

**Canada (Minister of Citizenship and Immigration) v.
Lin**

Between
Minister of Citizenship and Immigration, appellant, and
Chen Lin, respondent

[2001] F.C.J. No. 1574
2001 FCA 306
Docket A-3-01

**Federal Court of Appeal
Vancouver, British Columbia
Desjardins, Décary and Sexton JJ.A.**

Heard: September 24, 2001.
Judgment: October 18, 2001.
(24 paras.)

Aliens and immigration — Admission, refugees — Grounds, well-founded fear of persecution — Refugee Division, determination by — Appeals or judicial review.

Appeal by the Minister of Citizenship and Immigration from a decision of the Trial Division that the Refugee Division did not make a reviewable error in holding that Lin was a Convention refugee. Lin was a 17-year-old from China. He arrived in Canada by ship in January 2000. Lin's family was poor. He was forced by his family to leave China. They made arrangements for him to go to New York illegally so that he could work and send money back to support his family. Lin claimed that he did not know that he would be leaving China until the day that he left his village. His father told him that he had to leave and that he could not refuse. Lin was forced to travel in a locked container. The container was opened during a stop in Canada, where Lin sought refugee status. The Refugee Division held that Lin was a Convention refugee on the basis that his parents were agents of persecution, having sent him abroad against his will to work and support his family in China. The Refugee Division further held that there was more than a mere possibility that Lin, if returned, would again be forced by his parents to leave China illegally and make his way to North America. Due to the Chinese custom of filial piety, Lin would find it repugnant to disobey his parents. The Refugee Division determined that there was a nexus to the Convention refugee definition because Lin was a member of a particular social group, being a minor child in a Chinese family who was expected to provide support for other family members. The Trial Division endorsed the Refugee Division's reasons.

HELD: Appeal allowed. The Refugee Division erred in finding that Lin had a well-founded fear of persecution. There was no evidence that supported the Refugee Division's finding that minor children from China who were expected to provide support for other family members constituted a group which was targeted for persecution by parents or other agents of persecution. There was no evidence that Lin's fear of persecution was by reason of his membership in that social group. Lin's fear stemmed from the method chosen to leave China.

Counsel:

Helen Park, for the appellant.
Christopher Elgin, for the respondent.

The judgment of the Court was delivered by

1 **DESJARDINS J.A.:**— The Minister of Citizenship and Immigration appeals a decision of a motions judge of the Trial Division who determined that the Refugee Division made no reviewable error when it decided that the respondent was a Convention refugee.

2 The trial judge certified the two following questions:

- Is it an error in law for the Refugee Division to find that the minor claimant had a well-founded fear of persecution on the grounds that he was a member of particular social group being "minor child of Chinese family who is expected to provide support for other family members?"
- If the answer to question #1 is "no", did the Refugee Division err in law in finding a state's inability to protect when the minor claimant, alleging persecution by his parents, did not seek state protection?

The facts

3 The respondent Chen Lin, a seventeen-year-old male citizen from the Fujian Province in China, arrived in Vancouver on a container ship on January 3, 2000. Subsequent to his apprehension by Canadian authorities, he made a Convention refugee claim.

4 He alleges that he did not want to leave China, but his family forced him to do so. His parents, being poor and unemployed, made arrangements through snakeheads for him to go to New York illegally so he could work and send money back to support his family in China. The respondent's cousin, who lives in New York, entered the United States illegally seven or eight years ago and now has status there. The cousin was

visiting China when the respondent's parents forced the respondent to leave. He himself works for a restaurant in New York. He said he could find work for the respondent.

5 The respondent claims that his parents obtained a passport for him to exit China without his knowledge. He did not know that he would be leaving China until the day he left his village. His father told him he had to leave and could not refuse.

6 After spending ten days travelling by himself to Hong Kong and waiting in hotels, a smuggling agent directed him to a station. He was dragged into a container where there were about fifteen other people. The respondent did not know he would be travelling in a container until he arrived at the station. He became scared because he had heard that people had died in a container. The smuggler locked the door of the container behind him. The cargo ship holding the container was at sea for two weeks until the container was finally opened at the port of Vancouver on January 3, 2000. The respondent did not know he was in Canada until he was informed by immigration officials.

7 Although the respondent did not want to leave China, he fears that, if he is returned, he will face harsh treatment from the Chinese authorities because of his illegal exit.

The decisions below

8 The Refugee Division found the respondent credible except for a suspect portion which they found not material to the claim. The suspect portion had to do with his testimony about a person of his neighbourhood who had left China for the United States and who, upon his return to China, was tortured by the Chinese authorities. The respondent could not, however, state when that person had returned, but said that his parents knew him.

9 The Refugee Division held that the respondent was a Convention refugee on the basis that the respondent's parents, with the complicity of snakeheads, were the agents of persecution having sent him abroad against his will to work and support his family in China. The Refugee Division concluded that these actions had created a dangerous situation for the respondent. It also determined that the respondent would live a life of servitude in the United States to pay off the debt to the snakeheads and then provide support to his family. Those actions, cumulatively, amounted to persecution.

10 The Refugee Division further held that there was more than a mere possibility that the respondent, if returned, would again be forced by his parents to leave China illegally and make his way to North America. Due to the Chinese custom of filial piety, the respondent would be obligated to do as told. He would find it repugnant to report his parents to the authorities and it is highly unlikely that the State, being aware that the respondent had left China illegally, would provide him protection.

11 The Refugee Division finally determined that there existed a nexus to the Convention refugee definition because the respondent was a member of a particular social group, being "a minor child in a Chinese family who is expected to provide support

for other family members". It added that the fact that the agents of persecution, the parents, were also members of that same family did not detract from the respondent being a bona fide member of a particular group.

12 The motions judge simply endorsed the reasons given by the Refugee Division.

Analysis

13 The appellant claims that the motions judge erred in his finding, considering that the Refugee Division erred when it concluded that the respondent had been the subject of persecution, and when it defined the particular social group as a "minor child in a Chinese family who is expected to provide support for the other family members". The appellant also claims the Refugee Division erred in applying the test of state protection.

14 The respondent filed with the Refugee Division a copy of his passport which he said was a valid passport (Appeal Book, vol. II at 302). The original had been taken away from him by the snakeheads who also took away from him his personal ID card. When he left home, he said he asked his mother to make a copy of it. She later sent it to him in Canada. The document had a stamp on it which indicated that the Chinese Public Security Board (PSB) approved his exit from China for a short exit, the destination being Vietnam. His father obtained for him a visa for Vietnam.

15 The respondent travelled from his village to Hong Kong by plane from Chang Lee to Shenzhen City. He walked through Customs from Shenzhen City to Hong Kong. He then went to the bus station where he met the snakeheads who told him to get into the container.

16 The evidence shows that the trip had been arranged by his father. There is no evidence, however, that the father knew his son would be travelling in a container. The finding of the Refugee Division that the parents, with the complicity of the snakeheads, had placed him in a dangerous situation, is therefore without foundation.

17 The Refugee Division found that there was more than a mere possibility that the respondent, if returned, would again be forced by his parents to make an attempt, no matter how dangerous, to leave China illegally and make his way to North America with the assistance of snakeheads. The respondent made no statements to that effect, nor was there any evidence that the parents could afford to pay for such a trip a second time.

18 The Refugee Division held that the respondent would be required to live a life of servitude in the United States to pay off the debt to the snakeheads and to provide on-going support for his family. It held that those actions, cumulatively, amounted to persecution. The Refugee Division does not explain, however, why supporting one's family members amounts to persecution. The word "persecution" is not defined in the Immigration Act. This Court, in *Rajudeen v. M.E.I.* ((1984), 55 N.R. 129 (F.C.A.) at 133-34), reverted to ordinary dictionary definitions such as the one found in the Shorter

Oxford English Dictionary which contains, inter alia, the following definitions of "persecution":

A particular course or period of systematic infliction of punishment directed against those holding a particular (religious belief); persistent injury or annoyance from any source.

19 It was said in *Sagharichi v. M.E.I.*, [1993] F.C.J. No. 696, ((August 5, 1993) A-169-91(F.C.A.)), that a finding of persecution is a mixed question of fact and law. The Refugee Division's conclusion, in the case at bar, remains largely unsubstantiated.

20 Nor is there evidence that the respondent considered his parents as the agents of persecution. On the contrary, it was his mother who sent the respondent copy of his passport when she learnt that he was in Canada. There is no evidence that he feared return to China because of his parents.

21 There was no evidence which supports the Refugee Division's finding that minor children in a Chinese family who are expected to provide support for other family members constitute a group which is targeted for persecution by parents or other agents of persecution. There was no supporting evidence to establish that the respondent's fear of persecution was "by reason of" his membership in that social group. The respondent's fear of persecution was not because he was under eighteen and expected to provide support to his family. His fear was directed at the Chinese authorities and stemmed from the method chosen to leave China.

22 Finally, the issue of state protection was never raised during the hearing. The Refugee Division cited an extract from a report by Dr. Graham Edwin Johnson, Professor of Sociology at the University of British Columbia. Professor Johnson explains the long-standing filial piety that exists in China, which commands that sons obey their fathers. No link is made, however, in Professor Johnson's statement with state protection. Besides, there was no evidence of unwillingness on the part of the respondent to seek state protection which could have been explained by filial piety.

Conclusion

23 I would answer the first question certified by the motions judge in the affirmative on the basis that there was no evidence that the respondent had a well-founded fear of persecution. This dispenses with the necessity of answering the second question.

24 I would allow this appeal and set aside the decision of the motions judge. I would then allow the application for judicial review that was before the motions judge, I would set aside the decision of the Refugee Division, and I would refer the matter back to a differently constituted panel for a redetermination consistent with the above reasons.

DESJARDINS J.A.

DÉCARY J.A.:— I agree.

SEXTON J.A.:-- I agree.