

CANADA / JUDGMENT

TB9-21512

COURT

Refugee Appeal Division

DECIDED

12 February 2020

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RAD File / Dossier de la SAR : TB9-21512 TB9-21513 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 12, 2020 Date de la décision Panel T. Card Tribunal Counsel for the persons who are the subject of the appeal Nkunda I Kabateraine 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

- [1] XXXX XXXX (the "Principal Appellant"), and XXXX XXXX (the "Spousal Appellant") are citizens of China and are appealing a decision of the Refugee Protection Division (RPD) denying their claims for refugee protection.

DETERMINATION

- [2] The Appeals are dismissed. BACKGROUND AND ALLEGATIONS
- [3] The Principal Appellant had her first child with the Spousal Appellant in XXXX 2013. Their second was born in XXXX 2015 in violation of the Chinese one-child policy at the time. The second child was born while the Appellants were in hiding.
- [4] The Appellants went back to Beijing, where they were forced to pay fines for having the second child and missing regular inspections.
- [5] In XXXX 2016, the Principal Appellant was found to be pregnant again and was forced to undergo an abortion.
- [6] In XXXX 2017, the Principal Appellant discovered that she was again pregnant and went into hiding. While in hiding, the Appellants decided to flee to Canada. The Appellants went to Canada without their children in XXXX 2018.
- [7] In XXXX 2018, the Principal Appellant gave birth to her third child in Toronto. While in Toronto, the Appellants also became Christian. The Appellants were introduced to Christianity by their landlord.

- [8] The Appellants made their refugee claims on account of fear of forced sterilisation of the Principal Appellant and because of the Appellants' Christian faith. The claims were refused on the basis of credibility. NO NEW EVIDENCE OR ORAL HEARING
- [9] The Appellants did not submit any new evidence to be considered under s.110(4) of the Immigration and Refugee Protection Act (IRPA).¹ No analysis of new evidence is therefore required.
- [10] As an oral hearing can only be held where there is new evidence that has been admitted under s.110(4), and since there is no new evidence in this case, no oral hearing is required. ISSUES IN APPEAL
- [11] The Appellants argued the following issue in their appeals:
- (a) The RPD erred in relation to its conclusion the Appellants were not Christian as the RPD only based this conclusion on the lack of the Landlord providing testimony at the RPD Hearing.
 - (b) The RPD erred in finding the Appellants were of no interest to the family planning authorities as it was microscopic in its analysis of the Appellants' evidence.
- [12] I find that the determinative issues in this appeal are:
- (a) Credibility.
 - (b) Whether the Appellants face a serious possibility of persecution at the hands of the Chinese authorities due to violation of the two-child policy.
 - (c) Whether the Appellants face a serious possibility of persecution in China due to their Christian faith.

ANALYSIS

- [13] I have conducted an independent analysis of the evidence concerned, including reviewing the RPD hearing, as well as considering the Appellants' Memorandum,² the RPD Decision,³ and the Principal Appellant's Basis of Claim (BOC) form⁴ as amended⁵ amongst other documents. Appellants do not face a serious possibility of persecution due to the two-child policy
- [14] The Appellants have argued that the RPD was microscopic in its analysis and in finding the Appellants would not face a serious possibility of persecution due to violation of the two-child policy.
- [15] The Appellants draw attention to Paragraph 7 of the RPD Decision.⁶ The RPD outlined that during testimony by the Principal Appellant, family planning officials last came looking for her on XXXX XXXX 2018 at her parents' home. The officials had asked about the Principal Appellants' whereabouts and why she had not attended for check-ups. The parents had told them the Principal Appellant must have left to another area for business. The authorities

told the parents the Principal Appellant must report upon return, and that if the Principal Appellant was in hiding due to pregnancy, she would be heavily penalised, and the children not allowed to attend kindergarten.

- [16] The RPD drew a negative credibility inference on the basis that these details were omitted. The RPD also noted that during this testimony, the Principal Appellant was also sent a notice for a fine of RMB 5000 for failure to attend inspections. The Principal Appellant stated she was distracted by her daughter crying outside in the waiting area. The RPD also noted that it did not accept this explanation, given the level of detail provided.
- [17] I find that the Appellants have misconstrued the RPD's findings. This adverse credibility finding is not the sole reason the RPD found the allegation of being wanted by the authorities due to violation of the two-child policy to be not credible.
- [18] The RPD also noted, referring to the National Documentation Package (NDP), that the authorities in fact have been using fines to punish such violations, rather than using forced sterilisation. The RPD also noted that in fact, when the earlier violation of the then-one child policy took place, it was fines that were imposed, and that doctors had advised against use of an Intrauterine Device (IUD).
- [19] I note from my own examination of the NDP that this trend to using fines and relaxing enforcement of the family planning regulations has continued. In fact, there is now greater concern in China from an aging population combined with a declining birthrate that has led to this continuing trend of abandoning the use of forced sterilisation.⁷
- [20] At this point, I note the use of a newer NDP item in the above point. I am mindful of the case of Zhang⁸ which establishes that I must consider the most recent National Documentation Package (NDP) when conducting my independent assessment. Zhang also states that "...where that recent information arises after an applicant has perfected their appeal and made their submissions and that information is different and shows a change in the general country conditions, the Refugee Appeal Division (RAD) has a duty to advise the applicant that it is relying on that information."⁹
- [21] However, in this case, there is not a change in the general country conditions, and it is simply an update to an ongoing trend already disclosed in the NDP available at the time of the RPD decision. Had I not relied on this new item, and instead on the older items, my analysis and finding would not have changed.
- [22] There are some reports of the threat of forced sterilisation, as noted by the Appellants in reference to the United States 2018 State Department report. ¹⁰ However, when this is balanced against the overall trend of decreased use of this sanction, and the Appellants' own experiences, I find this threat to only rise to that of a mere possibility.

- [23] The credibility issues identified by the RPD are of some concern, but are not the only reason that the RPD found the Appellants not credible overall about the threat of forced sterilisation from the authorities.
- [24] I find that the RPD did not err in its findings on this issue and uphold these findings accordingly. Appellants are not genuine Christians
- [25] The Appellants have argued that the only reason the RPD found the Appellants not to be genuine Christians was because they failed to call their landlord as a witness. The landlord had been the person who introduced the Appellants to Christianity. The Appellants also submit that otherwise, the support letter from the pastor and baptism certificates along with the Appellants' testimony should be accepted as true and that this should be enough to establish the Appellants as genuine Christians.
- [26] It is important to note at this point that it is for the Appellants to make out their case with sufficient evidence, rather than for the RPD or RAD to disprove the case. The point being made by the RPD was that given the absence of oral testimony from the Landlord, there is less weighty evidence available to establish the Appellants' allegation that they are genuine Christians.
- [27] In relation to the letter from the Pastor¹¹ I note that the Pastor gives only a brief account saying the Appellants have attended church since XXXX XXXX 2018 and that they have good personality, are dependable, compassionate and helpful, take an interest in studying the Bible and volunteer. The Pastor also notes the baptism taking place on XXXX XXXX 2019.
- [28] I find that the letter adds weight to the contention of regular attendance by the Appellants at church, but adds almost nothing in relation to the genuineness of the Appellants' faith. The fact that the Appellants were baptised adds some evidence to the contention they are genuine Christians. However, given the fact anyone showing willingness can be baptised, again adds only a little weight to this allegation.
- [29] In making my independent analysis, I take note of some of the answers provided by the Principal Appellant about what Christianity means to her to be vague, general and lacking in detail. For example, the Principal Appellant was able to answer what the Four Gospels are, but when asked which her favourite was, she said the Gospel of John "Because in the Book of Gospel of John, there are more messages from Jesus Christ"¹² and nothing further. The Principal Appellant's answer is vague to the point it's not really an answer to the question provided.
- [30] On the point made by the Appellants that corroborating evidence is not required, it is important to remember that it is still for the Appellants to make their case out, and that valid reasons for the lack of corroborating evidence must also be considered. In this case, the only reason for the lack of additional corroborative evidence, such as the lack of oral testimony from the landlord or the Pastor, is because the Appellants, with the benefit of paid Counsel, chose not to put them forward. This is not a sufficiently valid reason to excuse the

Appellants from not presenting more corroborative evidence.

- [31] The Appellants have not advanced sufficient positive evidence to show that they are genuine Christians. Overall, I find the RPD did not err in its assessment of the Appellants' evidence regarding their Christian faith, nor its finding that the Appellants are not genuine Christians. I uphold these findings accordingly.
- [32] I further note that the RPD found that there was no evidence to show that the Appellants' religious activity had come to the attention of the Chinese authorities and that there is therefore no resulting sur place claim. I note that the Appellants have not challenged this finding, and I can find no obvious reason to overturn this finding of the RPD.

CONCLUSION

- [33] Having reviewed the entire claim, and having conducted my independent analysis, I find the RPD did not err in finding the Appellants not credible, not of interest to the Chinese authorities, and not to be genuine Christians.
- [34] Pursuant to s.111(1)(a) of the IRPA, the RPD's decision that the Appellants are neither Convention refugees nor persons in need of protection is confirmed.
- [35] The appeals are dismissed. (signed) "T. Card" T. Card February 12, 2020 Date 1 Immigration and Refugee Protection Act, S.C. 2001, c. 27, as amended. 2 Exhibit P-2, Appellants' Record, Pages 14-25. 3 Ibid., Pages 2-11. 4 Exhibit RPD-1, RPD Record, Exhibit 3, Pages 28-42. 5 Ibid., Exhibit 8, Page 281. 6 Exhibit P-2, Appellants' Record, Page 4, Paragraph 7. 7 National Documentation Package, China, 20 December 2019, tab 5.5: Whether Family Planning authorities, including in Guangdong and Fujian provinces, enforce the two-child policy through forced abortions, sterilization, and other birth control methods; information on measures taken against parents who fail to ... Immigration and Refugee Board of Canada. 18 December 2019. CHN106400.E. 8 Zhang v. Canada (Citizenship and Immigration), 2015 FC 1031. 9 Ibid., Paragraph 54. 10 Exhibit P-2, Appellants' Record, Page 24. 11 Exhibit RPD-1, RPD Record, Exhibit 8, Page 288. 12 RPD Hearing Audio, 3 July 2019 at 1:14:28-1:15:08.

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