Federal Court Cour fédérale

Date: 20210112

Docket: IMM-6024-19

Citation: 2021 FC 38

Ottawa, Ontario, January 12, 2021

PRESENT: Madam Justice Pallotta

BETWEEN:

YAN ZHAO

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] This application concerns the decision of the Immigration Appeal Division (IAD) dismissing an appeal by the applicant, Ms. Yan Zhao, from an exclusion order. The IAD denied Ms. Zhao's request for special relief on humanitarian and compassionate (H&C) grounds pursuant to section 67(1)(c) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*].

[2] Ms. Zhao is a citizen of China who came to Canada in 2000 as a foreign student at the age of 21. In 2004, she paid $30,000 to enter into a non-genuine marriage with a Canadian citizen and in April 2005, obtained permanent residence on the basis of that marriage. The marriage was dissolved by divorce in 2008. Ms. Zhao is currently re-married to a Canadian citizen and they have a daughter who was born in July 2018.

[3] Following an investigation into marriage fraud, Ms. Zhao was reported for misrepresentation in March 2015. She was asked to provide written submissions and was referred to a hearing. Following the hearing in October 2018, the Immigration Division (ID) found Ms. Zhao had entered into a non-genuine marriage to obtain permanent residence, and found her to be inadmissible on the basis of misrepresentation pursuant to s. 40(1)(a) of the *IRPA*. As a result of the inadmissibility finding, a 5-year inadmissibility bar was imposed. The ID issued an exclusion order against Ms. Zhao.

[4] Ms. Zhao appealed to the IAD. She did not challenge the legal validity of the exclusion order, but requested that the appeal be allowed based on H&C considerations pursuant to section 67(1)(c) of the *IRPA*. The H&C considerations that Ms. Zhao put forward included the best interests of her child, her establishment in Canada, and hardship to her family. By decision dated September 18, 2019, the IAD dismissed Ms. Zhao's appeal and found that the H&C factors in the case did not warrant an exercise of the IAD's discretion to grant special relief.

[5] On this application for judicial review, Ms. Zhao submits the IAD erred by performing a perfunctory analysis of the best interests of her child, by treating Ms. Zhao's 19 years of

establishment in Canada as a neutral factor based on her misrepresentation, and by misconstruing the reason why Ms. Zhao entered into the non-genuine marriage. Ms. Zhao also submits the IAD erred by undermining her credibility based on her misrepresentation, and by minimizing the hardship on Ms. Zhao's family if she were required to leave Canada.

[6] For the reasons below, I find Ms. Zhao has not established that the IAD's decision is unreasonable. This application for judicial review is dismissed.

II. **Issue and Standard of Review**

[7] The sole issue on this application for judicial review is whether the IAD's decision was reasonable.

[8] According to the Supreme Court's decision in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*], the IAD's decision is reviewable according to the reasonableness standard of review (see also *Xiao v Canada (Citizenship and Immigration)*, 2020 FC 117 at para 18; *Sun v Canada (Citizenship and Immigration)*, 2020 FC 477 at para 28). This is the same standard of review that was applicable prior to *Vavilov: Liu v Canada (Citizenship and Immigration)*, 2019 FC 184 [*Liu*] at para 19; *Li v Canada (Public Safety and Emergency Preparedness)*, 2019 FC 1235 at para 14; *Islam v Canada (Citizenship and Immigration)*, 2018 FC 80 at para 7.

[9] 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:

Vavilov at para 85. 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.

III. **Analysis**

[10] Section 40(1)(a) of the *IRPA* provides that a permanent resident or foreign national who induces an error in the administration of the *IRPA* by misrepresenting or withholding material facts is inadmissible for misrepresentation. The IAD may allow an appeal if it is satisfied that, at the time the appeal is disposed of, sufficient humanitarian and compassionate considerations warrant special relief in light of all the circumstances of the case, taking into account the best interests of a child (BIOC) who is directly affected by the decision: s. 67(1)(c) of the *IRPA*.

[11] Ms. Zhao alleges that the IAD's decision to dismiss her appeal was unreasonable. She alleges that the IAD erred:

A. in its credibility analysis;

B. by disregarding relevant evidence and engaging in speculation regarding the BIOC;

C. in its analysis of Ms. Zhao's remorse, which was based in part on a misunderstanding of why she entered into a fraudulent marriage;

D. by effectively disregarding Ms. Zhao's establishment in Canada on the basis of her previous misrepresentation; and

E. by minimizing hardship to Ms. Zhao's family.

A. *Did the IAD err in its credibility analysis?*

[12] The IAD found that Ms. Zhao's previous misrepresentation compromised her credibility. The misrepresentation was deliberate, and Ms. Zhao was granted permanent residence in Canada as a result. The IAD stated Ms. Zhao not only submitted a fraudulent immigration application, but also filed divorce documents with the Ontario Superior Court that included sworn declarations that Ms. Zhao conceded to be false. As a result, the IAD concluded it was unable to give significant weight to Ms. Zhao's testimony unless otherwise corroborated.

[13] Ms. Zhao submits the IAD erred by impugning her credibility outright, based on a single incident of deceitfulness: *Paulino v Canada (Citizenship and Immigration)*, 2010 FC 542 [*Paulino*] at paras 59-61. She asserts it was unreasonable for the IAD to find that none of her statements could be accepted as true in the absence of corroborating evidence, due to her prior misrepresentation. Ms. Zhao relies on *Maldonado v Canada (Minister of Employment and Immigration)* (1979), [1980] 2 FC 302, [1979] FCJ No 248 (CA) [*Maldonado*] for the proposition that sworn statements are presumed to be true unless there is a reason to doubt their truthfulness.

[14] In my view, the IAD provided cogent reasons for doubting the truthfulness of Ms. Zhao's sworn statements and testimony in the absence of corroboration. Ms. Zhao's intentionally false statements to immigration officials and her false declaration filed with the Ontario Superior Court provided reasons to rebut the presumption that her testimony was truthful. Ms. Zhao's case is distinguishable from *Paulino*, where the IAD erred by approaching the decision with a closed mind, focusing solely on the applicant's untruthful visitor visa application to the exclusion

of independent and credible evidence that supported the *bona fides* of the marriage. Here, the IAD did not impugn Ms. Zhao's credibility based on a single incident of deceitfulness and the IAD's focus was on the evidence directly relevant to the misrepresentation. Moreover, Ms. Zhao did not establish that the IAD ignored any relevant evidence.

B. *Did the IAD err by disregarding relevant evidence and engaging in speculation regarding the BIOC?*

[15] Where legislation specifically provides that the best interests of a child who is directly affected be considered—as under section 67(1)(c) of the *IRPA*—those interests are a singularly significant focus and perspective: *Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 [*Kanthasamy*] at paras 39-40.

[16] Ms. Zhao submits the IAD's decision is unreasonable because the analysis was not sufficiently alert, alive or sensitive to the BIOC: *Kanthasamy* at para 38, citing *Baker v Canada (Minister of Citizenship and Immigration)*, 1999 CanLII 699 (SCC), [1999] 2 SCR 817 at paras 74-75. Before the IAD, Ms. Zhao and her husband, Mr. Wang, claimed that their child would stay in Canada if Ms. Zhao were to return to China. When asked why the child would not accompany Ms. Zhao to China if the appeal were dismissed, Ms. Zhao stated that the child is Canadian and should not have to live elsewhere.

[17] Given her history of false statements, the IAD did not believe it was Ms. Zhao's plan to leave her daughter in Canada if her appeal were dismissed. In any event, the IAD noted that Ms. Zhao could not request special relief based on a chosen arrangement that would be more detrimental to her child. In considering possible arrangements for the child, the IAD concluded

it would be entirely reasonable for Ms. Zhao, as the primary caregiver, to take her infant daughter with her to China. Based on the evidence, the IAD found that the child could obtain status in China, and would not have to be separated from her mother. Taking into account the child's age and needs, the IAD found this would be a reasonable, temporary option, until Ms. Zhao could apply to return to Canada after the expiry of her inadmissibility bar. The IAD also determined Mr. Wang could join his wife in China during this time, or visit her regularly while staying in Canada. The IAD noted that financial resources did not appear to be an issue for the family.

[18] Ms. Zhao argues the IAD focused on one scenario—that the child would return to China with her mother—despite uncontradicted evidence from both parents that their plan was to leave the child in Canada with Mr. Wang. Even if the IAD did not agree with their plan, Ms. Zhao submits that the IAD was required to consider it as a possible scenario, and by failing to do so, the IAD failed to address the detrimental effect of the child's separation from her mother for several years.

[19] Furthermore, she submits that the IAD failed to assess another scenario, that is, whether the BIOC would be better served by allowing Ms. Zhao to remain in Canada to prevent disruption to the child's life. Ms. Zhao relies on *Yuan v Canada (Public Safety and Emergency Preparedness)*, 2017 FC 578 [*Yuan*] at paragraph 29, where this Court held the IAD's failure to consider the possibility that it would be in the best interests of the children to be with their parents in Canada was unreasonable.

[20] Ms. Zhao argues that the IAD was first required to articulate her child's best interests, before weighing the BIOC against the other positive and negative elements in the H&C analysis: *Sebbe v Canada (Minister of Citizenship and Immigration)*, 2012 FC 813 at para 16. She argues that the IAD failed to do so by ignoring the two most relevant scenarios noted above, thereby downplaying the significance of the BIOC factor.

[21] I am not persuaded that the IAD's BIOC analysis unreasonably ignored the most relevant scenarios.

[22] The failure to specifically analyze the BIOC in the context of a scenario that presumes the *status quo*—i.e. that Ms. Zhao's appeal is allowed and the entire family stays in Canada—is not a reviewable error in the present case. As the respondent correctly points out, the IAD panel was required to assess the consequences of Ms. Zhao's removal from Canada, and it did so. The *status quo* is, in a sense, the scenario against which the consequences of her removal are assessed. Faced with Ms. Zhao's removal order due to an inadmissibility finding, the IAD was required to consider the BIOC in determining whether special relief is warranted. In doing so, the IAD could consider various scenarios facing the child involved in the case, in view of the evidence; however, the BIOC is the focus of the IAD's consideration, not a specific scenario.

[23] Also, Ms. Zhao's reliance on *Yuan* is misplaced, as the facts can be distinguished from the present case. In *Yuan*, the children were living in China, not in Canada, and their father had hoped to move them to Canada if his appeal were granted. The Court found that the IAD erred by effectively dispensing with any consideration of the best interests of the three children, and

giving little credibility to the evidence of hardship they would face if the father's request for relief were denied, based on their parents' choice not to move them to Canada earlier.

[24] Moreover, in my view, it was open to the IAD to disbelieve Ms. Zhao's statement that despite being the primary caregiver, she would not take her daughter with her to China. I am not persuaded that the IAD made any reviewable error in analyzing the BIOC in a scenario where Ms. Zhao's daughter would accompany her to China.

[25] Furthermore, while the IAD focused on this scenario, I disagree with Ms. Zhao's submission that the IAD disregarded the alternative scenario, where the child would stay in Canada with her father. The IAD considered that scenario as well, but concluded it was more detrimental to the child. Ms. Zhao takes issue with the IAD's conclusion that it would be worse for her child to stay in Canada—she submits the child has no legal status, right to education, or right to medical care in China. However, when asked to point to any evidence to this effect, Ms. Zhao was unable to do so. Indeed, it appears that Ms. Zhao failed to include evidence on raising her child in China, and when she was asked at the IAD hearing to explain the lack of evidence, Ms. Zhao stated, "She's Canadian. Why [does] she need to go to China?" This echoes the sentiment expressed by Ms. Zhao in her statutory declaration, stating that her daughter is Canadian, and that it would be "enormously arrogant" to even suggest that her daughter should live anywhere but in Canada.

[26] At the IAD hearing, Ms. Zhao and Mr. Wang were asked about their plans in the situation where Ms. Zhao would have to return to China after an unsuccessful appeal. From a review of

the record, it is evident that Ms. Zhao and Mr. Wang did not fully consider how the needs of their daughter would be met if Ms. Zhao were to be removed from Canada—regardless of whether the child would stay in Canada or accompany her mother to China. When they were asked, repeatedly, why they would have Ms. Zhao return to China alone, with Mr. Wang and their daughter remaining in Canada, both Ms. Zhao and Mr. Wang simply continued to express their adamant position that this was their choice, as their daughter has the right to stay in Canada. Given the lack of evidence to support this position, in my view, the IAD reasonably found that Ms. Zhao could not request special relief based on a chosen arrangement that would be more detrimental to her child.

[27] Ms. Zhao also submits the IAD ignored relevant evidence and engaged in speculation about her child's best interests, contrary to *Kanthasamy* at paragraph 39. Specifically, Ms. Zhao argues the IAD had no evidence to support the finding that her child could obtain status in China. She also asserts the IAD speculated when it found that Mr. Wang could join them in China, as he has no status or the right to reside or work in China. Ms. Zhao submits that the IAD's findings that Mr. Wang could visit Ms. Zhao regularly in China and that the child could be placed in private school were also speculative.

[28] In my view, the IAD did not err by disregarding relevant evidence or by engaging in speculation. Contrary to Ms. Zhao's assertions, the IAD properly considered the evidence based on the record. The record indicated that individuals qualify for a Green Card in China if they have come to China to be with family, such as a spouse, dependent minors, or senior citizens. As a Green Card holder, individuals are entitled to "work freely" in China, and can send their

children to kindergarten, primary, and high schools without extra fees, as they hold the same rights as Chinese citizens in many aspects. As for the IAD's finding that the child could be placed in private school (once she reached the appropriate age), the evidence indicates that Ms. Zhao's family has sufficient financial resources, based on Mr. Wang's annual income and the family's savings. Moreover, the IAD concluded that Mr. Wang could visit his wife regularly in China based on his testimony that he had thirteen vacation days throughout the year. As such, in my view, the IAD's findings were based on the record.

[29] While I am sympathetic that Ms. Zhao and Mr. Wang faced difficult choices with the possibility of a negative outcome on appeal, their refusal to contemplate keeping the family together in China, and their insistence that they would only entertain a plan that separated their infant child from her mother and primary caregiver, did not bolster their case. In my view, the IAD properly considered the available evidence in examining and assessing the BIOC, and did not commit any reviewable error in doing so.

[30] In conclusion, I am not satisfied that the IAD's BIOC analysis was unreasonable. The removal of a parent will almost invariably impact his or her children in a negative way, but that does not mean a parent cannot be removed: *Liu* at para 24. Here, the IAD was clearly alert, alive, and sensitive to the best interests of Ms. Zhao's child, in light of the limited evidence provided. The IAD considered and assessed various factors that were relevant to the BIOC analysis for Ms. Zhao's child. These included the child's young age and her needs, her eligibility to obtain status in China, the possibility that Mr. Wang could join the family in China or visit from Canada, the fact that the child would not begin school for three to four years, and

upon reaching school age, the family's financial means would permit the family to enrol her in private school or return her to Canada. Considering all the factors, the IAD concluded that the child's separation from her father would result in hardship, and that it would be in her best interests to grant special relief. The IAD therefore considered BIOC to be a positive factor favouring special relief. However, when the IAD weighed the BIOC together with other factors, as it was required to do, the IAD concluded Ms. Zhao failed to establish that it should exercise discretion to grant special relief. I am not satisfied that the IAD's conclusion was unreasonable.

C. *Did the IAD err in its analysis of Ms. Zhao's remorse?*

[31] Ms. Zhao submits that the IAD unreasonably determined her expression of remorse was not a particularly compelling consideration. Ms. Zhao submits she is an honest person who made a serious mistake in her immigration process. She admitted her misrepresentation from the outset, and regretted her decision to enter into a marriage of convenience. Ms. Zhao argues that in the circumstances, the IAD's conclusions were unreasonable and made in disregard of the evidence: *Yuan* at para 32; *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, 1998 CanLII 8667 (FC) at para 17.

[32] I agree with the respondent that it was open to the IAD to conclude Ms. Zhao's expression of remorse was not a particularly compelling consideration in the appeal. Ms. Zhao acknowledged that she considered the consequences of misrepresentation, but nonetheless decided to proceed with obtaining permanent residence through a non-genuine marriage. Although Ms. Zhao had a valid student permit until September 2006, she pursued a marriage of convenience years earlier, in 2004. She testified having done so out of concern she would not

find a job that would allow her to apply for a work permit after graduating, and thereby obtain a path to permanent residence. However, the IAD did not find this to be a compelling reason, noting that there was no evidence of Ms. Zhao's efforts to search for a job.

[33] The IAD also found that the option of obtaining a work permit after graduation and then submitting an application for permanent residence was available to Ms. Zhao. Ms. Zhao submits this was incorrect, as certain programs for graduates were not available at the time of her decision to enter into a non-genuine marriage. I am unable to find evidence of the available work programs in the record, and in any event, this was a secondary consideration for the IAD. As noted above, Ms. Zhao deliberately entered into a non-genuine marriage two years before the expiry of her status in Canada, without exploring legal options to obtain status in Canada. Ms. Zhao's explanations do not justify her misrepresentation.

[34] In my view, the IAD reasonably found that Ms. Zhao's expression of remorse was not a particularly compelling consideration in her appeal.

D. *Did the IAD err by effectively disregarding Ms. Zhao's establishment in Canada on the basis of her previous misrepresentation?*

[35] With regard to establishment, the IAD found that Ms. Zhao was clearly established in Canada, as she married a Canadian, made a life in Canada, was never in receipt of social assistance, and had been able to support herself financially in Canada. While the IAD initially noted this may be considered a positive factor, it then determined that the establishment factor was not exceptional, relying on *Dan Shallow v Canada (Citizenship and Immigration)*, 2012 FC 749 [*Shallow*] at paragraphs 8-9. Further, the IAD determined that Ms. Zhao had only been able

to remain in Canada by “concealing her fraudulent landing”. The IAD found her entire time in Canada could be characterized as fraudulent, and she should not be “rewarded” for accumulating time in Canada by invoking her illegal actions to claim the benefit of a Ministerial exemption: *Tartchinska v Canada (Minister of Citizenship and Immigration)*, 2000 CanLII 15032 (FC) at para 22; *Singh v Canada (Citizenship and Immigration)*, 2009 FC 11 at para 56; *Shallow* at para 9. Ultimately, the IAD found Ms. Zhao’s establishment to be a neutral consideration.

[36] Ms. Zhao asserts the IAD failed to engage in a proper analysis—a balancing of the misrepresentation against the H&C factor of establishment—by effectively disregarding her establishment on the basis it was not exceptional and obtained by fraudulent means. Ms. Zhao cites *Mitchell v Canada (Citizenship and Immigration)*, 2019 FC 190 [*Mitchell*] at paragraphs 23-24 and 28, for the proposition that the proper test requires a decision maker to assess the nature of the non-compliance and its relevance and weight against the applicant’s H&C factors (see also *Damian v Canada (Citizenship and Immigration)*, 2019 FC 1158 [*Damian*]; *Gan v Canada (Citizenship and Immigration)*, 2014 FC 824 [*Gan*]; *Sultana v Canada (Minister of Citizenship and Immigration)*, 2009 FC 533 [*Sultana*]). While the above cases relate to section 25(1) of the *IRPA* rather than section 67(1)(c), the relevant provision in the case at bar, Ms. Zhao submits the principles are nevertheless applicable.

[37] Ms. Zhao submits it was unreasonable for the IAD to find that the establishment factor did not weigh in her favour based on her prior misrepresentation. Since the marriage of convenience was the basis for the removal order, Ms. Zhao argues that the H&C assessment should have considered factors, other than the misrepresentation, to decide whether she should

be granted special relief to stay in Canada. Furthermore, she argues the IAD's approach effectively considered her misrepresentation twice, by balancing it against the establishment factor that was already diminished based on this misrepresentation. Ms. Zhao submits that conflating the H&C factor of establishment with the underlying inadmissibility issue defeats the purpose of an H&C consideration under section 67(1)(c) of the *IRPA*, due to this "double counting" of misrepresentation. In the present case, Ms. Zhao submits the IAD's approach was unreasonable because it neutralized what would otherwise be a strong H&C factor in her favour.

[38] I am not persuaded that the IAD's assessment of Ms. Zhao's establishment was unreasonable. The cases that Ms. Zhao relies on are distinguishable from the case at bar. In *Mitchell* at paragraph 27, the Court found that the applicant, who was 8 years old when he was brought to Canada by an aunt, had no control over his arrival and his continued, unauthorized stay in Canada, and he had not attempted to mislead Canadian immigration authorities. Similarly, in *Damian* at paragraph 2, the Court held the officer failed to consider the fact that the applicant was a minor for seven and a half of the almost ten years that she was in Canada. In *Gan* at paragraph 6, the Court noted the officer viewed the applicant's H&C application through the prism of her mother's failure to declare the applicant on three previous occasions; there was no genuine consideration of the submissions made in support of the applicant, separate and apart from those relating to the finding of ineligibility based on the mother's repeated misconduct. In *Sultana* at paragraph 30, the Court held the officer failed to genuinely assess the H&C considerations by being overly fixated on the applicant's failure to disclose his wife and son in an application for permanent residence.

[39] In a number of other cases, this Court has recognized that misrepresentation is relevant to establishment: *Fouda v Canada (Immigration, Refugees and Citizenship)*, 2017 FC 1176 at para 54; *Mitchell* at para 27; *Phan v Canada (Minister of Citizenship and Immigration)*, 2019 FC 435 [*Phan*] at paras 35-36; *Ylanan v Canada (Minister of Public Safety and Emergency Preparedness)*, 2019 FC 1063 [*Ylanan*] at para 35. Whether the impact of the fraud reduces establishment to a neutral factor is a question for the discretion of the decision maker, based on the particular facts: *Canada (Citizenship and Immigration) v Liu*, 2016 FC 460 at para 29. (See also *Dhaliwal v Canada (Public Safety and Emergency Preparedness)*, 2015 FC 157 at para 106).

[40] There is some debate as to whether it is appropriate for a decision maker to "double count" the seriousness of an applicant's misrepresentation by using it to reduce the weight attributable to the establishment factor and using it again in the final weighing of all factors. In *Jiang v Canada (Public Safety and Emergency Preparedness)*, 2013 FC 413, the application for judicial review was allowed based on such double counting. In *Phan*, Justice Strickland noted previous decisions in which the Court found the establishment factor can be discounted in consideration of prior misrepresentation, but also acknowledged the debate regarding the circumstances in which the IAD will commit a reviewable error if it double counts misrepresentation to reduce the weight of other factors. In *Ylanan*, Justice Bell considered the reasoning in *Jiang* in detail and concluded that the Court's concern in *Jiang* appeared to be the use of misrepresentation to discount a factor for which it has no relevance. The Court stated in *Ylanan* at paragraph 35:

> The jurisprudence is constant that immigration cheats should not be able to benefit from their misdeeds. It is an affront to rational

> thought to suggest that a decision maker cannot say "I am going to discount your establishment in Canada because that very establishment arose from violating the law."
>
> …
>
> *A reviewable error would therefore appear to arise in at least two circumstances as it relates to the application of misrepresentation: 1. where a decision-maker uses the misrepresentation to avoid conducting any analysis of other* Ribic *factors, including that of establishment…; and 2. [i]n circumstances were misrepresentation, or any other factor for that matter, is used to assess a factor for which it has no relevance.*
>
> (Emphasis in original.)

[41] In my view, the IAD reasonably assessed the H&C factors that were relevant to Ms. Zhao's appeal. The IAD did not commit either type of reviewable error referred to in *Ylanan*, above, and furthermore, I am not persuaded that the IAD inappropriately double counted Ms. Zhao's misrepresentation by assigning neutral consideration to her establishment. As noted by Justice Boswell in *Dhaliwal* at paragraph 106, weighing the *Ribic* factors is not a quantitative or mensurative exercise, rather it is a qualitative or relative assessment. I agree with the respondent that the IAD fully considered Ms. Zhao's establishment and reasonably determined it would not be considered a positive factor as it had resulted entirely from her deliberate fraud. This, in my view, is a transparent response to Ms. Zhao's submission that she was denied the benefit of what would otherwise be a strong H&C factor in her favour.

E. *Did the IAD err by minimizing hardship to Ms. Zhao's family?*

[42] With regard to hardship to Ms. Zhao, the IAD noted she had been born, raised, and educated in China, with family still in her home country. The IAD determined that Ms. Zhao would not face linguistic or cultural barriers if she returned to China until she could be sponsored

by her husband. Moreover, the IAD found Ms. Zhao's experiences in Canada and her English language skills could enhance her employability in China. The IAD accepted that a temporary separation from her husband would cause hardship, and that this weighed in favour of granting special relief.

[43] The IAD also considered the hardship on Mr. Wang, who would be separated from the two most important people in his life, and found this to be a strong, positive consideration in favour of granting special relief.

[44] Ms. Zhao submits that in the global assessment of the factors, the IAD erred in minimizing Mr. Wang's serious hardship by describing it as temporary: *Yang v Canada (Citizenship and Immigration)*, 2019 FC 1237; *Phan*. Ms. Zhao submits the IAD's finding disregarded the enormous emotional and financial strain that a prolonged separation places on the marital relationship and family, the fact that her daughter would grow up without her father for several years, and the financial burden of Ms. Zhao leaving her job to return to China and paying for private school on a single income.

[45] I am not persuaded by Ms. Zhao's submissions that the IAD minimized the serious hardship to be faced by her husband. The IAD considered that Mr. Wang was unaware of his wife's misrepresentation and accepted the emotional hardship of separation from his wife and child as a strong positive consideration. The IAD weighed this hardship together with all of the other considerations, including the temporary nature of the inadmissibility bar.

[46] While Ms. Zhao disagrees with IAD's weighing of the factors and its decision, I find she has not established that the IAD weighed the factors unreasonably, or that the IAD's decision was unreasonable.

IV. **Conclusion**

[47] For the reasons above, the IAD's decision is reasonable. The application for judicial review is dismissed.

[48] Neither party raised a question for certification, and none arises.

JUDGMENT in IMM-6024-19

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is dismissed.

2. There is no question to certify.

"Christine M. Pallotta"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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