

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
San Pedro, California

File No.: A [REDACTED] [REDACTED] 1996

In the Matter of)
[REDACTED])
[REDACTED]) IN EXCLUSION PROCEEDINGS
Applicant)

CHARGE: Sections 212(a)(5) and (7), I&N Act

APPLICATIONS: Asylum, withholding of deportation

ON BEHALF OF APPLICANT:

ON BEHALF OF SERVICE:

Ms. Wood, Esquire
Cathy Dreyfuss, Esquire

Guita Vahid, Esquire
Heidi Goebel, Esquire
Trial Attorneys/INS

ORAL DECISION OF THE IMMIGRATION JUDGE

The applicant is a 21-year old female, single, native and citizen of China, who attempted to enter the United States on or about [REDACTED], 1995. She did not appear admissible to the United States, and was placed in exclusion proceedings by issuance of a Form I-122, dated [REDACTED], 1996. The applicant was charged with being excludable from the United States because she was an intending immigrant without an immigrant visa, and because she was coming here to work without a labor certification. The applicant appeared for an exclusion hearing with counsel, and through her attorney contested excludability under Sections 212(a)(5) and (7). The Government amended the I-122 orally and added the (6) charge,

the fraud charge, and counsel conceded the (6) charge, that is the fraud charge. Based upon counsel's admissions, I find that the applicant is excludable under the fraud charge. Since she is excludable under the fraud charge, then she would also be excludable under the (7) charge because she would not be in possession of valid entry documents and is, therefore, considered to be an intending immigrant without an immigrant visa. She has not presented any evidence to show that she has complied with the labor certification requirements. Accordingly, I find that the applicant is excludable on the labor certification charge as well.

In lieu of exclusion and deportation, the applicant requested asylum and withholding of deportation. She presented the Form I-589, with attachment, that's in the record as Exhibit 2. Background information was submitted as Exhibit 3, consisting of Amnesty International reports and other articles, Interpreter Release article regarding a memorandum from the Office of International Affairs, Phyllis Colvin, Consideration for Asylum Officers Adjudicating Asylum Claims from Women, dated June 5, 1995, another one dated May 26, 1995, INS Gender Asylum Fact Sheet and Guidelines, dated May 26, 1995, Amnesty International Report for China, June 1994, and June 1995. Those are all in the record as a Joint Exhibit 3. The State Department responded to our request for an advisory opinion by submitting the Country Conditions Report dated December 11, 1995. That is in the record as Exhibit 4. A declaration from the applicant is in the record as Exhibit 5. It

is dated [REDACTED], 1996. Exhibit 6 is a letter to the applicant's sister from Hong, dated [REDACTED], 1995, telling the sister of the applicant, who testified in these proceedings, that the applicant had been arrested by the police, that the applicant had wounded her manager with a tool last night because of a dispute over something. The manager flew into a rage and accused her of the crime of injury, and that's when the applicant was arrested. That a light outcome would be a fine as the penalty and the severe outcome would be imprisonment for two or three years. The Court misnumbered the exhibits. I have two Exhibit 6's. One was a substituted translation of Exhibit 6. We had received two translations. The substituted translation is what I just described. Exhibit 7 is a record of sworn statement. In the statement, the applicant was asked, what is the purpose of your trip to the United States, and she answered, to work. She was also asked, have you ever been arrested or imprisoned at any time, and she answered, no. Exhibit 8 is a photocopy of a passport from the People's Republic of China issued in the name of [REDACTED]. Exhibit 9 is a brief prepared by counsel for the applicant. Exhibit 10 is a substitute certificate of translation and Public Security Bureau of Taishan City Order for Arrest and translation. This document was marked into the record for identification purposes only. The Government objected to the document because it was not authenticated pursuant to the regulations as an official document from a foreign country. Exhibit 11 for identification

purposes only is a letter of certification and translation and certification of translation. This document was marked into the record for identification purposes only because the Government objected on the grounds that this was an official document and had not been properly authenticated pursuant to the regulations. However, it does not appear to be an official government document. It is a letter from the [REDACTED] Administrative District certifying that the applicant was admitted to be employed in the hotel as a waitress. Appears to be a combination government document, employment verification document. Exhibit 12 for identification purposes only is a receipt showing a fine of 5,000 yuan paid. Government objected to this document being marked into the record as evidence because it is an official document that has not been authenticated pursuant to the regulations. Exhibit 13 for identification purposes only is a work permit and translation. Government objected to this document being made part of the record because it appears to be an official government document that has not been authenticated pursuant to the regulations. Exhibit 14 is a letter from the applicant's father, and translation, as well as the envelope. It is addressed to the applicant's sister, and tells her that the applicant used to work in a hotel. The hotel manager attempted to rape her. She resisted, and during critical moment she used scissors to injure the manager. Because the manager is powerful and has social status and because of corruption, the applicant was being detained and the manager wanted to sue her.

He mentioned the fine of 5,000 yuan, but the family doesn't have that much money, but they have to try and get the money. They also demanded that the applicant be transferred to another job. The applicant thinks she can resolve the problem and promise the manager, but the nightmare continues because the applicant was transferred to a hair salon, and that "you should know that hair salons in China have been engaged in businesses like prostitution and other illegal drugs like LSD." And that she doesn't have any choice. Could the sister please try to get as much money as possible to save the applicant. Exhibit 15 is a letter, translation and envelope from the friend, [REDACTED], addressed to the applicant's sister, stating that she is the applicant's friend, that she came to the hair salon prior to the applicant and that she's also being persecuted by these bad guys. That the hair salon is run by the government and it is run by the security bureau and the boss, and they like to catch girls with minor offenses to this hair salon to serve the male customers and use these young girls' bodies to serve the male customers' desires. They demand us to help them selling the illegal drugs to the males. When they have too many customers and are getting too tired, they force the girls to take LSD to stimulate them so that they can take more customers. That [REDACTED], the applicant, is the youngest one among us and has not been harassed by them yet. They don't want to see her life being destroyed. Therefore, before she got too deep into this thing, they decided to help the applicant escape. Exhibit 16 for

identification purposes only is a letter of certification from the [REDACTED] Police Department dated [REDACTED], 1995. This document was marked for identification purposes only because the Government attorney objected to the document since it is an official government document that has not been authenticated in compliance with the regulations. Exhibit 17 consists of background information documents which also contains a Table of Contents, which counsel has identified as 1 through 8. Exhibit 18 is a letter from the applicant's sister, who testified in court today that she is a U.S. citizen now and she is the applicant's sister, and that she had been in Los Angeles several times for the applicant's hearing. She was unable to come for the [REDACTED] hearing because she was sick. So she wrote a letter to tell the Court that her sister is a gentle and kind girl and doesn't fight with anyone, and that she heard from her father that what the applicant did was self-defense and protection of herself, but that there is no justice in China, and that the applicant had to flee China for her safety and freedom. When she spoke to the father on the phone recently, he told the witness, [REDACTED], the applicant's sister, that the police come to the house continuously asking for the father to turn the applicant in. They also told the father that if they catch the applicant she would be punished severely, that the parents are very scared. If she is sent back to China, she will be put in prison, beaten and raped. She cannot have a safe and peaceful life there. Exhibit 19 is a publication

by the human rights in China, Caught Between Tradition and the State, Violations of the Human Rights of Chinese Women, dated August 17, 1995. Among other things, the report states that since China signed CEDAW in 1980, hundreds of thousands of women have been sold into slavery as wives or prostitutes after being kidnapped or tricked into going with traffickers. Hundreds of million of women have been beaten or abused by their husbands and other family members. The Chinese government has repeatedly committed itself to eliminating the trafficking of women, yet continues to restrict information about this crime, thus failing to mobilize society to combat it. The persistence of trafficking is officially attributed to futile thinking. Exhibit 20 is counsel's supplemental brief.

The applicant also presented testimony, as did her sister. Her sister testified that the applicant is her younger sister, and that she came from an area in China where forced prostitution occurred, and that she came to the United States in 1993 prior to her sister having these problems. That if her sister is released, she will take care of her, and that she has not been back to China since she left in 1995. That although the authorities have charged the applicant with assault, she did this out of self-defense, and that she had to do this in order to protect herself, and that the government is just using this as a way of getting the applicant into prostitution.

The applicant testified that her problems in China began

in 1995, specifically [REDACTED], 1995. She was working as a server in a hotel restaurant. The manager called her that night. Normally, there were two of them on duty, but she was called away and she was alone in the servers quarters. She had been working there for five months. The manager came into the room, touched her hair and breast and didn't say anything to her. She said please behave yourself and watch your manners and hands. He grabbed her and embraced her and she tried to struggle free. She called out for help, but no one heard her. There was a small scissors on the table next to her. She grabbed the scissors and jammed them into his thigh. She was frightened and upset and ran away. She did not stay to see how he was. He yelled out. She ran quickly downstairs, but the guards saw her and arrested her. They took her to the police station ten minutes away, and she was held over one month. The head of the police station interrogated her the day after she was arrested. Her parents spoke to the manager and he said that they had to pay him 5,000 yuan to cover his medical expense. The parents said they could only get 3,000 yuan, so he said that she could work and get the money deducted from her salary, and that's when she was required to go to work at the beauty salon. She had been sent there before on [REDACTED]. After she was released, she was sent to the hair salon. The first time she was sent there, she discovered it was not a hair salon, but a house of prostitution. At night, she observed that there were several men entering the business, and the girls were told if you

don't go into the room with these men, we will give you drugs to excite you and make you go in there with the men. If you don't go in on your own, we will give you this medication. She was asked if she was told to service these men. She said two people in charge told her to watch and learn from what she was taught. She did not actually watch them having sex. She just was watching them and learning how to be nice to the customer. She worked in the hair salon for three days. There were other co-workers who were sympathetic, and three girls helped her. They had a room to sleep inside the hair salon. Two guards were guarding the structure and she told the other girls her problem. So the other girls decided to help her escape, and two of them seduced the guards and took their keys. One girl got the keys to the gate and took her to the gate and told her to run, in the middle of the day. It was light outside when she did this. She said she took the bus to the old co-worker that she met before and then said the co-worker gave her a friend's name to go to. She stayed there for two to three days, Then she went to a friend's place in [REDACTED] for over ten days, and then she escaped to Hong Kong by boat. She had 2,000 U.S. dollars when she left China. Her friends had helped her arrange her trip. She had received the message that the police had been to the house and a verbal message from the parents given to her friend. The police were looking for her because she ran away from the hair salon, and there was a warrant out for her arrest. She believed that it said that she had harmed the manager. She said there was

no way she could have another job in China and that they would arrest her and make her be a prostitute. She doesn't want to go and be a prostitute, and she said that the owner of the hair salon and the police make a profit from this and from the drugs. Her parents remain in [REDACTED], China. She has two brothers and a sister. Her older sister is in [REDACTED]; her older brother is in China. She has two brothers and sisters. In other words, one brother, one sister. And the sister is in the United States, [REDACTED], the older brother is in China. She stayed with her parents in [REDACTED] until she worked at the hotel. She worked at the hotel from [REDACTED], 1995, until [REDACTED], 1995. She was a server in the hotel on the Second Floor, taking care of rooms like a maid. She cleaned the rooms and changed the sheets and took care of room service. She said she was wanted in China for stabbing the manager. She was told they wanted to put her away for three years by a man in a little room at the Public Security Building, but she never went to court. She said the manager made a lot of jokes. She said the problem occurred to her when she stabbed the manager in the Second Floor area where they were working with the linens at night. After she was kept in jail for a month, the parents begged the manager to help, and they had to pay the manager 3,000 RMB. The beauty salon was not in the hotel where she worked. It was 15 minutes from her parents' house. She was told to go there and was people's hair and she did it. She worked at the salon for three days starting [REDACTED] of 1995. She didn't see the manager

those three days. She never saw the manager after [REDACTED], 1995. She said when she was at the beauty salon she washed hair and helped others. ed others. She said the first day she was there, the women would come in to get their hair cut and they would also get manicures and pedicures. She said that the rooms in the back of the salon were for forcing the girls to work as prostitutes. She did not work as a prostitute. She did not see her parents for three days while she was working at the salon because she was not allowed to leave. She was required to stay at the salon and sleep. She said there were about 6 or 7 girls who worked there, and none of them were allowed to go home. She did not go to the police because she could be arrested by them. The police told her parents that they were looking for her because she escaped from the hair salon and had to go back there to work. She denied that she told the immigration officer who took the statement from her (Exhibit 7) that she had to pay 22,000. She did tell them that she did pay 1,000. She said she escaped from the beauty salon alone; that others from the salon had run away previously, but then they were taken back again. She said she had never been to a court and had never seen a court, and she's not sure whether or not she was in a court. She said she just was in a little room and some man spoke to her. She thought it was part of the police building. When she was working at the hotel prior to the stabbing, she was asked how the manager acted towards her prior to the night of the stabbing. She said that he spoke to her before that night,

that they all went to see a movie and went to a play, because in China it's not good for girls to go out alone. And he would touch her, jokingly suggesting that let me invite you to go to the movie alone. But she didn't want to go with him alone because she felt he was acting abnormally towards her, not like a normal colleague behavior, and that he shouldn't be touching her with his hands. She was frightened when he asked her out and touched her and so she walked away, and she said it happened several times prior to the stabbing. On the night of the stabbing, she said she was putting up the tablecloth alone when he walked into the room. He touched her hair and her back with his hands. She ignored him at first and later on he started to hold her on her back. She asked him respectfully to stop, but he didn't and kept holding her. She couldn't walk away, and he was holding her with a lot of force. She could not get away. He caressed her, yelled, and she yelled out no, but no one heard. She was afraid that he was going to try to rape her. There were small scissors on the table and she stuck them into his leg because she wanted to protect herself. She was very scared and didn't know what to do. He screamed loudly after she stabbed him and she ran away he released her after he felt the pain in his leg from the stabbing. She spoke to the head of the police department and told him that the manager wanted to rape her, but the police told her you should be happy because the manager has a name and money. How come you don't listen to the manager? Serves you right. And she asked the police officer how come he

didn't listen to her before he made this type of a decision. And she was detained for over one month. She has never had sexual relations with the man. While at the police station, she saw her parents. The police told her that she would be sentenced to three years. The police did not believe her. She was taken to the hair salon by the manager, 20 minutes away by car from her parents' house, and they told her she would be sleeping there too. During the day she was told to learn how to wash hair, and at night she was to keep the customer company. She saw women beaten who did not want to do this. She was asked why she didn't go to the police for help, and she said it was because they were together with the people at the beauty salon. She escaped because she saw if she would refuse to keep the customer company, she would be also beaten. If she returns to China, she is afraid she will be arrested and sent to prison to work at the beauty salon.

The State Department opinion doesn't address the issue raised by the applicant in her request for asylum. Counsel for the applicant submitted into the record background information which does address the issue raised in this case regarding the problems that this particular applicant faced in China. The applicant has submitted Consideration for Asylum Officers Adjudicating Asylum Claims from Women, dated May 26, 1995. On Page 4 of this memorandum, it states, that although women applicants frequently present asylum claims for reasons similar to male applicants, they may also have had experiences that are particular to their gender.

A woman may present a claim that may be analyzed and approved under one or more grounds, for example rape, including mass rape, for example Bosnia. Sexual abuse and domestic violence, infanticide and genital mutilation are forms of mistreatment primarily directed at girls and women, and they may serve as evidence of past persecution on account of one or more of the five grounds.

The applicant in this case relies upon her own testimony and the letters that she has submitted, the testimony of her sister, and numerous background information regarding the situation in China, the existence of discrimination, harassment and mistreatment of women, as well as the forced prostitution that occurs in China and, of course, the inevitable occurrence of AIDS in a prostitution setting.

The applicant, in my opinion, has testified in a credible manner in these proceedings. She has been specific and detailed. She has exhibited great emotion when she is talking about a very delicate and sensitive subject, especially for one so young and inexperienced in these matters of which she was discussing. Her testimony is consistent with her written application for asylum. Although her written application for asylum doesn't indicate that she was afraid of being raped by her manager, the implication is clear that that's what she was worried about because he was touching her in a sexual manner that was inappropriate for their relationship and that after she asked him to stop, he wouldn't, and that's when she stabbed him. While she doesn't use the words

attempted rape in her application, that is the implication of what she felt was occurring. Clearly, if someone was touching a woman in a sexually inappropriate manner and continued after being told to stop and then used physical strength to continue doing it despite her verbal request to stop, I think a reasonable person would believe that that was going to lead to rape. In any event, the applicant, whose verbal requests were ignored, whose screams went without aid, did the only other action that she could take to protect herself, which was to stab him with scissors that were sitting nearby. She was arrested, held in jail. And then apparently the manager made a deal with the family that she could pay him 3,000 yuan and then work off the rest at the beauty salon. This was done with the concurrence of the police, and apparently the police would use the services of the beauty salon. The beauty salon was a front for a house of prostitution as well as illegal drug use. The applicant saw what was going on at the beauty salon and didn't want any part of it, and so she ran away. The applicant is afraid that if she returns to China, she will be incarcerated, fined and forced to go back into prostitution.

Whether or not the applicant's action of stabbing the manager in the leg with the scissors is a criminal offense, and I cannot determine if it is. I don't know enough about criminal law to know if that would be considered a valid defense and would make her innocent of the crime of assault with a deadly weapon. But in any event, even assuming that it were a criminal offense and that

she could be found criminally liable for this action, clearly requiring her to work in a house of prostitution to pay for her crime is an inappropriate punishment. That police sanctioned punishment that was given to the applicant against her will in my opinion amounts to persecution. The applicant was not agreeable to paying for her crime in this manner, and she didn't have a choice. This was the deal the manager gave her and she had to take it. The police apparently were aware of where she was going because she had seen them and she said they were all benefiting from the house of prostitution that was being fronted as a beauty salon. So the government was clearly knowledgeable of the problem that was occurring to her and nevertheless allowed it to continue. A house of prostitution by force is something that only a woman can be victimized by, not a man. And secondly, the applicant was a woman who didn't want to do this. So she is in the same situation as the applicant in the Kasinga case, who was in a society where she was being forced to undergo a procedure of which she was not in agreement. I find that the applicant is in the same situation as the applicant in the Kasinga case because she is a woman in a government sanctioned problem in China in which she is being forced to go to a house of prostitution against her will. This is not an appropriate way to punish someone for a crime, even if we assume that it is a crime. Apparently the applicant had been subjected to sexual harassment by her boss repeatedly. She had no way of protecting herself against that harassment because she would walk

away from him. She would try not to be alone with him. She would turn him down for dates. And when he couldn't get favors from her willingly, he chose the approach by force. I find, therefore, that the applicant has established a well-founded fear of persecution and I, therefore, am granting her request for asylum.

Since I am granting the applicant's request for asylum, I do not need to reach the issue of withholding of deportation.

ORDER

IT IS ORDERED that the applicant's request for asylum be granted.

ROSE COLLANTES PETERS
Immigration Judge