

Federal Court



Cour fédérale

**Date: 20140505**

**Docket: IMM-6522-13**

**Citation: 2014 FC 422**

**Ottawa, Ontario, May 5, 2014**

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

**BETWEEN:**

**MIN JIA  
ZHIHAI WANG**

**Applicants**

**and**

**MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] This is an application for judicial review, pursuant to section 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA], of a decision that the applicants were not Convention refugees or persons in need of protection.

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

I. Background

[3] Ms. Jia and Mr. Wang are Chinese citizens. They testified that they were both previously married and each had one child from their first marriage. After Ms. Jia's son was born in 1994, she used an IUD as contraception. Ms. Jia and Mr. Wang met in 2006 and began cohabiting in January 2009. In May 2012, Ms. Jia, then in her late thirties, discovered that she had accidentally become pregnant. The couple married in June 2012 and applied for a birth permit but it was refused as they each had a child already. Ms. Jia went into hiding.

[4] In July 2012, because Ms. Jia was not at work and was missing her family planning check-ups, family planning officials came to their house, interrogated Mr. Wang's parents, and assaulted them. The officials visited again in August and told Mr. Wang's parents that they would find the couple sooner or later and would deal with them.

[5] In August 2012, the couple applied for a visitor visa and in October of that same year, they travelled to Canada. On January 4, 2013, the family planning officials came to the family house in China again, arrested Mr. Wang's parents, and sent them to a detention facility, where they interrogated them about Ms. Jia's pregnancy. Ms. Jia gave birth to a daughter in Canada on January 16, 2013. The couple applied for refugee protection approximately one week later. They explained to the Refugee Protection Division [RPD] that they feared severe persecution for having breached the one-child policy if they were returned to China.

II. Impugned decision

[6] The RPD heard the applicants' case on September 13, 2013 and issued a decision on September 18, 2013. It accepted their identity as citizens of China but found that they were not refugees or persons in need of protection. The Board member noted that she took into account the Chairperson's Guidelines on *Women Refugee Claimants Fearing Gender-Related Persecution* [the Gender Guidelines] in making her determination.

[7] The Board member identified a number of credibility issues in the claimants' documents and testimony and indicated that in her assessment she had focussed on the authenticity of the documents submitted.

[8] First, the claimants had submitted notices of detention indicating that Mr. Wang's parents were detained on January 2, 2013, because Ms. Jia had given birth to "two babies in excess of the law". Ms. Jia explained that this meant a total of two babies, the second one being over the limit, and that the notices referred to her pregnancy, as her second child was not born until January 16<sup>th</sup>. She had previously testified that her in-laws had not revealed the pregnancy, but when confronted with the document, explained that she had made a mistake, and they had revealed it in January 2013 when interrogated. The Board member did not consider these to be satisfactory explanations. She weighed the convoluted and contradictory testimony and considered the documentary evidence that the market for fraudulent documents was expanding rapidly in China, and found on a balance of probabilities that the notices of detention had been fabricated to support the claim.

[9] The Board member then considered a family planning certificate submitted by Ms. Jia. It indicated her date of birth as being July 21, 1973 and was issued on January 1, 2010, but gave her age as 39. Ms. Jia explained that in China children are considered to be one year old at the time of birth, and that depending on when the Chinese new year fell, they might be two years older than their calendar age. However, the Board member gave this explanation little weight as the claimant's calendar age on January 1, 2010 was 36 years old, not 37 or 38, so the discrepancy remained unaccounted for. In addition, the family planning certificate did not indicate a method of birth control and did not record any birth control checks during the validity of the document, only regular verification of Ms. Jia's address. Ms. Jia stated that the information on her IUD was contained in a previous booklet which she had destroyed and that no specific entry would be made after birth control checks; however, the Board member did not find this very persuasive. The Board member concluded on the balance of probabilities that the document only showed address verifications and not regular birth control checks, and therefore did not corroborate Ms. Jia's account of regular state check-ups. She found that the document was also, on a balance of probabilities, fabricated to support the refugee claim.

[10] The Board member's findings in respect of the two documents caused her to find that none of the applicants' documents concerning the alleged risk from family planning authorities were trustworthy and reliable. She therefore placed no weight on the document purporting to deny a birth permit for the couple's daughter.

[11] The Board member found that the fabrication of documents in evidence also tainted the evidence produced, to show that the applicants each had one child from a previous marriage. A

birth certificate document was produced for Ms. Jia's son but only a notary public certificate was produced for Mr. Wang's son. A documentary source in the national documentation package indicated that such a certificate would "theoretically represent an expert judgment on the part of the notarial official as to the facts documented" and could be issued on the basis of an oral statement by an applicant. The Board member acknowledged that household registration books for both applicants were submitted showing a son for each, but noted that these were prone to widespread fraud. She also acknowledged that Ms. Jia had declared both a son and a stepson on her Canadian visa application.

[12] The Board member placed little weight on the reliability of the testimony and documentation of the applicants' household composition. She found that there was insufficient trustworthy and reliable evidence to establish on a balance of probabilities that the applicants had violated Chinese family planning laws and would face persecution as a result. She noted that she had considered Mr. Wang's assertion that the couple wished to have more children, but noted that they were now aged 43 and 40 and that this was speculative. She also noted that she had considered case law referenced by the applicants where strong opposition to mandated birth control had led to persecutory treatment, but found that this was not the applicants' situation. Ms. Jia had stated that she had complied with family planning regulations for approximately 18 years, although she disliked the check-ups, and that her recent pregnancy had been accidental. This did not constitute such a strongly held belief that it would constitute persecution to force her to submit to state reproductive supervision.

[13] The Board member concluded that the applicants had not provided sufficient credible and reliable evidence to support a finding that they would face more than a mere possibility of persecution if returned to China, or a finding that on a balance of probabilities they would face a risk to their lives, a risk of torture, or a risk of cruel and unusual treatment or punishment. She rejected the claims.

### III. Issue

[14] The issue is whether the Board erred in its review of the evidence when concluding that the applicants had failed to prove a well-founded fear of persecution in China.

### IV. Standard of review

[15] The applicants did not present arguments on the standard of review. The respondent argued that the applicants' case turns on the Board's credibility assessment and weighing of the evidence, for which the standard of review is reasonableness.

[16] The standard for a Board's assessment and weighing of evidence has been established to be reasonableness: *Dunsmuir v New Brunswick*, 2008 CSC 9 [*Dunsmuir*] at para 53. However, the standard for the choice of the correct legal test or threshold, is generally that of correctness: *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 [*Khosa*] at para 44.

V. Analysis

*Did the Board err in its review of the evidence when concluding that the applicants had failed to prove a well-founded fear of persecution in China?*

[17] The applicants argue that although the Board mentioned the Gender Guidelines, it failed to apply them by taking into consideration Ms. Jia's genuine subjective fear of persecution based on her pregnancy, which was supported by objective country documentation concerning the one-child policy. Instead, the Board discounted the applicants' testimony due to authenticity concerns with the documents they had submitted. The applicants submit that the inconsistencies in their story did not invalidate the factual situation of cruel and inhumane treatment of violators of the one-child policy.

[18] The main issue before the Board was credibility. It found that given the irregularities in the testimony and documents presented to it, there was insufficient reliable evidence to find that the applicants faced persecution as envisaged in section 96 of the IRPA or unacceptable risks as envisaged in section 97 of the IRPA, if returned to China. The applicants do not point to any specific evidence which the Board ignored, nor do they demonstrate how the international instruments cited would have changed the outcome of the decision.

[19] Findings of credibility lie at the heart of a Board's expertise in determining the possibility of testimony and drawing inferences from the evidence. It is well-established that an applicant's overall credibility may affect the weight given to the documentary evidence (*Granada v Canada*

(*MCI*), 2004 FC 1766 at para 13; *Hamid v Canada (MCI)*, [1995] FCJ No 1293 (QL) (TD) at para 21; *Huang v Canada (MCI)*, 2011 FC 288 at para 21).

[20] A Board is not obliged to list every piece of evidence and every argument in order for its decision to be reasonable (*Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 [*Newfoundland Nurses*] at para 16). When the record is viewed as a whole, it is clear that it was open to the Board to find as it did. I am in agreement with the respondent. The applicants' arguments amount to a request to reweigh the evidence. The Board's decision was a possible, acceptable outcome within the bounds of reasonableness.

[21] In view of the fact that the applicants were deemed not to be credible and their documents were suspect due to their numerous irregularities, there was no credible evidence on which the RPD could find a subjectively or objectively well-founded fear of persecution, or support a finding that the applicants would be persecuted were they to return to China. In cases relied upon by the applicants such as *Canada (MCI) v Ye*, 2013 FC 634, there was reliable evidence to support the central elements necessary to prove a well-founded fear of persecution.

[22] The RPD's finding that the applicants' story lacked the hallmarks of a truthful account was justified. The Board's decision was a reasonable, acceptable outcome within the bounds of reasonableness.

[23] For the above reasons, the application is dismissed.



**JUDGMENT**

**THIS COURT'S JUDGMENT is that the application is dismissed.**

"Peter Annis"

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-6522-13

**STYLE OF CAUSE:** MIN JIA, ZHIHAI WANG v MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** VANCOUVER, BRITISH COLUMBIA

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**JUDGMENT AND REASONS:** ANNIS J.

**DATED:** MAY 5, 2014

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