14-2402
Xia v. Whitaker

BIA
Sichel, IJ
A088 524 649

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING TO A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 18th day of December, two thousand eighteen.

PRESENT:
JON O. NEWMAN,
DENNIS JACOBS,
PIERRE N. LEVAL,
Circuit Judges.

JIANDONG XIA,
Petitioner,

v. **14-2402**
NAC

MATTHEW G. WHITAKER, ACTING
UNITED STATES ATTORNEY GENERAL,
Respondent.

FOR PETITIONER: Gary J. Yerman, New York, NY.

FOR RESPONDENT: Benjamin C. Mizer, Principal Deputy Assistant Attorney General; Mary Jane Candaux, Assistant Director; Michael C. Heyse, Trial Attorney, Office of Immigration

Litigation, United States Department of Justice, Washington, DC.

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

Petitioner Jiandong Xia, a native and citizen of the People's Republic of China, seeks review of a June 4, 2014, BIA decision that affirmed the August 24, 2012, decision of an Immigration Judge ("IJ") denying asylum, withholding of removal, and relief under the Convention Against Torture ("CAT"). *In re Jiandong Xia,* No. A088 524 649 (B.I.A. June 4, 2014), *aff'g* No. A088 524 649 (Immig. Ct. N.Y. City Aug. 24, 2012). We assume the parties' familiarity with the underlying facts and procedural history in this case.

Under these circumstances, we have reviewed both the IJ's and the BIA's opinions "for the sake of completeness." *Wangchuck v. Dep't of Homeland Sec.*, 448 F.3d 524, 528 (2d Cir. 2006). The applicable standards of review are well established. *See Jian Hui Shao v. Mukasey*, 546 F.3d 138, 157-58 (2d Cir. 2008).

Xia applied for asylum, withholding of removal, and CAT

relief, asserting a fear of persecution based on the birth of his children in the United States in violation of China's population control program. As an initial matter, contrary to Xia's contention, the agency applied the correct standard of review when considering his application. *See id.* at 156-57 & n.15.

For largely the same reasons as set forth in *Jian Hui Shao*, we find no error in the agency's determination that Xia failed to satisfy his burden for asylum, withholding of removal, and CAT relief. *See id.* at 158-67; *see also Paul v. Gonzales*, 444 F.3d 148, 156-57 (2d Cir. 2006). While the petitioners in *Jian Hui Shao* were from Fujian Province, and Xia is from Zhejiang Province, as with the evidence discussed in *Jian Hui Shao*, Xia's evidence related to Zhejiang Province does not describe the use of force in the enforcement of the family planning policy against Chinese nationals returning with U.S.-born children. *See id.* at 160-61, 165-66, 171-72.

For the foregoing reasons, the petition for review is DENIED. As we have completed our review, the pending motion for a stay of removal in this petition is DISMISSED as moot.

FOR THE COURT:
Catherine O'Hagan Wolfe
Clerk of Court