Federal Court  Cour fédérale

**Date: 20241107**

**Docket: IMM-4598-23**

**Citation: 2024 FC 1784**

**Ottawa, Ontario, November 07, 2024**

**PRESENT: Mr. Justice Pentney**

**BETWEEN:**

**YICHEN LIU**
**YONGCHENG JIN**
**YEXIN JIN**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION**

**Respondent**

## JUDGMENT AND REASONS

[1] The Applicants seek judicial review of the refusal to extend their permanent resident visas ("PRV") eligibility period despite their legitimate reasons for needing more time before they could travel to Canada.

[2] The Applicants are citizens of China. Yichen Liu is the Principal Applicant (the "PA"), and she applied for a visa together with her husband, Yongcheng Jin and their minor child, Yexin

Jin. They received PRVs as provincial nominees in March 2020. The Applicants were unable to travel at that time because of restrictions associated with the COVID-19 pandemic. When the Respondent offered them the opportunity to renew their eligibility periods pursuant to a special program developed in response to COVID-19 travel delays, the Applicants indicated their continued interest in coming to Canada.

[3] The Applicants were granted Confirmation of Permanent Residence (CoPR) and PRVs permitting them to travel to Canada; the husband's PRV was issued in March 2022, while the PA and the minor child received theirs in April 2022. These were valid until November 9, 2022, which gave them six months to organize their landing in Canada. They planned to travel in September 2022, and say they purchased airline tickets.

[4] In late August, the Principal Applicant, discovered that she had an unexpected pregnancy and her doctor advised against long-haul travel; she began a treatment plan to reduce her risks of miscarriage. The Applicants immediately informed the Respondent of this development, and then changed their flight arrangements to November 8, 2022 so that they would arrive in Canada before the expiry of their CoPRs and PRVs.

[5] On November 2, 2022, the Principal Applicant attended a medical examination where she was told that the fetus had lost its heartbeat and she would have to undergo an abortion. On November 3, 2022, she advised the Respondent of this medical emergency and requested an extension of their PRVs. The Applicants were unable to leave China on November 8, 2022 to complete their landing prior to the PRV expiry date, as they had planned.

[6] On November 21, 2022, the Respondent denied to the Applicants' request for a visa extension, stating:

> Your permanent resident visas and Confirmation(s) of Permanent Residence (COPR) were issued on April 26, 2022 and were valid to November 09, 2022, providing you with sufficient time to make appropriate arrangements to land in Canada. All visas must be used for landing within their validities and extensions will not be granted.
>
> If you are still interested in immigrating to Canada, you may submit a new application and pay new processing fees. The application will be assessed according to the Act and Regulations in force at the time, thus no assurances of success may be made.

[7] The Officer's notes in the Global Case Management System elaborate on the reasons for the denial:

> I note that the clients had about 7 months to travel and land as [Permanent Residents] with the most recent CoPR/visa and they chose not to do it before the end of Sept 2022. I am satisfied the client[s] were given sufficient time to organize their landing as [Permanent Residents]. This file is approved and closed. Visa extension denied. Clients may reapply with new fees and form when they are ready.

[8] The Applicants argue that the decision should be overturned because it was made in a procedurally unfair manner, the decision is unreasonable, and the Officer fettered their discretion by refusing to consider an extension.

[9] The determinative issue in this case is that the Officer erred by fettering their discretion. A decision which is the product of fettered discretion is automatically unreasonable because it

represents a failure to exercise the discretion or decision-making authority conferred on the officer: *Austin v Canada (Citizenship and Immigration)*, 2018 FC 1277 [*Austin*] at para 16.

[10] The Officer in this case appeared to be under the mistaken impression that no extension was possible. This is clearly expressed in the letter sent to the Applicants on November 21, 2022: "All visas must be used for landing within their validities and extensions will not be granted."

[11] The problem with this approach is that it is contrary to the policy guidance set out in the message sent to the Applicants inviting them to confirm that they still wanted to immigrate to Canada under the exceptional policy adopted after the pandemic. That document states: "Once a CoPR expires, applicants are normally required to submit a new application if they still want to immigrate to Canada." (Emphasis added). In addition, previous decisions of this Court have confirmed that there is a discretion – however limited– to extend a visa validity period in appropriate circumstances: see, for example *Kheiri v Canada (Minister of Citizenship and Immigration)*, 2000 CanLII 15933 (FC); *Austin*; *Singh Bajwa v Canada (Citizenship and Immigration)*, 2012 FC 864.

[12] There is no indication that the Officer gave any consideration to the reasons put forward by the Applicants to explain and justify their request for an extension of their visa eligibility. The Officer's comment that they had 7 months to organize their travel but chose to wait until September 2022 misses the point. I agree with the Applicants that their CoPR and visa documents were valid until November 9, 2022. They were not told to rush to Canada at the earliest opportunity, but rather were given a deadline for their landing in Canada. They had

arranged to travel so that they would arrive in Canada before that deadline expired, but were unable to do so due to a medical emergency. The fact that they could have travelled sooner does not justify a failure to consider why they could not travel prior to the expiry of the eligibility period.

[13] The decision reflects a failure – or refusal – to exercise the discretion to consider whether the Principal Applicant's circumstances warranted an extension of the eligibility period. It was the product of fettered discretion. The decision is, therefore, automatically unreasonable.

[14] In light of my finding on the issue of fettered discretion, it is not necessary to deal with the other arguments advanced by the Applicants.

[15] For these reasons, the application for judicial review will be granted. The decision will be quashed and set aside, and the matter remitted back for reconsideration by a different officer.

[16] There is no question of general importance for certification.

**JUDGMENT in IMM-4598-23**

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

1. The application for judicial review is granted.

2. The decision of the Visa Officer dated November 21, 2022 is hereby quashed and set aside. The matter is remitted back for reconsideration by a different officer.

3. There is no question of general importance for certification.

"William F. Pentney"
Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

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| **DOCKET:** | IMM-4598-23 |
| **STYLE OF CAUSE:** | YICHEN LIU, YONGCHENG JIN, YEXIN JIN v THE MINISTER OF CITIZENSHIP AND IMMIGRATION |
| **PLACE OF HEARING:** | TORONTO, ONTARIO |
| **DATE OF HEARING:** | OCTOBER 10, 2024 |
| **REASONS FOR JUDGMENT AND JUDGMENT:** | PENTNEY J. |
| **DATED:** | NOVEMBER 07, 2024 |

**APPEARANCES:**

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| Rishma Bhimji | FOR THE RESPONDENT |

**SOLICITORS OF RECORD:**

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