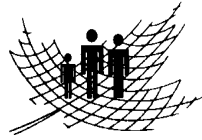


**IMMIGRATION AND REFUGEE BOARD  
(REFUGEE DIVISION)**



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

V99-02929

IN CAMERA  
HUIS CLOS

CLAIMANT(S)

DEMANDEUR(S)

XXXXX XX

DATE(S) OF HEARING

DATE(S) DE L'AUDITION

30 November 1999

DATE OF DECISION

DATE DE LA DÉCISION

21 February 2000

CORAM

CORAM

Leon Graub  
S.M. Beckow

FOR THE CLAIMANT(S)

POUR LE(S) DEMANDEUR(S)

Adrian Huzel  
Barrister & Solicitor

REFUGEE CLAIM OFFICER

AGENT CHARGÉ DE LA REVENDICATION

J. Sharpe

DESIGNATED REPRESENTATIVE

REPRÉSENTANT DÉSIGNÉ

XXXX XXXXX

MINISTER'S REPRESENTATIVE

REPRÉSENTANT DU MINISTRE

Nil

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These are the reasons for the decision of the Convention Refugee Determination Division (CRDD) in the refugee claim of XXXXX XX ("the claimant"). The claimant is a 16-year-old citizen of China. He arrived in Vancouver on 12 August 1999 as an unaccompanied minor, and made his refugee claim<sup>1</sup> the next day. The hearing into his claim was held pursuant to section 69.1 of the *Immigration Act*,<sup>2</sup> at Vancouver, B.C. on 30 November 1999.

In determining whether the claimant is a Convention refugee, the panel considered the evidence adduced, all representations, country documents, statutory provisions, and case law. In procedural and evidentiary issues, the panel has followed the IRB's Guidelines on *Child Refugee Claimants*.<sup>3</sup>

## ALLEGATIONS

In his oral testimony, the claimant alleged that his father was arrested by the Public Security Bureau in 1994; he does not know for what crime. When his father returned home in three or four months after the payment of a fine of 10,000 RMB, he had been very badly beaten. Whereas before his arrest, he had been kind to the claimant, after his arrest he became mean. Now he began yelling at and beating the claimant. When the beatings started, the claimant testified that he was in grade two.

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<sup>1</sup> A Convention refugee is defined, in part, in section 2(1) of the *Immigration Act* as follows:

A Convention refugee means any person who

a) by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,

(i) is outside the country of the person's nationality and is unable or, by reason of that fear, is unwilling to avail himself of the protection of that country, or

(ii) not having a country of nationality, is outside the country of his former habitual residence and is unable or, by reason of that fear, is unwilling to return to that country.

<sup>2</sup> As enacted by R.S.C. 1985 (4th Supp.), c.28, s.18.

<sup>3</sup> IRB Chairperson's Guidelines on *Child Refugee Claimants: Procedural and Evidentiary Issues*, September 1996.

Nothing seemed to go right for his father after that. He started a number of businesses but all of them failed, leaving losses. The father then took up pig farming, but lost money on that enterprise as well. He subsequently began drinking. He would come home, scream at the claimant, and beat him, without provocation.

He testified that the father would take a stick, bigger than a broom handle, and attack him. Later, the claimant began running away from home to avoid his father when his father set out to beat him. The beatings continued at a rate of one to three times a month. They became more severe over the years.

To see whether the claimant was able to take a balanced view of his situation, the panel asked him if he remembered times when he was young and the family was happy. He recalled that, when he was hungry as a young child, his father was happy to go out and buy something for him to eat. But after his jailing by the police, he says, these times ended and his father got meaner as the years passed.

The claimant's father forced him to work on an unsafe construction site where nails would stick into his feet. To escape this situation, he began to help his father with the pig farm and, fairly soon after, was doing all the chores connected with it.

His father was also physically violent towards his mother and, less often, towards his sister. His parents quarrelled often. In addition, his mother would intervene to defeat her husband's attempts to beat the son. On one occasion, he told his mother, "Let him do it. If he wants to kill me, let him go ahead."

The last occasion on which his father beat him happened when he was fifteen years old. He was cooking rice and his father was fixing the roof. He was having difficulty putting the lid on the rice pot. When his father came down from the roof, he told him, "You're so stupid. You still don't know how to do simple things." The father took up a stick and hit him. His mother came between them. The claimant used the opportunity to run away.

He was asked why he and his mother allowed this abuse to continue and he replied that his father was the head of the house and in charge of everything. He did not know if other children in his village were being abused because it was not a subject that people talked about.

In announcing his decision to put the child on a boat, the father told him he did not like the child very much, found raising him a burden, and did not want to be obliged to pay for him anymore. The claimant was asked what his father's response would be if he returned home. He said he thought it would be worse than before. The claimant was asked what would happen if he reported his father to the police. He said that he did not expect the police would do anything if he reported him. The police would not open their doors to investigate when someone was knocked down by a car, he said. Again, if his father found out he had called the police, he feared being beaten worse than ever.

## ANALYSIS

### *Credibility*

In our view, the claimant was a trustworthy witness and his testimony was reliable. His testimony was consistent with his PIF and CIC notes. He answered questions put to him in a straightforward manner, without hesitation or evasion. Although opportunities were available to him, he did not embellish or exaggerate his account. None of his statements sounded improbable or suspect. None of his allegations were shaken on cross-questioning. The claimant was able to recall and describe happy as well as tragic events in his life, which went to credibility. At one point he launched into a spontaneous flow of words describing the worst incident of abuse he experienced. His spontaneity appeared genuine and unrehearsed. His demeanour during the telling of this detailed narrative was consistent with a person who had lived through the abuse he

described. The panel finds the claimant to be a credible witness, and his credibility was an important factor in the panel's favorable determination of his claim.

What the claimant said is corroborated in the country documents. His assertion that his father was the head of the household and could do what he wished is supported by Dr. Graham Johnson's report, part of Exhibit 5. Dr. Johnson states:

The relationship between parents and children in a Chinese family is most importantly regulated by the concept of "filial piety" (xiao). ... Filial piety ... implies respect [and] obedience....<sup>4</sup>

The links that a Chinese individual has to the family are intense. ... The system of kinship in traditional China was based on male predominance and was strictly patrilineal.<sup>5</sup>

"Caught Between Tradition and the State," the Human Rights in China report in Exhibit 3 (hereafter the HRIC report) corroborates this view as well.

Domestic violence is certainly not new to Chinese society, where a male-centered cultural system in which women were required to be subservient to men has been in place for thousands of years.<sup>6</sup>

The claimant's remarks that other families in the village were reluctant to discuss topics like domestic violence is also corroborated in the HRIC report. That report states that Chinese families hold the "common belief that 'family shame [in this case, the subject of domestic violence] should not be aired in public.'" <sup>7</sup> The claimant did not seem to be expressing these views to bolster his case, but because he genuinely appeared to hold them.

The HRIC report's authors "believe that the problem of violence by parents and parents-in-law against minor and adult children may be ... serious and widespread."<sup>8</sup>

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<sup>4</sup> Exhibit 5, Dr. Garham Johnson, *The Chinese State, Families and Filial Piety. An Opinion.* At p. 3.

<sup>5</sup> *Ibid.*, at p. 4.

<sup>6</sup> Exhibit 3, "Caught Between Tradition and the State: Violations of the Human Rights of Chinese Women," Human Rights in China (HRIC), August 1995, at p. 23. HR Package.

<sup>7</sup> *Ibid.*, at p. 23.

<sup>8</sup> *Ibid.*, at p. 24.

Virtually unnoticed, except in the occasional instance where beatings result in the death of the child. Child abuse has not, to our knowledge, been the subject of serious studies and there are no specific legal provisions outlawing it.<sup>9</sup>

In our opinion, the years of physical and psychological abuse that the claimant suffered between 1993 and 1999 amount to persecution. The IRB Guidelines on *Child Refugee Claimants* direct the panel:

In determining the child's fear of persecution, the international human rights instruments, such as the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and the Convention on the Rights of the Child, should be considered in determining whether the harm which the child fears amounts to persecution.<sup>10</sup>

Article 9 of the UN *Declaration of the Rights of the Child* directs the international community to protect the child against cruelty:

The child shall be protected against all forms of neglect, cruelty and exploitation. He shall not be the subject of traffic, in any form.<sup>11</sup>

The People's Republic of China signed the U.N. *Convention on the Rights of the Child* on 26 January 1990 and ratified it on 2 March 1992. Article 37 of the *Convention* states:

States Parties shall ensure that (a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment.<sup>12</sup>

The panel finds that the claimant has offered the Board credible evidence that his father has ongoingly subjected him, as a minor incapable of protecting himself, to cruelty. In addition, the father has exposed the son to the risks of debt bondage. While many Chinese migrants on the boats are happy to be in North America, the claimant

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<sup>9</sup> *Ibid.*, at p. 24.

<sup>10</sup> Chairperson's Guidelines on *Child Refugee Claimants: Procedural and Evidentiary Issues*. Ottawa: IRB, September 1996.

<sup>11</sup> *Declaration of the Rights of the Child*, adopted by Resolution 1386 (XIV) of the General Assembly of the United Nations on 20 December 1959.

<sup>12</sup> *Ibid.*, Article 37.

testified that he never wanted to leave China, but that his father consigned him to this fate.

The claimant's father has subjected him to cruel and degrading punishment, both by being physically violent with him and by placing him in the hands of the human smugglers. The claimant testified that he believed his father did so so that the claimant would remit the extra money he earned overseas to the family in China. However, the act of sending him into debt bondage overseas is the final persecutory act that the father has visited upon the child.

The claimant must have a link between the persecution he fears, if returned to China, and one of the grounds set out in the definition. We find that he has a link as a member of a particular social group -- namely, minors.<sup>13</sup> The child's vulnerability arises as a result of his status as a minor. His vulnerability as a minor is an innate and unchangeable characteristic, notwithstanding that the child will grow into an adult.<sup>14</sup>

#### *State Protection*

According to the 1992 Chinese Law on the Protection of Juveniles, physical abuse of children can be grounds for criminal prosecution.<sup>15</sup> However, as we shall see below, the law is seldom invoked and little protection from abusive family members is available to children. Again, the 1991 Protection of Minors Act states that, even when "the circumstances are serious," only administrative punishments are available against those who violate its provisions.<sup>16</sup> Says the HRIC report:

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<sup>13</sup> Cf. T91-01497, T91-01498, *Ramirez, Toth*, 9 August 1994 (reasons signed 1 November 1994); T93-09636, T93-0638, T93-0639, *Neville, Macdonald*, 26 January 1994 (reasons signed 9 September 1994); T94-00416, T94-00418, T94-00419, *Ramirez, Winkler*, 25 August 1994 (reasons signed 14 November 1994).

<sup>14</sup> T94-00416 et al, D. Winkler and J. Ramirez, 25 August 1994.

<sup>15</sup> Exhibit 3, Department of State *Country Reports on Human Rights Practices for 1998* - Volume 1, at p. 863.

<sup>16</sup> Exhibit 5, HRIC, "Protections' Fail to Protect," *China Rights Forum*, Spring 1996, at p. 2.

The act ... did not increase protection for children against abuse by relatives, a problem which, to HRIC's knowledge, has not been the subject of systematic research. In the case of such abuse, the Act refers to Article 182 of the Criminal Code which provides for lesser penalties for assaults against relatives as compared to those against strangers and states that prosecutions will only be initiated when someone has filed a complaint with the authorities. Furthermore, the Article states that there will be prosecutions only when an assault is "odious," which law enforcement and judicial bodies have generally interpreted as meaning that it results in permanent physical injury.<sup>17</sup>

The claimant testified that his mother had tried informal channels of conflict resolution (neighbours and relatives) and had been unsuccessful. The claimant did not think that the police would do anything for a child. This view is corroborated by the country documents. For example, Dr. Johnson states:

Families [have always been] responsible for the behaviour of their members. ... In general, ... the state would not intervene in family matters. ... What may be a matter of public concern in a Canadian context -- wife beating, child abuse -- may well remain in the private realm with no official intervention. ... Child protection as it might be understood in a Canadian context is but poorly developed.<sup>18</sup>

The objective evidence supports the child's belief that the Public Security Bureau would in all likelihood have done nothing to prosecute a charge of domestic abuse against the father. The evidence suggests that domestic abuse is regarded by the police as a family matter and that the husband/father is regarded as head of the family and thus its chief decision-maker.<sup>19</sup>

In addition to state protection not being available for a child, the claimant has testified that attempting to invoke it puts him in a difficult position. If unsuccessful, he could be subject to even worse abuse. If successful, he might send to jail the sole breadwinner of the family. Under these circumstances, he worried how the family would survive. Seeing his way out of what appeared to be a no-win situation is probably not possible for a child as young as he is.

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<sup>17</sup> *Ibid.*, at p. 2.

<sup>18</sup> *Supra*, footnote 3, at pp. 2-3.

<sup>19</sup> Exhibit 3, "Caught Between Tradition and the State," at p. 22.



Again, it is important to remember that the claimant did not seek remedy in travel to Canada. His father made that decision for him, without consulting him, and without caring how he felt about it. The child has not been launched on his first career; he has been exiled from his family.

We find that state protection in China is neither an available nor a realistic option for someone in the claimant's particular position in contemporary China.

*Internal Flight Alternative (IFA)*

In all likelihood, the Chinese authorities would return the claimant to his family home if he were sent back to China. Article 9 of the UN *Convention on the Rights of the Child* enjoins international protection against a child in the claimant's position being sent back to an abusive and neglectful family environment:

1. States Parties shall ensure that a child shall not be separated from his or her parents against their will, *except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents....* [My emphasis]<sup>20</sup>

Regarding IFA, Linden J.A. in *Thirunavukkarasu* determined that the issues to be addressed are:

IFA must be sought, if it is not unreasonable to do so, in the circumstances of the individual claimant. The test is a flexible one, that takes into account the particular situation of the claimant and the particular country involved. This is an objective test and the onus of proof rests on the claimant on this issue, just as it does with all other aspects of a refugee claim. Consequently, if there is a safe haven for claimants in their own country, where they would be free of persecution, they are expected to avail themselves of it unless they can show that it is objectively unreasonable for them to do so. ...

... whether, given the persecution in the claimant's part of the country, it is objectively reasonable to expect him or her to seek safety in a different part of the country before seeking a haven in Canada or elsewhere. Stated another way for clarity, the question to be answered is, would it be unduly harsh to expect this person, who is being persecuted in one part of

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<sup>20</sup> *Convention on the Rights of the Child*, adopted by Resolution 44/25 of the General Assembly of the United Nations on 20 November 1989, Article 9.

his country, to move to another less hostile part of the country before seeking refugee status abroad?<sup>21</sup>

The claimant testified that he could not stay with his relatives for any extended period of time. When he fled there to escape his father, they did not regard him as their child and demanded that he return to his own family. Without being accepted into another extended-family household, given his vulnerability as a minor, asking him to live on his own might expose him to homelessness or to the influence of unscrupulous elements who prey on the weak and vulnerable. The panel is unaware of any state-run or government-sponsored institution that would assume responsibility for the welfare of the child.

To the argument that he risks the same fate here in Canada as he does in China, we accept the testimony of the designated representative that the Ministry for Children and Families can provide the claimant with a foster family until he reaches adulthood. We find that there is no reasonable IFA in the People's Republic of China for a minor who has been abused and, to all intents and purposes, rejected by his family.

In summary, then, the panel finds that there is more than a mere possibility of persecution should the claimant be returned to the People's Republic of China. The panel does not believe that state protection is available to him as a minor suffering from physical abuse. The panel does not see a reasonable IFA for the claimant in his particular situation as a vulnerable minor and an abused child.

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<sup>21</sup> *Thirunavukkarasu v. Canada (Minister of Employment and Immigration)*, [1994] 1 F.C. 589 (C.A.); (1993), 22 Imm. L.R. (2d) 241 (F.C.A.).

DETERMINATION

In light of these reasons, the panel determines that XXXXX XX is a Convention refugee, as defined in section 2(1) of the *Immigration Act*.

“Steve Beckow”

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Steve Beckow

Concurred in by:

“Leon Graub”

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Leon Graub

DATED at Vancouver, B.C., this 21<sup>st</sup> day of February, 2000.

**KEYWORDS - REFUGEE DIVISION - PARTICULAR SOCIAL GROUP -  
DOMESTIC VIOLENCE - CHILDREN - MINORS - INTERNATIONAL  
INSTRUMENTS - STATE PROTECTION - INTERNAL FLIGHT  
ALTERNATIVE - MALE - POSITIVE - CHINA**