

CANADA / JUDGMENT

TB8-08828

COURT

Refugee Appeal Division

DECIDED

26 February 2020

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RAD File / Dossier de la SAR : TB8-08828

TB8-08829

Private Proceeding / Huis clos

Reasons and decision ? Motifs et décision

Persons who are the subject of the appeal

XXXX XXXX XXXXXXXXXX XXXX

Personnes en cause

Appeal considered / heard at

Toronto, ON

Appel instruit / entendu à

Date of decision

February 26, 2020

Date de la décision

Panel

Karen Wallace

Tribunal

Counsel for the persons who are the subject of the appeal

Anna Aazam

Barrister and Solicitor

Conseil des personnes en cause

Designated representative

N/A

Représentant(e) désigné(e)

Counsel for the Minister

N/A

Conseil du ministre

REASONS FOR DECISION

OVERVIEW

- [1] XXXX XXXX is the Principal Appellant. His mother, XXXX XXXX, is the Associate Appellant. The Appellants are citizens of China. They allege that they are at risk of persecution by the authorities in China because they are Christians and due to strict family planning regulations. The female Appellant also alleges that she is at risk of domestic violence from her husband.
- [2] The Appellants appeal the decision of the Refugee Protection Division (RPD), dated March 20, 2018, which rejects their claims for refugee protection. The RPD decided that the Appellants are not credible.
- [3] New evidence has been submitted in this appeal. An oral hearing is requested.
- [4] The determinative issue in this appeal is whether the RPD made an error when it decided that the Appellants are not credible.

DECISION

- [5] I dismiss the appeal. The RPD was correct in finding that the Appellants are neither Convention refugees, nor persons in need of protection.

BACKGROUND

- [6] The Appellants are mother and son.
- [7] The male Appellant came to Canada on a student visa in XXXX 2016. He alleges that he is at risk of persecution if he returns to China because: he became a Christian after his arrival in Canada; and he will be subjected to family planning restrictions if he wants to have children in China.
- [8] The female Appellant came to Canada on a visitor's visa in XXXX 2016. She alleges that she is at risk of persecution or harm if she returns to China because: the family planning authorities want to force her to be sterilized; she is at risk of domestic violence from her husband; and the Public Security Bureau (PSB) intend to arrest her because she is a Christian and was involved with an unregistered or house church in China.

[9] The Appellants' applications for refugee protection were filed separately. The female Appellant filed first in XXXX 2016. The male Appellant filed a few months later in XXXX 2017. Their claims were joined and heard together by the RPD in XXXX 2018.

The RPD Decision

[10] The RPD rejected the claims for refugee protection because they did not find the Appellants credible for several reasons including:

- * The Appellants' individual Basis of Claim forms contain very different allegations and details;
- * The female Appellant's Basis of Claim contains no allegations involving family planning or domestic violence. It is based solely on religious persecution;
- * A lack of medical evidence regarding the female Appellant's intrauterine device (IUD) or any mandatory family planning check ups;
- * False information provided by the female Appellant to the United States (US) immigration officials in a prior visa application;
- * Inconsistencies in the reason the female Appellant decided to become a Christian;
- * The female Appellant's delay in finding a church in Canada and the timing of her son's involvement in the Church; and
- * The male Appellant's fear of persecution by family planning authorities is not well founded.

The Appellants' Position

[11] The Appellants argue that the RPD made the following errors:

- * The RPD erred in its analysis of the female Appellant's risk of domestic abuse and of both Appellants' risk of persecution by Family Planning authorities;
- * The RPD erred in its analysis of the both Appellants' risk of persecution based on their Christianity; and
- * The RPD erred in its assessment of the sur place claim.

NEW EVIDENCE

[12] New evidence has been submitted in this appeal. The evidence is a Certificate of Sterilization which states that the female Appellant was sterilized on XXXX XXXX XXXX 2003. The evidence presented by the Appellants is not accepted.

[13] According to the law,¹ I can only accept evidence that:

- i. arose after the RPD decision; or
- ii. was not reasonably available at the time of the decision; or

iii. that you could not reasonably have been expected in the circumstances to bring to the RPD before the decision.

[14] If the evidence meets one or more of these requirements, I must decide if the evidence is new, credible and relevant before I can accept it.²

[15] The new evidence is refused. The requirements of the law have not been met. The document is not evidence that arose after the RPD decision. It was reasonably available prior to the rejection.

[16] In fact, the sterilization certificate was already submitted. It is contained in the RPD Record in Exhibit 11 at page 279.

[17] Since the requirements of the law have not been met, the new evidence must be refused. Also, there is no reason to admit it. It was already presented at the RPD hearing and forms part of the record in this appeal.

Request for an Oral Hearing is Refused

[18] Subsection 110(6) of the Immigration and Refugee Protection Act (IRPA) permits an oral hearing under certain circumstances, provided new evidence is accepted. Since the new evidence is not accepted an oral hearing is not permitted.

ANALYSIS

[19] In considering this appeal, I have applied a standard of correctness to the RPD's findings as per the Federal Court of Appeal decision in *Huruglica*.³ I have conducted my own independent analysis of the evidence. This included reviewing the hearing transcript and all of the documentation on record.

Risk of Persecution of the Female Appellant by Family Planning Authorities

[20] The female Appellant's Basis of Claim does not mention any concerns with the Family Planning authorities in China. When she was asked why she did not mention them, she simply stated that she does not know.⁴

[21] At the hearing she stated that she fears the authorities because they want to force her to be sterilized. When she was asked how she knows this, she stated she knows because she was sterilized once before in XXXX 2003.⁵ She then stated she had that sterilization reversed by a military hospital but they would not issue any proof of the reversal.⁶

[22] The fact that the female Appellant did not mention any issue with the family planning authorities in her Basis of Claim suggests a lack of subjective fear.

- [23] If the female Appellant actually fears returning to China because she will be sterilized, it would be expected that this would be set out in her claim for refugee protection. She provided no reasonable explanation at the hearing why it was not. She simply stated she does not know why.
- [24] In the appeal memo, the female Appellant's counsel argues that a fear of family planning authorities would not "necessarily" have been immediately apparent to the female Appellant until she experienced freedom and equality in Canada for the first time. She "may very well have" grown accustomed to inequality and control over her reproductive rights in China in order to cope with it.
- [25] This argument is speculative. The female Appellant provided no testimony at the hearing to support this argument.
- [26] The female Appellant did provide some documents prior to the RPD hearing that deal with the family planning issue. A sterilization notice and a XXXX report relate to this issue. I recognize that these documents do provide some notice of the issue in advance of the hearing.
- [27] In any event, the lack of an objective basis to fear sterilization in the circumstances of this case is far more determinative in my analysis than a lack of subjective fear.
- [28] The female Appellant testified that the authorities asked her to be sterilized twice before when each of her daughters was born, but she refused. She was able to avoid sterilization by agreeing to wear an IUD and paying fines.⁷
- [29] The Appellant is only at risk of any type of consequence from the authorities if she has another child. She states that she and her husband would like to have another child because he would like to have another son.
- [30] Even if the Appellant is able to become pregnant in the future, her own evidence is that she refused to be sterilized twice in the past and the authorities did not pursue this option as long as she paid a fine.
- [31] The objective evidence in the National Documentation Package for China establishes that a fine is the most common consequence for having more than the permitted children. However, a fine is not consistently imposed. The amount is also not consistent. ⁸ Even if the Appellant is fined in the future for having another child, that economic consequence does not amount to persecution or a risk to her life or of cruel and unusual treatment or punishment.
- [32] The RPD found that the female Appellant and her husband are not without the financial means to pay a fine since they were able to pay for travel to Canada and the international tuition fees for their son.

- [33] The Appellants argue that there was no evidence before the RPD about the amount of tuition or how it was paid. Therefore, the RPD erred by relying on vague information.
- [34] However, there was evidence of the amount of tuition and how it was paid before the RPD. The Appellant's son provided the Canadian immigration authorities with this information to obtain his student visa. It is contained in Exhibit 8 of the RPD Record.⁹ A receipt for \$XXXX XXXX XXXX XXXX for the tuition deposit is provided. The male Appellant confirmed that his parents paid the fee on his behalf in a letter attached to his visa application.¹⁰ He also confirmed that in his testimony at the hearing.¹¹
- [35] In their appeal memo, the Appellants state that they had to pay between XXXX XXXX XXXX and XXXX XXXX XXXX Chinese yuan in the past for family planning fines; and the RPD's finding about their ability to pay the fine is unreasonable, given how high the fine is.
- [36] The amount in yuan converts to roughly \$XXXX XXXX XXXX XXXX XXXX to \$XXXX XXXX XXXX XXXX XXXX Canadian Dollars, which is significantly less than the tuition fees the Appellants were able to pay in the past.
- [37] The employment information for the female Appellant's husband, as disclosed in her son's student visa application, states that her husband earns XXXX XXXX XXXX yuan annually¹². As a result, the amount of the fine does not amount to persecution or one of the harms contemplated in section 97 of the IRPA in this case.

Risk of Persecution of the Male Appellant by Family Planning Authorities

- [38] I agree with the RPD's conclusion that the male Appellant's fear is not well founded.
- [39] The male Appellant has no immediate plans to have a family. The family planning authorities have no interest in him.
- [40] When he was asked why he fears the family planning authorities, he stated that he does not want to be restricted by China's family planning limits.¹³ He hopes to have four children some day. He also does not want a future wife of his to go through what his mother has gone through with family planning.¹⁴
- [41] Any fear the Appellant may have is speculative and is more a fear on behalf of a potential future wife. Whether he will have any children and if he does, how many he will have, depends on many factors. These include the wishes, health and fertility (or ability to conceive) of himself and his future partner.
- [42] Based on his own testimony, there is nothing more than a mere possibility of persecution of the male Appellant from family planning authorities in China. Based on his parents' experience, any future consequence for having more than the permitted number of children would likely be a fine. As discussed above, this does not amount to persecution.

Risk of Religious Persecution

[43] On a balance of probabilities, neither Appellant is a genuine Christian. As a result, there is no serious possibility of persecution in China based on their religion.

The Female Appellant's Religious Beliefs

[44] The Minister of Citizen and Immigration intervened in the RPD hearing. They provided written submissions and documents.¹⁵ The Minister provided a copy of the application the female Appellant submitted for a US visa in 2007. That visa was refused because the Appellant provided false employment information.

[45] The Minister stated that the Appellant attempted to obtain a US visa through fraudulent means when there was no reason to do so, because this occurred almost a decade before she allegedly joined the church in China.

[46] The Minister argued that the Appellant is not credible because she misrepresented her personal information to foreign authorities through fraudulent means for personal gain.

[47] The RPD addresses this issue in their decision and relied on the Minister's evidence as a factor to conclude that the female Appellant is not credible overall and is an unreliable witness.

[48] The Appellants have not provided any arguments regarding this portion of the RPD's decision. I agree with the RPD's finding that the female Appellant is not credible overall. Therefore, the presumption that her sworn testimony is true is rebutted in this case.

[49] The Appellant claims that the PSB want to arrest and punish her due to her involvement in a house church in China. They have allegedly come to her home multiple times to look for her. Yet, there is no PSB summons or warrant to corroborate this. If the PSB are so interested in the Appellant that they have come to her home multiple times, it would be expected that they would take a further step, such as issuing a summons for interrogation.

[50] The National Documentation Package for China states that PSB investigations and procedures require "meticulous documentation of offenders" and the PSB "specifically requires documentation, reporting, and monitoring of potential offenders".¹⁶

[51] As detailed in paragraphs 36 to 42 of the RPD decision, the female Appellant provided conflicting reasons for her decision to become involved in Christianity. I share and agree with the concerns set out in the RPD decision.

[52] The female Appellant was inconsistent and unclear about her motivation for turning to Christianity and taking the risks involved with being a member of an illegal house church in China. There is also no PSB documentation to corroborate her alleged involvement or that the PSB are interested in her. This leads me to conclude that she was not practising Christianity in China.

- [53] The Associate Appellant arrived in Canada in XXXX 2016. She testified that she made no attempts to find a church in Canada. She did not start attending church until XXXX 2017.¹⁷ She found the church when her immigration consultant recommended it.
- [54] The church pastor was also the Appellants' immigration consultant. He prepared the narrative attached to both of their Basis of Claim forms. The Appellant became aware of his church after she consulted him about her refugee claims.
- [55] The Appellants argue that the female Appellant had never experienced freedom of religion before, and was initially focused on visiting with her son, so the delay in finding a church is reasonable.
- [56] However, the female Appellant testified that the purpose of coming to Canada was to practice her religion freely.¹⁸ If this is the case, it would be expected that she would attempt to locate a church earlier. Yet, she made no attempt to find a church for over seven months after her arrival; and she only attended church when her immigration consultant referred her to his own church.
- [57] I find that the delay in finding a church, when the female Appellant stated that the purpose of coming to Canada was to practice her religion freely, is another factor that negatively impacts on the credibility of the Associate Appellant's claim that she is a genuine Christian.
- [58] For all of the above reasons, I find that the female Appellant was not motivated to come to Canada for religious reasons and she is not a genuine Christian.

The Male Appellant's Religious Beliefs

- [59] The male Appellant's claim that he is a Christian is even less credible than his mother's. His testimony at the hearing speaks for itself.
- [60] He stated that he was not at all involved in Christianity until XXXX 2017, which is over one year after his arrival in Canada. His mother took him to church.¹⁹ He also stated that his mother decided he should make a refugee claim.²⁰ When he was asked why he made a refugee claim, he stated "Because I honestly could not continue on this study reason, family ran out of money.... Therefore, this is the way."²¹
- [61] His answer reveals his motive for the refugee claim. His intention when he came to Canada was to "try his best to stay in Canada" by completing his studies and getting a job in his field of study.²² When his family ran out of money and he could not continue his studies, he claimed refugee protection. I agree with the RPD's conclusion that the male Appellant's involvement in the church that his immigration consultant is the pastor of, is simply to bolster or assist his refugee claim.

Domestic Violence Claim

- [62] The female Appellant alleges that she fears she will be harmed by her husband if she returns to China. However, she has been found not credible, so there is no presumption that her testimony is true.
- [63] The Appellant's Basis of Claim does not mention any concerns with her husband or domestic violence. When she was asked why she did not mention him, she simply stated that she does not know.²³
- [64] When the Appellant was first asked at the RPD hearing what she fears in China she stated that she feels she is being persecuted by state planning authorities and also due to religion.²⁴ When she was asked a second time she stated she fears being sterilized.²⁵ When she was asked if there is anything else she fears she stated "religion".²⁶
- [65] During three separate occasions when the Appellant was asked what she feared she never mentioned her husband. She has provided no reasonable explanation for failing to mention him in either her Basis of Claim or when she was asked at the hearing.
- [66] The female Appellant did not mention any fear of her husband until the RPD Member brought up her XXXX report at the end of the hearing. That the report mentions domestic violence. At that point, she stated that her husband was angry after she gave birth to two daughters because he wanted another son.²⁷
- [67] The Appellant was asked why she is communicating with her husband in China if she is afraid of him and why he is helping her with her claim by mailing her documents to support her claim. She stated that she became a different person after she became a Christian, which is why she and her husband got remarried.²⁸ She also stated that she is communicating with him because she wants to have another son with her husband.²⁹
- [68] I recognize that a person may conceal domestic abuse and be hesitant to talk about it for a variety of reasons. They may also delay leaving and even return to their abusers. I am aware of and have considered the Chairperson Guidelines 4: Women Refugee Claimants Fearing Gender-Related Persecution (the Gender Guideline).
- [69] Even with recognition of the complexity involved in abuse that is inflicted by an intimate partner, I still find that the Associate Appellant's actions and testimony do not suggest that she has any fear of her husband. She made no mention of any fear of her husband in her Basis of Claim. She was asked three times at the hearing what she fears if she returns to China and she did not mention her husband. She testified that she is a different person now and wants to have another child with her husband.
- [70] The Appellants argue that the XXXX report³⁰ supports the allegation of domestic abuse and the RPD failed to consider this corroboration.

- [71] The XXXX report is based on what the Appellant told the XXXX during a single interview. It is also based on the Appellant's completion of a "self-rating scale for depression" and a "PTSD checklist." 31
- [72] The report establishes that the Associate Appellant has been diagnosed with XXXX XXXX XXXX and XXXX XXXX XXXX XXXX XXXX XXXX XXXX). However, it does not establish the cause of those disorders. The XXXX cannot independently corroborate the alleged domestic violence. The XXXX is reliant on the facts reported by the Associate Appellant and it has been determined that the Associate Appellant is not credible.
- [73] For the above reasons, I find that the Appellants have failed to establish that the female Appellant would face a serious possibility of persecution or harm from her husband.

The Sur Place Claim

- [74] The Appellants argue that the RPD erred by failing to undertake a complete sur place assessment based on the Appellants' religious activity in Canada.
- [75] The Appellants attend a church in Canada called Shenzhou Church. A letter from their church states that they have both been attending church. The letter does not state exactly when they began attending or how often they attend. It states that the Appellants "worship faithfully despite the bad weather."32
- [76] Baptism certificates state that the Appellants were baptised on XXXX XXXX XXXX 2017.33
- [77] Due to this activity, it is necessary to determine the merits of a sur place claim for protection.
- [78] The RPD determined that the Appellants are not genuine Christians, so they are not at risk of persecution now or in the future. As explained above, I agree with this finding.
- [79] The Appellants have not established that the Chinese authorities currently have any knowledge of their baptism or activities in Canada or are likely to have that knowledge in the future.
- [80] The letterhead on the church letter states that the Shenzhou Church is a "house church of persecuted people".
- [81] The photographs34 the Appellants provided at the hearing show that the church congregation is very small and they do not have an established indoor location. They simply meet outside year-round on a lawn in front of another church for their services.
- [82] Due to the small size of the Appellants' church and the lack of a formal location, it is not likely that the Chinese authorities will become aware of the Appellants' attendance or baptism.

[83] Given my finding that the Appellants are not genuine Christians, along with the lack of any evidence that the Chinese authorities are aware of or likely to become aware of their activity, I am not satisfied that there is anything more than a mere possibility of persecution of or other harms to the Appellants in China. Therefore, there is an insufficient basis for the sur place claim.

CONCLUSION

[84] I dismiss the appeal and confirm the decision of the RPD that the Appellants are neither Convention refugees, nor persons in need of protection.

(signed)

Karen Wallace

Karen Wallace

February 26, 2020

Date

1 Subsection 110(4) of IRPA.

2 Canada (Citizenship and Immigration v. Singh, 2016 FCA 96; Canada (Citizenship and Immigration) v. Raza, FC 385.

3 Canada (Citizenship and Immigration) v. Huruglica, 2016 FCA 93 (CanLII).

4 Transcript of March 8, 2018 RPD Hearing, at p. 16, lines 25-29.

5 Transcript of March 8, 2018 RPD Hearing, at p. 16, line 41.

6 Transcript of March 8, 2018 RPD Hearing, at p. 17, lines 40-44.

7 Transcript of March 8, 2018 RPD Hearing, at p. 18, lines 40-50.

8 Exhibit RPD-1, RPD Record, Exhibit 4, National Documentation Package (NDP) for China (October 31, 2017), item 5.4.

9 Exhibit RPD-1, RPD Record, Exhibit 8, page 212.

10 Exhibit RPD-1, RPD Record, Exhibit 8, at pp. 217-218.

11 Transcript of March 8, 2018 RPD Hearing, at p. 34, lines 30-34.

12 Exhibit RPD-1, RPD Record, Exhibit 8, at p. 213.

13 Transcript of March 8, 2018 RPD Hearing, at p. 34, lines 41-43.

14 Transcript of March 8, 2018 RPD Hearing, at p. 35, lines 48-49.

15 Exhibit RPD-1, RPD Record, Exhibits 6 and 7, pp.177-194.

16 Exhibit RPD-1, RPD Record, Exhibit 4, National Documentation Package (NDP) for China (October 31, 2017), item 12.8.

17 Transcript of March 8, 2018 RPD Hearing, at p. 28, lines 19-20.

18 Transcript of March 8, 2018 RPD Hearing, at p. 28, lines 26-30.

19 Transcript of March 8, 2018 RPD Hearing, at p. 36, lines 11-12.

20 Transcript of March 8, 2018 RPD Hearing, at p. 33, lines 41-43.

21 Transcript of March 8, 2018 RPD Hearing, at p. 39, lines 30-40.

22 Transcript of March 8, 2018 RPD Hearing, at p. 34, lines 20-28.

23 Transcript of March 8, 2018 RPD Hearing, at p. 30, line 29.

24 Transcript of March 8, 2018 RPD Hearing, at p. 12, line 50 and p. 13, line 5.

25 Transcript of March 8, 2018 RPD Hearing, at p. 15, line 5.

26 Transcript of March 8, 2018 RPD Hearing, at p. 15, line 26.

27 Transcript of March 8, 2018 RPD Hearing, at p. 30, line 21-23.

28 Transcript of March 8, 2018 RPD Hearing, at p. 30, lines 48-49.

29 Transcript of March 8, 2018 RPD Hearing, at p. 31, line 9.

30 Exhibit RPD-1, RPD Record, Exhibit 13, at pp. 326-331.

31 Exhibit RPD-1, RPD Record, Exhibit 13, at p. 329.

32 Exhibit RPD-1, RPD Record, Exhibit 9, at pp. 257-258.

33 Exhibit RPD-1, RPD Record, Exhibit 9, at pp. 259-260.

34 Exhibit RPD-1, RPD Record, Exhibit 11, at pp. 288-298.

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TB8-08829

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Immigration and Refugee

Board of Canada

Refugee Appeal Division

Commission de l'immigration

et du statut de réfugié du Canada

Section d'appel des réfugiés

RAD.25.02 (January, 2020)

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