Federal Court Cour fédérale

Date: 20230822

Docket: IMM-7527-22

Citation: 2023 FC 1125

Montréal, Quebec, August 22, 2023

PRESENT: Mr. Justice Gascon

BETWEEN:

WENHAO WEI
CHANG WENG
GUOHONG WENG
JIALAN WENG
SHIYUN WENG

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The principal applicant, Ms. Wenhao Wei, her husband, Mr. Chang Weng, and their three children, Guohong Weng, Jialan Weng, and Shiyun Weng [together, the Weng family], are citizens of China. They ask for the judicial review of a decision rendered on July 22, 2022

[Decision] by a senior officer [Officer] of Immigration, Refugees and Citizenship Canada [IRCC]. In the Decision, the Officer held that there were insufficient humanitarian and compassionate [H&C] considerations to justify granting the Weng family an exemption under section 25(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] to allow them to remain in Canada.

[2] The Weng family submits that the Decision should be set aside, and that the matter be referred to a different officer for redetermination. The Weng family alleges that the Officer erred by failing to reasonably consider a number of factors in their analysis, more specifically, Ms. Wei's mental health condition, the best interests of the children [BIOC], the conditions for Christians in China, and the disruption of their establishment in Canada. Further, the Weng family claims that the Officer failed to conduct a global assessment of the evidence.

[3] For the following reasons, this application for judicial review will be granted. I acknowledge that many of the concerns raised by the Weng family are insufficient to invalidate the Decision. However, I agree with them that the Decision crosses the line of unreasonableness because the Officer failed to analyze how the impact of the removal on Ms. Wei's mental health condition would itself affect her children. This error in the treatment of the BIOC is enough to justify the Court's intervention.

II. Background

A. *The factual context*

[4] In February 2017, the Weng family came to Canada through temporary resident visas.

[5] In April 2017, the Weng family submitted a refugee protection claim.

[6] In June 2017, the Refugee Protection Division [RPD] denied their claim. The Weng family appealed the RPD's decision to the Refugee Appeal Division [RAD]. In March 2018, the RAD dismissed their appeal.

[7] Meanwhile, in 2018, the Weng family started attending the Living Stone Assembly Church in Canada. They claim that they identify as Christians.

[8] During their stay in Canada, Ms. Wei, her husband, and their two older children obtained a number of work permits. They all have different employment.

[9] Also, while in Canada, Ms. Wei was diagnosed with severe major depressive disorder with psychotic features. She receives ongoing psychiatric treatment.

[10] On November 19, 2021, the Weng family submitted an application for permanent residence from within Canada based on H&C considerations.

B. *Decision*

[11] In the Decision denying the Weng family's H&C application, the Officer acknowledged the hardship that being separated from their friends in Canada would inflict on the Weng family. However, the Officer mentioned that such hardship would not justify granting an H&C exemption to the Weng family.

[12] The Officer also recognized the Weng family's level of establishment in Canada and found that residing in Canada for about five and a half years was a reasonable amount of time.

However, the Officer ultimately determined that it was not sufficient hardship to justify humanitarian relief.

[13] The Officer continued by noting the Weng family's ongoing relationships in China, including parents and siblings, and the fact that they have not been absent from their country for a period long enough that re-establishment and finding employment in their country of citizenship would create undue hardship.

[14] With regard to the Weng family's religious beliefs, the Officer noted that this risk was assessed by both the RPD and the RAD, but dismissed due to credibility concerns. Further, after carefully reviewing the documentation on China's religious freedom, the Officer concluded that the Weng family's assertion that they risk a serious possibility of adverse hardship based on their Christian beliefs and practices is of a generalized nature and unsupported by the evidence.

[15] The Officer also acknowledged Ms. Wei's mental health condition, but ultimately concluded that the treatment portion of Dr. Hung-Tat Lo's psychiatric report [Dr. Lo's Report] should be afforded little weight. The Officer stated that there was no evidence that Ms. Wei would be unable to access medical treatment for her mental health issues in China. Further, the Officer explained that they had concerns with the limited scope of Dr. Lo's Report as well as its lack of objectivity. In the end, the Officer placed some weight on this factor as they accepted that Ms. Wei was experiencing mental health problems, which a return to China could possibly exacerbate.

[16] Finally, the Officer determined that there was insufficient evidence demonstrating a negative impact on the children to allow an H&C application based on the BIOC. The Officer

found that nothing besides inherent hardship of the requirement to leave Canada has been demonstrated, with the children having to adapt to a new school system or having to find new employment. The Officer, however, gave significant weight to this factor in their consideration.

[17] The Officer concluded that, after examining all relevant factors and circumstances, sufficient H&C considerations did not exist to justify granting the exemption sought by the Weng family under subsection 25(1) of the IRPA.

C. *The standard of review*

[18] Decisions taken on H&C applications made under subsection 25(1) of the IRPA are highly discretionary (*Sutherland v Canada (Citizenship and Immigration)*, 2016 FC 1212 at para 12). Accordingly, I agree with the Weng family and the Minister of Citizenship and Immigration [Minister] that the standard of reasonableness applies here (*Nyabuzana v Canada (Citizenship and Immigration)*, 2021 FC 1484 [*Nyabuzana*] at para 18).

[19] Reasonableness is the presumptive standard that reviewing courts must apply when conducting judicial review of the merits of an administrative decision (*Canada (Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*]). Reasonableness focuses on the decision made by the administrative decision maker, which encompasses both the reasoning process and the outcome (*Vavilov* at paras 83, 87). Where the applicable standard of review is reasonableness, the role of a reviewing court is to examine the reasons given by the administrative decision maker and to determine whether the decision is based on "an internally coherent and rational chain of analysis" and is "justified in relation to the facts and law that constrain the decision maker" (*Vavilov* at para 85). The reviewing court must therefore consider whether the "decision

bears the hallmarks of reasonableness — justification, transparency and intelligibility" (*Vavilov* at para 99).

[20] Such a review must include a rigorous evaluation of administrative decisions. However, as part of its analysis of the reasonableness of a decision, the reviewing court must begin its inquiry by examining the reasons provided with "respectful attention," and seeking to understand the reasoning process followed by the decision maker to arrive at its conclusion (*Vavilov* at para 84). The reviewing court must adopt an attitude of restraint and intervene "only where it is truly necessary to do so in order to safeguard the legality, rationality and fairness of the administrative process" (*Vavilov* at para 13).

[21] The onus is on the party challenging the administrative decision to prove that it is unreasonable. Flaws must be more than superficial for a reviewing court to overturn an administrative decision. The court must be satisfied that there are "sufficiently serious shortcomings" (*Vavilov* at para 100). When the reasons contain a fundamental gap or an unreasonable chain of analysis, a reviewing court may have grounds to intervene.

III. Analysis

[22] The Weng family submits that the Officer erred by failing to reasonably consider a number of factors in the Decision, namely, the conditions for Christians in China, the disruption to the family's establishment in Canada, the impact of a removal on Ms. Wei's psychiatric condition, and the impact of Ms. Wei's mental health deterioration on the BIOC. Further, the Weng family maintains that the Officer failed to conduct a global assessment.

[23] At the hearing, counsel for the Weng family focused her oral arguments on the two issues surrounding Ms. Wei's mental health. Before addressing those, I will first deal with the other errors alleged by the Weng family.

A. *Misapprehension of the evidence about Christians in China*

[24] The Weng family claims that the Officer's analysis of their religious hardship is unreasonable because the Officer selectively considered evidence, misapprehended the evidence that they did consider, and required proof of personalized hardship.

[25] I am not convinced by the Weng family's arguments on this front.

[26] There is a strong presumption that a decision maker has weighed and considered all the evidence, unless the contrary is established (*Kanagendren v Canada (Citizenship and Immigration)*, 2015 FCA 86 at para 36; *Florea v Canada (Minister of Employment and Immigration)*, [1993] FCJ no 598 (QL) (FCA)). Moreover, failure to mention a particular piece of evidence does not mean it has been ignored or discounted (*Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para 16), and a decision maker is not required to refer to all of the evidence that supports their conclusions. It is only when the decision maker is silent on evidence that clearly supports a contrary conclusion that the Court may intervene and infer that the decision maker overlooked the contradictory evidence in making his or her finding of fact (*Nguyen v Canada (Citizenship and Immigration)*, 2016 FC 1207 at para 23, citing *Ozdemir v Canada (Minister of Citizenship and Immigration)*, 2001 FCA 331 at paras 9–10; *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)* (1998), [1999] 1 FC 53 (FC) [*Cepeda-Gutierrez*] at paras 16–17). However,

Cepeda-Gutierrez does not support the proposition that the mere failure to refer to important evidence that runs contrary to the decision maker's conclusion automatically renders the decision unreasonable and causes it to be set aside. On the contrary, *Cepeda-Gutierrez* states that only when the evidence omitted is critical and squarely contradicts the decision maker's conclusion can the reviewing court infer that the decision maker failed to take into account the evidence before him or her. This is not the case here with respect to the Weng family's religious beliefs and practices, and the Weng family has not referred the Court to any such evidence in the record.

[27] In the present case, the Officer not only acknowledged the evidence adduced by the Weng family, but they also agreed that, on some level, there is persecution in China based on religious beliefs and practices (Decision at p 8). However, the Officer pointed to evidence that demonstrates that most Christians are not persecuted, and held that there was no evidence on whether the Weng family would themselves be persecuted as members of the Living Stone Church.

[28] It is true that the evidence on the record is mixed with respect to the treatment of Christians in China. The Officer stated that the objective documentary evidence "demonstrates that Christians in China can practice their faith without harassment" (Decision at p 8). Conversely, the Weng family identified a report in their submissions, which explicitly identifies hardship on members of the Living Stone Church.

[29] I accept that the Officer's analysis on this front could perhaps have been more detailed, but I am not persuaded that this is sufficient to warrant the Court's intervention. On judicial review, the Court is not tasked with revisiting and reweighing the evidence assessed by a

decision maker. In this case, given the contradictory evidence regarding Christians in China, it was open to the Officer to conclude as they did.

B. *Failure to consider disruption to establishment*

[30] The Weng family also submits that the Officer erred in only considering the nature and extent of their establishment in Canada, and not the disruption that would be caused to that establishment if they were removed from Canada. The Weng family relies on Justice Pamel's findings in *Truong v Canada (Citizenship and Immigration)*, 2022 FC 697 [*Truong*], where the Court found that it was unreasonable for the officer not to consider the level of disruption to the applicant's establishment (*Truong* at para 15).

[31] While I do not dispute this principle, I am satisfied that the Officer did not commit an error similar to the *Truong* case or fail to acknowledge a certain degree of hardship with the disruption of the Weng family's establishment. The Officer recognized, among other things, the disruption to the children's education and friendships, and the need to leave their current employment (Decision at pp 11–12). Again, the Weng family has failed to establish any major shortcomings in the Officer's reasons on that aspect.

C. *Assessment of the impact of a removal on Ms. Wei's mental health*

[32] The Weng family argues that the Officer failed to consider the impact of deportation on Ms. Wei's mental health, regardless of treatment options in China. Further, they claim that the Officer's refusal to afford full weight to Dr. Lo's Report was not justified. Finally, the Weng family submits that the Officer unduly minimized Ms. Wei's mental health issues.

[33] Despite the able arguments made by counsel for the Weng family on this point, I am not convinced that the Weng family demonstrated sufficiently serious shortcomings on this ground so as to render the Decision unreasonable.

[34] The Weng family is right to point out that an officer is required to consider not only the existence of medical treatment in the country of removal but also the impact of a removal from Canada on an applicant's physical or mental health, and that failure to do so may render a decision unreasonable (*Nyabuzana* at para 45, citing *Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 [*Kanthasamy*] at para 45 and *Saidoun v Canada (Citizenship and Immigration)*, 2019 FC 1110 at para 19). In *Kanthasamy*, the Supreme Court of Canada determined that the officer in that case erred by having an "exclusive focus on whether treatment was available" in the applicant's country (*Kanthasamy* at para 48).

[35] However, in this case, this is not what the Officer did. The Officer went further than assessing the availability of mental health treatment in China and did turn their mind to the impact of deportation on Ms. Wei's mental health issues. In the Decision, the Officer noted the following at page 10:

> I am mindful that in the event she is to return to China, her symptoms may possibly be exacerbated and further deteriorate her condition.… I accept and am sympathetic to the fact that the Applicant is experiencing and enduring mental health issues and recognize that remaining in Canada will most likely improve her well-being. As such, I place some weight to this factor in the decision.

[36] Therefore, it is clear from the Decision that the Officer was sensitive to Ms. Wei's mental health condition and dutifully considered this issue. The present case differs from that of *Tutic v Canada (Citizenship and Immigration)*, 2022 FC 800 [*Tutic*] on which the Weng family relies. In

Tutic, the Court found that the officer did not directly address the impact that removal would have on the applicant. Again, this is not what happened in the Weng family's case, since the Officer acknowledged that removal from Canada might exacerbate Ms. Wei's mental health issues, and placed "some weight" on this factor.

[37] Furthermore, I find no serious shortcomings with the Officer's assessment of Dr. Lo's Report on Ms. Wei's mental health. In support of its position, the Weng family relies on *Kashyap v Canada (Citizenship and Immigration)*, 2022 FC 961 [*Kashyap*], where Justice Diner held that the officer in that case established "an arbitrary threshold for assigning positive probative weight to a medical letter by taking issue with the fact that it does not explain in detail how the diagnoses were reached, how often the patient has met his psychiatrist since 2004… or how the 2018 assessment was conducted with respect to methods, time duration, and language" (*Kashyap* at para 35). Justice Diner continued by explaining the following at paragraph 36:

> [36] Without justifying why a particular detail was important or necessary and should have been included, the Officer was not free to cherry pick information they would have preferred to see in the letter and then qualify it as vague in their absence. In so doing, the Officer unreasonably discounted the weight of evidence, which corroborated significant aspects of the Applicant's narrative, on the basis that it did not include certain details the Officer would have liked to see.…

[38] It is true that, in the present case, the Officer had similar issues with the fact that "it is unclear how long each encounter lasted or whether Dr. Lo had access or reviewed the Applicant's previous medical or psychological records," or that "the psychological diagnostic tools and specific measurements utilized by the doctor to assess the Applicant and determine her diagnosis are absent for consideration" (Decision at p 10). However, the Officer explicitly stated that such missing information would have provided "further context and breadth" to Ms. Wei's

condition. When the reasons are read in their entirety, it is clear that the Officer faulted Dr. Lo's Report for the missing links in its analysis and for failing to explain how Ms. Wei's mental health diagnosis led to the prognosis of a psychotic break upon her return to China. In light of the particular factual context here, especially considering the briefness of Dr. Lo's Report, I am satisfied that the Officer provided reasonable justification for discounting the value of Dr. Lo's Report.

[39] Immigration officers can analyze a psychologist's or psychiatrist's report and decide to give it little weight, as long as their decision to do so is adequately justified (*Nyabuzana* at paras 45–46). Here, the Officer explained that, while they accepted Dr. Lo's opinion that remaining in Canada was an ideal option for Ms. Wei, they were not satisfied that it was the only recourse available to her. First, the Officer noted that there was no evidence that Ms. Wei's particular treatment and medication were not available in China, or would be interrupted if she were removed from Canada. The Officer also noted that there was no evidence of continuous appointments with health professionals here in Canada to treat her condition. Second, the Officer explained that they had issues with the briefness of Dr. Lo's Report, which contained limited or no details on Ms. Wei's condition, on the psychological diagnostic tools used, or on other information that would have provided further context and breadth to Ms. Wei's condition. The Officer also had issues with the tone of the report and its lack of objectivity, since Dr. Lo's recommendations, aside from prescribed medication, focused solely on the necessity for Ms. Wei to remain in Canada.

[40] It is in this context that the Officer afforded less weight to Dr. Lo's medical opinion regarding treatment, despite the Officer's acknowledgment of Dr. Lo's findings on Ms. Wei's

condition and possible aggravation upon removal from Canada. In my view, when all elements of the Decision are considered, the Officer's reasons adequately justify the outcome reached in the Decision on Ms. Wei's mental health condition, and reasonably explain why the missing information would have been important in this case.

[41] I do not agree with the Weng family's contention that the Officer unreasonably minimized Ms. Wei's mental health issues. Their reliance on *Akhtar v Canada (Citizenship and Immigration)*, 2022 FC 856 [*Akhtar*] is misplaced. In *Akhtar*, the applicant provided multiple medical reports and letters from medical professionals indicating a consistent diagnosis over many years. In the face of the abundant evidence of the applicant's mental health conditions indicating severe depression, severe anxiety, and severe suicidal ideation, the Court found it unreasonable for the officer to reduce the applicant's issues to "emotional difficulties" (*Akhtar* at paras 21–23). By contrast, here, the only evidence of Ms. Wei's mental health issues is contained in Dr. Lo's two-page Report, with few particulars on the breadth of Ms. Wei's condition. In the face of this slender evidence on the magnitude of Ms. Wei's condition and symptoms, I am not convinced that the Officer's analysis and conclusion can be qualified as unreasonable.

[42] I underline that the Officer did not simply dismiss or ignore Dr. Lo's Report, but decided to give it little weight. As triers of fact, it is up to immigration officers to determine the weight to be given to evidence, and this includes expert evidence such as psychological or psychiatric assessment reports. The Officer in this case did just that, and supplemented their conclusion with reasons. In their reasons, the Officer provided explanations for the reasons why they could not give full weight to Dr. Lo's Report. The Officer referred to the missing link between Dr. Lo's summary analysis and the psychotic break prognosis. The Officer also singled out the fact that

Dr. Lo opined not solely on medical issues and treatment, but also on matters related to Ms. Wei's immigration status and on a recommendation that Ms. Wei stay in Canada.

[43] In sum, the Officer acknowledged Ms. Wei's mental health issues and the possible impact of deportation from Canada on her condition, but they were not satisfied that, based solely on Dr. Lo's Report and considering the irregularities they identified, it was sufficient to establish that the severity of Ms. Wei's mental health condition warranted H&C relief.

[44] I recognize that the Officer's assessment of the evidence regarding Ms. Wei's mental health may not be ideal, and is perhaps tiptoeing the line between what is reasonable and what is not. In the end, however, I am satisfied that, in the circumstances, the Decision demonstrates a reasonable level of justification, transparency, and intelligibility (*Vavilov* at para 81). The Weng family did not demonstrate that the Officer "has fundamentally misapprehended or failed to account for the evidence before it" (*Vavilov* at para 126), or has failed to follow a rational chain of analysis (*Vavilov* at para 103) on this ground.

[45] The issue for this Court is not to decide whether the Officer was correct in their assessment of Dr. Lo's Report nor whether another interpretation of the report would have been possible. The issue is whether it was reasonable for the Officer to conclude as they did, in light of their expertise and the deferential approach that reviewing courts need to take on evidentiary matters before a decision maker.

[46] As correctly underlined by counsel for the Minister, "weight to be given expert evidence is a matter for the trier of fact" and "an expert's conclusion which is not appropriately explained

and supported may properly be given no weight at all" (*Capitol Life Insurance Co v R*, [1986] 2 FC 171 (FCA) at 177).

[47] Moreover, it is well established that, while an expert can give opinion evidence, such evidence should not turn into advocacy or deal with the ultimate issues to be determined by the decision maker, be it a court or an administrative tribunal. In *R v Mohan*, [1994] 2 SCR 9 [*Mohan*], the Supreme Court of Canada articulated the four threshold requirements when a court is tasked with determining the admissibility of expert evidence, namely: relevance, necessity in assisting the trier of fact, absence of any exclusionary rule, and a properly qualified expert. Under the principle of "necessity," expert evidence must provide the courts with information that is considered as being "outside the experience and knowledge of a judge" (*Mohan* at p 23). The proposed expert opinion evidence must be necessary to assist the trier of fact, bearing in mind that necessity should not be judged strictly. This is notably the case where the expert evidence is needed to assist a court or an administrative tribunal due to the technical nature of the issues at stake, or where the expertise is required to enable the decision maker to appreciate a matter at issue and to help it form a judgment on a matter where ordinary persons are unlikely to do so without the help of those with special knowledge.

[48] Experts, however, must not substitute themselves for the trier of fact (*Mohan* at p 24). As such, expert evidence that provides legal conclusions or opinions on issues and questions of fact to be decided by the court is inadmissible because it is unnecessary and usurps the role and functions of the trier of fact (*Quebec (Attorney General) v Canada*, 2008 FC 713 at para 161, aff'd 2009 FCA 361, 2011 SCC 11). In sum, expert witnesses are not entitled to opine on legal matters, which fall within the scope of the court or administrative tribunal's experience and

knowledge. As Dr. Lo's Report effectively expresses the author's personal views on the ultimate issue that was for the Officer to decide, it was open to the Officer to voice reservations about the advocacy dimension of the report (see *Es-Sayyid v Canada (Public Safety and Emergency Preparedness)*, 2012 FCA 59 at para 41).

[49] I make one additional remark on the matter. An immigration officer's assessment of a psychological or psychiatric report constitutes an evidentiary finding. On judicial review, the courts must consider the conclusions of an administrative decision maker from a perspective of reasonableness and restraint, with a respectful attention to the reasons of the decision maker. This judicial restraint requires the reviewing courts to adopt a deferential and disciplined approach. This is particularly true with respect to an administrative decision maker's assessment and treatment of the evidence, including expert evidence. On judicial review, it is not for the reviewing courts to substitute their point of view for that of the decision maker, even if they could have come to a different conclusion. The reviewing courts must focus their attention on the decision made by the administrative decision maker, in particular on its justification, and not on the conclusion that they would have reached themselves if they had been in the shoes of the decision maker. In other words, the standard of reasonableness is rooted in the principles of judicial restraint and deference, and requires reviewing courts to show respect for the distinct role that Parliament has chosen to confer on administrative decision makers rather than on courts (*Vavilov* at paras 13, 46, 75).

[50] It is well established that immigration officers have specialized knowledge to assess evidence relating to facts that fall within their area of expertise. And this includes evidence relating to the mental health conditions of applicants. In such situations, the standard of

reasonableness requires the Court to show great deference to the evidentiary findings of immigration officers. It is not the task of a reviewing court to reweigh the evidence on the record, including expert evidence, or to reassess the findings of fact and substitute its own (*Canada (Canadian Human Rights Commission) v Canada (Attorney General)*, 2018 SCC 31 at para 55).

[51] Here, I am not persuaded that there are any reasons to intervene in the Officer's assessment of Dr. Lo's expert evidence.

D. ***Impact of Ms. Wei's mental health condition on the BIOC analysis***

[52] The Weng family further argues that the Officer's failure to consider the impact on the children of the possible deterioration of Ms. Wei's mental health condition if removed from Canada renders the Decision unreasonable.

[53] On this point, I agree with the Weng family.

[54] The analysis of the BIOC warrants special attention (*Mubiayi v Canada (Citizenship and Immigration)*, 2017 FC 1010 at para 14). In *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817, the Supreme Court of Canada held the following at paragraph 75:

> [F]or the exercise of the discretion to fall within the standard of reasonableness, the decision-maker should consider children's best interests as an important factor, give them substantial weight, and be alert, alive and sensitive to them. That is not to say that children's best interests must always outweigh other considerations, or that there will not be other reasons for denying an H&C claim even when children's interests are given this consideration. However, where the interests of children are minimized, in a manner inconsistent with Canada's humanitarian

> and compassionate tradition and the Minister's guidelines, the decision will be unreasonable.

[55] In *Jeong v Canada (Citizenship and Immigration)*, 2019 FC 582 [*Jeong*], Justice Boswell found that an officer unreasonably failed to examine the applicant's ability to parent her daughter if she was returned to her country, despite the psychologist report opining that her psychological symptoms would be exacerbated by removal from Canada (*Jeong* at para 61).

[56] Here, the Officer stated that there was no reason to believe that Ms. Wei and her husband would not continue to care and support their children upon their return to China (Decision at p 12). It is clear from the Decision that the Officer failed to consider how the possible impact of removal on Ms. Wei's mental health condition would itself have a cascading effect on the BIOC. In a context where the Officer did acknowledge the possibility that Ms. Wei's condition could deteriorate if she was removed from Canada, the Officer's failure to deal with this factor in the BIOC analysis is undoubtedly a flaw in the overall analysis.

[57] I accept that the Officer had given limited weight to Dr. Lo's Report. However, it is clear from the Decision that the Officer had recognized the mental health troubles faced by Ms. Wei and the fact that her mental health condition could deteriorate upon return to China. I acknowledge that the Officer did not accept Dr. Lo's evidence of a mental health crisis upon return or of a psychotic break, but there were certainly issues with Ms. Wei's mental health condition upon return to China. It is this impact on the children that was totally ignored by the Officer. With or without a psychotic break if removed from Canada, the impact of the deterioration of Ms. Wei's mental health on her children had to be considered in the BIOC analysis.

[58] As pointed out by counsel for the Weng family at the hearing, the Officer ignored specific arguments that had been made by the Weng family on this issue in their submissions filed in support of their H&C application. At paragraph 46 of those submissions, they argued that "[t]he minor Applicants' personal security interests include the ability to safely practice their religion and having their mother's full support and care unimpeded by her mental illness. The impact of a negative H&C decision on these interests is discussed above. It should also be noted that religious persecution and/or a deterioration in their mother's mental health would harm not only the children's best interests, but also their basic needs." There is therefore no question that the impact of a deterioration of Ms. Wei's mental health condition was put to the Officer in the H&C application.

[59] In *Vavilov*, the Supreme Court of Canada reminded reviewing courts that a reasoned explanation by an administrative decision maker has two related components: adequacy, as well as logic, coherence, and rationality (*Vavilov* at paras 96, 103–104). A decision maker's failure "to meaningfully grapple with key issues or central arguments raised by the parties may call into question whether the decision maker was actually alert and sensitive to the matter before it" (*Vavilov* at para 128). As the Federal Court of Appeal stated in *Alexion Pharmaceuticals Inc v Canada (Attorney General)*, 2021 FCA 157 [*Alexion*], the "critical point[s]" of a decision are shaped, in part, by "the central issues and concerns raised by the parties" (*Alexion* at para 13, citing *Vavilov* at paras 127–128): "[i]n making its decision, the [decision maker] must ensure that a reasoned explanation is discernable on the key issues—the issues on which the case will turn and the issues of prime importance raised in the parties' submissions" [emphasis added.] (*Alexion* at para 70). In this case, the Weng family had expressly flagged the concern that a deterioration of Ms. Wei's mental health would have a detrimental effect on the children in their

submission for H&C relief. This was, without a doubt, a key issue and material element raised by the Weng family in their H&C application. However, it was entirely neglected in the Officer's reasons. Either the Officer ignored the evidence and arguments put forward by the Weng family on this front, or they were not alert and sensitive to this matter before them. Either way, the Officer's failure to engage with this element of the Weng family's H&C application suffices to render the Decision unreasonable.

[60] In other words, the Decision does not meet the minimum requirements of "responsive justification," because the Weng family had made specific submissions directly relevant to the grounds on which the Decision rests (*Nesarzadeh v Canada (Citizenship and Immigration)*, 2023 FC 568 at para 13). Of course, the Officer did not have to accept everything advanced by the Weng family in their H&C application, but the Officer was required to deal with it and to offer some explanation about how this information factored into the analysis. A reasonable decision must demonstrate that the decision maker engaged with the key evidence and arguments that are relevant given the legal framework that applies. That was not done here. At paragraph 102 of *Vavilov*, the Supreme Court held that the reviewing court "must be satisfied that 'there is [a] line of analysis within the given reasons that could reasonably lead the tribunal from the evidence before it to the conclusion at which it arrived'." Here, there is simply no line of analysis to trace or to follow on the impact of the possible deterioration of Ms. Wei's mental condition on her children.

[61] Because of the importance of the BIOC in the Weng family's H&C application, and in the Officer's Decision, this flaw in the Officer's analysis warrants the Court's intervention. On this point, I am unable to "to trace the decision maker's reasoning without encountering any fatal

flaws in its overarching logic" (*Vavilov* at para 102). This finding suffices to find that the Decision is unreasonable.

E. ***Failure to conduct global assessment***

[62] The Weng family finally submits that the Officer erred by taking a "silo" approach to each distinct factor, without considering their cumulative impact. The Weng family refers to multiple instances where the Officer indicated they were assigning "some weight" to different factors, including the BIOC, but ultimately found that they were not satisfied that any of them warranted humanitarian relief.

[63] While I do not agree entirely with the Weng family's argument on this aspect, the fact that the BIOC to which the Officer accorded some "significant" weight needs to be reassessed means that the overall weighing exercise also has to be revisited.

[64] The Officer indicated that they weighed both positive and negative factors against each other "as part of a global assessment" (Decision at p 13) but that, ultimately, they were not satisfied that sufficient H&C considerations existed to justify an exemption under subsection 25(1) of the IRPA. Whether the "positive factors" are sufficient to outweigh the negative ones is not a mathematical assessment, as the Minister pointed out. The mere fact that the Officer identified, on multiple occasions, factors that had "some weight" in favour of the Weng family does not entitle them to a positive outcome.

[65] However, since, in the analysis of the BIOC, the Officer failed to consider the impact of Ms. Wei's possible exacerbation of her psychological condition if she was removed from Canada, it means that the weighing exercise of all factors was itself vitiated. More particularly, I

note the following Officer's statement: "While I place significant weight to the [BIOC], I find this factor alone does not outweigh all other factors and is not a determinative factor to justify an exemption" (Decision at p 12). Had the Officer properly weighed the BIOC in light of Ms. Wei's mental health issues, there is a real possibility that it could have become a determinative factor to justify an exemption. This is what will need to be re-determined by a different officer.

IV. Conclusion

[66] For the above-mentioned reasons, the Weng family's application for judicial review is granted. The Decision is not based on an internally coherent and rational analysis, as the Officer's conclusions on the BIOC do not constitute a reasonable outcome having regard to the legal and factual constraints to which the decision maker is subject and to the evidence. Therefore, the matter must be referred back to a new officer for re-determination.

[67] The parties proposed no question of general importance for certification and I agree that there is none.

JUDGMENT in IMM-7527-22

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is granted, without costs.

2. The July 22, 2022 decision by a senior officer of Immigration, Refugees and Citizenship Canada, denying the Applicants' application for permanent residence on humanitarian and compassionate considerations, is set aside.

3. The matter is referred back to Immigration, Refugees and Citizenship Canada for redetermination on the merits by a different officer, in accordance with the Court's reasons.

4. There is no question of general importance to be certified.

"Denis Gascon"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-7527-22
STYLE OF CAUSE:	WEI ET AL v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	JULY 26, 2023
JUDGMENT AND REASONS:	GASCON J.
DATED:	AUGUST 22, 2023

APPEARANCES:

Alison Pridham	FOR THE APPLICANTS
Stephen Jarvis	FOR THE RESPONDENT

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