

CANADA / JUDGMENT

TA6-06889

COURT

Refugee Protection Division

DECIDED

17 September 2007

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Immigration and Refugee Board of Canada Refugee Protection Division Commission de l'immigration et du statut de réfugié du Canada Section de la protection des réfugiés RPD File No. / N° de dossier de la SPR: TA6-06889 TA6-06890 Private Proceeding / Huis clos Claimant(s) XXXXX XXXXX (a.k.a. XXXXX XXXXX XXXXX) Demandeur(e)(s) d'asile XXXXX XXXXX (a.k.a. XXXXX XXXXX XXXXX) Date(s) of Hearing July 10, 2007 Date(s) de l'audience Place of Hearing Toronto, Ontario Lieu de l'audience Date of Decision September 17, 2007 Date de la décision Panel Milton Israel Tribunal Counsel for the Claimant(s) Carla Sturdy Barrister & Solicitor Conseil(s) du / de la / des demandeur(e)(s) d'asile Refugee Protection Officer N/A Agent(e) de protection des réfugiés Designated Representative(s) N/A Représentant(e)(s) désigné(e)(s) Counsel for the Minister N/A Conseil du ministre You can obtain the translation of these reasons for decision in the other official language by writing to the Editing and Translation Services Directorate of the IRB at 344 Slater Street, 11th floor, Ottawa, Ontario, K1A 0K1, or by sending a request by e-mail to translation.traduction@irb-cisr.gc.ca or by facsimile to (613) 947-3213. La Direction des services de révision et de traduction de la CISR peut vous procurer les présents motifs de décision dans l'autre langue officielle. Vous n'avez qu'à en faire la demande par écrit à l'adresse suivante : 344, rue Slater, 11e étage, Ottawa (Ontario) K1A 0K1, par courriel à traduction.translation@cisr-irb.gc.ca ou par télécopie au (613) 947-3213. XXXXX XXXXX (a.k.a. XXXXX XXXXX XXXXX) (the claimant) and her daughter, XXXXX XXXXX (a.k.a. XXXXX XXXXX XXXXX) (the minor claimant), are alleged citizens of the People's Republic of China (China). They claim refugee protection pursuant to section 96 and subsection 97(1) of the Immigration and Refugee Protection Act. The claimant was declared to be the Designated Representative of the minor claimant. Allegations: The claimant's first child was a son, born on XXXXX, 2003. In XXXXX 2006, she found that she was pregnant again. Before the next IUD check-up, she went into hiding. Her husband also went into hiding. While in hiding, she learned that Family Planning officers came to her home to look for her. They believed she was pregnant and as a result, they ordered her to have an abortion and sterilization. A notice was left with the claimant's in-laws. As a result, the claimant left China and her husband is still in hiding.

Determination:

I find that the claimants are neither Convention refugees nor are they persons in need of protection. The determinative issues in this claim are the identity of the claimants, and the credibility of the claimant's Personal Information Form (PIF) narrative¹ and oral testimony concerning her pursuit by birth control officials in order to perform an abortion and sterilization. I find, on a balance of probabilities, that the claimant's PIF narrative and oral testimony with regard to identity and with regard to the above allegations are not credible. The reasons for this decision are noted below. The claimant was asked why she had not disclosed an original Resident Identity Card. She responded that the card was thrown away by the smuggler. She was asked why this was done. She said that the smuggler told her that if the card was found, it could cause them trouble. She was asked if she carried the card with her. She said 'yes'. She was asked when she gave the card to the smuggler. She said he took it on the train. The panel's specialized knowledge indicates that a smuggler would advise a would-be refugee regarding what to take and not take with her. In addition, disposing of the card in a plastic covering would not be easy or safe on a train. Although not noted in the hearing, it is noted here that in the claimant's Record of Examination (ROE),² she was asked what other identity documents she had outside of China. The claimant responded, "Household registry, Resident ID card." I find, on a balance of probabilities, that the claimant's testimony regarding the smuggler disposing of the card on the train is not credible. It was noted that the claimant's occupation was not noted in her hukou. She responded, "No, XXXXX". It was noted that there was no indication that she was a XXXXX in the hukou. She responded that occupation was never listed there. It is noted that her son's occupation, student, is noted in the hukou. Country documents³ indicate that there is no legal requirement to update job status. Implicit in this statement, however, is the need to include initial job status. In addition, if local practice indicates, as in the case of her son, that work status is noted, the work status of other family members should also be included. It was also noted that in the section of the hukou ('when and from where moved'), only a minimal address rather than a full address is included. The panel noted its specialized knowledge that a full address is required. Country documents indicate that the hukou is primarily concerned with residential location and Public Security Bureau (PSB) authorization is required in order to change one's hukou.⁴ The section noted above should include in this regard, the full address from which the claimant moved and the full new address. The claimant responded that in hukous, there is sometimes a full address and sometimes not. She was asked how she knew this. She responded that in her neighbourhood, the full address is sometimes not listed. She was asked if she looked at the hukous of other families. She said 'no', then 'every place different', then 'every once in a while I saw a couple of hukous'. She was asked if she would then look at the sections regarding moving. She said 'yes'. I draw a negative inference from the claimant's inconsistent testimony regarding looking at other hukous. I find, on a balance of probabilities, that the claimant's testimony in this regard is not plausible. The claimant's hukou contained printing that showed through to the back page. This was judged to be unusual and it was sent out for forensic testing. The report was inconclusive, although it noted that the hukou was well printed and there were no apparent alterations. However, on the basis of the negative inference and finding regarding the claimant's

Resident Identity Card noted above and on the basis of the concerns in regard to the hukou noted above, I find, on a balance of probabilities, that the hukou may not be authentic. The claimant disclosed other documents⁵ and these were considered by the panel. However, none of these documents carry safety features and therefore they are easily counterfeited. Country documents⁶ indicate that there is a substantial counterfeiting industry. In addition to documents with no safety features, Resident Identity Cards and hukous are also counterfeited. In the context of the negative inferences and findings noted above, I give little evidentiary weight to these other documents. The cumulative negative inferences and findings noted above leads the panel to find, on a balance of probabilities, that the claimants have not established their identities as citizens of the People's Republic of China. As the claimant has not established her identity, it is open to the panel to terminate consideration of this claim at this point. However, the substantive aspects of this claim were also given consideration. The claimant testified that she became pregnant for a second time in XXXXX 2006. She further testified that she did not know when her IUD fell out. In her PIF, there was no mention of her IUD falling out. She was asked what she did. She said that she went into hiding because she feared an abortion. It was noted that country documents⁷ indicate that her concerns regarding a forced abortion or a forced sterilization if she returns to China with her second child are not well founded. Her additional claim that the second child would not be allowed to go to school because she was an unauthorized child born outside is also not well founded. In Guangdong Province, the claimant's alleged home province, the preponderance of the evidence indicates that it is more likely than not that a person who has an unauthorized second child while living abroad would not face penalties upon returning to China. If, however, the child was conceived in China before the mother left the country, only an out of birth fine must be paid. Counsel noted in her written submissions that this policy applied only to mothers who left China legally. There is, however, no documentary evidence that this is the case. In addition, an implicit acceptance of two children families is reflected in a further statement noting that in the 1990s, 'many provinces revised their birth planning regulations, and reportedly all those provinces dropped mandatory sterilization of couples with two children. [my emphasis].'⁸ In this regard, Guangdong Family Planning Regulations do note that the principle of couples having just one child 'shall be advocated', but Article 55 stipulates that in cases where urban or rural residents have one more child than is permitted, 'a social support fee will be charged.'⁹ The fee may be substantial but it is meant to be the penalty rather than forced abortion or sterilization. In the same document,¹⁰ recent reports are cited in regard to China's concern about the growing gender imbalance and efforts are being made to reward couples with daughters. In this regard, it is more likely than not that the claimant's second child, a daughter, would be welcomed back to China. In regard to specific incidents of forced abortions or sterilizations in Guangdong Province, none could be found in reports from sources consulted by the IRB Research¹¹ Directorate. In addition, country documents indicate that rural couples are given more flexibility regarding a second child.¹² The claimant responded that her second child could not be registered in the family hukou and therefore would not be allowed to attend school. In this regard, the panel noted country documents¹³ indicated that a fine would be charged and this fine was meant to pay the social costs for an unauthorized child. Upon payment of the fine, a child would be registered in the hukou and would be allowed to attend school and receive

whatever social benefits are available to all children. This document further notes that two children families are common in rural China. Although the claimant testified that this was not the policy 'in our place', she did not disclose any evidence in this regard. Finally, the claimant's alleged sterilization notice¹⁴ was considered by the panel. However, it contains no safety features and in the context of identity findings noted above, the panel gives it no evidentiary weight. There are clearly mixed messages in the evidence found in country documents. In addition, I have given serious consideration to the written submissions and attached document disclosed by counsel. I find, however, that the preponderant message from both Chinese government sources and independent sources is that a fine rather than a forced abortion and sterilization is more likely than not the penalty that would be faced by the claimant. I further find, on a balance of probabilities, that the panel's credibility findings with regard to the claimant's identity casts doubt on the claimant's PIF narrative and oral testimony concerning her knowledge of birth control policies in her village and her pursuit by Family Planning officials in order to perform a forced abortion and sterilization. The document disclosed¹⁵ by the claimant to support her claim that Family Planning officials wanted her to submit to sterilization lacks any safety features and is subject to the same concerns regarding counterfeiting noted above. I give this document no evidentiary weight. I therefore find, on a balance of probabilities, that the claimant is not at risk of forced sterilization and that her second child is not at risk of being denied inclusion in the family hukou and eligibility for an education. In summary, having found that the claimant has failed to establish her identity and having further found, on a balance of probabilities and on the basis of the cumulative negative inferences and findings and on the basis of the totality of evidence including that available in country documents, that the claimant is not at risk of a forced sterilization and that the claimant's second child is not a risk of being denied inclusion in the family hukou and eligibility for schooling, I therefore find, that the claimant has failed to satisfy her burden of establishing a serious possibility that she would be persecuted or that she would be personally subjected to a risk of cruel and unusual treatment or punishment or a danger of torture by any authority in the People's Republic of China.

Conclusion:

I find that the claimants are neither Convention refugees nor are they persons in need of protection. The Refugee Protection Division therefore rejects their claims. "Milton Israel" Milton Israel DATED at Toronto, Ontario, this 17th day of September, 2007. REFUGEE PROTECTION DIVISION / ONE-CHILD POLICY / FAMILY PLANNING / IDENTITY / IDENTITY DOCUMENTS / AUTHENTICITY / CONTRADICTIONS / EVIDENCE / MALE / SPOUSE / NEGATIVE / CHINA 1 Exhibit C-1. 2 Exhibit R/A-2. 3 Exhibit R/A-1, item 3.1, "China: Reforms of the Household Registration System (hukou) (1998-2004)." 4 Ibid. 5 Exhibits C-5 and C-8. 6 Exhibit R/A-1, item 3.4, CHN100510.E. 7 Exhibit R/A-1, items 5.1., 5.5, 5.6. 8 Exhibit R/A-1, item 5.1. 9 Exhibit R/A-1, item 5.5, Information Request CHN100358.E. 10 Ibid. 11 Exhibit R/A-1, item 5.6, Information Request CHN43165.E. 12 Exhibit R/A-1, item 5.7, Information Request CHN43031.E. 13 Exhibit R/A-1, item 5.9, CHN40685.E. 14 Exhibit C-5. 15 Exhibit C-5.

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