

Federal Court



Cour fédérale

**Date: 20200825**

**Docket: IMM-5191-19**

**Citation: 2020 FC 851**

**Ottawa, Ontario, August 25, 2020**

**PRESENT: Madam Justice Walker**

**BETWEEN:**

**JIN HUI FANG**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] Mr. Fang seeks the Court's review of a decision (Decision) of the Immigration Appeal Division (IAD) dismissing his appeal of the refusal by an immigration officer of his second wife's application for permanent residency. The IAD confirmed the officer's conclusion that Mr. Fang's wife, Ms. Chen, cannot be considered a spouse because she is a person described in section 4.1 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 (*Regulations*).

[2] In its Decision, the IAD made a series of negative credibility findings based on significant inconsistencies in the testimony and evidence of Mr. Fang and Ms. Chen regarding their relationship history. The panel's findings undermined the couple's central contentions that their first relationship was not conjugal and that Mr. Fang's subsequent brief marriage to a Canadian citizen was genuine. The IAD also questioned the circumstances that led to the alleged rekindling of Mr. Fang's relationship with Ms. Chen after his divorce.

[3] The IAD's conclusion that Ms. Chen is a person described in section 4.1 of the *Regulations* is supported by the evidence. The Decision is justified and internally coherent. Mr. Fang has not identified any errors in the IAD's analysis or conclusion that warrant interference by the Court. As a result, I have concluded that the Decision is reasonable and will dismiss Mr. Fang's application for judicial review.

#### I. Overview

[4] Mr. Fang and Ms. Chen, both Chinese nationals, began a romantic relationship in 2003 in China but separated in 2004 and lost contact. According to their narrative, Ms. Chen was pregnant with their child at the time of the break up but did not disclose the pregnancy to Mr. Fang.

[5] Mr. Fang was also introduced to his first wife in 2004. They married on June 2, 2005 and his wife sponsored him to come to Canada. Mr. Fang arrived in Canada in March 2006. He and his wife separated in 2007.

[6] Mr. Fang and Ms. Chen reconnected in 2008 through a mutual friend in China. Mr. Fang returned to China temporarily in 2009 and stayed with Ms. Chen and their child at his family's house. Mr. Fang and Ms. Chen married in 2011 and had a second child.

[7] Mr. Fang first attempted to sponsor Ms. Chen for permanent resident status in Canada in 2015 but his application was denied. He submitted a second application in 2017. The second application was refused on January 16, 2018 in reliance on section 4.1 of the *Regulations* and Mr. Fang appealed the refusal to the IAD. The IAD held hearings over two days (May 2, 2019 and June 7, 2019) and dismissed the appeal on August 2, 2019. The IAD's Decision is the subject matter of this application.

[8] The IAD made three critical factual findings in its analysis of section 4.1. The IAD summarizes of its analysis as follows:

[5] The main issue with this appeal is the credibility of the parties [Mr. Fang and Ms. Chen]. They provided inconsistent testimonies with statements made in the past without credible explanations. After being confronted about these, [Mr. Fang]'s testimony did not become straightforward as he began not to remember what happened. The breakdown of the relationship between the parties was not credible and conflicted with [Mr. Fang]'s first marriage. There were several elements suggesting [Mr. Fang] entered his first marriage primarily for the purpose of acquiring status and that it wasn't a genuine relationship. The parties' reconciliation in 2008 was further implausible and lacked substance in their circumstances. [...]

## II. Issue and standard of review

[9] The sole issue in this application is whether the Decision is reasonable. The focus of Mr. Fang's submissions is the IAD's negative assessments of his and Ms. Chen's credibility.

[10] The parties submit and I agree that the Decision is subject to review by this Court for reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 10 (*Vavilov*)). None of the situations identified by the Supreme Court of Canada (SCC) in *Vavilov* for departing from the presumptive standard of review apply in this case. A review of the Decision for reasonableness is also consistent with the pre-*Vavilov* jurisprudence (see, e.g., *Li v Canada (Citizenship and Immigration)*, 2019 FC 1544 at para 24 (*Li*)).

[11] The majority in *Vavilov* set out guidance for reviewing courts in the application of the reasonableness standard. I have applied that guidance in my review, exercising restraint but conducting a robust review of the Decision for justification and internal coherence (*Vavilov* at paras 12-15, 85-86, 99; *Canada Post Corp. v Canadian Union of Postal Workers*, 2019 SCC 67 at paras 28-29).

### III. Analysis

[12] Section 4.1 of the *Regulations* prevents a couple from appearing to dissolve an existing relationship to permit one spouse to obtain immigration status in Canada, for example through a non-genuine relationship with a Canadian citizen, only to subsequently resurrect the initial relationship. Mr. Fang bears the onus of establishing that Ms. Chen is not a person described in the section (*Li* at para 48). The full text of the somewhat tortuous language of section 4.1 is set out in Annex A to this judgment.

[13] Section 4.1 is premised on three conjunctive elements. Rephrasing the three elements, Ms. Chen will not be considered Mr. Fang's spouse pursuant to section 4.1 if:

1. She and Mr. Fang had a previous marriage, common-law partnership or conjugal partnership;
2. The previous marriage, common-law partnership or conjugal partnership was dissolved primarily so that Ms. Chen or Mr. Fang could acquire immigration status or privilege in Canada; and
3. Ms. Chen and Mr. Fang subsequently began a new conjugal relationship.

[14] The IAD found Mr. Fang and Ms. Chen not credible and concluded that their 2003-2004 conjugal and common-law relationship did not break down and that Mr. Fang's first marriage was not genuine. The panel's adverse credibility findings are owed deference by this Court (*Li* at para 26; *Rahal v Canada (Citizenship and Immigration)*, 2012 FC 319 at para 42).

[15] Mr. Fang contests each of the IAD's findings but states that this application turns primarily on whether the IAD erred in its conclusion that Mr. Fang and Ms. Chen had a conjugal relationship in China. If they did not, Ms. Chen cannot be a person described in section 4.1.

A. *Prior conjugal/common-law relationship*

[16] The IAD found that:

- Mr. Fang and Ms. Chen were in a conjugal relationship from February 2003 to the breakdown of their relationship, whether in November or December 2004;
- in fact, the couple were in a common-law relationship because they lived together for over a year prior to the breakdown;

- Ms. Chen's statements in her initial 2015 sponsorship interviews supported these findings. She stated that the couple met and became lovers in February 2003 and that they cohabited from March 2003 to November 2004. When she was interviewed for the second application in 2017, Ms. Chen stated that the couple began their relationship in February 2003 and started living together in November 2003, evidence that was slightly inconsistent;
- Mr. Fang gave contradictory evidence before the IAD and his explanations for the contradictions lacked credibility. He first stated that he met Ms. Chen in February 2004 and that they never really lived together. They spent a couple of nights a week at each other's homes from February to December 2004. He also suggested that they lived together on a full-time basis for the last two months of their relationship. In cross-examination, Mr. Fang stated that the couple met in February 2003 but began their relationship in February 2004. When asked to explain the inconsistency with Ms. Chen's 2015 testimony, Mr. Fang stated that she must have confused the dates. When confronted with Ms. Chen's 2017 testimony, he reacted with confusion and an inability to recall details;
- at the IAD hearing in 2019, Ms. Chen attempted to counter her prior testimony by stating that the couple only lived together from October to December 2004, consistent with Mr. Fang's testimony. She blamed the contradiction on errors in the visa officer's notes;
- Mr. Fang and Ms. Chen were attempting to mislead the IAD in insisting that they had not been living together for a year prior to the breakdown of their relationship;

- the reasons given by Mr. Fang and Ms. Chen for the breakdown of their relationship were inconsistent. Mr. Fang testified that his mother refused to accept Ms. Chen because she was not from his hometown. Nevertheless, Ms. Chen moved in with him permanently in 2004, a course of action inconsistent with the reason given for the looming breakdown (his mother's disapproval). Mr. Fang also testified that Ms. Chen left their home voluntarily in December 2004 because of the conflict with his mother, changed her phone number, and the couple lost contact;
- Ms. Chen portrayed a different rationale for the mother's disapproval, stating she left Mr. Fang following a phone call from his mother asking her to leave him because she was not from a rich family.

[17] Mr. Fang submits that the IAD erred in finding that he and Ms. Chen were in a conjugal relationship prior to their late-2004 break up because the panel failed to consider certain indicia of a conjugal relationship and misapprehended the evidence concerning the existence of such a relationship between the two. He refers to the indicia set out in the IRCC's Processing Manual, *OP 2- Processing Members of the Family Class*: mutual commitment to a shared life; exclusive intimate activity; interdependence (physical, emotional and financial); permanence; societal and family perceptions of the couple; and their personal intentions.

[18] The IAD found that Mr. Fang and Ms. Chen were in both a conjugal and common-law relationship in 2003-2004. With regard to the existence of a conjugal relationship, the panel cited the length of the intimate and exclusive relationship, their public portrayal as a couple to friends

and family, marriage discussions, regular cohabitation, and the sharing of household work and expenses.

[19] Mr. Fang's submissions question only a narrow subset of the IAD's findings and overlook a number of its critical conclusions.

[20] First, Mr. Fang has not contested the IAD's finding that he and Ms. Chen lived together for one year prior to their break up and, therefore, were in a common-law relationship. This finding alone satisfies the first prong of section 4.1 of the *Regulations*.

[21] Second, Mr. Fang argues that he and Ms. Chen were only considering marriage in 2004 and that there is no evidence they shared expenses or were interdependent. I have reviewed the IAD testimony highlighted by Mr. Fang in support of his arguments and conclude that the panel made no error in its observations regarding the couple's marriage discussions, their shared living and expense arrangements, or their interactions with friends and family. For example, the couple testified that Ms. Chen took care of the cooking and Mr. Fang paid their living expenses. This testimony suggests the normal inter-dependence of a couple living together and sharing day-to-day responsibilities. With respect to the couple's marriage discussions, Mr. Fang testified that their friends assumed they were getting married and that it was their intention to do so. The IAD pointed to the discussions as one element in its overall assessment of the serious nature of relationship.



[22] In addition, Mr. Fang states that the IAD failed to consider that the couple made no childcare arrangements, another factor from the IRCC's *Processing Manual*. This argument fails to recognize that, during the period they were found to be in a conjugal and common-law partnership, Mr. Fang and Ms. Chen did not have a child. There was no reason for the IAD to consider this factor.

[23] Mr. Fang's submissions ignore the IAD's central adverse credibility findings. The submissions also fail to recognize that the IAD's conclusion as to the existence of a conjugal relationship results from a cumulative evaluation of the couple's relationship, taking into account exclusivity, cohabitation, discussions of marriage, and societal perception. This evaluation, coupled with the IAD's serious credibility concerns regarding Mr. Fang and Ms. Chen's attempts to downplay the relationship, are determinative.

[24] Finally, Mr. Fang submits that the IAD focussed on minor discrepancies in his and Ms. Chen's testimony, characterizing the discrepancies as "slightly different versions about the reasons for their break up". The submission is not persuasive as the IAD found repeated and material inconsistencies in the parties' testimony on each aspect of their relationship. Regarding the break up itself and the role his mother played, Mr. Fang argues that his and Ms. Chen's testimony differ in detail only and that the reasons they each gave for his mother's disapproval merely reflect two sides of the same story. However, the sole reason given for the breakdown of the couple's relationship was his mother's disapproval. I agree with the Respondent that the discrepancies between the two stories as to the reason for that disapproval were not minor in this context.

[25] The IAD made no error in observing that the reasons why Mr. Fang and Ms. Chen separated changed over time and lacked detail, bearing in mind that the couple had been in a relationship for over a year and were living together. The IAD also made no error in drawing an adverse inference from the fact that Ms. Chen attempted to explain the differences in the couple's stories at the 2019 hearing by denying her original explanation for the mother's disapproval.

B. *Mr. Fang's first marriage*

[26] The IAD found that Mr. Fang's first marriage to a Canadian citizen was not genuine and was entered into primarily to enable Mr. Fang to acquire status in Canada. The IAD focused on Mr. Fang's inconsistent testimony regarding the timing of his introduction to his first wife and the couple's living arrangements following Mr. Fang's arrival in Canada in March 2006.

[27] Mr. Fang submits that the IAD's finding that his first marriage was not genuine is not reasonable. He questions the materiality of his contradictory evidence as to when he met his first wife, the accuracy of the panel's conclusions on the hasty nature of the relationship, his first wife's suitability vis-à-vis his mother, and the spouses' Canadian living arrangements. Mr. Fang also submits that the IAD erred in failing to consider the fact that his first marriage had never been investigated.

[28] The IAD acknowledged that Mr. Fang's first marriage had not been investigated but stated that he nonetheless bore the onus of satisfying the panel that Ms. Chen was not a person described in section 4.1 of the *Regulations*. The IAD made no error in this regard or in stating

that evidence relating to Mr. Fang's first marriage was essential in assessing the application of section 4.1. The fact that the IAD did not consider the absence of an investigation as a positive factor is not a reviewable error.

[29] Mr. Fang argues that the contradictions in his testimony regarding when he met his first wife were inconsequential as the time period spans only a few months. In my view, the argument ignores the importance of the period in question. The IAD concluded that Mr. Fang took steps to find another spouse while still in a relationship with Ms. Chen. The conflicting dates given by Mr. Fang for the first meeting, September 2004 as opposed to January or February 2005, are directly relevant to this conclusion. In September 2004, Mr. Fang was still involved with Ms. Chen. The IAD found that Mr. Fang's explanation that he confused the dates was not persuasive because his evidence that the first meeting occurred in September 2004 was provided in 2006 as part of his interview process for sponsorship to Canada by his first wife. Therefore, it was more likely to be accurate due to temporal proximity.

[30] The IAD's analysis of the rapid development of Mr. Fang's relationship with his first wife is consistent with the evidence in the record. It is clear that, at best, the relationship followed immediately on the heels of the breakdown of Mr. Fang's relationship with Ms. Chen.

[31] The IAD emphasized the lack of evidence of the couple's cohabitation and life together in Canada following Mr. Fang's 2006 arrival in Canada. The panel's assessment was twofold. First, the IAD found that he did not consistently live with his first wife and that the reasons given for the lack of cohabitation (work locations, length of commute) were not reflective of a genuine

marriage. Second, Mr. Fang provided little documentary evidence in support of the marriage relationship. He stated that he and his wife shared a bank account but provided no evidence of the account.

[32] Mr. Fang submits that his explanation regarding his living arrangements with his first wife should have been accepted by the IAD. Effectively, Mr. Fang asks me to reweigh his evidence and come to a contrary conclusion. It is trite to say that this is not the role of the Court on judicial review. The IAD's rejection of Mr. Fang's explanation did not ignore or misconstrue the explanation, nor did the IAD overlook any material aspects of his testimony. The panel's consideration of the couple's Canadian living arrangements were one part of its analysis of a brief relationship that began while Mr. Fang was still involved with Ms. Chen and ended shortly after his arrival in Canada with no evidence of any real cohabitation. There is no reason for the Court to intervene in the IAD's conclusion that Mr. Fang's first marriage was not genuine.

C. *2008-2009 Reconciliation*

[33] The final element of the IAD's section 4.1 analysis centred on Mr. Fang and Ms. Chen's 2008-2009 reconciliation following a chance August 2008 meeting between Ms. Chen and a common friend she had with Mr. Fang. The IAD found that the story of the August 2008 meeting and resulting reconciliation was implausible notwithstanding receipt of a support letter from the common friend. The panel did not accept Ms. Chen's testimony of a meeting in her hometown hours away from where she and Mr. Fang had resided together in China. The IAD questioned their rapid reconciliation after being out of contact for a number of years.

[34] Mr. Fang submits that the IAD's implausibility finding was unwarranted. He argues that findings of implausibility should be limited to situations in which events are clearly unlikely to have occurred or are outside of what could reasonably be expected (*Aguilar Zacharias v Canada (Citizenship and Immigration)*, 2012 FC 1155 at paras 10-11).

[35] On the facts of this case, I find that the IAD's implausibility conclusion with respect to the 2008-2009 reconciliation is reasonable. The panel referenced its numerous adverse credibility findings regarding Mr. Fang and Ms. Chen's prior relationship history. In this context, the circumstances of the 2008 chance meeting, soon after Mr. Fang's divorce, leading to an abrupt reconciliation and fundamental change in the couple's lives, can reasonably be characterized as implausible.

#### D. *Summary*

[36] 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 paras 105-110). Having reviewed the evidence in the record and considered the parties' submissions, I find that the Decision is reasonable. Mr. Fang has identified no reviewable errors in the IAD's detailed credibility findings. The Decision is based on a series of material omissions and contradictions in the testimony of both Mr. Fang and Ms. Chen that undermine each aspect of their relationship narrative. The IAD's reasoning is internally coherent and rational. It is justified based on the facts of the case and the provisions of section 4.1 of the *Regulations*.

IV. Conclusion

[37] The application is dismissed.

[38] No question for certification was proposed by the parties and none arises in this case.

**JUDGMENT in IMM-5191-19**

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

1. The application for judicial review is dismissed.
2. No question of general importance is certified.

**"Elizabeth Walker"**

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Judge

ANNEX A*Immigration and Refugee Protection Regulations, SOR/2002-227***New relationship**

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 foreign national has begun a new conjugal relationship with that person after a previous marriage, common-law partnership or conjugal partnership with that person was dissolved primarily so that the foreign national, another foreign national or the sponsor could acquire any status or privilege under the Act.

**Reprise de la relation**

4.1 Pour l'application du présent règlement, l'étranger n'est pas considéré comme l'époux, le conjoint de fait ou le partenaire conjugal d'une personne s'il s'est engagé dans une nouvelle relation conjugale avec cette personne après qu'un mariage antérieur ou une relation de conjoints de fait ou de partenaires conjugaux antérieure avec celle-ci a été dissous principalement en vue de lui permettre ou de permettre à un autre étranger ou au répondant d'acquérir un statut ou un privilège aux termes de la Loi.



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

**DOCKET:** IMM-5191-19

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