

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 03-3185

YONG ZHEN CHEN,

Petitioner

v.

JOHN ASHCROFT,
ATTORNEY GENERAL OF THE UNITED STATES,

Respondent

On Petition for Review from an
Order of the Board of Immigration Appeals
(Board No. A77-322-686)

Argued July 13, 2004

Before: RENDELL, BARRY and FISHER, *Circuit Judges*.

(Filed: August 4, 2004)

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OPINION OF THE COURT

FISHER, *Circuit Judge*.

Petitioner Yong Zhen Chen appeals the order of the Board of Immigration Appeals (“BIA”) denying his applications for asylum, withholding of deportation, and relief under the Convention Against Torture. Because the BIA’s order was supported by substantial evidence, we will dismiss the petition for review.

Chen was engaged and the woman became pregnant. The couple had not undergone a traditional Chinese wedding ceremony, and even if they had, could not register a traditional marriage because the woman was underage under China’s birth control policy. She was subsequently ordered to have an abortion by Chinese birth-

control officials. When officials arrived to escort the woman to the abortion, Chen tried to prevent them from entering their home. He was surrounded and beaten while his fiancée was dragged from the bedroom and kicked. She bled and suffered a miscarriage.

The next day, Chen complained to officials that they had killed his baby. He was detained at the police station, handcuffed to a window frame, slapped, and knocked unconscious. Two days later, he was released on bail. Officials threatened to order Chen to return to the station at any time, and that he would have to pay a fine. Officials came to Chen's home "many times" and said his "wife" could not live with him. Chen could not pay a fine and officials removed property from his home when he tried to leave China.

The immigration judge denied Chen's applications for asylum, withholding of deportation, and relief under the Convention Against Torture. The BIA affirmed, finding that Chen "failed to show that he or his spouse has been forced to abort a pregnancy, forced to undergo involuntary sterilization, or persecuted for resistance to a coercive population control program." Chen filed a timely petition for review.

To obtain reversal, Chen "must show that the evidence he presented was so compelling that no reasonable factfinder could fail to find the requisite fear of persecution." INS v. Elias-Zacarias, 502 U.S. 478, 483-84 (1992). Although we sympathize with Chen and do not condone his treatment at the hands of the birth-control officials, the BIA's finding that Chen did not warrant asylum is supported by substantial evidence. See Prasad v. INS, 47 F.3d 336 (9th Cir. 1995) (no past persecution despite

custodial beating); Kapcia v. INS, 944 F.2d 702 (10th Cir. 1991) (asylum denied despite repeated two-day detentions where petitioner was interrogated and beaten).

Alternatively, Chen argues that he may bootstrap his asylum application through the nature of his relationship with his fiancée. As support, he cites to the BIA's decision of In re C-Y-Z, 21 I. & N. Dec. 915 (BIA 1997), where the BIA held that the spouse of a woman who underwent an involuntary sterilization merited asylum. Chen asks that C-Y-Z be extended to non-married adults who were legally prohibited from officially marrying due to the minimum age requirements of China's birth control policy. We decline to extend C-Y-Z, because the plain language of the definition of "refugee" requires an individualized analysis of the alleged persecution. 8 U.S.C. § 1101(a)(42). To the extent that C-Y-Z takes a categorical approach regarding spouses, that approach should not be extended to the current context, and the BIA does not urge us to hold otherwise. As the BIA's conclusions regarding Chen's experiences were supported by substantial evidence, we may not substitute our view for that of the BIA.¹

We have considered Chen's remaining arguments and find them to be without merit. Accordingly, the petition for review will be DENIED.

¹Nor is petitioner aided by the Ninth Circuit's recent decision in Ma v. Ashcroft, where the Court overturned a BIA order denying asylum to a man whose traditional marriage could not be officially registered. 361 F.3d 553 (9th Cir. 2004). That decision is inapposite as Chen was unmarried, either officially or traditionally.