

Federal Court



Cour fédérale

**Date: 20230710**

**Docket: IMM-3661-22**

**Citation: 2023 FC 935**

**Ottawa, Ontario, July 10, 2023**

**PRESENT: Mr. Justice Norris**

**BETWEEN:**

**ZHAOHUA DONG**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] The applicant, Zhaohua Dong, is a citizen of China. In December 2019, he applied for permanent residence in Canada under the sponsorship of his wife, Ying Dong, a permanent resident. In a decision dated April 19, 2022, an officer with Immigration, Refugees and Citizenship Canada refused the application because the applicant had not established that his marriage to Ms. Dong was not entered into primarily for the purpose of acquiring status under the *Immigration and Refugee Protection Act*, SC 2001, c 27 (*IRPA*) and that it is genuine, as

required by subsection 4(1) and section 124 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227.

[2] The applicant now applies for judicial review of this decision under subsection 72(1) of the *IRPA*. He submits that the decision is unreasonable and that it was made in breach of the requirements of procedural fairness.

[3] For the reasons that follow, I agree with the applicant that the decision is unreasonable because the officer's reasons lack intelligibility and transparency and because the officer failed to take material evidence into account. Since this is sufficient to require that the matter be reconsidered, it is not necessary to address the procedural fairness issue.

[4] The parties agree, as do I, that the substance of the officer's decision is to be reviewed on a reasonableness standard. 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" (*Canada (Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 85). The onus is on the applicant to demonstrate that the officer's decision is unreasonable. To set aside a decision on this basis, the reviewing court must be satisfied that "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).

[5] The applicant was born in China in 1980. Ms. Dong was born there in 1985. She became a permanent resident of Canada in September 2007.

[6] The applicant and Ms. Dong were introduced by a matchmaker in early 2010. At the time, the applicant was living in the United States without status and Ms. Dong was living in Toronto. The two communicated virtually at first but after several months Ms. Dong began visiting the applicant in the United States and the two became romantically involved. Eventually, they held what they referred to as a wedding reception in New York City on November 14, 2011 (although they did not “officially register” their marriage at that time). Ms. Dong continued to visit the applicant in the United States.

[7] In June 2012, Ms. Dong gave birth to a daughter in Toronto. No father is named on the Statement of Live Birth form but the applicant and Ms. Dong maintain that he is the father. (When the application for permanent residence was submitted, the daughter was living in China with the applicant’s parents.) In September 2018, the applicant entered Canada irregularly and joined Ms. Dong in Toronto. The two were legally married in Toronto in January 2019.

[8] The application for permanent residence was supported by numerous documents demonstrating the nature of the relationship between the applicant and Ms. Dong as well as written submissions from counsel. The supporting documents included: lease agreements in both of their names for their former and current residences; a letter from their previous landlord confirming that the two were living together; insurance for Ms. Dong’s vehicle listing the applicant as a driver; life insurance for Ms. Dong listing the applicant and their daughter as joint beneficiaries; phone records; joint bank account statements; and photographs of the wedding reception in New York, the marriage in Toronto, and the couple involved in day to day activities together.

[9] As set out in the officer's reasons, after reviewing the initial application package, the officer "determined that there was insufficient evidence to support the level of interdependence expected after 9 years in a relationship." The officer noted in particular that the photographs submitted "appear to be posed and the sponsor does not demonstrate a degree of comfort with the applicant that would be expected in a relationship of this duration." The officer also noted that the applicant had not been named on the Statement of Live Birth (which the officer erroneously refers to as a birth certificate) "despite the applicants considering themselves married at the time of birth."

[10] As a result of these concerns, on April 4, 2022, the officer sent the applicant a procedural fairness letter stating that the officer was "not satisfied that you and your sponsor did not enter into marriage primarily for the purpose of obtaining status under the IRPA" and giving the applicant an opportunity to "make any submissions related to this matter." No explanation for why the officer was of this view is provided in the procedural fairness letter.

[11] With the assistance of counsel, the applicant responded to the procedural fairness letter by submitting updated information including phone and banking records, insurance documents, untranslated WeChat communications, and additional photographs along with further written submissions.

[12] The officer did not interview either the applicant or Ms. Dong before refusing the application.

[13] In the April 19, 2022, decision, in addition to the original concerns noted above, the officer assessed the applicant's evidence as follows:

- The joint bank account statements reflect deposits of the applicant's pay cheque and regular withdrawals for insurance payments but there were no day to day living expenses such as groceries, gas, or rent.
- The insurance documents are updated versions of policies submitted previously.
- The WeChat communications could not be considered because they were not translated.
- The lease agreement "is not the legal agreement required in the province of Ontario and therefore holds less weight."
- The phone records reflect calls of only short durations between the applicant and Ms. Dong and this "does not demonstrate conversations that would be expected calling each other for regular communications."
- The new photographs "all appear to be posed for this application and have been taken by a third party."

[14] After "careful review of all submissions and based on a balance of probabilities," the officer was not satisfied that the applicant and Ms. Dong "are in a genuine relationship not entered primarily for the purpose of acquiring status and privilege" under the *IRPA*. Since this precludes the applicant from being considered a member of the spouse or common law partner in Canada class, the application for permanent residence was refused.

[15] As I have already stated, I agree with the applicant that the officer's decision lacks transparency and intelligibility. I also agree that the officer failed to account for material evidence supporting the applicant's position that his marriage to Ms. Dong is bona fide.

[16] I begin by observing that the officer misapprehends the record in at least two respects: first, by identifying the applicant as a citizen of Vietnam when in fact he is a citizen of China; and second, by identifying the pay cheques deposited into the joint bank account as the applicant's when in fact they are Ms. Dong's. While I am not convinced that these misapprehensions of the record are necessarily material, they certainly give rise to a concern that the officer did not review the record with the degree of care that was required.

[17] In my view, the officer's decision suffers from four key flaws that together undermine its overall reasonableness.

[18] First, the officer's assessment that, in the photographs, Ms. Dong "does not demonstrate a degree of comfort with the applicant that would be expected in a relationship of this duration" is entirely subjective and, as such, does not provide a reasonable basis for the officer's ultimate conclusion. The genuineness of a relationship must be assessed through the eyes of the parties and against the cultural background in which they have lived, not through the decision maker's own conception of what a genuine relationship would look like (*Khan v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1490 at para 16; *Gebremedhin v Canada (Citizenship and Immigration)*, 2022 FC 1386 at para 49). Indeed, the officer does not explain in any way how it was determined that Ms. Dong did not demonstrate "a degree of comfort with the

applicant that would be expected in a relationship of this duration.” In the absence of such an explanation, the officer’s assessment of this evidence is unintelligible and opaque. Also unexplained is the basis for the officer’s finding that the new photographs “all appear to have been posed for this application.” As well, without further explanation, the significance of the fact that a third party had taken the photographs is a complete mystery.

[19] Second, it is equally unintelligible and opaque why the lease the couple signed with their landlord “holds less weight” because it is not a standard form lease. This is particularly so given the letter from their former landlord corroborating the fact of their tenancy from October 2018 until March 2022.

[20] Third, in view of the evidence that the applicant and Ms. Dong were living together, it is unclear why they would be expected to engage in lengthy telephone calls, as the officer evidently thought they would if they were in a genuine relationship.

[21] Finally, the officer failed to give any meaningful consideration to the evidence that the applicant was insured to drive Ms. Dong’s car and that he and their daughter were joint beneficiaries on Ms. Dong’s life insurance policy. While these circumstances are not necessarily determinative, they provided material support for the applicant’s position that his marriage to Ms. Dong is bona fide: see *Shumilo v Canada (Citizenship and Immigration)*, 2018 FC 1135 at para 48. For the contrary conclusion to be reasonable, the officer had to explain why this evidence was not found to be persuasive. The officer failed to do so.

[22] As *Vavilov* holds, “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” (at para 128). I am satisfied that the decision is unreasonable. There are sufficiently serious shortcomings in the officer’s decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency. This application for judicial review must, therefore, be allowed and the matter remitted for redetermination by a different decision maker.

[23] The parties did not propose any serious questions of general importance for certification under paragraph 74(d) of the *IRPA*. I agree that no question arises.



**JUDGMENT IN IMM-3661-22**

**THIS COURT'S JUDGMENT is that**

1. The application for judicial review is allowed.
2. The decision dated April 19, 2022, refusing the applicant's application for permanent residence is set aside and the matter is remitted for redetermination by a different decision maker.
3. No question of general importance is stated.

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"John Norris"

Judge

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

**DOCKET:** IMM-3661-22

**STYLE OF CAUSE:** ZHAOHUA DONG v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** HELD BY VIDEOCONFERENCE

**DATE OF HEARING:** JANUARY 18, 2023

**JUDGMENT AND REASONS:** NORRIS J.

**DATED:** JULY 10, 2023

**APPEARANCES:**

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