



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
Office of the Clerk*

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Name: ZHANG, QING

A73-148-366

Date of this notice: 11/15/2001

Enclosed is a copy of the Board's decision and order in the above-referenced case.

Very Truly Yours.

Lori Scialabba
Acting Chairman

Enclosure

Panel Members:

GUENDELSBERGER, JOHN
MILLER, NEIL P.
MILLER, NEIL P.
MOSCATO, ANTHONY C.

DYERTA

Falls Church, Virginia 22041

File: A73 148 366 - New York

Date:

NOV 15 2001

In re: QING ZHANG

IN EXCLUSION PROCEEDINGS

MOTION

ON BEHALF OF APPLICANT: Theodore N. Cox, Esquire

ON BEHALF OF SERVICE: Elaine A. Fabian
Assistant District Counsel

EXCLUDABLE: Sec. 212(a)(7)(A)(i)(I), I&N Act [8 U.S.C. § 1182(a)(7)(A)(i)(I)] -
No valid immigrant visa

Sec. 212(a)(7)(B)(i)(I), I&N Act [8 U.S.C. § 1182(a)(7)(B)(i)(I)] -
Nonimmigrant - no valid passport

Sec. 212(a)(7)(B)(i)(II), I&N Act [8 U.S.C. § 1182(a)(7)(B)(i)(II)] -
No valid nonimmigrant visa or border crossing card

APPLICATION: Reopening

This case was last before us on May 31, 1996, when we dismissed the applicant's appeal of an Immigration Judge's decision denying her application for asylum and withholding of deportation. The applicant has now filed a motion for reopening based on change of circumstances. The motion will be granted, proceedings will be reopened, and the record will be remanded to the Immigration Judge.

The applicant is a 29-year-old native and citizen of China who arrived in the United States on October 19, 1994. Following a hearing conducted on October 31, 1995, the Immigration Judge found the applicant excludable as charged, denied her asylum and withholding claim, and ordered her excluded and deported from the United States. We affirmed the Immigration Judge's decision, concluding that the applicant failed to demonstrate persecution on account of her activities in support of the Chinese pro-democracy movement in 1989.

On May 24, 2001, the applicant filed the instant motion, requesting that exclusion proceedings be reopened based on a "change of circumstances." In the motion, applicant's counsel asserts the following:

Respondent has a son born on May 7, 1999 in the U.S., and is also pregnant now (documents attached). If she is sent back to China now, she will be forced to undergo abortion. If she is sent back to China after the second child is born, she will be sterilized (see attached background materials).

In support of her motion, the applicant has submitted a completed Application for Asylum and Withholding of Removal (Form I-589); a photocopy of a Certificate of Birth issued by the New York Department of Health for Richard Chen, born May 7, 1999; a photocopy of a form from the Chinatown Health Clinic indicating that the applicant is receiving prenatal care there; and an unsigned, unsworn statement by the applicant.

The Immigration and Naturalization Service has submitted a form response contending that the applicant's motion "is a motion to reconsider that does not specify the errors of fact or law in the prior decision or is not supported by pertinent authority."

The applicant's motion falls outside the time and numerical limitations on motions to reopen set forth at 8 C.F.R. § 3.2(c)(2) (2001). However, these time and number limits do not apply to a motion to reopen to apply or reapply for asylum or withholding of deportation based on changed circumstances arising in the country of nationality or in the country to which deportation has been ordered, if such evidence was material and was not available and could not have been discovered or presented at the previous hearing. 8 C.F.R. § 3.2(c)(3)(ii).

Moreover, as a result of our precedent decision in *Matter of X-G-W-*, Interim Decision 3352 (BIA 1998), this Board will allow the reopening of proceedings to pursue asylum claims based on coercive population control policies, notwithstanding the time and number limitations specified in 8 C.F.R. § 3.2. Subsequent to our May 31, 1996, decision in this case, Congress enacted the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104-208, 110 Stat. 3009-546 ("IIRIRA"). Section 601(a)(1) of the IIRIRA amended the statutory term "refugee" by adding that a person who has been forced to abort a pregnancy, to undergo involuntary sterilization, or who has been persecuted for resistance to a coercive population control program shall be deemed to have been persecuted on account of political opinion. 110 Stat. at 3009-689. Section 601(a)(1) applies to pending asylum and withholding of exclusion and deportation applications, and to motions seeking to reopen such cases, even though it was not in effect at the time of the Board's decision. See *Matter of X-P-T-*, 21 I&N Dec. 634 (BIA 1996).

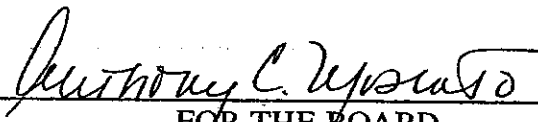
The applicant's hearing on her asylum claim before the Immigration Judge concluded on October 31, 1995. In her present motion, the applicant has submitted evidence that establishes she has a 2-year-old United States citizen child and is currently pregnant. The applicant asserts

that "If we are sent back to China now, I will be forced to undergo abortion. If we are sent back to China after our second child is born, my husband or I will be sterilized." In addition, she asserts that, as a person deported to China, she will be sentenced to jail for 2 or 3 years and will be beaten and tortured.

We find it appropriate to grant the applicant's motion to reopen based on the revisions to the term "refugee" that were brought about by section 601(a)(1) of the IIRIRA. *Matter of X-G-W-*, Interim Decision 3352 (BIA 1998); 8 C.F.R. § 3.2(c)(3)(ii). Moreover, in light of changes in the law pertaining to China's population control policies, we find that the record should be remanded for further proceedings and that the applicant should be afforded an opportunity to apply for relief based on her fear of persecution for violating China's coercive population control program. See *Matter of X-P-T-*, 21 I&N Dec. 634 (BIA 1996). The following orders will be entered.

ORDER: The motion to reopen is granted.

FURTHER ORDER: The record is remanded to the Immigration Judge for further proceedings consistent with the foregoing opinion.



FOR THE BOARD