



IMMIGRATION AND REFUGEE BOARD  
(REFUGEE DIVISION)

LA COMMISSION DE L'IMMIGRATION  
ET DU STATUT DE RÉFUGIÉ  
(SECTION DU STATUT DE RÉFUGIÉ)

IN CAMERA  
HUIS CLOS  
**TA0-03535**

**AMENDED**

CLAIMANT(S)

**XXXXX XXXX XXX  
(a.k.a. XXXXX XXXX XXX)**

DEMANDEUR(S)

DATE(S) OF HEARING

**March 6, 2001**

DATE(S) DE L'AUDIENCE

DATE OF DECISION

**March 6, 2001 (Rendered Orally)  
May 1, 2001 (Written Reasons)**

DATE DE LA DÉCISION

CORAM

**Bonnie E. Milliner  
Margarita Okhovati**

CORAM

FOR THE CLAIMANT(S)

**Maureen Silcoff  
Barrister & Solicitor**

POUR LE(S) DEMANDEUR(S)

REFUGEE CLAIM OFFICER

**Kevin Fainbloom**

AGENT CHARGÉ DE LA REVENDICATION

DESIGNATED REPRESENTATIVE

**Susan J. Woolner  
Barrister & Solicitor**

REPRÉSENTANT DÉSIGNÉ

MINISTER'S COUNSEL

**Dale Munro**

CONSEIL DE LA MINISTRE

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On October 31, 2000 and March 6, 2001, at Toronto, Ontario, the Convention Refugee Determination Division (CRDD) of the Immigration and Refugee Board (IRB) heard the claim of XXXXX XXXX XXX, age 17, to be a Convention refugee pursuant to section 69.1 of the Immigration Act. The claimant is a citizen of China who bases her claim on membership in a particular social group, namely, female minors incapable of protecting themselves in abusive family situations. The designated representative appointed to oversee the claimant's interests was Susan Woolner, a Toronto lawyer. The Chairperson's Guidelines on Child Refugee Claimants were considered in light of the nature of this claim for refugee status before the panel.<sup>1</sup> Because the minor before us is female, the panel also considered the Chairperson's Guidelines on Women Refugee Claimants Fearing Gender Related Persecution.<sup>2</sup> We also took into consideration Counsel's submissions and the Refugee Claim Officer's (RCO) observations.

### **Preliminary Matters**

#### **Postponement Request**

The first sitting of this claim on October 31, 2000 was very brief and no evidence was taken. Counsel requested a postponement for the purpose of familiarizing herself with the lead decision of the claims of a large group of Chinese minors. This lead decision had just been released that morning and Counsel had not yet read it. Because the lead decision was a negative one, and evidence from that case was being entered into evidence in this case before us, Counsel felt she was ill-prepared for a hearing that she had anticipated would only address identity and credibility issues. In addition, she was concerned that the Minister had intervened in other similar cases and had not appeared, yet was present at this hearing. Counsel felt it would be an error to confront the claimant without her knowing what was contained in the findings of the lead case and that it would not be in the claimant's best interests to proceed.

The Minister's Counsel indicated that it was his intent to come at the beginning of

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<sup>1</sup> Child Refugee Claimants: Procedure and Evidentiary Issues, Guidelines Issued by the Chairperson pursuant to Section 65 (3) of the Immigration Act, IRB, Ottawa, September 30, 1996.

<sup>2</sup> Women Refugee Claimants Fearing Gender-Related Persecution: Update, Guidelines Issued by the Chairperson pursuant to Section 65 (3) of the Immigration Act, IRB, Ottawa, November 25, 1996.

the hearing to see if the claimant would appear and to find out the exhibits on file. He did not oppose Counsel's request for time to review the lead decision.

Given the facts in the lead case could be applicable to the claimant before us, and given the length of time it would take for all parties to review the lead decision, the panel determined that it was not in the minor claimant's best interests to proceed if she was not prepared. Therefore, the postponement request was granted.

### **Interpreter Concerns**

When the parties reconvened on March 6, 2001 to hear this claim, the Minister's Counsel made a request to have the interpreter replaced, based on information that he said he had received from an allegedly reliable source (that he declined to reveal) that the interpreter was a security risk. Although the Minister's Counsel was shown an electronic mail (e-mail) missive that indicated the IRB was aware of the allegations and had cleared this lady as far back as November 16, 2000,<sup>3</sup> the Minister's Counsel was not reassured and refused to question the claimant unless the panel dismissed the interpreter. According to the Immigration Act, section 69.1 (5) (a) (ii), it is mandatory that the Minister be able to present evidence and question on exclusion issues. However, there was no suggestion that exclusion was an issue in this case. Therefore, the discretion falls to the panel:

At the hearing into a person's claim to be a Convention refugee, the Refugee Division

(b) may, if it considers it appropriate to do so, give the Minister a reasonable opportunity to question the person making the claim and any other witnesses and to make representations concerning the claim.<sup>4</sup>

In addition, Minister's Counsel was unable to put before the panel any evidence other than innuendo that the interpreter provided for the hearing was a security risk. There was evidence, however, in the form of the e-mail<sup>5</sup> that she had been cleared. While the panel had no objection to the presence of the Minister's Counsel, it was his choice not to ask questions. He determined that he would sit and listen, take notes, monitor the hearing, and receive copies of the evidence. He ended a lengthy presentation by informing the parties concerned that if the decision of the panel proved to be problematic, he would possibly take the matter further, which is his right to do. The panel determined that in the

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<sup>3</sup> Exhibit R-2, E-mail from Angela Santomieri, Head, Interpreters and Recordings, IRB, Toronto Region to Sashika Seevaratnam, to Harold Jacobson, OSM, Team 6, and cc. to other CRDD Department Managers.

<sup>4</sup> Immigration Act of Canada, Section 69.1 (5) (b).

<sup>5</sup> Exhibit R-5, E-mail.

absence of adverse evidence, the interpreter would stay, and that if the Minister's Counsel chose not to ask questions, he would stay as a silent observer for the balance of the hearing.

### **Summary of the Claimant's Allegations**

The claimant is the middle child of three, a boy and two girls. Her parents were fined for their violation of China's One Child Policy. There was a fourth child, a boy, who died at birth.

The claimant comes from a poor working class family, was seen as bad luck by the family, and stood poorly in comparison to her siblings. She was beaten by her mother and blamed for her infant brother's death.

The claimant's parents arranged to send her out of the country. The claimant understood she was destined for the United States of America (USA) and that she was to send money home.

The claimant was apprehended at the border when she, with a group of other Chinese minors, was attempting to get into the USA. She was held in detention for a time and feels she was treated very poorly.

She feels that if she returns to China, she will be punished by her parents and the Chinese authorities, and she will be forced to come back to North America again so that the snakeheads can realize their fees.

### **Determination**

In order for the panel to find the claimant to be a Convention refugee, the evidence must demonstrate that she 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.<sup>6</sup> Having considered all of the evidence, the panel was satisfied that there is a "serious possibility" that the claimant, should she return to China, would be persecuted, based on her membership in a particular social group, namely, female minors incapable of protecting themselves in abusive family situations.

### **Issues**

The issues identified at the outset of the hearing were those identified at the hearing of the lead case of the claims of the group of Chinese minors.<sup>7</sup> They are as follows: identity, including personal identity and citizenship; credibility;

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<sup>6</sup> Adjei v. Canada (Minister of Employment and Immigration), [1989] 2 F.C. 680.

<sup>7</sup> Exhibit R-4, Transcript of lead case in the matter of Chinese minor refugee claimants, August 29, 30, 31, 2000, and September 1, 2000, p. 7.

nexus/membership in a particular social group; objective basis; state protection; and the effects of the Charter of Rights and Freedoms. The effects of the Charter proved not to be an issue.

### **Analysis**

#### **Identity**

The claimant's identity as a Chinese national was established by supporting documentation filed.<sup>8</sup> The panel concludes that she is who she says she is, and that she is a citizen of the People's Republic of China. The panel determines that the claimant has established her identity as an abused child.

#### **Credibility**

When determining the credibility and trustworthiness of the claimant's evidence, the panel took into consideration a number of factors, i.e. her age, her gender, her cultural background, her level of education and sophistication, and her past experiences. We considered the fact that she is an unaccompanied minor, and we considered any nervousness related to giving testimony in a hearing room situation. We found that the claimant testified in a straightforward manner without hesitation or evasion and that there were no relevant inconsistencies in her testimony. Neither were there any contradictions between her testimony and the other evidence before us. There were opportunities for her to embellish her claim and she did not do so which serves to enhance rather than detract from her credibility. She is seventeen years of age, almost a legal adult, and we gave full weight to her testimony.

#### **The Claimant's Allegations of Abuse**

In her narrative, the claimant told of her mother beating her with a bamboo stick for bringing bad luck to the family. Orally, she related a number of incidents indicating beatings. She was beaten, sometimes two to three times per month, for seemingly frivolous reasons. When asked to describe the worst incident at the hands of her mother, her distress at relating the incident was obvious to the panel. The one thing she seemed most concerned about was being hit with the bamboo stick. Physical abuse was not limited to her mother. The claimant related an incident in which her older brother caused her harm just because she had not closed a door. Although she levied no allegations of physical abuse against her father, she indicated that he was absent most of the time due to his work, and that when he was back at home, he listened to his wife, not the claimant. In other words, her mother had sole power.

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<sup>8</sup> Exhibit C-2, Notarial Certificate for Birth, Household Registration, and Graduation Certificate.

The claimant related a number of concerns with respect to psychological abuse as well. Her concerns ranged from mild, i. e. feelings of not being loved enough and antipathy toward being made to wear second-hand clothes, (in the opinion of the panel, not abnormal in the average teenager) to severe, including being cursed at and blamed for events beyond her control such as the timing of her birth and her being jailed in Canada. While the claimant made no allegations of abuse against her grandmother, her grandmother, at the very least, reinforced the assertion of the claimant's mother that the date of the claimant's birth was against the family and was bad luck.

The panel finds that the claimant is a child of an abusive family, and is, on a balance of probabilities, the family scapegoat. The panel finds that the parental purpose in sending a fifteen-year-old female child halfway around the world was meant to accomplish two goals – to relieve themselves of a perceived burden and to swell the family coffers in the process. The exile of this child from her family and her homeland without her prior knowledge or consent (as she testified to) is the ultimate abuse.

### **Protection**

The claimant indicated that her father deferred to her mother in matters of family discipline. There is no evidence before the panel to indicate that the position of the claimant's grandmother is any different. Her brother was identified as an agent of abuse rather than as a protector. Her sister is younger than the claimant and could not be expected to function as a protector without jeopardizing her own more favoured position within the family. The claimant was asked if she had any plan to go for help or to escape from her parents. Her response was that if she went to relatives, they would simply ask her to go back home. This is not an unreasonable explanation in view of families who are scrambling to feed their own mouths, let alone those of others. There is no evidence before the panel to indicate that there are any government institutions that would accept responsibility for the welfare of this child. There is evidence to support the opposite position. The claimant's dilemma supported by Dr. Michael Szonyi who states:

I know no agency in rural Fuzhou that would assist or support a youth or young adult who wished to resist coerced confrontation by her family. Social services familiar to Canadians, such as those provided by Children's Aid Societies or women's shelters, are not available in rural Fuzhou.<sup>9</sup>

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<sup>9</sup> Exhibit C-5, Affidavit of Michael Szonyi, D. Phil., City of Toronto.

What then is the position of the state and the attitude of the populace with respect to abused children, especially female children? The documentary evidence tells us that in the rural areas in particular, the type of area from which the claimant comes, the traditional preference of parents is still for males, and female infanticide, abandonment, and neglect of baby girls are still a concern,<sup>10</sup> even though the Law on the Protection of Juveniles forbids such practice.<sup>11</sup> In China, families are considered responsible for the behaviour of their members, and in general, the state would not intervene in family matters which remain in the private realm.<sup>12</sup> There are laws in the books that are supposed to protect children, but they are seldom invoked, particularly if the children are female.<sup>13</sup> The kidnapping and buying and selling of children persists in rural areas.<sup>14</sup> Other documentary evidence indicates that women and girls have been the silent victims of government policies which encourage or tacitly accept human rights abuses, but controls on freedom of expression, information, and association prevent women from speaking out or organizing. The Chinese government has failed to eliminate “slave trading” in women. China’s population control policy depicts girls as problematic for families and the government has failed to prevent abuses of the rights of female children. Laws outlawing discrimination have no enforcement mechanisms.<sup>15</sup> Hundreds of millions of women and girls suffer from domestic violence, and the lack of services or supports for victims means that females trying to escape such abuse have nowhere to turn. Concerns about saving face for the authorities lead to the suppression of information that would reveal the extent of the serious abuses against girls and women.<sup>16</sup> Although significant legislation has been passed to address the abuses of women and girls, the laws fail to address crucial concerns and lack any meaningful mechanisms for enforcement.<sup>17</sup> Looking at the objective basis of the claim, the panel finds the evidence

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<sup>10</sup> Exhibit R-1, China Disclosure Package, February 2000, United States Department of State, Human Rights Reports for 1999, p. 39.

<sup>11</sup> Ibid., p. 68.

<sup>12</sup> Exhibit C-3, In the Matter of the Chinese Refugee Claimants who are Minors, Volume 1, Tab F, # 2, p. 7.

<sup>13</sup> Exhibit R-1, China Disclosure Package, February 2000, United States Department of State, Human Rights Reports for 1999, p. 68.

<sup>14</sup> Ibid., p. 69.

<sup>15</sup> Exhibit C-3, In the Matter of the Chinese Refugee Claimants who are Minors, Volume 1, Tab B, # 6, p. 2.

<sup>16</sup> Ibid., p. 3.

<sup>17</sup> Ibid.

reveals that meaningful state protection is not available, nor it is a realistic option for an individual in the claimant's particular position.

### **Lead Case**

This panel finds that the claim before the panel of the lead case does not apply to the claimant before us. In that particular case, the claimant agreed to come to Canada and retained a good relationship with her parents.<sup>18</sup> The claimant before us testified that she was shocked and felt at a loss when she found out she would be shipped to Canada. In addition, she testified that her mother would not allow her to refuse to go, and that if she told her mother she did not want to go, she would be cursed. The panel finds that the two cases are not comparable.

The claimant testified that if she were to be sent back to China, she could face a number of difficulties: punishment from the Chinese government, in the form of jail or fines, harassment from the snakeheads, and trouble from her parents. It is the parental reaction that is of concern to this panel. The claimant felt that since her parents spent money to send her out of China, on her return, they might contact the snakehead to send her out again. She also fears that if she returned to her family, she would have to live as she lived before – unhappily. The Convention Refugee definition is forward-looking. The panel finds that to be subjected again to the life she once lived in China would constitute persecution within the meaning of the Convention Refugee definition. The panel finds that it is her youth and her gender that renders her vulnerable.

### **Conclusion**

For all of the reasons stated above, and after careful consideration of all the evidence, the panel concludes that the claimant has good grounds for fearing persecution in China based on her membership in a particular social group, namely, female minors incapable of protecting themselves in abusive family situations.

Therefore, the Refugee Division determines the claimant, XXXXX XXXX XXX, to be a Convention refugee.

“Bonnie E. Milliner”  
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 Bonnie E. Milliner

Concurred in by:

<sup>18</sup> Exhibit R-4, Transcript of Lead Case TA0-03660, September 1, 2000, pp. 3, 4, 5.



“Margarita Okhovati”

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Margarita Okhovati

DATED at Toronto, this 1st day of May, 2001.

**REFUGEE DIVISION – PARTICULAR SOCIAL GROUP – GENDER - MINORS – UNACCOMPANIED  
MINORS - GENDER-RELATED PERSECUTION - WOMEN REFUGEES – CHILDREN - DOMESTIC  
VIOLENCE - INTERPRETERS - FEMALE - POSITIVE - CHINA**