



## Qiu Qing Pan v. Eric H. Holder

2012 | Cited 0 times | Second Circuit | February 16, 2012

11-1179-ag

Pan v. Holder

### 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 A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

1 At a stated term of the United States Court of Appeals 2 for the Second Circuit, held at the Daniel Patrick Moynihan 3 United States Courthouse, 500 Pearl Street, in the City of 4 New York, on the 16th day of February, two thousand twelve.

6 PRESENT: 7 PIERRE N. LEVAL, 8 JOSE A. CABRANES, 9 RAYMOND J. LOHIER, JR., 10 Circuit Judges.

NAC

1 UPON DUE CONSIDERATION of this petition for review of a 2 Board of Immigration Appeals ("BIA") decision, it is hereby 3 ORDERED, ADJUDGED, AND DECREED that the petition for review 4 is DENIED.

5 Qiu Qing Pan, a native and citizen of the People's 6 Republic of China, seeks review of a March 2, 2011, order of 7 the BIA, affirming the March 6, 2009, decision of an 8 Immigration Judge ("IJ") denying his application for asylum, 9 withholding of removal, and relief under the Convention 10 Against Torture ("CAT"). In re Qiu Qing Pan, No. A099 673 11 108 (B.I.A. Mar. 2, 2011), aff'g No. A099 673 108 (Immig. 12 Ct. N.Y. City Mar. 6, 2009). We assume the parties' 13 familiarity with the underlying facts and procedural history 14 in this case.



## Qiu Qing Pan v. Eric H. Holder

2012 | Cited 0 times | Second Circuit | February 16, 2012

15 Under the circumstances of this case, this Court 16 reviews the IJ's decision as supplemented and modified by 17 the BIA, i.e., minus the adverse credibility determination 18 not reached by the BIA. See *Xue Hong Yang v. U.S. Dep't of Justice*, 426 F.3d 520, 522 (2d Cir. 2005). The applicable 20 standards of review are well established. See 8 U.S.C. 21 § 1252(b)(4)(B); see also, e.g., *Yan Chen v. Gonzales*, 417 22 F.3d 268, 271 (2d Cir. 2005).

1 The BIA reasonably concluded that Pan failed to 2 demonstrate a well-founded fear of persecution based on his 3 claim of resistance to the family planning policy. See *Shi 4 Liang Lin v. U.S. Dep't of Justice*, 494 F.3d 296, 313 (2d 5 Cir. 2007) (en banc). Here, Pan asserts that his vocal 6 objection when the family planning officials visited his 7 home and his act of going into hiding thereafter constitute 8 such "resistance." Even assuming that Pan established 9 "resistance," the BIA did not err in finding that he failed 10 to establish he had a well-founded fear of future harm 11 amounting to persecution on account of that resistance.

12 Based on Pan's admission that he did not know if the family 13 planning officials were still seeking to punish him in 14 China, Pan failed to demonstrate that his fear of future 15 persecution was objectively reasonable. See *Jian Xing Huang 16 v. U.S. INS*, 421 F.3d 125, 129 (2d Cir. 2005) ("In the 17 absence of solid support in the record . . . [a] fear is 18 speculative at best."). The agency also did not err in 19 concluding that Pan's assertion of a fear of persecution was 20 undermined by the fact that both his wife and his parents 21 continued to live in China and had not been further punished 22 or sanctioned beyond his wife's alleged forced abortion. See 23 *Melgar de Torres v. Reno*, 191 F.3d 307, 313 (2d Cir. 1999).

1 The agency also reasonably concluded that Pan did not 2 have a well-founded fear of persecution based on his 3 practice of Christianity. Because Pan did not become a 4 Christian until after he left China and did not allege that 5 he was personally subjected to past persecution on account 6 of his faith, he was required to show either that he would 7 be "singled out individually for persecution" or that there 8 was a pattern or practice of persecution of similarly 9 situated persons in China. See *Hongsheng Leng v. Mukasey*, 10 528 F.3d 135, 142 (2d Cir. 2008). As the agency concluded, 11 Pan failed to make this showing. As Pan presented no 12 evidence to the agency that he will proselytize to other 13 Chinese citizens, the agency reasonably concluded that the 14 Chinese government was not likely to become aware of his 15 activities. See *Jian Xing Huang*, 421 F.3d at 129.

16 In addition, the record does not compel the conclusion 17 that there is a pattern of persecution so systematic or 18 pervasive that all Christians in China are at risk. Cf. 19 *Santoso v. Holder*, 580 F.3d 110, 112 (2d Cir. 2009) 20 (concluding that substantial evidence supported the agency's 21 determination that the mistreatment of some ethnic Chinese 22 in Indonesia did not establish a pattern or practice of 23 persecution in part because Indonesia is a large country).

1 In making this determination, the agency reasonably 2 considered the country conditions evidence in the record, 3 recognizing that, while the evidence indicated that 4 government officials sometimes



## Qiu Qing Pan v. Eric H. Holder

2012 | Cited 0 times | Second Circuit | February 16, 2012

harass Chinese Christians who 5 attend unregistered churches, freedom to participate in 6 religious activities continued to increase in many areas.

7 See *Ivanishvili v. U.S. Dep't of Justice*, 433 F.3d 332, 341 8 (2d Cir. 2006). Indeed, contrary to Pan's claim of an 9 objectively reasonable fear of persecution, his wife and her 10 family, who were practicing Christians, have remained in 11 China unharmed. See *Melgar de Torres*, 191 F.3d at 313. The 12 IJ also considered the letter submitted by Pan's father, in 13 which he indicated that some individuals in his community 14 who participate in underground churches have been harmed by 15 the Chinese government, but reasonably gave it diminished 16 evidentiary weight because Pan's father was an interested 17 witness not subject to cross-examination. See *Xiao Ji Chen* 18 v. U.S. Dep't of Justice, 471 F.3d 315, 342 (2d Cir. 2006).

19 Because the agency reasonably found that Pan failed to 20 establish that he had a well-founded fear of persecution 21 based on his resistance to China's family planning policy 22 and his Christianity, it did not err in denying him asylum, 23 withholding of removal, and CAT relief because those claims 1 were based on the same factual predicate. See *Paul v. 2 Gonzales*, 444 F.3d 148, 156 (2d Cir. 2006).

3 For the foregoing reasons, the petition for review is 4 DENIED. As we have completed our review, any stay of 5 removal that the Court previously granted in this petition 6 is VACATED, and any pending motion for a stay of removal in 7 this petition is DISMISSED as moot. Any pending request for 8 oral argument in this petition is DENIED in accordance with 9 Federal Rule of Appellate Procedure 34(a)(2) and Second 10 Circuit Local Rule 34(b).

11 FOR THE COURT:

12 Catherine O'Hagan Wolfe, Clerk

