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D.E.P. (Re)

[2000] C.R.D.D. No. 204
No. T99-11413

**Immigration and Refugee Board of Canada
Convention Refugee Determination Division
Toronto, Ontario
Panel: Bonnie E. Milliner
In camera**

Heard: August 2, 2000.
Decision: October 10, 2000.

China — Positive — Family planning — One-child policy — Political opinion — Refugee sur place — Male.

Appearances:

John Savaglio, for the claimant(s).

Selwyn Pieters, Refugee Claim Officer.

REASONS FOR DECISION

¶ 1 On August 2, 2000, at Toronto, Ontario, the Convention Refugee Determination Division (CRDD) of the Immigration and Refugee Board (IRB) heard the claim of xxx xxx, age 46, to be a Convention refugee pursuant to section 69.1 of the Immigration Act. The claimant is a citizen of China who bases his claim to a well-founded fear of persecution on the grounds of political opinion, namely, as a physician who clandestinely delivers babies in defiance of China's One-Child Policy.

¶ 2 The claimant consented in writing to have his claim heard by a single-member panel. Because of the medical nature of the claim, an interpreter familiar with medical terminology was requested. Two interpreters, armed with a medical dictionary, were provided.

Summary of the Claimant's Allegations

¶ 3 The claimant is a doctor who was asked from time to time to provide second or third-time mothers with necessary medical assistance and occasional delivery assistance. These women were afraid to go to hospital to have their babies delivered for fear of being discovered by the

family planning officials. The claimant's activities were not discovered prior to his departure from China.

¶ 4 He came to Canada xxxxxxxxxxxxxxx. Later, he learned that his family had been questioned by the police with respect to the claimant's having sabotaged the government family planning policy and that the nurse who helped him deliver the babies had been arrested. Still later he learned that the nurse had been convicted and had received a sentence of two years plus probation.

¶ 5 The claimant fears that if he returns to China, he will face a worse fate since he was the doctor who did the deliveries.

Determination

¶ 6 In order for this Member to find the claimant to be a Convention refugee, the evidence must establish that he has good grounds to fear persecution for at least one of the reasons set out in the Convention refugee definition. The standard of proof to be applied in assessing whether good grounds exist is set out in Adjei. [See Note 1 below] I was satisfied that there is a "serious possibility" that the claimant, should he return to China, would be persecuted, based on his political opinion.

Note 1: Adjei v. Canada (Minister of Employment and Immigration), [1989] 2 F.C. 680.

Issues

¶ 7 The issues identified at the outset of the hearing were identity, credibility, well-foundedness of the claimant's fear, a delay in claiming of some one and a half months, and the sur place nature of the claim.

Analysis

Identity

¶ 8 The claimant's identity as a Chinese national was corroborated by his passport. [See Note 2 below] More problematic was establishing his identity as a physician, because he had no official documentation such as certificates or licenses to corroborate such an identity. However, his passport gave his occupation as doctor. In the face of extensive questioning by a medically-knowledgeable panel, the claimant was able to demonstrate medical knowledge using proper medical terminology. Therefore, I accepted that, on a balance of probabilities, he is a doctor.

Note 2: Exhibit M2, passport copy.

province to province. Disciplinary measures for policy violation range widely including the loss of employment. Although government policy prohibits the use of force to compel abortion or sterilization, there are documented instances where coercion has been used to meet government goals. While it is more likely than not that women would not face punishment amounting to persecution for births out of plan, it is plausible that a physician who facilitated births in contravention of the one-child policy could face very severe sanctions amounting to persecution. Given the conflicting evidence with respect to one-child policy, the arbitrariness with which it is enforced, and the absence of evidence to show that the claimant would not be punished, I find that a doctor in the claimant's situation would face more than a mere possibility of being persecuted for his violation of China's family planning policy.

Conclusion

¶ 15 For all of the reasons stated above and after careful consideration of all the evidence, I conclude that the claimant has good grounds for fearing persecution by reason of his political opinion.

¶ 16 Therefore, the Refugee Division determines the claimant, xxxxx, to be a Convention refugee.

"Bonnie E. Milliner"

Dated at Toronto this 10th day of October, 2000

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