

Federal Court



Cour fédérale

**Date: 20221017**

**Docket: IMM-6550-20**

**Citation: 2022 FC 1414**

**Toronto, Ontario, October 17, 2022**

**PRESENT: The Honourable Mr. Justice Fothergill**

**BETWEEN:**

**BAO QIU XIA  
(AKA LONG LUAN)**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. Overview

[1] Bao Qiu Xia, also known as Long Luan, seeks judicial review of a decision by a Senior Immigration Officer [Officer] to refuse his request to apply for permanent residence from within Canada on humanitarian and compassionate [H&C] grounds pursuant to s 25(1) of the

*Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA]. The Officer also declared Mr. Luan to be inadmissible to Canada for misrepresentation pursuant to s 40(1)(a) of the IRPA.

[2] The Officer unreasonably relied on the seriousness of Mr. Luan's misrepresentation to repeatedly discount every factor that might have favoured granting H&C relief. The Officer also failed to recognize that Mr. Luan's wife and child, both of whom are Canadian citizens, may not be able to relocate to China, because that country does not recognize dual nationality.

[3] The application for judicial review is allowed.

## II. Background

[4] Mr. Luan is a citizen of China. He came to Canada in 1990 and sought protection as a refugee based upon his alleged participation in the Tiananmen Square protests. His refugee claim was refused by the Immigration and Refugee Board, and a departure order was issued against him in 1994.

[5] Mr. Luan's first wife applied to sponsor him for permanent residence in 1993. However, she withdrew the application when the couple divorced. Mr. Luan then "went underground", and "lived like a shadow" in different cities for more than a decade.

[6] Mr. Luan did not bring any identification documents with him from China. He says he attempted to retrieve them from his family, but they did not provide them. His family asked that

he not contact them directly, because this might cause difficulties with the Chinese authorities. They suggested Mr. Luan adopt a new identity for his safety.

[7] In 2004, Mr. Luan obtained false identification documents with the name “Bao Qiu Xia”. He managed to get a driver’s licence and a social insurance number with this identity. He also made a refugee claim using his new identity, but then failed to appear for the hearing.

[8] In 2005, Mr. Luan met his current wife Qi Fang. Ms. Fang is a Canadian citizen who was born in China. She has a son named Alfred who was born in Canada in 2004. Ms. Fang and her former husband could not agree on whether to live in Canada or China. Her former husband returned to China and eventually remarried. Ms. Fang struggled to raise Alfred on her own, and arranged for him to live with her parents in China shortly before she met Mr. Luan.

[9] Mr. Luan and Ms. Fang moved in together in February 2006. In July 2007, Ms. Fang brought Alfred, now two years old, back to Canada to live with them. Her divorce took effect in February 2007, and she married Mr. Luan in September 2007. Ms. Fang knew that Mr. Luan did not have status in Canada, but she did not know that Bao Qiu Xia was not his real name.

[10] In 2008, Mr. Luan submitted a request for permanent residence under the spousal sponsorship program using the name Bao Qiu Xia. Stage 1 approval was granted in 2010. However, during the processing of Stage 2, Mr. Luan’s fingerprints were matched with those associated with his initial refugee claim. At first, Mr. Luan insisted this must be a mistake, but he eventually admitted his true identity.

[11] The spousal sponsorship application was refused in 2018, and Mr. Luan was declared inadmissible to Canada for misrepresentation. He requested an exemption from his inadmissibility on H&C grounds, but this was refused by the Officer on June 16, 2020.

[12] The Officer accepted that Mr. Luan had attained significant establishment in Canada, based on 30 years of residence, his familial situation, his financial establishment, and the testimonials of friends and relatives. However, the Officer observed that Mr. Luan's "strong establishment in Canada is the result of his decades-long evasion of immigration authorities, and the circumvention of Canadian immigration laws".

[13] The Officer acknowledged that Mr. Luan may face hardship in re-establishing himself in China, and he may not enjoy the same level of financial well-being. This was accorded "some weight". The Office again noted that "these difficulties are of his own making".

[14] The Officer accepted that Mr. Luan's family "may be adversely affected by his removal", but again remarked that this was "a predicament of his own making". While "certainly far from ideal", the Officer also found that it would be possible for Ms. Fang and Alfred to move to China with Mr. Luan, to alleviate the hardship of familial separation.

[15] The Officer's analysis of Alfred's best interests was as follows:

I have considered the best interests of the applicant's child – Alfred. While there does not appear to be evidence of a legal adoption of the child by the applicant, I am, for all intents and purposes, satisfied that the applicant has a close, paternal relationship with his step-son. The affidavits submitted by the

applicant, his spouse, family, friends, and, most importantly, the child in question, persuade me that the applicant is a doting and loving father, who is caring, involved, and invested in his child's life.

The child himself is a Canadian citizen who has spent the bulk of his life residing here. He is not fluent in Chinese, and does not have friends or a social network in China. I note that he is doing well at school, and actively pursues academic and athletic extracurricular activities. I am cognizant that, should the applicant be removed to China, the family's financial situation would deteriorate, and thus the child's ability to participate in extracurricular scholastic activities and hockey may be negatively impacted.

In considering the above, I am of the opinion that the interests of the child would be best served if his relationship with the applicant remains undisturbed, and for the child and his family to remain in Canada.

[16] The Officer's decision concluded with a summary of Mr. Luan's establishment and the hardships he and his family would endure if he returned to China alone. The Officer repeated the finding that the "severity and duration of the applicant's misrepresentation is a factor that weighs substantially against the applicant".

[17] The Officer balanced the best interests of the child [BIOC] against other factors as follows:

I have given the BIOC factor significant weight in my consideration. Although a significant factor, I do not find it to be the determinative factor, and do not find that it outweighs the applicant's misrepresentation, and his repeated attempts at frustrating the Canadian immigration process.

III. Issue

[18] The sole issue raised by this application for judicial review is whether the Officer's decision was reasonable.

IV. Analysis

[19] The Officer's decision is subject to review by this Court against the standard of reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov] at para 10). The Court will intervene only where "there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency" (*Vavilov* at para 100).

[20] The criteria of "justification, intelligibility and transparency" are met if the reasons allow the Court to understand why the decision was made, and determine whether the decision falls within the range of acceptable outcomes defensible in respect of the facts and law (*Vavilov* at paras 85–86, citing *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47).

[21] Mr. Luan says that the Officer failed to consider "the full extent of the real-life harm to the child". He maintains that the Officer did not reasonably explain the manner in which the BIOC were weighed against the misrepresentation, and the reasons do not permit him or the Court to understand the Officer's analysis.

[22] The Officer found that, if Mr. Luan were to return to China without his family, the deterioration in the family's financial situation could potentially jeopardize Alfred's participation in extracurricular activities. I agree with Mr. Luan that the Officer does not appear to have seriously engaged with the most significant negative impact of family separation, specifically Alfred's emotional health and his development into adulthood.

[23] While the Officer found the BIOC to be a significant factor, these were held not to be determinative and insufficient to outweigh Mr. Luan's misrepresentation. The Officer's reasons do not disclose any rationale for this conclusion, and the decision does not exhibit the requisite degree of justification, intelligibility and transparency (*Vavilov* at paras 85–86).

[24] The Officer did not conduct a holistic assessment of positive and negative factors. Rather, the Officer repeatedly discounted Mr. Luan's establishment and potential hardship based upon Mr. Luan's misrepresentation. As Justice Sandra Simpson explained in *Jiang v Canada (Public Safety and Emergency Preparedness)*, 2013 FC 413 at paragraph 11, the problem with this approach is that the Officer double-counted the seriousness of the misrepresentation by using it to reduce the weight attributable to establishment and hardship factors, and then using it again in the final weighing.

[25] In *Phan v Canada (Citizenship and Immigration)*, 2019 FC 435, Justice Cecily Strickland cautioned against an analytical approach where misrepresentation, even if deliberate and serious, is repeatedly used to discount positive factors (at para 36):

[...] In this matter, the IAD discounted not only the establishment factor but also the Applicant's expression of remorse, her community support, and the hardship to the Applicant, all on the basis of the misrepresentation. [...] I would observe that, read in whole, the IAD's focus appears to have been to discount or dismiss the H&C factors primarily on the basis of the misrepresentation, rather than properly assessing each of those factors and then weighing them to determine if they served to establish H&C considerations that warrant special relief in light of all the circumstances of the case.

[26] The Officer unreasonably relied on the seriousness of Mr. Luan's misrepresentation to repeatedly discount every factor that might have weighed in favour of granting H&C relief. In effect, the Officer "elevated misrepresentation as a factor to a level that made it impossible to overcome on an H&C analysis" (*Shen v Canada (Citizenship and Immigration)*, 2018 FC 620 at para 29). While the misrepresentation was a relevant factor to be considered, it should not have been the only or primary factor, as this tends to defeat the purpose of s 25 of the IRPA (*Kobita v Canada (Citizenship and Immigration)*, 2012 FC 1479 at para 35).

[27] The Officer suggested that Alfred could move to China, even though this would not be in his best interests. However, the Officer appears to have disregarded evidence that Ms. Fang and Alfred, both of whom are Canadian citizens, may not be able to relocate there because China does not recognize dual nationality. The Respondent says this aspect of the Officer's analysis was "superfluous", and it was never seriously contemplated that Alfred would return with his family to China. But the possibility of relocation was mentioned a number of times in the Officer's decision, always in the context of mitigating the hardship of family separation.



V. Conclusion

[28] The application for judicial review is allowed, and the matter is remitted to a different immigration officer for reconsideration. Neither party proposed that a question be certified for appeal.

[29] Mr. Luan asks that the style of cause be amended to reflect his true identity. The Respondent does not object to including Mr. Luan's correct name in the style of cause, but urges the Court to retain his pseudonym to ensure consistency with Mr. Luan's immigration files.

[30] The style of cause will therefore be amended to identify the Applicant as "Bao Qiu Xia (aka Long Luan)".

**JUDGMENT**

**THIS COURT’S JUDGMENT is that:**

1. The application for judicial review is allowed, and the matter is remitted to a different immigration officer for reconsideration.
2. The style of cause is amended to identify the Applicant as “Bao Qiu Xia (aka Long Luan)”, with immediate effect.

“Simon Fothergill”

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Judge

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

**DOCKET:** IMM-6550-20

**STYLE OF CAUSE:** BAO QIU XIA (AKA LONG LUAN) v THE MINISTER OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** BY VIDEOCONFERENCE BETWEEN TORONTO AND OTTAWA, ONTARIO

**DATE OF HEARING:** SEPTEMBER 20, 2022

**JUDGMENT AND REASONS:** FOTHERGILL J.

**DATED:** OCTOBER 17, 2022

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