



RPD File No. / N° de dossier de la SPR : TB6-01781
TB6-01801

Private Proceeding / Huis clos

Reasons and Decision – Motifs et Décision

Claimant(s)	XXXX XXXX XXXX XXXX	Demandeur(e)(s) d'asile
Date(s) of Hearing	November 23, 2018	Date(s) de l'audience
Place of Hearing	Toronto, Ontario	Lieu de l'audience
Date of Decision and reasons	February 19, 2019	Date de la décision et des motifs
Panel	Sarah Morgan	Tribunal
Counsel for the Claimant(s)	Patricia Ritter	Conseil(s) du (de la/des) demandeur(e)(s) d'asile
Designated Representative(s)	N/A	Représentant(e)(s) désigné(e)(s)
Counsel for the Minister	Eric Liu	Conseil du (de la) ministre

2019 CanLII 132746 (CA IRB)

REASONS FOR DECISION

[1] This is the decision in the claims of XXXX XXXX (female claimant) and XXXX XXXX (male claimant) who claim to be citizens of China and are requesting refugee protection pursuant to sections 96 and 97(1) of the *Immigration and Refugee Protection Act*.

[2] The claimants are a married couple. Their claims are joined pursuant to Rule 55 of the Refugee Protection Division Rules.

DETERMINATION

[3] The panel finds that the claimants have not satisfied the burden of establishing a serious possibility of persecution on a Convention ground, or that, on a balance of probabilities, they would personally be subjected to a risk to life or a risk of cruel and unusual treatment or punishment or a danger of torture upon return to China.

De Novo

[4] The claimants' first RPD decision (dated August 16, 2016) was overturned by the Federal Court on June 19, 2017 and sent back for redetermination.

ALLEGATIONS

[5] In the Basis of Claim Forms (BOC) signed February 8, 2016 and amended March 14, 2016 and May 22, 2018, the claimants state the following risks.

[6] The female claimant, a 29 year old woman, states that she was accused of slandering the government and fears the PSB (Public Security Bureau) will arrest her. She states that she had an affair with a county magistrate in 2014 and when she became pregnant, he forced her to have an abortion. He then fired her. During her employment, she had noticed evidence of his corruption so when she lost her job, she posted information about the corruption on the internet. She was thereafter questioned by some men who threatened further harm after kicking her. She continued to post updates on the internet but her posts were quickly deleted. The magistrate called and threatened her. She went to Europe in XXXX 2015 to have a break. Upon her return, she went to

the municipal government to ask for help and while she was there, the PSB went to her home seeking her arrest. She went into hiding before leaving China with a smuggler.

[7] The male claimant, a 34 year old man, states that he was arrested by Chinese authorities who accused him of slandering the government. He worked dispensing medications at a hospital and when he reported that the hospital was dispensing undocumented and therefore suspicious medicine, he was told to be quiet. He was then fired. He went to the food and drug administration to report the matter. Thereafter, five men went to his home, beat him, and threatened him with death if he continued to pursue the matter. He then went to the hospital and told passersby about the matter. He was then arrested and detained seven days by the PSB. Upon his release, he tried to petition at a local office. He accompanied the female claimant to Europe and then upon returning to China, planned to go to Beijing to petition. On his way to the station, family called to say that the PSB were there seeking his arrest. He went into hiding and escaped China with the female claimant and a smuggler.

[8] Both claimants fear Chinese authorities should they return.

ANALYSIS

[9] The determinative issues in this case are well-foundedness and credibility.

Identity

[10] The claimants' identities as nationals of China are established through their testimony and the supporting documentation filed, namely, copies of their passports.¹

Minister's Intervention

[11] The Minister of Immigration, Refugees and Citizenship Canada (the Minister) provided a Notice of Intervention on March 22, 2016. The Minister's Representative (MR) raised concerns regarding the claimants' credibility owing to conflicting statements made by each claimant at the Port of Entry. The MR intervened with documents and did not participate in the hearing.

¹ Exhibit 1

Credibility

[12] When a claimant swears that certain facts are true, this creates a presumption that they are true unless there is valid reason to doubt their veracity. The determination as to whether a claimant's evidence is credible is made on a balance of probabilities. Having considered the claimants' testimony, the panel has credibility concerns as outlined below.

Ability to exit China when wanted by PSB

[13] The panel notes the Jurisprudential Guide issued by the Chairperson concerning exit controls in China. The panel has considered this Guide and has also undertaken an independent assessment of the claimants' particular circumstances and evidence concerning their exit from China.

[14] The claimants testified that they flew from Beijing to Hawaii. They did not have difficulties exiting China. The panel notes that their passports contain exit stamps from China dated XXXX XXXX, 2016.

[15] The claimants both assert that they were wanted for arrest by Chinese authorities before they departed China for Hawaii on XXXX XXXX, 2016. The panel finds on a balance of probabilities that the claimants did not have difficulty passing through the airport's many security checks because they were not wanted by Chinese authorities.

[16] The panel notes the documentary evidence concerning the efficiency of Chinese authorities and the presence of the Golden Shield Project. The panel finds that if the claimants were indeed wanted by authorities, they would then have been discovered by authorities when they left China on XXXX XXXX, 2016 using their own passports to travel as they testified that they did.

[17] The documentary evidence indicates that PSB monitors citizens' exits from China and that an individual wanted by the PSB would be noted in the computer database. The current documentary evidence states that airport authorities are connected to Policenet, a PSB database of persons wanted by authorities:

In 10 February 2014 correspondence with the Research Directorate, the Executive Director of the Dui Hua Foundation affirmed that airport security officials have access to the Public Security Bureau of China's online database of citizens who have been convicted of crimes or are wanted by the authorities [also known as Policenet or the Golden Shield]. Similarly, the representative of the Laogai Research Foundation stated that reports on “experiences of activists who have been detained while trying to board an international flight provide clear evidence that airport officials are connected to Policenet” (26 Feb. 2014). A colleague of Cao Shunli, who was also prevented from travelling to Geneva for the human rights training in September 2013, later publicized her own experience at the airport in Guangdong (HRIC 11 Oct. 2013). According to the Laogai Research Foundation, the colleague indicates that when her passport was swiped by airport authorities, scanning equipment immediately made noises alerting airport officials that she was wanted by police. She was subsequently detained in the Guangdong Baiyun Airport and told that Shanghai police would not let her leave. She was then transported from Guangdong to Shanghai for detention and questioning. This woman's experience provides concrete evidence of airport officials coordinating with police departments in tracking and detaining a political dissident.

[...]

The representative of the Laogai Research Foundation wrote that the Chinese government checks the passports of citizens attempting to leave the country in order to ensure that they are suitable for foreign travel. Customs officials stamp the passports of citizens approved for foreign travel. Public security officials often confiscate passports held by individuals deemed unsuitable for foreign travel. ²

[18] The panel notes the female claimant's testimony that she believes the snakehead facilitated their travel. The panel, however, prefers the documentary evidence which indicates that citizens' exits from China are closely monitored.

The representative of the Laogai Research Foundation provided the following information:

[T]he Golden Shield incorporates extensive tracking and control mechanisms such as real-name online registration requirements, GPS monitoring, and facial recognition surveillance technology in a multipronged approach to identify potentially disruptive individuals. Policenet, a component of the Golden Shield, stores a wealth of information on Chinese citizens and connects the various agencies and levels of command within the public security apparatus. This integrated system enables Chinese public security forces to effectively target and neutralize political dissidents.

² Exhibit 3 , NDP 30 April, 2018 version, item 14.3 RIR CHN104761.E

In partial corroboration, the Chinese economist writing in *Open Magazine* affirms that “Cisco’s Policenet has been helping the [Chinese Communist Party]’s public security organs to ferret out political dissidents and Falun Gong practitioners for years.”

An undated article on the website of the Ministry of Public Security, entitled “Deepening the Implementation of the ‘Golden Shield’ Project,” indicates that all police units nationwide have access to eight public security databases, including the “National Basic Population Information Database” (China n.d.). Also accessible through the databases is information on household registration [*hukou*], border exit and entry, road traffic, and criminal investigations.³

[19] The documentary evidence indicates that passports and travellers are thoroughly examined at airports in China and that facial recognition technology is used at Beijing and Guangzhou airports:

Sources report the use of facial recognition technology for staff at Beijing Capital International Airport. A 2009 article by *China Daily* indicates that as of September 2009, Beijing Capital International Airport has used facial recognition systems to “stop people from pretending to be airport staff and sneaking into restricted areas.” Similarly, the Canadian embassy official indicated that Beijing international airport has a facial recognition system “used by airport staff passing between the secure transit and public sections of the terminal,” as well as by “flight crew departing Beijing, using the same queue as airport staff.”

According to the Canadian embassy official, facial recognition technology is also used at Guangzhou International Airport:

[w]hen passengers [pass] through [the] immigration counter, they [are] photographed by a mini-camera to record each passenger’s face. Facial recognition technology is applied to the images; however, it is unclear as to the total scope of the database against which the images are assessed.

More generally, concerning practices at main Chinese international airports, the same source explained that Chinese border officials do not take photographs of passengers upon international departure at every airport in China. In Beijing, photographs were taken in the past, but are not being taken now. If photographs are being taken (e.g., Guangzhou), they would be taken at China Immigration Inspection departure counters at airports. The only facial recognition procedure applied is a comparison between the photo on the travel document and the passenger’s face.⁴

³ Exhibit 3, NDP 30 April, 2018 version, item 10.4, RIR CHN104762.E

⁴ Exhibit 3, NDP, 30 April, 2018 version, item 3.24, RIR # CHN105049.E

[20] The panel also notes that there is systematic corruption in China and that airport officials can be bribed. The panel acknowledges that the documentary evidence does indicate that authorities in China do not always apply regulations evenly.

[21] The panel finds however that the preponderance of the documentary evidence does state that authorities at airports and at borders conduct thorough screening of passengers. The panel notes that the claimants assert that they are wanted for arrest. The panel notes the documentary evidence indicating that authorities in airports have access to computer systems allowing them to see if the person applying for exit is wanted by authorities. The panel prefers the unbiased country condition evidence to the claimants' testimony and finds on a balance of probabilities that the claimants are not wanted by Chinese authorities.

Well-foundedness: profile as individuals wanted by police

[22] The female claimant testified that she was accused of political dissent because she posted on a blog that the county magistrate who fired her, Mr. XXXX, had treated her badly. The posts were removed from the internet soon after she made them. She testified that she wanted to go to city officials to report him but that she did not do so. The panel asked whether she made any complaints about him other than on a blog and she said no. She stated that she wanted to expose his misbehaviour to city hall but that before she made a complaint, she heard from her family that the PSB were at her home and that they told her to report to them on XXXX XXXX, 2015.

[23] The panel finds that the documentary evidence indicates that the PSB brook no dissent and are known to arrest protesters and hold them without charge.⁵ PSB forces, according to the documentary evidence, also "*used administrative detention to intimidate political and religious activists and to prevent public demonstrations.*"⁶

[24] The panel finds that the female claimant complained about the personal actions of a public official on a blog in 2015. She did not mention that he was corrupt in his job, but only in personal matters. She testified that she has not had contact with him since XXXX, 2015. The panel finds

⁵ Exhibit 3, NDP, 30 April, 2018 version, item 10.5, RIR CHN104967.E

⁶ Exhibit 3, NDP, 30 April, 2018 version, item 2.1, DOS Report

that a reasonable person would not find the female claimant to be a political dissident or a person seeking to overthrow the government.

[25] The male claimant testified that he feared Chinese officials because he exposed a medicine expiry date scandal at the hospital where he was employed. When asked why he would be fearful of authorities because of this, he said that the PSB accused him of slandering the government.

[26] He want to complain at his hospital, then he complained to the township and then to the ministry of quality control. He testified that the highest level of government he went to was the city government. He testified that he was arrested and detained seven days in XXXX 2015 on the charge of slandering the government. After his release from detention, he was able to travel to Europe with the female claimant for a vacation (XXXX, 2015). After he returned from vacation, the PSB issued a summons for his arrest.

[27] When asked why a summons was issued, he said it was because he went to the city in XXXX, 2015. The panel asked the male claimant whether he had any trouble leaving China for Europe and he said no, but that a smuggler helped him.

[28] The panel notes the section above concerning ability to leave China and finds on balance that the male claimant is not of interest to authorities given his ability to exit China for Europe on XXXX XXXX XXXX 2015. The panel finds that if Chinese authorities wished to arrest him for actions he took in XXXX, 2015, they would not have permitted him to leave China for Europe in XXXX, 2015.

[29] The documentary evidence indicates that government officials have little tolerance for petitioners who travel to Beijing to bring their complaints about possible government corruption. The claimants did not petition and did not take their complaints to even a level higher than the city. Their involvement was local.

[30] The documentary evidence states that although authorities “*quickly suppress demonstrations involving expression of dissenting political views,*” that citizens hold thousands of protests every year, concerning different government actions.

[31] The evidence states that local authorities are more concerned with petitioners who take grievances to the state level and that local officials do attempt to stop petitioners from doing so:

Civil protests and petitioners

3.15.1 Some applicants will apply for asylum or make a human rights claim based on ill- treatment amounting to persecution at the hands of private security firms working in co-operation with corrupt police officers, and/or the Chinese authorities due to their involvement in civil unrest or petitions.

3.15.2 Treatment: The law provides for freedom of peaceful assembly, however, the government severely restricted this right in practice. The law stipulates that such activities may not challenge “party leadership” or infringe upon the “interests of the state.” Protests against the political system or national leaders are prohibited. Authorities deny permits and quickly suppress demonstrations involving expression of dissenting political views. Citizens continue to gather publicly to protest evictions, relocations and compensation in locations throughout the country, often resulting in conflict with authorities or other charges.

3.15.3 Freedom of assembly and association are severely restricted. Citizens risk punishment for organising demonstrations without prior government approval, which is rarely granted. Nevertheless, workers, farmers and urban residents held tens of thousands of protests during 2012, reflecting growing public anger over unlawful activity by officials, especially land confiscation, corruption, pollution and fatal police beatings. In July 2012, thousands of people peacefully protested against the construction of a copper plant in Shifang, Sichuan Province. Police took action with tear gas, stun grenades and beatings. After photographs were circulated by social media sites, the authorities announced that they would cancel the project and release detained protesters, though residents expressed fears that the project would resume once attention died down.

3.15.4 The law protects an individual’s ability to petition the government, however, persons petitioning the government faced restrictions on their rights to assemble and raise grievances. Most petitions addressed grievances about land, housing, entitlements, the environment or corruption. Most petitioners sought to present their complaints at national and provincial “letters and visits” offices. Although banned by regulations, retaliation against petitioners reportedly continues. This was partly due to incentives the central government offered to local officials to prevent petitioners from raising complaints to higher levels. Local officials face penalties if they fail to limit the flow of petitioners travelling to Beijing to report injustices to the central government. As a result, petitioners are routinely intercepted, harassed and detained in illegal “black jails” or sent to labour camps without trial. Detained petitioners are reportedly subjected to beatings, psychological abuse and sexual violence but in some cases, officials tolerated demonstrations or agreed to protesters’ demands.

[...]

In recent years there has been a significant increase in petitioning and civil unrest in China mainly related to the issues of unpaid wages, land confiscation, forced

evictions and corruption. Many of these protests have involved thousands of people and some have turned violent, resulting in deaths and serious injury.

Although the Chinese government is wary of any form of popular protest and is likely to respond harshly to protests that challenge the state's authority, the majority of these land and industrial protests are based on local issues and directed against local officials. Even when the protests are directed against the state they rarely challenge the state's authority or right to govern but instead protest against its specific policy as regards wages or land. In general, applicants from this category of claim are unlikely to be seen by the Chinese authorities as having engaged in a political act and are therefore unlikely to engage the United Kingdom's obligations under the Refugee Convention. However, each case should be considered on its individual merits as protestors or petitioners may be subject to criminal or administrative detention in RTL camps or 'black jails' where they are at risk of torture, abuse and mistreatment.⁷ [emphasis added]

[32] The panel finds that a reasonable person would not find these claimants to be political dissidents or persons seeking to overthrow the government. The claimants did not indicate that they did anything illegal or that they took their concerns to any level higher than the city.

[33] The panel acknowledges that Chinese officials do not tolerate political opposition or dissent but finds on balance that the claimants would not be considered anti-regime or political opponents.

[34] The panel finds, given the implausibility of the claimants being viewed as anti-regime, that, on a balance of probabilities, they are not wanted by or of interest to the PSB for reasons of their views on hospital medications (male claimant) or the personal actions of a municipal official (female claimant) in China.

Supporting documents

[35] The panel notes the two summons⁸ indicating the claimants are each wanted for "slandering of government." The panel notes that the documents do not have security features and could have been produced by using a printer and a stamp with red ink.

⁷ Exhibit 3 , NDP 30 April, 2018 version, item 1.7, UK Operational Guidance Note, Dec 2014

⁸ Exhibit 1 (subsection 7)

[36] The panel notes that the claimants enlisted the assistance of a smuggler and provided documents and information of unknown provenance in order to obtain a US Visa. As such, it would be reasonable to believe that the claimants would have access to similar documents to establish and support a claim as someone wanted by authorities. The panel awards no weight to the documents indicating that the claimants are wanted by authorities.

[37] The panel notes moreover that that this type of document, a single page with black ink and red stamps and without security features, is easily made by anyone, anywhere. The panel notes the documentary evidence indicating that fraudulent documents are readily available in China.

In correspondence with the Research Directorate, an official at the Canadian embassy in Beijing wrote that there are “consistent reports” of document fraud in China and that fraudulent identity documents (IDs) are easily obtained in the country. Similarly, a professor of criminal justice at Xavier University who specializes in Chinese policing stated in correspondence with the Research Directorate that “[t]here is little question that fraud of all kind[s], including ID fraud, is a major problem in China.” The Professor added that fraudulent IDs are “easily accessible” and that the industry is a “big business” and an “open secret” in China. In July 2012, the state media source China.org.cn described the fraudulent ID industry as “an incredibly lucrative trade,” in an article about the market for fake student ID cards, university diplomas, and other types of ID on the grounds of Renmin University in Beijing.

According to the Beijing embassy official, the provinces of Guangdong and Fujian are “considered particularly high-risk for fraudulent documents”⁹.

[38] The panel finds, on a balance of probabilities, that the summonses and detention certificate are not genuine. The panel finds on a balance of probabilities that the claimants are not wanted by Chinese authorities.

[39] The female claimant provides a typed document entitled “revealing the people’s government magistrate evil doing” which she claims she posted on the internet. The panel, however, has no indication that this document was posted anywhere. The panel notes that the female claimant testified that her posts were removed soon after posting. The panel finds that this document could have been produced by anyone, and that the document holds no evidence that it was ever posted anywhere. The panel awards it no weight.

⁹ Exhibit 3, NDP, 30 April, 2018 version, item 3.22, RIR # CHN104579.E

Expert witness

[40] The panel heard and considered evidence provided by the expert witness called by counsel, Professor XXXX XXXX. The panel notes the witness's self-described area of expertise is "the domestic politics of China and China-Canada relations."

[41] The panel notes the expert witness testimony that corruption is rampant in China and that there is little recourse for citizens to complain about corrupt officials and that there are times that those who expose corruption could be charged criminally. Professor XXXX also testified about the evolving surveillance technology employed by authorities to watch the activities and movements of citizens.

[42] While the panel notes and appreciates the participation and evidence of the expert witness, the panel notes also his testimony that he does not have specific knowledge of the officials mentioned in the claimants' BOCs. The panel finds that his evidence is similar to that provided in the NDP at exhibit 3. The panel notes that the witness does not have specific knowledge of the officials whom the claimants fear and find his testimony is not of sufficient probative value as to overcome the panel's findings on credibility (their ability to exit China when allegedly wanted by authorities) or well-foundedness (their profile as persons of interest to authorities).

CONCLUSION

[43] Accordingly the panel finds, on a balance of probabilities, that there is not more than a mere possibility that the claimants would be persecuted for a Convention ground or that it is likely they would be subjected personally to a risk to life or a risk of cruel and unusual treatment

or punishment or a danger of torture. The claimants are neither Convention refugees nor persons in need of protection.

(signed)

“Sarah Morgan”

Sarah Morgan

February 19 2019

Date