

Federal Court



Cour fédérale

Date: 20220217

Docket: IMM-349-21

Citation: 2022 FC 211

Ottawa, Ontario, February 17, 2022

PRESENT: The Honourable Madam Justice Strickland

BETWEEN:

SHULAN ZHANG

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] This is the judicial review of the decision of the Immigration Appeal Division [IAD] of the Immigration and Refugee Board of Canada rejecting the appeal by the Applicant, Shulan Zhang, of the decision of a visa officer refusing her application to sponsor her spouse, Zaijie Guo [Guo or spouse] for permanent residence.

Background

[2] The Applicant is a 30 year old permanent resident of Canada and a Chinese citizen. She came to Canada in 2014 as a dependant child of her father, a Convention refugee. Her spouse is a 28 year old citizen of China. The Applicant claims that she was introduced to her future spouse in July 2016 by his aunt who was a regular customer at the grocery store where the Applicant works. At that time, the Applicant lived in Canada and her future spouse lived in China. In July or August 2016, the Applicant and her spouse began to communicate via WeChat; however, the conversation fizzled out after a few months. In December 2016, encouraged by his family, Guo reinitiated contact with the Applicant and a relationship developed. In April 2017, the Applicant visited China remaining there until August 2017. During this time, she and Guo decided to marry. They had an engagement party on July 11, 2017 and registered their civil marriage the following day. Their family chose February 7, 2018 as an auspicious date for their wedding. The Applicant returned to China for the wedding banquet which was celebrated with some 600 family and friends.

[3] In May 2018, the Applicant applied to sponsor Guo for permanent residence in Canada. In April 2019 Guo was interviewed by a visa officer in Hong Kong. The visa officer subsequently refused the sponsorship application on the basis that the marriage was not genuine or was entered into primarily for immigration purposes. By a decision dated December 10, 2020 the IAD refused the appeal. That decision is the subject of this judicial review.

IAD's Decision

[4] The IAD found that the Applicant had failed to prove that she is in a genuine relationship with her spouse and that they did not marry primarily to bring him to Canada. The IAD stated that the testimonial evidence was filled with incomplete or contradictory narratives surrounding the genesis and development of the relationships. In particular, there were unexplained aspects of the introduction of the couple, their relationship to the matchmaker and the role of their relatives in China. Additionally, there was evidence of a strong “pull factor” for Guo to come to Canada.

Legislation

Immigration and Refugee Protection Regulations, SOR/2002-227 [IRP Regulations]

4 (1) 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

(a) was entered into primarily for the purpose of acquiring any status or privilege under the Act; or

(b) is not genuine.

Issues and standard of review

[5] The Applicant asserts that the IAD's decision is based on a series of unreasonable credibility findings. In that regard, the IAD relied on mistakes of fact, failed to consider the Applicant's cultural milieu, made speculative assumptions and assessed the evidence microscopically.

[6] All of the concerns raised by the Applicant pertain to the issue of whether the IAD's decision was reasonable. The parties submit, and I agree, when a court reviews the merits of an administrative decision the presumptive standard of review is reasonableness. No exceptions to that presumption have been raised nor apply (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at paras 10, 23, 25).

[7] On judicial review, the reviewing court asks whether the decision bears the hallmarks of reasonableness – justification, transparency and intelligibility – and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision (*Vavilov* at para 99).

Analysis

[8] This is a disjunctive test (*Gill v Canada (Citizenship and Immigration)*, 2012 FC 1522 at para 30 [*Gill*]) and the onus is on an applicant to establish both requirements on a balance of probabilities (*Chen v Canada (Citizenship and Immigration)*, 2018 FC 840 at para 10).

[9] While the IAD's credibility findings are to be afforded deference (*Wang* at para 37; *Bains v Canada (Citizenship and Immigration)*, 2018 FC 740 at para 15; *Vavilov* at para 125), they are not immune to scrutiny if the IAD ignored, failed to consider, or misapprehended evidence, or if the credibility findings are otherwise shown to be unjustified (*Vavilov* at para 126).

Genesis of relationship – Aunt

[10] The IAD found that the testimony surrounding the Applicant and her spouse's relationship with the matchmaker, Guo's aunt, lacked clarity and cogency. Specifically, that the Applicant had testified that the aunt was initially drawn to her having heard her speak in a Fuqing dialect. However, that the Applicant also testified that 50-70% of the grocery store employees spoke the same dialect. The inference drawn by the IAD apparently being that the Applicant's dialect would not serve as an initial draw. The IAD also stated that the Applicant's testimony was that after the matchmaking her friendship with the aunt grew. However, the IAD noted that she also testified that they never met outside of the grocery store. Further, the Applicant had clearly stated that she had once driven the aunt's daughter home but did not go inside, she then but changed her testimony to say that she had been several times to the aunt's home to pick up gifts.

[11] The IAD stated that Guo had testified that the Applicant had only visited his aunt's home three times after the marriage and that because his wife is shy she did not feel comfortable visiting his aunt. The IAD found that this explanation contradicted the couple's assertion that the aunt had a close relationship with the Applicant. Further, when Guo was asked how, having such a limited relationship with the Applicant, his aunt could determine that the Applicant would be a good match he responded that it was because his aunt thought the Applicant had a lucky face and could bring fortune to the family. The IAD also drew a negative inference from the fact that the Applicant did not call the aunt as a witness. It noted that at the first day of the hearing her testimony was that she had not thought to do so. However, even at the later second day of the

hearing, the aunt was not called as a witness, yet her evidence could have corroborated many unclear elements of the genesis and development of the relationship.

[12] The Applicant submits that the IAD erred in its statement that the Applicant's testimony was that 50-70% of the grocery store employees spoke the same dialect.

[13] Regrettably, an official transcript of the hearing before the IAD was not in the record before me. However, the Applicant provided an informal transcript in her materials and the Respondent has not taken issue with its content. As the Applicant asserts, a review of the transcript reveals that following a lengthy and largely irrelevant round of questioning by the Minister's counsel about the Applicant's shift and wages at the grocery store the Applicant was asked how many of the approximately 30 cashiers speak Fujianese, to which the Applicant responded perhaps 22 or 23. Minister's counsel then stated his understanding of the Applicant's testimony to be that of the 100 people working at the grocery store, 80 to 90 of them speak Fujianese. The Applicant confirmed that maybe 60 to 70% of the employees did so. When asked to explain the development of the relationship with the aunt, the Applicant testified:

Minister's Counsel: Explain how your relationship with aunt Feng, how did that relationship develop?

Applicant: She doesn't work in that market and she is sometimes coming to shopping. She likes quiet times, so she would normally come in the evening time. I was also often in the night shift, so she saw that I was speaking Fuqing dialect, so sometimes we chatted.

Minister's Counsel: She saw I was speaking what dialect?

Applicant: Fuqing.

Minister's Counsel: Is that quite distinct from people from Fuzhou, for example, that dialogue?

Applicant: It was a little different. I am not that familiar with Fuzhou's dialect.

Minister's Counsel: So, anyway so she heard you speaking and then what happened?

Applicant: So, as a senior, she talk to me. And I am also good at talking to seniors. So, she really liked chatting with me.

Minister's Counsel: OK. And that was when? When was that?

Applicant: In 2016 June or July.

Minister's Counsel: OK. And so, it is mentioned here that you are a friend of hers. Is that correct? Do you consider yourself a friend of Guo, Feng?

Applicant: Yes.

Minister's Counsel: OK. So, tell me about this friendship. And, just to be clear, there is a difference between a friendship and a casual acquaintance or relationship. In other words, someone that you are friendly to because you were a cashier. I might see a cashier and say hello but she is not my friend. What do you mean by friendship? Tell me about your friendship.

Applicant: Initially, I was at work, so I couldn't chat too long with her and it's just a greeting or something. It was after introduced to her nephew, she is very caring about how our relationship developed, so that's when we developed a more deeper relationship. When she was asking how it's going.

Minister's Counsel: So, not before your relationship with her nephew.

Applicant: At that time, it is just a regular friend. Not a good friend.

Minister's Counsel: But what do you mean by a regular friend? I don't understand. I am trying to distinguish between friendship and a friendly hello, if I can put it that way.

Applicant: Majority is like a friendly greeting and every time she comes, she always comes to buy the bread and sometimes she asks me which one is good or better, so I always tell her.

Minister's Counsel: Did your friendship extend to outside the store?

Applicant: No.

Minister's Counsel: Has Guo, Feng come to your home?

Applicant: No.

Minister's Counsel: Have you visited her home?

Applicant: Previously her daughter also worked in the market. Sometimes I drove her daughter home before. But just dropped her off and never went inside.

.....

Minister's Counsel: If 23, 28 to 23 of cashiers are Fujianese, and maybe 60 to 70% of the whole of the store are Fujianese, why would it be unusual, why would your husband's aunt think it unusual that you and a co-worker were speaking Fujianese? I was that so unusual?

Applicant: The dialects are all similar, almost the same. It is just because at that time I just went there to work and she never saw me before. Maybe she was more curious. It was after several times that one of my colleagues actually told me that she is the wife of one of our managers.

Still later:

Minister's Counsel: Now that you are part of the uncle's family who is the manager, at least the manager if not the general manager at Foody Mart, why haven't you got a better promotion? Why haven't you visited your uncle's home?

Applicant: After our wedding, I did visit once or twice to their home but mainly it was looking for his aunt. And they did mention to me whether I want to go into accounting. They can send me to study in the classes, but I said that I am very happy right now with this position and I didn't want to go.

Minister's Counsel: OK. Now, earlier I asked you about visiting and you said you never visited any manager's home, including this one. In fact, you drove his daughter to the home and dropped her off but didn't go in. This answer is very different. Explain why.

Applicant: Because the visiting their home was not a formal one. I just go to see his aunt because there were some packages from his parents that were sent here to Canada. So they asked me to go there

to pick it up. So, it was not very formal to meet uncle and aunt. I was just going to get the package.

Minister's Counsel: I didn't ask you if you had a formal visit. I asked you if you visited. So, either the first answer was a lie or this one is a lie. Which is it?

Applicant: Right now, my answer is correct. When the previous question was asking whether I visited any manager's home, I always just treated his uncle and aunt as just uncle and aunt, not as managers. So, when the question was about visiting managers' homes I thought it was asking about other managers.

Minister's Counsel: Well, I asked you if your aunt visited you and you said no.

Applicant: Yes. That is true. She didn't. After the wedding, she would come to my hometown... But here in Canada, she really didn't visit it. And she participated in the wedding.

Minister's Counsel: This is the person who was portrayed the record as your really good friend who introduced her nephew to you and yet she never comes to visit you and you never go to visit her except to pick up presents. If that's true.

Applicant: In Canada, we don't have this kind of custom. In China, we frequently visit each other's home.

Minister's Counsel: You're speaking Chinese now when you work in a Chinese supermarket in an area that has largely Chinese people, why would the Chinese custom of visiting one another's families in China not transcend to Canada?

Applicant: It's not the same as China. With parents there, so we have frequent visits to the parents' home. Here, he is not here and it is his uncle and aunt so I didn't visit them too much. Maybe because I was quite shy. If there was no relative from his side to accompany me to go to his uncle and aunt's home, me myself I seldom go.

Minister's Counsel: So, this doesn't suggest that the aunt was really that close to you at all, doesn't it? It has a different feeling about your relationship then you tried to portray earlier?

Counsel: I'm sorry, how so?

Minister's Counsel: Because they are not close at all! That's my question. Let her answer it.

Applicant: Two weeks ago it was her birthday, and I baked a cake for her.

Minister's Counsel: And how did you give it to her?

Applicant: That day, I was on my way to work and I drove to the house and gave it to her daughter and so her daughter brought it in... so it would be a surprise to her mom.

Minister's Counsel: Sorry, say that again.

Applicant: Her daughter wanted it to be a surprise to her mom.

Minister's Counsel: So, you did this as a favour to her daughter?

Applicant: Because I myself I don't know her mother's exact birthday. Just her daughter mentioned that her mom's birthday is in this month and she needs a cake. So, I prepared the cake and her daughter brought in and later on her mom knows that it was coming from me.

Minister's Counsel: Was that baked at the store?

Applicant: No. I made it at home myself.

Minister's Counsel: I found my question. It was, "Has Guo come to your home or have you visited her home?" "Previously her daughter, because sometimes I drive her home but I have never gone inside." Now that's the end of my questions. Thank you.

Applicant: I want to explain that to drop off her daughter, that was before I really know her mother. It was before that that I dropped off her daughter. And then after my wedding, to visit their home to pick up things, that happened after the wedding. And then the cake, this just happened two weeks ago.

[14] When Guo was interviewed, he was asked by the Applicant's counsel if he knew how his aunt came to know the Applicant. He responded that his aunt went to the grocery store for

groceries and that the Applicant was working in the bakery there. The Minister's counsel followed this up asking:

Minister's Counsel: So, tell me about your relationship with Mr. Wei and his wife, Ms. Guo. How often do you communicate with them?

Guo: We don't often contact each other.

Minister's Counsel: And so, what do you know, you said that you're my wife was friends with Ms. Guo. What do you know of their friendship, their relationship? Your wife and Ms. Guo?

Guo: Their relationship is kind of like friends.

Minister's Counsel: What do you mean by that? Can you give us some detail on any activities they do together or how often they meet or communicate? Any details of that sort.

Guo: Because my wife works in a supermarket and my maternal aunt often buys her groceries in the supermarket and they chatted to each other and then gradually become friends.

Minister's Counsel: OK. Do they ever meet, had they ever met, and I am talking about the time until you got the marriage document in 2017. Until that time, had your aunt and your wife ever met in person outside of the supermarket?

Guo: My wife has been to their home three times.

Minister's Counsel: And so, does she go to their home three times... I'm looking at the time until April 2017 when she came to China. Did you go to your aunt's on three times until then?... I will be specific. So from 2015 to April 2017, during that time, did she visit your aunt's home three times or less than that?

Guo: No. It was after the marriage.

Minister's Counsel: And when you say after the marriage, I just want to be clear about what you were talking about. 2017 or after the banquet in 2018?

Guo: It was after the marriage 2018.

Minister's Counsel: So then, before 2018, are you saying that your wife had never visited your aunt's home?

Guo: Yes.

Minister's Counsel: Did they ever meet outside of the supermarket before the 2018 marriage banquet?

Guo: No.

Minister's Counsel: Ok. So, did your wife... OK. So, I am just trying to understand why your aunt would've thought that she was a good match for marriage if the only interaction that she had with your wife was when your aunt was working at the supermarket and she was a customer.

Guo: And my maternal aunt was doing groceries in the supermarket, my wife (inaudible) she was just meeting my wife like she was communicating with a younger person, a younger sister. She was saying that my wife had a good character. Especially my wife's features, the face, it is a very typical lucky girl and bring fortune to our family. That type of feature. And that is what we believe. That she is a lucky one for the family.

Minister's Counsel: Did your aunt propose any other matches do you from Canada ever other than your wife?

Guo: No.

[15] The Applicant's testimony was that the aunt had heard the Applicant speaking with her co-workers using the Applicant's village dialect. Because of this, the aunt knew that the Applicant was from Fuqing. To this extent, the transcript supports the IAD's finding that the Applicant testified that the aunt was drawn to her after hearing her speak in the Fuqing dialect. Of note is that the Applicant's evidence was also that she worked later shifts, the aunt was older and liked to shop at quieter times and the Applicant was good at communications with older persons.

[16] However, the above transcript excerpts do not support the IAD's implicit negative credibility finding associated with the Applicant's testimony of how she and the aunt first came

to know of each other. The IAD found that the Applicant testified that “50-70% of the store employees spoke the same dialect” and implied that this made it implausible that the aunt was drawn to the Applicant because of her dialect. However, this was not the Applicant’s evidence. She testified that 50-70% of the staff spoke Fujianese, not the Fuqing dialect.

[17] The Respondent points to the Minister’s post-hearing submissions which asserted, among other things, that the Minister raised the dialect issue but that the Applicant failed to challenge the point. The Respondent asserts that the Applicant therefore is not permitted to do so at judicial review.

[18] I note that the Minister’s submissions included that:

7. The narrative as presented by the appellant is that the applicant’s aunt, hereby referred to as Ms Guo, was a good friend who brought up the applicant as a potential marriage match to the appellant sometime in July 2016.....

15. The appellant initially testified that Ms Guo started speaking to her because she discovered the appellant speaking the Fujian dialect at work and was intrigued by the possibility of the appellant originating from the same region in China as the applicant. However, she also stated this friendship with Ms Guo did not extend outside the supermarket, Ms Guo has never visited the appellant at her home and the appellant similarly has never visited Ms Guo at her home. **Further, the appellant also testified that overall about 60-70% of staff at the supermarket spoke the Fujian dialect and was unable to explain clearly why the aunt would then be surprised to hear her speak the same dialect spoken by so many others at the supermarket and would strike up a friendship with her.** The Minister respectfully submits that when the appellant’s testimony is assessed objectively, it is rather clear that Ms. Guo was not a close friend of the appellant either before or after the introduction to the applicant or at the time of the appeal. The nature of that relationship, which was posited as the reason for the introduction in the first place is rather distant and brings into question the real reason for the applicant was introduced to the appellant. It is certainly plausible

the applicant was introduced to the appellant because she was looking for a marital match and Ms Guo wanted to arrange a match which would acquire for him immigration status in Canada.

(emphasis added)

[19] It is clear that the above submissions by the Minister as to the Applicant's testimony do not accurately reflect her testimony as set out in the transcript. It is also clear that the IAD accepted the Minister's version of the evidence. However, the role of the IAD was to assess the evidence for itself. I agree with the Applicant that the IAD misapprehended her testimony and drew a negative credibility finding based on that misapprehension. Further, as to the Respondent's position that because the Applicant did not correct the Minister's post-hearing submissions by filing a response to those submissions that she is now precluded from raising the issue, I do not agree. The Applicant could reasonably assume that the IAD, who heard the evidence, would base its findings on that evidence, not on the Minister's depiction of the evidence. The Applicant also could not have known until after the IAD issued its reasons that it erred in its understanding of the evidence. It was entirely open to the Applicant to raise an issue of the misapprehension of the evidence by the IAD at judicial review.

[20] I do note that in her September 6, 2019 letter written in support of her spousal sponsorship, the Applicant described the aunt as her friend and stated that since they were from the same place in China "we had a very good relationship and were very close in our spare time". This contradicts the testimony given before the IAD. That said, the IAD does not refer to that letter. Its findings are based on the testimony of both the Applicant and her spouse. Read in whole and in context, that testimony consistently describes the Applicant's relationship with the aunt as limited. When asked why then the aunt would think that Guo would be a good match for

Applicant, the IAD referred to Guo's testimony that it was because she had a lucky face and could bring good fortune to the family. However, Guo had also been asked to talk about his first conversation with his aunt. He testified that it was through WeChat and that his aunt and said that she had come to know a girl who she found to be really nice and she would like to introduce them. Asked if the aunt had told him anything else, he replied that his aunt mentioned that the Applicant is good-natured, has good character, is single and might be suitable for a wife. Asked if he had asked his aunt and uncle to help him find a potential wife, Guo stated that he had not, nor had his aunt proposed any other matches other than with the Applicant. However, that his family had tried to find matches for him in China, which had not worked out.

[21] Later again asked why his aunt would have thought the Applicant to be a good match, given that the Applicant and his aunt only knew each other from the grocery store, Guo gave the above evidence about his aunt stating that the Applicant had a good character and a lucky face and could bring good fortune to the family.

[22] The IAD in its reasons states that when asked how the aunt could have determined that the Applicant would be a good match, given the limited relationship between the aunt and the Applicant, that the Applicant testified it was because the aunt felt the Applicant has a lucky face and could bring fortune to the family. The IAD then states the Applicant's testimony was that she did not feel comfortable going to the aunt's home as she was shy and concluded that "This explanation contradicted the couple's assertion that the aunt had a close relationship with Appellant. I find that the narrative concerning the relationship with the matchmaking aunt is not credible which does not support a finding of genuineness".

[23] However, the testimony of the Applicant and Guo was not that there was a close relationship between the aunt and the Applicant. Nor did the IAD consider the testimony as to the context of the relationship.

[24] Further, the IAD appears to have been fixated on the motivation of the aunt in introducing the Applicant and her spouse, in effect, imputing the motivation of the aunt onto the couple themselves.

[25] In sum, the IAD erred in its finding that the Applicant asserted in her testimony that there was a close friendship between her and the aunt. And, based on this, the IAD further erred in finding that because the aunt was not a close friend, there was then a contradiction in the Applicant and her spouse's testimony that the Applicant did not visit the aunt because she was shy. The IAD also erred in its finding that the Applicant's testimony during the IAD hearing changed concerning her visits to the aunt's home.

[26] The IAD's misapprehension of this evidence is sufficient to render unreasonable its finding that the testimony concerning the relationship with the aunt was not credible, and therefore did not support a finding of genuineness.

Development of the Relationship

[27] The IAD also found the development of the relationship from the time it became romantic to marriage was very rapid and that this was inconsistent with a genuine marriage, in particular, given that the relationship had initially fizzled out.

[28] The transcript demonstrates that the consistent evidence of the Applicant and her spouse was that they began communicating via WeChat in June or July 2016 but after two or three months the communications fizzled out. Her testimony was that at that time she was also dating other men, she thought Guo may be immature and too young for her, and she was concerned about his motivation given that he had told her that he had twice previously unsuccessfully applied for student visas to study in Canada. Guo's testimony was that his mother saw the Applicant's picture and thought she had a "lucky face" and had also visited her home town and spoken with her family's neighbours who spoke well of the Applicant. His mother then encouraged Guo to contact the Applicant again which he did in December 2016. He testified that he thought he would give it another try, if it worked out great, if not, then he and the Applicant would still be friends. The consistent testimony is that they continued to communicate from December 16, 2017.

[29] The Applicant stated that they communicated 3, 4 or 5 times a week and that her impression of Guo gradually changed. She was satisfied that he had not sought student visas since 2012, he had graduated and had a good stable job and he had demonstrated that he was a caring person and showed warmth to her family members in China. She stated that she had stopped seeing other people because she was eager to get to know Guo and start a formal relationship. When asked what the status of the relationship was just before she and Guo met in person she said maybe close to becoming boyfriend and girlfriend.

[30] The Applicant visited China on April 7, 2017 and stayed until August. The consistent testimony of the couple is that on June 24, 2017 they took a trip to Shanghai, stayed together in a

hotel and after this that marriage discussions solidified. The Applicant's testimony was that the topic of marriage had arisen before her trip to China, the general idea being that if they met in person and really liked each other then the goal would be to marry. Guo proposed on July 1, 2017, there was a banquet with 200 guests and marriage ceremony on July 11, the marriage was registered on July 12 and the couple had a formal wedding with 600 guests on February 7, 2018.

[31] The IAD states that although the pair were just friends when the Applicant arrived in China, Guo met her at the airport with roses. She explained that his family made him perform this gesture. The IAD does not reach any specific finding about this, however, given the Applicant's testimony as to how the relationship developed and the involvement of Guo's family, it is difficult to see how this would give rise to a credibility concern. The IAD also appears to acknowledge the explanations given for why the relationship originally fizzled out but then restarted in December 2016. However, it found that the Applicant and Guo had not provided more details as to why the relationship initially fizzled but on reconnection rapidly advanced to marriage and held that "this slow and then very fast development is inconsistent with a genuine relationship and factors negatively in my decision making". I agree with the Applicant that, when viewed in the context of the whole of the testimony of the Applicant and her spouse, in which it was explained why the relationship had not initially taken off but subsequently later worked out, the IAD's finding lacks justification.

[32] The IAD also found that the Applicant and Guo had demonstrated very limited knowledge and interest in each other, including that during the visa interview Guo had little knowledge of details of the Applicant's job, friends and notably the reason her father fled China.

[33] The Applicant notes that her counsel explained in his submissions that Guo told the visa officer that the Applicant's only employment in Canada was at the supermarket (Foody Mart), where she has worked since 2015. The visa officer found that this was inconsistent with the documents indicating that the Applicant's employer changed in May 2018, and made an adverse finding based on Guo's lack of knowledge about his wife's employment. However, at the IAD hearing, it became clear that Guo was correct in stating that the Applicant has worked continuously at Foody Mart. The Applicant adduced evidence from Foody Mart indicating that she had always worked at the supermarket, but that she did so through a placement agency. While that agency had changed ownership in May 2018, her actual work placement remained the same.

[34] The November 16, 2020 submissions by the Applicant's counsel to the IAD do explain the apparent discrepancy in her employment and the September 6, 2019 letter from Foody Mart confirms that the Applicant had been working there from November 9, 2015 to the date of the letter and that it was the placement agency assigning her to work there that had changed, not her actual work.

[35] I also note that at the IAD hearing Guo correctly answered that his wife had worked in the Foody Mart continuously since they had been introduced.

[36] Indeed, in the Minister's November 14, 2020 post-hearing submissions the Minister explicitly agreed that the Applicant had credibly addressed the visa officer's concerns relation to Guo's knowledge of his wife's employment, immigration to Canada and her father's

immigration history to Canada when those matters were put to the Applicant at the IAD hearing. While on judicial review the Respondent conversely submits that Guo failed to explain to the visa officer that the Applicant was not directly employed by the Foody Mart but “merely worked there via a job placement agency that had changed ownership”, it is unclear to me how Guo could reasonable be expected to aware of this rather microscopic level of information. He correctly stated that her job had not changed.

[37] As to her father’s immigration to Canada, when interviewed by the visa officer Guo knew that the Applicant’s father came to Canada as a refugee but did not know the reason why her father fled China. Before the IAD, the Applicant explained that she did not have a close relationship with her father and Guo’s testimony was that she seldom spoke of her father. I agree with the Applicant that the IAD does not explain why it was implausible, given this consistent evidence, that the Applicant did not discuss with Guo the reason why her father fled China. Indeed, the Minister in its post-hearing submissions accepted that this concern had been credibly addressed by the testimony given before the IAD.

[38] I also agree with the Applicant that the IAD failed to explain why Guo’s lack of knowledge on this one issue apparently outweighed his testimony as to all of the things that he did know about the Applicant including, for example, the names of her three friends from the grocery store, that when she is not working she likes to cook, garden, and watch TVB programs and help take care of her niece. In my view, the IAD’s finding that the Applicant and her spouse had not demonstrated a knowledge or interest in each other is not justified based on the whole of

the evidence that was before the IAD. Accordingly, its finding that this was inconsistent with a genuine relationship is unreasonable.

Purpose of the marriage

[39] Finally, the IAD found that the Applicant had not demonstrated that the primary purpose of the marriage was something other than gaining immigration status. In that regard, the IAD stated the Applicant's testimony was that when the relationship resumed in December 2016 she no longer had concerns about the Guo's motives because he had not sought a student visa subsequent to 2012 and he was well established in China. The IAD states, however, that Guo had testified "that he had just finished his studies in China and if he were allowed to come to Canada, he may pursue graduate studies. I find the Applicant's on-going desire to study in Canada is a pull factor". The IAD then noted that the Applicant has visited China twice since the marriage and testified that during each of her visits she also vacationed in Japan. Her husband had applied for a visa to go wither but was unsuccessful. The IAD then states "I find that the Applicant has shown some desire to leave China which is a push factor".

[40] However, as the Applicant points out, Guo did not testify that he had just graduated and the record indicates that, in fact, he graduated in July 2014, which was before the aunt introduced him to the Applicant. There was also testimony that Guo was now established in his work in China. Further, that Guo's parents preferred the couple to settle in China but that the Applicant strongly wished to live in Canada. Guo had not been able to change her mind about this and he did not want to be separated from his wife. When asked about the couple's plans, were Guo to come to Canada, his testimony was that they would have to work hard to learn English and that

he would have to find a job as they planned to have children. Another plan being considered was that he would pursue graduate studies. Based on this, it would appear that the possibility of Guo undertaking of graduate studies was one scenario that the couple were contemplating, however, in the context of the whole of the testimony it is difficult to see how this is would amount to a determinative “pull” factor in these circumstances.

[41] As to the IAD’s treatment of the Applicant’s vacations to Japan, at the hearing before the IAD the Applicant was asked if she and her spouse had ever traveled internationally. She testified that when she returned to China she went to Japan twice with her younger sister and her sister’s daughter. She stated that she went to Japan because she really likes it there and she has aunts there. Further, that they had planned that Guo would also go on these holidays but his visa was refused. In the absence of any evidence that Guo was considering staying in Japan and/or not returning to China, I have considerable difficulty in understanding how a desire to travel with his spouse on family vacations to Japan amounts to a push factor – but not evidence of a genuine relationship.

[42] The Applicant raises other concerns with the IAD’s decision and the Respondent raises findings it submits to be reasonable. However, I need not address these as I am satisfied that the errors identified above are sufficient to render the IAD’s decision unreasonable and require the matter to be redetermined.

JUDGMENT IN IMM-349-21

THIS COURT'S JUDGMENT is that

1. The application for judicial review is granted;
2. The decision is set aside and the matter shall be remitted to another officer for redetermination;
3. There shall be no order as to costs; and
4. No question of general importance for certification was proposed or arises.

"Cecily Y. Strickland"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-349-21

STYLE OF CAUSE: SHULAN ZHANG v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: BY VIDEOCONFERENCE USING ZOOM

DATE OF HEARING: FEBRUARY 10, 2022

JUDGMENT AND REASONS: STRICKLAND J.

DATED: FEBRUARY 17, 2022

APPEARANCES:

Michael Korman FOR THE APPLICANT

Prathima Prashad FOR THE RESPONDENT

SOLICITORS OF RECORD:

Korman & Korman LLP FOR THE APPLICANT
Toronto, Ontario

Department of Justice FOR THE RESPONDENT
Toronto, Ontario