Li v. Canada (Minister of Citizenship and Immigration)

Between
Qing Bing Li, applicant, and
The Minister of Citizenship and Immigration, respondent

[1999] F.C.J. No. 1398
Court File No. IMM-5095-98

Federal Court of Canada - Trial Division
Vancouver, British Columbia
Reed J.

Heard: August 25, 1999.
Judgment: August 27, 1999.
(12 paras.)

Aliens and immigration — Admission, refugees — Grounds, well-founded fear of persecution.

This was an application by Li to set aside the Convention Refugee Determination Division's decision that he was not a Convention refugee. Li claimed that he was the main economic supporter of three disabled family members. He claimed that the Chinese government did not provide his family with basic medical services, and did not allow him an adequate opportunity to make a living. The Division found that Li's complaints did not constitute persecution. Li argued that the Division did not consider his claim of persecution in sufficient detail.

HELD: Application dismissed. Despite a lack of detailed analysis, the Convention's decision was fully supported by the record. A more thorough analysis would not have led to a different result. Li was an economic migrant, not a Convention refugee.

Statutes, Regulations and Rules Cited:

Federal Court Immigration Rules, Rule 11.

Counsel:

Douglas Cannon, for the applicant.
Mark Sheardown, for the respondent.

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1 **REED J.** (Reasons for Order):— I think it is necessary to comment, first, on two procedural matters, both related to the fact that the respondent chose not to oppose the

applicant's application for leave. The applicant's application for leave to commence a judicial review proceeding was filed on October 2, 1998, and his application record, including an affidavit sworn by him on October 30, 1998, was filed on November 2, 1998. On November 23, 1998, the respondent wrote to the Court, sending a copy to counsel for the applicant, stating that the Minister of Citizenship and Immigration would not be filing any submissions with respect to the applicant's application for leave, but reserved the right to do so if leave was granted. The granting of leave converts the leave application into a judicial review proceeding.

2 The Federal Court Immigration Rules, 1998 provide that, at the leave stage, a respondent who opposes an application may file affidavits and shall file a memorandum of argument:

> 11. A respondent who opposes an application
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> (a) may serve on the other parties one or more affidavits, and
> (b) shall serve on the other parties a memorandum of argument which shall set out concise written submissions of the facts and law relied upon by the respondent,
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> and file them, together with proof of service, within 30 days after service of the documents referred to in subrule 10(2).

3 On May 27, 1999, Mr. Justice Denault granted the applicant leave to commence a judicial review proceeding and in his order, in accordance with the usual orders of this Court, he provided:

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> 4. Further affidavits, if any, shall be served and filed by the applicant on or before June 28, 1999.
> 5. Further affidavits, if any, shall be served and filed by the respondent on or before July 5, 1999.
> 6. Cross-examinations, if any, on affidavits are to be completed on or before July 15, 1999.
> 7. The applicant's further memorandum of argument, if any, shall be served and filed on or before July 26, 1999.
> 8. The respondent's further memorandum of argument, if any, shall be served and filed on or before August 4, 1999.
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> ...

4 The applicant filed no further affidavit and no further memorandum of argument to those filed the previous November in support of his application for leave. The respondent filed no affidavits, but on July 23, 1999, filed a Memorandum of Argument. One of the arguments contained therein was that the applicant's affidavit,

sworn the previous October 30, 1998, should be declared to be inadmissible because it contained evidence that had not been before the CRDD.

5 Counsel for the applicant then brought a motion to have the respondent's Memorandum of Argument struck from the record on the ground that it was unfair that it should be filed so late when it contained nothing that could not have been put before the Court during the fall of 1998. He asserted that the filing at such a late date deprived him of an adequate opportunity to prepare a response. He argued that there is nothing in the Rules that allows for the filing of submissions other than at the leave stage, and that since the applicant had filed no further materials even though he had been allowed to do so by paragraphs 4 and 7 of Mr. Justice Denault's Order, the respondent was not entitled to file any further material either. He therefore argued that the respondent's Memorandum of Argument should be struck from the record.

6 I did not accede to that request. In the Minister's letter of November 23, 1998, she reserved the right to file submissions at a later date if leave was granted. Counsel for the applicant did not object to that position, or seek the setting of a specific date within which the respondent's deferred submissions had to be filed. The reference in Mr. Justice Denault's Order to the filing of a "further memorandum of argument" by the respondent is not conditional on either the applicant or the respondent filing further material in accordance with any of paragraphs 4, 5 or 7 of the Order. The paragraphs are independent and, in the context of the respondent's November 23, 1998 letter, paragraph 8 must be taken to include the deferred submissions. I therefore dismissed the motion to strike the respondent's Memorandum of Argument from the record.

7 I also refused to entertain the respondent's preliminary motion that the applicant's October 30, 1998 affidavit be declared inadmissible. It seemed to me it was too late for the respondent to take that position. The affidavit was part of the record when the respondent chose not to make submissions on the leave application the previous November. It was part of the record that formed the basis of Mr. Justice Denault's Order granting leave. It is too late now to suggest that it should not be part of the record.

8 I turn then to the merits of the application. The applicant seeks an order setting aside a decision of the Convention Refugee Determination Division ("CRDD") that found he was not a refugee. His refugee claim was based on the assertion that he was the main economic support of three family members who were disabled (his younger brother had polio and now allegedly cannot walk, his father and sister suffer from congenital heart disease). The applicant states that the government of the People's Republic of China does not provide his family members with basic medical services, nor does it allow him an adequate opportunity to earn a living. He states that as a farmer he is required, by law, to stay on the farm and cannot move to an urban centre to find work.

9 The CRDD rejected this claim, recognizing that many people in the PRC live in poverty, and that the disabled are not well taken care of. The CRDD noted that this was not because the government was unwilling to provide medical care to the disabled, but because it was unable to do so, given the costs involved. The CRDD concluded that the

hardships that were suffered by the applicant and his disabled family members did not constitute persecution and certainly did not constitute persecution for a convention reason - there was no nexus between the hardships and a convention reason (race, religion, membership in a particular social group, or political opinion).

10 Counsel for the applicant argues that the CRDD did not examine the applicant's claim to be persecuted as a member of a particular social group (ie: a farmer who was the sole support of his disabled family) in enough detail to constitute a proper assessment of his claim. Counsel argues that the CRDD did not appreciate that the applicant could not work off the farm because it was against the law and that he had not worked in Shenzen, although he had worked illegally elsewhere in China.

11 Despite a lack of detailed analysis, the CRDD's decision that the hardship suffered by the applicant and his family was not persecution, and that it was not visited on them because they fell within a particular social class, as the latter is defined in Canada (A.G.) v. Ward, [1993] 2 S.C.R. 689, is fully supported by the record. I am not persuaded that a more detailed analysis could have led to any different result. Also, the CRDD understood that the registration of all residents, and the return of those from villages to their farms, was a requirement imposed by law. It questioned, however, whether that law was strictly enforced. The CRDD stated that the applicant had worked in Yanan and then tried to find work, unsuccessfully, in Shenzen. Contrary to counsel's representations, I did not find a statement in the decision of the CRDD that it thought that the applicant worked in Shenzen. The CRDD identified the applicant as an economic migrant, not a convention refugee, and that decision is accurate.

12 For the reasons given the applicant's application will be dismissed.

REED J.