



Fear of Forced Sterilization By Chinese Mother of Two Not “Well Founded”

U.S. COURT OF APPEALS (3rd Cir.)

CASE: Ying Chen, Qiang Chen

DATE: Opinion filed March 18, 2011

ISSUE: Married couple fight removal to China because they have two children.

HELD: The Court studied a similar case from 2010 and found that while Fujian Province might fine the petitioners and there might be "social coercion" for Mrs. Chen to be sterilized, there is no indication that her fear of forced sterilization is well-founded.

FACTS:

Petitioners are from Fujian Province. Husband (Qiang Chen) entered in 1996. Wife (Ying Chen) entered in 2003. They married in U.S. in 2005 and have had two sons, born in 2005 and 2008, both United States citizens.

In 2008, after the Department of Homeland Security served Notices to Appear, petitioners conceded their removability before an Immigration Judge. They applied for asylum, withholding of removal, Convention Against Torture ("CAT") relief, and, alternatively, voluntary departure. Petitioners – principally Ms. Chen, the lead applicant and sole witness to testify before the Immigration Judge – claim that they fear persecution upon return to China for having violated the one-child policy in that Ms. Chen will be forcibly sterilized and/or face economic persecution.

The Immigration Judge denied relief.

Among other things, the Immigration Judge found that Ms. stated desire to have a third child upon return to China is speculative, and that, under the holding in *Matter of J-W-S-*, 24 I. & N. Dec. 185 (Board of Immigration Appeals 2007), she failed to show a well-founded fear that she would be forcibly sterilized upon returning with her two United States citizen children. The Immigration Judge also denied withholding of removal and found no evidence showing a likelihood that Ms. Chen will be subjected to torture upon return.

The Board of Immigration Appeals affirmed and dismissed appeal, finding that petitioners failed to show an objective, well-founded fear of persecution.

The Board of Immigration Appeals agreed with the Immigration Judge that petitioners do not warrant asylum based on the birth of their two children, and it rejected efforts to distinguish their case from *Matter of J-W-S-*. The Board of Immigration Appeals rejected, in particular, the argument that children will be considered Chinese citizens for purposes of enforcing population control policy.

On appeal to the Federal 3rd Circuit Court of Appeals

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Petitioners argue that Ms. Chen established that her fear of future persecution is well-founded. They contend that the Board of Immigration Appeals and the Immigration Judge engaged in "generic reliance" on the holding in *Matter of J-W-S-* and failed to consider evidence showing that children will be treated as Chinese citizens, which gives rise to their fear that Ms. Chen will be sterilized or subjected to onerous fines for having had more than one child.

Earlier Case Considered

The recent opinion in *Matter of H-L-H- & Z-YZ-*, 25 I. & N. Dec. 209 (Board of Immigration Appeals 2010), contains a comprehensive discussion that persuasively addresses many of the issues before us. This court has not previously considered in a precedential opinion the latest view of this issue.

The respondents there, like the Chens here, were natives and citizens of China who hailed from the Fujian Province and had two United States citizen children. They claimed that if they returned to China, and specifically the Fujian Province, the female respondent would be subject to forced sterilization as well as a significant fine. The Immigration Judge agreed and granted the application for asylum. The Board of Immigration Appeals vacated the opinion of the Immigration Judge, concluding that the respondent had not shown that she possessed a well-founded fear of forcible sterilization or other sanctions rising to the level of persecution.

In doing so, the Board of Immigration Appeals noted that State Department reports on country conditions, including the *Profiles of Asylum Claims & Country Conditions*, are "highly probative evidence and are usually the best source of information on conditions in foreign nations." *Id.* at 213. With respect to the discussion of forced sterilization in China and Fujian Province in particular, in the May 2007 *China: Profile of Asylum Claims and Country Conditions* ("2007 Profile"), the Board of Immigration Appeals stated:

Although acknowledging that there were "reportedly" forced sterilizations in Fujian in 2006, the State Department observes that Consulate General officials visiting Fujian have found that coercion through public and other pressure has been used, but they did not find any cases of physical force employed in connection with abortion or sterilization. In interviews with visa applicants from Fujian representing a wide cross-section of society, Consulate General officers have noted that many violators of the one-child policy paid fines, but they found no evidence of forced abortion or property confiscation. According to the Fujian Provincial Birth Planning Committee, there have been no cases of forced abortion or sterilization in Fujian in the last 10 years.

In short, we discern no reversible error in the denial of claims for asylum. Because withholding of removal carries a higher burden of proof than asylum, the request for withholding was properly denied, as well.

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