, 2012, sent a procedural fairness letter to Yongping Feng which stated:

We have received information that establishes conclusively that your son, REN Zhong is in fact married and has a child. On December 11, 2011, you provided a "Never Married Certificate" for your son and did not reveal his marriage or the birth of his daughter. This information could affect REN Zhong's eligibility as a dependent child. Therefore, this constitutes the withholding of material facts and may result in the refusal of your application and in you and your son being deemed inadmissible to Canada for a period of two years.

This is a procedural fairness letter giving you 45 days to respond to this information before a final decision is made on this case.

CIC did not disclose the source of the information or a copy of the email or its attachments to Yongping Feng.

[9] On April 5, 2012, Ying Lin sent CIC a second email, retracting her previous story, stating:

... I would like to apologize for all the inconveniences and interruptions caused to your work through the email I've sent you early March, but I plea for help from you desperately.

I would like to state all the facts that I've know to you. First of all, on the 07 of September 2010, REN Zhong's father passed away unexpectedly, and the custom in Fuzhou is to have some happy event (e.g. an engagement or wedding ceremony) within 100days as to alleviate the grief and brings luck to the family . Thus, REN Zhong and I had our engagement ceremony on the 10.01.2011, we did not registered for marriage and thus both still remains single. After few months, I've had an extremely big argument withREN Zhong and was seriously upset, and suffer a great depression, thus flew to Australia in April and did not contact him since then, at the time I realised that I was pregnant but because I was still angry with him, I did not tell him the fact that I was pregnant, I gave birth to my daughter in Sydney, and my status remains as a Single Mother. I came back to China on the 04 December 2011, and knowing that he will be going to Canada soon, I was agitated therefore sent you previous emails. I felt extremely guilty for causing such a chaos, as of last month, I've decided to take my baby back to Australia where we can start a new life from now on, my baby will have nothing to do with REN Zhong. Could I please plea you to grant him

permanent visa. My baby and I will greatly appreciate your help.
[sic].

[10] Yongping Feng replied to the procedural fairness letter on April 7, 2012 stating:

We are very sorry about the inconvenience and confusion caused by the relationship between my son Zhong REN and his girlfriend Ying LIN. First of all, we acknowledge that that my son Zhong REN and Ying LIN were in relationship as boyfriend and girlfriend before. On September 7, 2010 my husband was murdered in China. According to the local traditional custom in Fuzhou, we needed to have some happy events within 100 days to alleviate the grief and brings the luck back to the family. As a result, my son Zhong REN and Ying LIN had their engagement ceremony. However, several months later, my son Zhong REN and Ying LIN broke up, and Ying LIN left China for Australia. When she left she did not disclose the fact that she became pregnant. Accordingly my son still remained the status as “Never Married”. Given the fact, I provided the “Never Married Certificate”. We really did not know Ying LIN gave birth to a baby girl until we received the letter dated on March 7, 2012. Based on the above statements, we swear that we did not misrepresent directly or indirectly withholding material facts. We all realize that the situation is confusing, but it is the truth. We again apologize for the confusion caused by this matter. [sic][emphasis added].

[11] Ying Lin sent a third email to CIC on April 11, 2012:

I sincerely apologize for all the inconveniences and misunderstanding caused to you in referring to the above case. I would like to make clarify the misunderstandings.

I met REN Zhong on a short trip when I came back from Australia, and we had a short relationship. On the 7th September 2010, REN Zhong’s father was murdered; his whole family suffers emotional distress and was living with anxiety. At that time, as his girlfriend I have chosen to stay with him and giving him emotional support. Due to the folk custom in Fuzhou, there needs to be a happy event within the family as to wash away bad luck and brings good luck, thus I’ve agreed to be engaged to REN Zhong. After few months, REN Zhong and I had huge relationship issues, and as a result I flew back to Australia with anger and did not contact REN Zhong or his family at all. Not long, I realized I was pregnant, I’ve decided to gave birth to her alone in Australia, although I know that I might be facing all the challenges that a Single mother faces. I came back to

China with my baby and re-contacted REN Zhong, and knowing the fact that he might be going to Canada soon, I was irritated and thus, sending you those emails as to deter him from going to Canada. [sic]

[12] On October 3, 2012, CIC issued a decision removing Ren Zhong from the application as it concluded that he was not a “dependent” as defined in section 2 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [*Regulations*]. The officer stated that “having reviewed the information of file, I am satisfied that REN ZHONG was married or entered into a common-law relationship with LIN YING ... since the submission of this application for permanent residence.”

[13] On October 3, 2012, CIC issued a second decision denying Yongping Feng’s application and finding that both she and her son were inadmissible to Canada for two years for misrepresenting Ren Zhong’s marital status, under ss. 40(1)(a) and 40(2)(a) of the *IRPA*. Specifically the decision-maker found the explanation offered by the Applicants in response to the fairness letter was not credible. The Manager writes:

I do not find your response to be credible. First, I note that the Australian birth certificate of Ren Charlynn, your son’s daughter, names Ren Zhong and Lin Ying as informants. Second, the photo of Ren Zhong and his daughter was provided by Lin Ying to this office on March 1st. Clearly, Ren Zhong had knowledge of his daughter prior to March 7th if he is featured in a photo holding her that existed prior to March 7th. Third, in the wedding photos provided by Lin Ying, she is wearing a wedding gown. The wearing of such a dress is not consistent with an engagement ceremony in China.

In conclusion, all of the evidence points to Ren Zhong having married Lin Zhong [sic]. His marital status is material to your application as you were claiming him as a dependant child based on his age and marital status.

Issues

[14] The Applicants raise two issues:

1. CIC erred by not setting out what extrinsic evidence it relied on in its procedural fairness letter, thus the Applicants were not given an opportunity to respond to it; and
2. CIC's determination that Mr. Zhong had been married was unreasonable.

Analysis

[15] Justice Rothstein, as he then was, set out what constitutes extrinsic evidence in *Dasent v Canada (Minister of Citizenship and Immigration)*, [1995] 1 FC 720 at para 23 [*Dasent*]: “evidence of which the applicant has no knowledge and on which the immigration officer intends to rely in making the decision affecting the applicant.” He further stated that “the question is whether the applicant had the opportunity of dealing with the evidence. This is what the long-established authorities indicate the rules of procedural fairness require.”

[16] Neither the email nor its attachments constitute extrinsic evidence as described in *Dasent*. Although these Applicants were not provided with the email from Lin Ying or its attachments, they nonetheless, had the full opportunity to address and explain the content of that document and its attachments. It is of note that the Applicants, in their response to the fairness letter, point to the relationship of Ren Zhong and Lin Ying as the relationship at issue (although Lin Ying was not identified in the letter), point to the “ceremony” they had in accordance with local custom (although no details as to why CIC thought Ren Zhong was married were identified in the letter), and speak to the birth of a baby girl (although the gender of the child was not disclosed in the fairness letter).

Further, Ren Zhong was in the photos, looking at the camera. The photos are therefore not information of which the Applicants have “no knowledge.” I note also that the claim that the Applicants did not know of the birth of Ren Charlynn until the fairness letter on March 7 is tenuous. Lin Ying stated that she left China to go to Australia in April, 2011. By that time she would have been about six months pregnant. For the Applicants to not have known that she was pregnant is not believable.

[17] Lin Ying states that she returned to China following the birth of her daughter in Australia and there is every reason to believe given the detail in the response to the fairness letter that the Applicants had discussed with Lin Ying her allegations.

[18] In short, I find that the failure to provide the email and its attachments did not prevent the Applicants from making a full and complete explanation; the officer’s failure to disclose the source of the information or the evidence provided did not prejudice the Applicants. The level of detail in the response to the fairness letter reveals that the Applicants would not have been put in any better a position to respond to the allegations if the email and attachments were provided to them.

[19] Further, I find the officer’s decision that Ren Zhong was married to Lin Ying to be reasonable based on the evidence. I agree with the Applicants that the material misrepresentation is the marriage, not the birth of a child. Nonetheless, there is sufficient evidence to support the conclusion that there was a marriage, including the photos in which Lin Ying is wearing a wedding dress, which, as the officer who has expertise in such things notes, is not attire that would be worn at an engagement party in China. Although not noted by the officer, I also note that the “ceremony”

occurred well outside the 100 days following the death of Mr. Ren, prescribed by the local tradition, which supports that the event was not a mere engagement done to comply with local tradition for the purpose of bringing the family good fortune. Again, although not noted by the officer, I also note that in one of the pictures submitted by Lin Ying, Ren Zhong is wearing a white suit and in the other five, he is wearing a black suit, suggesting that one set of pictures is from the wedding ceremony, and the other picture is from a separate set of engagement photos taken on a different day. This further supports the fact that the ceremony depicted in the majority of the photos is in fact a wedding ceremony instead of a separate engagement ceremony.

[20] Further, from the notes on file (which notes form part of the reasons for decision: *Toma v Canada (Minister of Citizenship and Immigration)*, 2006 FC 779, 295 FTR 158 at para 10, citing *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 at paras 43 and 44), it is clear that the officer considered the Never Married Certificate submitted by the Applicants, but found it not to be credible in light of the evidence submitted by Lin Ying. I also note that there is a caveat explicitly stated on the Never Married Certificate: it only applies for that particular district and marriage registrations in other districts would not be caught.

[21] The officer did not ignore any evidence nor take into account any irrelevant considerations in determining that Mr. Zhong was married. The Applicants want this Court to reweigh that evidence and find in their favour. That is not the function of this Court on judicial review. Where there is evidence to support the officer's conclusion and she did not ignore relevant evidence, deference must be given to her conclusion.

[22] For these reasons, these applications are dismissed. No question was proposed by either party for certification.

JUDGMENT

THIS COURT'S JUDGMENT is that time is extended for the filing of these applications, both applications are dismissed, no question is certified, and a copy of these Reasons shall be placed in each Court file.

"Russel W. Zinn"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKETS: IMM-1280-13
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STYLE OF CAUSE: YONGPING FENG ET AL v THE MINISTER OF
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