

Federal Court



Cour fédérale

**Date: 20230105**

**Docket: IMM-241-21**

**Citation: 2023 FC 26**

**Ottawa, Ontario, January 5, 2023**

**PRESENT: The Honourable Madam Justice Elliott**

**BETWEEN:**

**YISHAN LI, XUNJIE SHEN, AND  
RUICHENG SHEN**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

**I. Overview**

[1] The Applicants are a family of four from China who entered Canada on November 1, 2016.

[2] They bring this application for judicial review of a decision made on January 11, 2021 (the Decision) by a Senior Immigration Officer (Officer) refusing their application for permanent

residence from within Canada pursuant to subsection 25(1) of the *Immigration and Refugee Protection Act, SC 2001, c 27 (IRPA)*.

[3] For the reasons that follow, this application is granted.

## II. **Background Facts**

[4] The Principal Applicant, Yishan Li, (PA) is a 27-year old citizen of China who arrived in Canada on November 1, 2016 with her husband, Xunjie Shen, and their son, Kevin.

[5] In 2018, the PA gave birth to her daughter, Scarlett, in Canada. They applied for permanent residence on humanitarian and compassionate grounds (H&C), based on their establishment in Canada and the best interests of their two children.

[6] The Applicants provided a great number of submissions in their letter of April 10, 2020. They included that the best interests of the children, specifically with regard to Scarlett's asthma and food allergies, Kevin's educational prospects given his lack of proficiency in Mandarin and the limited social mobility in China of both children, warranted an H&C exemption.

[7] The Applicants also submitted that the family have significantly established themselves in Canada, which includes close relatives, employment and social involvement in the community.

[8] Before submitting their application for permanent residence, the Applicants had claimed refugee protection on the basis of their Falun Gong practice. The Refugee Protection Division (RPD) rejected the Applicants' claim and the Refugee Appeal Division (RAD) denied their appeal.

[9] Subsequently, the Applicants were offered a Pre-removal Risk Assessment (PRRA). They alleged, again, that they would face serious risks on the basis of their Falun Gong practice, and their affiliation with the Federation for a Democratic China. When their PRRA application was refused, they did not seek judicial review.

[10] The Applicants submitted their H&C application one week after their PRRA was rejected. Details and documentary evidence of the RPD claim, RAD appeal and the PRRA do not appear in this record.

### III. **Issues**

[11] The Applicants submit the Decision is unreasonable. They have raised four issues in support of that position, saying that the Officer erred when they:

1. Ignored relevant evidence and engaged in a selective analysis of the evidence without regard to the totality of the evidence;
2. Failed to consider the best interest of the children;
3. Misconstrued the meaning of "establishment"; and
4. Made findings not based on the evidence regarding the Applicants' family members in Canada and particularly Mr. Shen's sister.

[12] I find it is only necessary to address the first issue, which is determinative and includes a faulty analysis of the best interest of the children.

#### IV. Standard of Review

[13] The Supreme Court of Canada has established that when conducting judicial review of the merits of an administrative decision, other than a review related to a breach of natural justice and/or the duty of procedural fairness, the presumptive standard of review is reasonableness: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2015 SCC 65 [*Vavilov*] at para 23. While this presumption is rebuttable, no exception to the presumption is present here.

[14] A reasonable decision is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker. The reasonableness standard *requires* a reviewing court defer to such a decision: *Vavilov* at para 85.

[15] The decision maker may assess and evaluate the evidence before it. Absent exceptional circumstances, a reviewing court will not interfere with its factual findings. The reviewing court must refrain from “reweighing and reassessing the evidence considered by the decision maker”: *Vavilov* at para 125.

#### V. Analysis

A. *The Officer conducted a selective analysis and ignored relevant evidence.*

[16] The Applicants submit that the Officer ignored medical evidence about Scarlett’s food allergies and moderately severe asthma.

[17] They also submit the Officer selectively analyzed the evidence by ignoring paragraphs in the National Documentation Package for China and other documents they submitted to the Officer that were contradictory to the findings related to the accessibility of healthcare in China.

[18] The Respondent made no substantive submissions in response to these arguments of the Applicant. They merely stated that all submissions were considered and the information was carefully assessed. Then the Respondent simply concluded that the Applicants had failed to meet their onus to provide sufficient information for a positive result.

[19] The Applicants submitted substantial evidence concerning the best interests of the children (BIOC), particularly Scarlett's health issues.

[20] The Officer acknowledged that "the applicant's daughter has moderately severe asthma for which she requires medications/puffers to control and treat her asthma, has food allergies and that her condition is likely congenital and can be managed well with medications."

[21] The Officer then noted that "[a]lthough the applicant states that there is a high rate of pollution in China, asthma is a condition that affects individuals all over the world. Moreover, the doctor's report does not state that she is at risk in China because of her asthma."

[22] The Applicants note that the Officer cited only one of five medical reports they submitted. They also submit that the Officer ignored all other critical medical evidence including

four letters from specialists and several reports confirming Scarlett's frequent visits to emergency rooms and hospitals.

[23] Additionally, the Applicants submit the Officer ignored Scarlett's need for an Anaphylaxis Emergency Plan, and prescriptions, as well as country condition reports speaking to the risks to her health in China.

[24] I agree with the Applicants. After a review of the record, I find the evidence ignored by the Officer establishes that Scarlett had several visits to the emergency department due to exacerbation of her asthma including admission to Sick Kids Pediatric Medicine Inpatient Unit for 3 days.

[25] The Officer makes no mention of the severity of Scarlett's asthma and the documented incidents of exacerbation. The reports from pediatricians and respiratory specialists are not mentioned, nor is the affidavit of the PA confirming that due to her conditions, Scarlett visits her pediatrician every two weeks, her respirologist once a month, and her allergist every 6 months.

[26] The Officer did not refer to the information that Scarlett's allergies include peanuts, eggs and seafood and the Applicants' submission that peanuts and peanut oil are main ingredients in Chinese foods.

[27] I have serious concerns with the Officer's failure to assess the totality of evidence regarding Scarlett's medical concerns. Of course, failure to mention a particular piece of

evidence in a decision does not mean that it was ignored: *Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, [2011] 3 SCR 708, at para 16.

[28] But, when an administrative tribunal is silent on evidence clearly pointing to an opposite conclusion and squarely contradicting its findings of fact, the Court may intervene and infer that the tribunal overlooked the contradictory evidence when making its decision: *Ozdemir v Canada (Minister of Citizenship and Immigration)*, 2001 FCA 331 at paras 9-10; *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, [1999] 1 FC 53 at para 17.

[29] In this case, the Officer's misapprehension of the medical evidence before them is such that the findings do not flow from the evidence and the reasons provided by the Officer fail to meet the requisite standards of intelligibility and transparency: *Torres v Canada (Minister of Citizenship and Immigration)*, 2019 FC 150 at para 27; *Nagamany v Canada (Minister of Citizenship and Immigration)*, 2019 FC 187 at para 52).

[30] On a final note, I find that even the limited analysis of the one medical report from Dr. Lee lacks intelligibility. The Officer seems to reason that because Dr. Lee's report, dated June 13, 2019, does not attest to risk in China due to Scarlett's asthma, there is no risk. This is completely illogical. Medical reports are submitted by medical professionals who are well positioned to speak to the medical history, conditions and medications of their patients. It is not commonplace for such reports to comment on how those particular conditions may fare in other

parts of the world. This comment contributes to my conclusion that the Officer's findings on Scarlett's medical evidence and health risks are unreasonable.

B. *Country condition evidence of health care in China*

[31] The Officer's reasons indicate that one report, The Commonwealth Fund, International Health Care System Profiles, China (June 5, 2020), [the Report] was consulted to conclude there is "insufficient evidence to indicate that the applicant would be able [sic] to access health services for her children". I note that the excerpt confirms "China achieves near-universal coverage through the provision of publicly funded basic medical insurance... [which] cover[s] primary, speciality, hospital and mental health care, as well as prescription drugs and traditional Chinese medicine".

[32] The Applicants provided an affidavit from Hui Chun Chih, a lawyer at the Chinese & Southeast Asian Legal Clinic, sworn February 17, 2021. The affidavit contains specific portions of the Report that were not mentioned by the Officer in reaching their conclusion. Specifically, the contradictory information that was not assessed by the Officer included the barriers to health insurance faced by foreigners (Scarlett is a Canadian citizen) and limited reimbursement ceilings.

[33] The affidavit reproduced the three paragraph section of the report referred to by the Officer and noted the Decision cited the second half of the section in the report but left out the first half.



[34] The omitted information states:

Purchased primarily by higher-income individuals and by employers for their workers, private insurance can be used to cover deductibles, copayments, and other cost-sharing, as well as to provide coverage for expensive services not paid for by public insurance.

No statistics are available on the percentage of the population with private coverage. Private health insurance is provided mainly by for-profit commercial insurance companies.

[35] In reviewing the Report's information concerning public health insurance programs, to which the Officer did not refer, the affiant notes the Report states:

Urban-Rural Resident Basic Medical Insurance covers rural residents and urban, self-employed individuals, children, students, elderly adults, and others.

The public insurance programs only reimburse patients up to a certain ceiling, above which residents must cover all out-of-pocket costs. Reimbursement ceilings are significantly lower for outpatient care than for inpatient care. For example, in 2018, the outpatient care ceiling was CNY 3,000 (USD 845) for Beijing residents under Urban-Rural Resident Basic Medical Insurance. In comparison, the ceiling for inpatient care was CNY 200,000 (USD 56,338). Annual deductibles have to be met before reimbursements, and different annual deductibles may apply for outpatient and inpatient care. (Emphasis added by affiant)

[36] In the context of safety nets for individuals, the Decision cited the first half of the section in the Report but left out the second half. The complete section, with the omitted part underlined by the affiant is:

Safety nets: For individuals who are not able to afford individual premiums for publicly financed health insurance or cannot cover out-of-pocket spending, a medical financial assistance program, funded by local governments and social donations, serves as a safety net in both urban and rural areas.

The medical financial assistance program prioritizes catastrophic care expenses, with some coverage of emergency department costs

and other expenses. Funds are used mainly to pay for individual deductibles, copayments, and medical spending exceeding annual benefit caps, as well as individual premiums for publicly financed health insurance. In 2018, 76.7 million people (approximately 5.5% of the population) received such assistance for health insurance enrollment, and 53.6 million people (3.8% of the population) received funds for direct health expenses.

(Emphasis added)

[37] The Applicants submit that by referring to certain sections of the Report and ignoring adjacent parts that contradicted their findings, the Officer's conclusions that (1) the children would likely have access to health care if removed to China, and (2) the Applicants provided insufficient evidence that the best interests of the children would be directly compromised by the level and adequacy of health care services in China are unreasonable.

[38] I agree.

## VI. Conclusion

[39] For all the foregoing reasons I am persuaded the Officer's treatment of the Applicants' evidence was unreasonable.

[40] A decision maker must take the evidentiary record and the general factual matrix that bears on their decision into account, and the decision must be reasonable in light of them. The reasonableness of a decision may be jeopardized where the decision maker has fundamentally misapprehended or failed to account for the evidence before it: *Vavilov* at para 126.

[41] When making their decision, the Officer overlooked important contradictory evidence that was put forward by the Applicants. In so doing, the Officer failed to meaningfully account for the central issues and concerns raised by the Applicants. As a result, the reasons lack justification and transparency: *Vavilov* at para 127.

[42] The application is granted and the Decision is set aside. This matter is to be returned to a different Officer for redetermination.

[43] There is no serious question of general importance.

**JUDGMENT IN IMM-241-21**

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

1. The application is granted and the Decision is set aside. This matter is remitted to a different Officer for redetermination.
  
2. There is no serious question of general importance for consideration.

"E. Susan Elliott"

---

Judge

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

**DOCKET:** IMM-241-21

**STYLE OF CAUSE:** YISHAN LI, XUNJIE SHEN, AND RUICHENG SHEN  
v THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION

**PLACE OF HEARING:** HEARD BY VIDEOCONFERENCE

**DATE OF HEARING:** MARCH 2, 2022

**JUDGMENT AND REASONS:** ELLIOTT J.

**DATED:** JANUARY 5, 2023

**APPEARANCES:**

Jai Wei Chen FOR THE APPLICANTS

Neeta Logsetty FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Chinese & Southeast Asian Legal FOR THE APPLICANTS  
Clinic  
Barristers and Solicitors  
Toronto, Ontario

Attorney General of Canada FOR THE RESPONDENT  
Toronto, Ontario