BIA
Chase, IJ
A97-160-508
A97-160-508

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDERAL REPORTER AND MAY NOT BE CITED AS PRECEDENTIAL AUTHORITY TO THIS OR ANY OTHER COURT, BUT MAY BE CALLED TO THE ATTENTION OF THIS OR ANY OTHER COURT IN A SUBSEQUENT STAGE OF THIS CASE, IN A RELATED CASE, OR IN ANY CASE FOR PURPOSES OF COLLATERAL ESTOPPEL OR RES JUDICATA.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, Foley Square, in the City of New York, on the 17th day of August, two thousand and six.

PRESENT:
HON. JON NEWMAN,
HON. GUIDO CALABRESI,
HON. SONIA SOTOMAYOR,
Circuit Judges.

Xiao Ying Liu and Shi Yu Li,
Petitioners,

v. No. 05-6745-ag
NAC

United States Department of Justice, Attorney General
Alberto R. Gonzales,
Respondent.

FOR PETITIONERS: Yee Ling Poon, Robert Duk-Hwan Kim, New York.

FOR RESPONDENT: Anthony J. Jenkins, United States Attorney, Angela P. Tyson-Floyd, Assistant United States Attorney, St. Croix, Virgin Islands.

UPON DUE CONSIDERATION of this petition for review of a decision of the Board of Immigration Appeals ("BIA"), it is hereby ORDERED, ADJUDGED, AND DECREED, that the

petition for review is DENIED.

Xiao Ying Liu, through counsel, petitions for review of the BIA decision affirming Immigration Judge ("IJ") Jeffrey Chase's denial of her application for asylum, withholding of removal, and relief under the Convention Against Torture ("CAT"). We assume the parties' familiarity with the underlying facts and procedural history of the case.

Where, as here, the BIA adopts the decision of the IJ and supplements the IJ's decision, this Court reviews the decision of the IJ as supplemented by the BIA. *See Yu Yin Yang v. Gonzales*, 431 F.3d 84, 85 (2d Cir. 2005); *Yan Chen v. Gonzales*, 417 F.3d 268, 271 (2d Cir. 2005). The Court reviews *de novo* questions of law and the application of law to undisputed fact. *See, e.g.*, *Secaida-Rosales v. INS,* 331 F.3d 297, 307 (2d Cir. 2003). It reviews the agency's factual findings under the substantial evidence standard, treating them as "conclusive unless any reasonable adjudicator would be compelled to conclude to the contrary." 8 U.S.C. § 1252(b)(4)(B); *see, e.g.*, *Zhou Yun Zhang v. INS,* 386 F.3d 66, 73 & n.7 (2d Cir. 2004). However, we will vacate and remand for new findings if the agency's reasoning or its fact-finding process was sufficiently flawed. *Cao He Lin v. U.S. Dep't of Justice*, 428 F.3d 395, 406 (2d Cir. 2005); *Tian-Yong Chen v. INS*, 359 F.3d 121, 129 (2d Cir. 2004); *see also Xiao Ji Chen v. U.S. Dep't of Justice*, 434 F.3d 144, 158 (2d Cir. 2006) (agreeing with this principle, but avoiding remand, in spite of deficiencies in an adverse credibility determination, because it could be confidently predicted that the IJ would adhere to the decision were the case remanded).

Even assuming arguendo that this Court has jurisdiction to review the IJ's finding that Liu failed to file her application within a reasonable period of her changed personal circumstances materially affecting her eligibility for relief, *but cf. Xiao Ji Chen*, 434 F.3d at 154;

1 *Jun Min Zhang v. Gonzales*, — F3d — , 2006 WL 1901014 at *3-4 (2d Cir. July 12, 2006),
2 petitioner's asylum claim is unavailing.
3 The IJ determined that Liu failed to show that she would likely be forcibly sterilized upon
4 return to China on account of her two United States-citizen children. He noted that the Asylum
5 Profile and Country Report indicated that the birth of two children while living abroad has not
6 been established as a violation of the family planning policy. He also noted the Country Report's
7 contention that the Chinese government relied on economic incentives and sanctions to enforce
8 its family planning policy, as opposed to forcible birth control measures. This Court has
9 warned against overreliance on a State Department report suggesting that an individual in the
10 applicant's circumstances would not generally reasonably fear persecution. *Tian-Yong Chen*,
11 359 F.3d at 130. Here, the IJ's conclusion that Liu's fear of future persecution was unfounded is
12 substantially supported by the record as a whole; he considered the State Department's country
13 materials in conjunction with Liu's written testimony and submitted documentary evidence and
14 reasonably determined that nothing indicated that she would be treated as a violator of the family
15 planning policy due to her two United States-citizen children. *Cf. Jian Xing Huang v. INS,* 421
16 F.3d 125, 129 (2d Cir. 2005) (finding that, "[i]n the absence of solid support in the record" for
17 petitioner's assertion that he will be subjected to persecution on account of his two U.S.-born
18 children, "his fear is speculative at best"). As there is no evidence in the record indicating that
19 Liu would likely be tortured upon return to China, the IJ's denial of relief under the CAT was
20 also appropriate.
21 _____For the foregoing reasons, the petition for review is DENIED.
22

FOR THE COURT:
Roseann B. MacKechnie, Clerk

By:_____