

Federal Court



Cour fédérale

**Date: 20190723**

**Docket: IMM-5866-18**

**Citation: 2019 FC 978**

**Ottawa, Ontario, July 23, 2019**

**PRESENT: Madam Justice Strickland**

**BETWEEN:**

**FENG YU WANG**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] This is an application for judicial review of a decision of the Immigration Appeal Division [IAD] of the Immigration and Refugee Board of Canada denying the Applicant's appeal of a decision of an immigration officer with the Immigration Section, Consulate General of Canada, Hong Kong [Visa Officer] that refused the Applicant's application to sponsor her husband for permanent residence in Canada.

## Background

[2] The Applicant, Feng Yu Wang, is a Canadian citizen. In 2012, she met her now-husband, Zhao Hui Chen [Husband], who is a citizen of China. At the time, he was in Canada and was pursuing a refugee claim. His claim was denied in May 2014 and he voluntarily returned to China in November 2014. While the Applicant's Husband was still in Canada they had a daughter, who was born on February 23, 2014. On May 10, 2014, the Applicant and her Husband became engaged and they were married, in China, on April 20, 2015. This was a second marriage for both of them.

[3] On June 19, 2015, the Applicant applied to sponsor her Husband to come to Canada as a member of the family class. On April 28, 2016, he attended an interview in Hong Kong, accompanied by a Cantonese interpreter, to assess his eligibility as a family member under the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA]. During the interview the Visa Officer asked the Husband questions about the Applicant, his relationship with her, their daughter, and other matters. The Visa Officer also advised the Husband of the Visa Officer's concerns about whether the Husband was a member of the family class under s 117(1)(a) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227, [IRP Regulations]. These concerns included the following:

- there was insufficient evidence to support the development of a genuine relationship between the Applicant and her Husband, and it appeared that he had a strong desire to remain in Canada. He first entered illegally in 2011 and filed a refugee claim. He stated that he developed a strong relationship with the Applicant shortly after he was refused the refugee claim;
- there was no evidence to support that the Applicant and her Husband had lived together in Canada as they claimed, and the Husband was evasive when giving information about that period of time;

- the Husband was unable to give details of the Applicant’s pregnancy, or the name of the family doctor or the hospital where the Applicant gave birth. Nor was he able to give details about the daily activities of their daughter and was uncertain about their future arrangements for her;
- despite stating that the Applicant had visited him in China, the Husband was unable to give detailed information regarding her visits. It appeared that the main purpose of these visits was not to visit him but to register their marriage in order to facilitate his permanent residence application. It also appeared that the Applicant had close family members and friends to visit in China;
- there was no reliable evidence to support how the Applicant and her Husband had maintained close contact after he returned to China. The Husband was unable to describe WeChat records, the contents of which were general and brief and did not support that these were to maintain a close relationship between a genuine couple;
- the Applicant and her Husband didn’t know each other’s family members at the time of the marriage. The Husband displayed a lack of knowledge about the Applicant and had great difficulty giving details about her background including her life, her previous job, and her education level etc. The Applicant and her Husband did not appear to have made any plans for the future other than for the Husband to obtain permanent residence status. Nor was the Husband able to give detailed info about his wedding day and the Visa Officer found that it was unusual that close family members, such as their parents, did not attend the wedding.

[4] At the conclusion of the interview, the Visa Officer rendered his or her decision finding that the Husband had not established, on a balance of probabilities, that the marriage was genuine and was not entered into primarily for an immigration purpose, being to facilitate the Husband’s entry into Canada to acquire status or privilege under the IRPA. There were more indicators than not that this was a marriage of convenience.

[5] The Applicant appealed to the IAD, which, by a decision dated October 31, 2018, denied her appeal. That is the decision now under review.

## Decision Under Review

[6] The IAD held a hearing at which the Applicant, her Husband (by telephone), and the Applicant's aunt testified. A Cantonese interpreter was used, and counsel for the Minister participated in the hearing. In a lengthy and frequently repetitive decision, the IAD found that the marriage was entered into primarily for the purpose of immigration and was not genuine. It also stated that this was one of those unusual cases where the lack of credible evidence regarding the development of the relationship between the Applicant and her Husband was determinative.

[7] The IAD stated that there were numerous significant credibility concerns. The issues identified by the Visa Officer went to the very heart of the matters on appeal and had not been overcome with credible evidence before the IAD, and additional issues were identified at the appeal hearing. The Applicant, her Husband, and her aunt all provided evidence that was unreliable and not credible.

[8] The IAD stated that it had considered several of the factors set out in *Chavez v Canada (Citizenship and Immigration)*, 2005 CarswellNat 7250 (IAD) [*Chavez*], when assessing the genuineness of the marriage, the development of the relationship, and the evidence filed in support of the appeal.

[9] The IAD found that the evidence of the Applicant and her Husband was inconsistent in regard to numerous critical issues, which were contained in the forms they filed in support of the sponsorship application and, with respect to very basic elements regarding the genesis and development of their relationship. The evidence was confusing, inconsistent, and, for the IAD to allow the appeal, it would need to accept the Husband's explanation about his failure to answer

straightforward questions at the visa office as well as his evidence regarding contradictory evidence in the forms with respect to where he was living while the relationship with the Applicant was developing and when he met members of his wife's family.

[10] As to the evidence, while this was voluminous, there was very little, if any, to corroborate the couple's assertions of the critical first years of their relationship. The IAD stated this was a glaringly telling omission which undermined their appeal. Instead, the evidence demonstrated that the couple's marriage was an arrangement for immigration purposes and not because the couple was in a genuine marriage.

[11] The IAD then discussed the evidence. This included the birth of the couple's child. However, the IAD found that this was not conclusive evidence of the genuineness of the marriage given the IAD's significant credibility concerns. The IAD also found that, while the Applicant and her Husband had memorized and could repeat the narrative of how they met and how their relationship developed, this lacked the spontaneity that would be expected of a genuine couple. The IAD discussed the development of the relationship, including the evidence as to whether the couple had lived together prior to the birth of their child and reviewed the documentary evidence as to their place of residence. The IAD found the evidence to be unclear, confusing and contradictory, and to undermine their assertion that they had a romantic relationship before their daughter was born or afterwards. The IAD also noted an absence of calls and texts between the couple for the two-year period while the Husband was in Canada and found that the text messages from the time after his return to China and prior to the wedding demonstrated a focus on sponsorship and did not establish a genuine or caring relationship or a shared future between the couple. The IAD also addressed the letters of support provided by

friends and family but found, amongst other things, that these were inconsistent with the account of the living situation that was advanced at the appeal hearing.

[12] The IAD also addressed the Husband's explanation for his lack of knowledge of his wife and child during the visa post interview, being that he was nervous and tired from traveling to the interview, but did not accept this as reasonable given that he was able to provide answers to many questions but completely failed in response to questions about his spouse. The IAD expressed concern with the Husband's continued lack of knowledge about the Applicant and her family. It also addressed the fact that at no time prior to the appeal was there any mention of the Applicant's aunt, with whom the couple asserted they had lived prior to the Husband's return to China and at the time of the birth of their child. This lack of evidence extended to the forms submitted by the couple, which did not list the aunt's address as a place of residence and did not list the aunt as one of the individuals who had accompanied them to China to attend their wedding. Given that the aunt played a pivotal role in the couple's story, the IAD found that this was material, and it was reasonable to expect that it would have been mentioned when the forms were completed in 2015 and at the 2016 visa post interview. The IAD concluded that the evidence did not clearly establish that the Husband ever lived with the Applicant's aunt and that the narrative had been manufactured for the purpose of bolstering the appeal, which it stated was "devastating" to the credibility of all of the witnesses.

[13] The IAD also addressed the evidence concerning when the Husband met the Applicant's aunt and her family but found it to be contradictory and to undermine the couple's assertions as to the development of their relationship and their credibility generally. Contradictions were also identified in the evidence concerning when the Husband first met the Applicant's family. The

Husband's immigration history was also considered in light of the timeline of his relationship with the Applicant. The IAD found this to be a relevant factor in its examination of the couple's relationship and found that his testimony concerning his delay in marrying the Applicant was another indicator of a relationship which isn't genuine. Therefore, it was reasonable to infer that in this situation the Husband's primary motivation was to acquire permanent residence in Canada.

[14] While the IAD's finding that the primary purpose of the relationship was for immigration was determinative, it also concluded that the evidence filed on appeal was not supportive of a determination that the marriage was genuine. In that regard, it discussed photographs, trips to China, and additional factors, but found that these did not establish the genuineness of the marriage.

[15] Ultimately, the IAD concluded that there must be clear, cogent, and convincing evidence to establish that the marriage was genuine and that immigration was not the primary purpose of the marriage. Such evidence was lacking in this case, notwithstanding the existence of a child born to the couple. The IAD found that the marriage was entered into to facilitate the immigration of the Husband to Canada, and was not genuine.

### **Issues and Standard of Review**

[16] In my view, there is only one issue on this application, which is whether the IAD's decision was reasonable. The determination of whether a marriage is genuine or was entered into for the primary purpose of acquiring status or privilege under the IRPA raises questions of fact and law and, accordingly, the applicable standard of review is reasonableness (*Hua v Canada*

*(Citizenship and Immigration)*, 2018 FC 1041 at para 7; *Dalumay v Canada (Citizenship and Immigration)*, 2012 FC 1179 at para 19).

[17] Reasonableness is concerned with the existence of justification, transparency, and intelligibility within the decision-making process and also with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47).

### **Positions of the Parties**

[18] The Applicant's submissions delve deeply into the details of the IAD's findings but, in essence, she submits that the IAD's assessment of the evidence was unreasonable. Specifically, she argues that the IAD erred in determining that the lack of pre-wedding evidence was determinative, and in failing to consider the evidence as a whole, including the existence of a child of the marriage. Further, that the IAD's examination of the evidence was narrow and microscopic and that the IAD gave undue weight to minor issues and contradictions.

[19] The Respondent submits that the IAD considered the evidence and testimony as to the development of the relationship, noting that it was severely lacking, especially in light of the Visa Officer's concerns, and the issues being central to the application. The evidence was contradictory in parts and the witnesses were not credible. All of which went to the central determination in the case, being whether the evidence showed on a balance of probabilities that the marriage had been entered into for the purpose of gaining status under the IRPA. The Respondent submits that the decision was reasonable.



## Analysis

[20] Section 4(1) of the IRP Regulations states as follows:

<p><b>4 (1)</b> For the purposes of these Regulations, a foreign national shall not be considered a spouse, a common-law partner or a conjugal partner of a person if the marriage, common-law partnership or conjugal partnership</p> <p><b>(a)</b> was entered into primarily for the purpose of acquiring any status or privilege under the Act; or</p> <p><b>(b)</b> is not genuine.</p>	<p><b>4 (1)</b> Pour l'application du présent règlement, l'étranger n'est pas considéré comme étant l'époux, le conjoint de fait ou le partenaire conjugal d'une personne si le mariage ou la relation des conjoints de fait ou des partenaires conjugaux, selon le cas :</p> <p><b>a)</b> visait principalement l'acquisition d'un statut ou d'un privilège sous le régime de la Loi;</p> <p><b>b)</b> n'est pas authentique.</p>
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[21] This is a disjunctive test (*Gill v Canada (Citizenship and Immigration)*, 2012 FC 1522 at para 30 [*Gill*]) and, as the Respondent submits, the onus was on the Applicant to establish both requirements on a balance of probabilities (*Chen v Canada (Citizenship and Immigration)*, 2018 FC 840 at para 10).

### *Pre-wedding evidence*

[22] The Applicant submits that the IAD erred by focussing on a lack of evidence pertaining to a single period of time pre-dating both the marriage, and the current time, in order to find that the marriage was not genuine and was entered into for an immigration benefit. According to the Applicant, the intention of the marriage is to be assessed at the time of the marriage, and the couple's evidence is probative in establishing this. Genuineness, however, is to be assessed at the time of the hearing (*Gill* at paras 11, 33) and is to be determined based on the evidence as a whole. The Applicant submits that IAD's decision was even more unreasonable in light of the

existence of the couple's daughter, which was a factor that should have been afforded great weight. Further, the leading decision concerning the genuineness of a marriage is *Chavez*, which lists eleven non-exhaustive factors to be considered in determining genuineness. Conduct of the parties at the time of meeting, at the time of engagement and/or the wedding is just one of those factors. Here the IAD found that the evidence regarding that factor was determinative. The Applicant submits that it was unreasonable for the IAD to consider only this single factor.

[23] In my view, this submission cannot succeed. First, the IAD stated that it had considered several of the *Chavez* factors and that it did so is apparent from its reasons. The IAD clearly considered the intent of the parties to the marriage, the length the relationship, the amount of time they spent together, the parties' behaviour subsequent to the wedding, the continued levels of contact and communication, knowledge of the child of the marriage, as well as knowledge of and contact with extended families of the parties. These factors were all addressed in the IAD's reasons. While the IAD stated that the evidence of pre-wedding conduct was determinative of the genuineness the marriage, its reasons demonstrate that the IAD did not consider this to the exclusion of consideration of other relevant factors. It was not necessary for the IAD to explicitly tie its analysis to each *Chavez* factor considered.

[24] The Applicant also submits that the tests for genuineness of the relationship and the intent behind the marriage pertain to different time periods – the time of the hearing and the time of the marriage – neither of which coincide with the genesis of the relationship in this case. The IAD failed to explain why this period is determinative of both parts of the test. The effect is that the determination of genuineness and intent hangs on evidence from a single period of time, considered in isolation, rather than an assessment of the evidence as a whole. The Applicant

submits that this was an error as the IAD was required to consider the entirety of the evidence before it as a whole, rather than the evidence that was before the Visa Officer, and to examine the evidence throughout the relationship. This is because evidence of commitment subsequent to a marriage can be used to prove the primary purpose of the marriage or its genuineness (*Sandhu v Canada (Citizenship and Immigration)*, 2014 FC 834 at para 13 [*Sandhu*]).

[25] I note that in *Gill*, relied upon by the Applicant, Chief Justice Crampton noted that it is well established that while there may be strong links between the two tests in s 4, they are distinct. In *Gill*, the applicant and her husband had been married for over four years and there was a child of the marriage. They submitted that the presence of a child demonstrated that the IAD's finding that the primary purpose of the marriage was for an immigration purpose was perverse. The Chief Justice acknowledged that evidence about matters that occurred subsequent to a marriage can be relevant to a consideration of whether the marriage was entered into primarily for the purpose of acquiring status or privilege under the IRPA. However, that such evidence is not necessarily determinative and it is not necessarily unreasonable for the IAD to fail to explicitly consider and discuss such evidence (*Gill* at paras 28–32). Further, that:

[33] This is because, in contrast to the present tense focus of the first of the two tests set forth in section 4 of the Regulations, which requires an assessment of whether the impugned marriage “is not genuine,” the focus of the second of those tests requires an assessment of whether the marriage “was entered into primarily for the purpose of acquiring any status or privilege under the Act” (emphasis added). Accordingly, in assessing whether the latter test is satisfied, the focus must be upon the intentions of both parties to the marriage at the time of the marriage. I agree with the Respondent that testimony by those parties regarding what they were thinking at that time typically will be the most probative evidence regarding their primary purpose for entering into the marriage.

[34] In my view, it was not unreasonable for the IAD to conclude, for the reasons described above, that at the time Mr. Gill entered the marriage, he did so primarily for the purpose of acquiring a status or privilege under the IRPA. In reaching that conclusion, the IAD did not err by failing to explicitly discuss evidence about matters that post-dated the marriage. That said, I note that such evidence was appropriately considered by the IAD in reaching its conclusion regarding the genuineness of the marriage.

[Emphasis in original.]

[26] Accordingly, in the matter now before me, in conducting the primary purpose analysis, the IAD did not err by failing to explicitly discuss post-marriage evidence. In any event, the IAD stated that the lack of evidence for the critical period in this matter, being from when the couple met in November 2012 to when the Husband left Canada in April 2015, was made even more “confounding” by the extensive post-wedding evidence filed in the appeal, which it found to be insufficient to overcome its concerns. That is, the IAD considered the post-wedding evidence in the context of the primary purpose analysis but found that it did not allay its concerns. The IAD’s assessment of the post-wedding evidence is also demonstrated in the IAD’s genuineness assessment. For example, when reviewing photos taken during trips to China after the wedding, the IAD stated that these photos were insufficient to overcome its stated concerns about the primary purpose of the marriage. Further, given the IAD’s concerns with the primary purpose of the relationship, it was more plausible that the trips were for the purpose of facilitating contact between the minor child and Applicant’s family members in China, rather than evidence of a genuine relationship. As to other indicators post-dating the marriage that could suggest that the marriage is genuine, such as money transfers and changes in insurance beneficiaries, those shed little light on whether the primary purpose of the relationship was for immigration. The IAD also noted that there were hundreds of pages of text messages that post-dated the marriage. However,

these demonstrated only superficial contact between the Applicant and her Husband, focusing on what they were eating, the weather, sleeping, and showering, interspersed with brief chats about the well-being of their daughter. The IAD found that these text messages were insufficient to overcome its concerns with the primary purpose of the marriage and found them to be further evidence that the marriage was one for immigration purposes and not genuine.

[27] I note that while the IAD did closely examine the evidence concerning the pre-wedding stage and found it to be determinative, it also considered significant credibility concerns raised by the Visa Officer which arose out of the Husband's post-wedding testimony. The IAD found that these concerns went to the heart of the matters in issue in the appeal and were not overcome by sufficient credible evidence at the appeal hearing. These concerns included a lack of reliable evidence to support how the Applicant and her Husband had maintained close contact after he returned to China and the Husband's lack of knowledge about the Applicant. The IAD also considered the Husband's immigration history.

[28] Thus, the IAD did consider post-wedding evidence in the context of its genuineness analysis.

[29] Further, as stated in *Bercasio v Canada (Citizenship and Immigration)*, 2016 FC 244:

[19] As I understand *Yadav*, it stands for the proposition that the relevant time frame for assessing the genuineness of a marriage is at the time of the interview. But this only means that all relevant evidence available at that time should normally be considered. The case does not stand for the proposition that the evidence after the marriage should have more weight than evidence before the marriage, or that the initial evidence of the relationship and marriage cannot outweigh that following the marriage.

[30] And while a finding that a marriage is genuine weighs significantly in favour of a marriage that was not entered into for the purpose of gaining status in Canada, such a finding is not determinative of primary purpose, which is due, in part, to the differing points in time at which the separate tests are evaluated. Evidence of commitment subsequent to the marriage can also be used to prove the primary purpose of the marriage (*Sandhu* at paras 12–13). Here, however, the IAD did not find that the marriage was genuine and found that the post-wedding evidence failed to establish that the primary purpose of the marriage was not to achieve an immigration benefit.

[31] In short, I am not persuaded that the IAD erred in this aspect of its assessment of the evidence.

*Existence of a child of the marriage*

[32] Nor do I agree with the Applicant that the IAD erred in failing to afford sufficient weight to the existence of their daughter as a child of the marriage.

[33] First, evidence of genuineness is not necessarily determinative of the question of whether the marriage was entered into for an immigration purpose (*Sandhu* at para 12; *Grabowski v Canada (Citizenship and Immigration)*, 2011 FC 1488 at para 24). This is so even when there is a child of the marriage:

[14] The IAD appears to accept that the child is a child of the marriage. It refers to this Court's decision in *Gill v Canada (Minister of Citizenship and Immigration)*, 2010 FC 122 as to the relevance of a child of a marriage, but also correctly observes that "a child born of a marriage is not determinative of the genuineness of the marriage, where the lack of credible evidence is so striking that the credibility issues overshadow the evidence concerning the child" citing *Mansro v Canada (Minister of Citizenship and*

*Immigration*) (18 July 2007), IAD VA6-00931, 2007 CarswellNat 4765 at para 14 (Immigration & Refugee Board (Appeal Division)) and *Baljit Kaur Dhaliwal v Canada (Minister of Citizenship and Immigration)*, 2012 FC 1182 at para 9.

*(Lamichhane v Canada (Citizenship and Immigration)*, 2016 FC 957 [*Lamichhane*]).

[34] The IAD explicitly noted, citing *Gill*, that substantive weight is to be attributed to the birth of a child to the marriage as evidence of genuineness. However, given that the other evidence as to the couple's relationship prior to the wedding and both before and after the child was born was entirely lacking in credibility, this diminished any weight that could be afforded to the existence of the child as an indicator of a genuine marriage. I note that this included, for example, the Husband's limited knowledge of the child and the post-wedding communications of the couple, which only peripherally concerned the child.

[35] In my view, this is a similar circumstance as *Lamichhane*, and, given the whole of the evidence before it, the IAD reasonably reached a similar conclusion.

#### *Microscopic review of the evidence*

[36] While I agree that there were some minor points on which the IAD focused, again viewing its decision in whole, it is clear that there were major credibility issues the Applicant and her Husband simply did not overcome.

[37] The IAD reviewed the documentary evidence submitted by the Applicant, it interviewed the Applicant, her Husband and the Applicant's aunt and questioned those witnesses, and it had the benefit of assessing their oral evidence. It identified specific credibility findings such as the fact that although the Applicant and her Husband claimed to live with her aunt at the time their

child was born, the evidence simply did not support this. Further, the communications between the Applicant and her Husband while he was in China were not indicative of a genuine relationship. Nor was the Husband adequately able to explain his profound lack of knowledge at the visa post about the Applicant and the birth of their child. The couple was also unable to adequately explain the inconsistencies between their testimony and the information in the immigration forms. Credibility findings of the IAD are to be afforded deference (*Bains v Canada (Citizenship and Immigration)*, 2018 FC 740 at para 15).

[38] Here the IAD did not ignore or overlook evidence as to the genuineness of the marriage or make its credibility findings based on a flawed understanding of that evidence, irrelevant evidence or peripheral detail. Its decision falls within the range of possible outcomes that are defensible based on the facts and law.



**JUDGMENT in IMM-5866-18**

**THIS COURT'S JUDGMENT is that:**

1. The application for judicial review is denied.
2. No question of general importance is proposed for certification and none arises.
3. There shall be no order as to costs.

“Cecily Y. Strickland”

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-5866-18

**STYLE OF CAUSE:** FENG YU WANG v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** JUNE 27, 2019

**JUDGMENT AND REASONS:** STRICKLAND J.

**DATED:** JULY 23, 2019

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