

NOV 01 2012

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

AIHUA CHEN,

Petitioner,

v.

ERIC H. HOLDER, Jr., Attorney General,

Respondent.

No. 10-71588

Agency No. A088-355-094

MEMORANDUM*

On Petition for Review of an Order of the
Board of Immigration Appeals

Argued and Submitted October 18, 2012
Honolulu, Hawaii

Before: REINHARDT, THOMAS, and PAEZ, Circuit Judges.

Aihua Chen, a native and citizen of China, petitions for review of the decision of the Board of Immigration Appeals (“BIA”) dismissing his appeal from the Immigration Judge’s (“IJ”) denial of his applications for asylum and withholding of removal. We have jurisdiction under 8 U.S.C. § 1252. In light of

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

our decision in *Jiang v. Holder*, 611 F.3d 1086 (9th Cir. 2010), we grant the petition and remand for further consideration.

In *Jiang*, we clarified the role that a spouse's forced abortion should play in the agency's asylum analysis after *Matter of J-S*, 24 I. & N. Dec. 520 (BIA 2008). We explained that *J-S* "stands only for the limited proposition that INA § 101(a)(42) cannot be read to confer 'automatic or presumptive refugee status'" on spouses of victims of forced abortions. *Jiang*, 611 F.3d at 1094 (emphasis in original). Further, we held that the agency should consider a spouse's forced abortion "as 'proof' that an applicant resisted a coercive population control policy, and in analyzing whether persecution occurred as a result." *Id.*

Here, the BIA decided Chen's case without the guidance of *Jiang*. The BIA determined that Chen did not engage in "other resistance" to China's coercive population control program and that he failed to demonstrate harm rising to the level of past persecution. In doing so, the BIA failed to consider Chen's wife's forced abortion as proof of Chen's resistance to the coercive population control program or of past persecution as *Jiang* directs. In light of *Jiang*, we therefore grant Chen's petition and remand to the BIA for further consideration of his applications for asylum and withholding of removal.

Petition GRANTED and REMANDED.