

Federal Court



Cour fédérale

**Date: 20220517**

**Docket: IMM-2132-21**

**Citation: 2022 FC 734**

**Ottawa, Ontario, May 17, 2022**

**PRESENT: Madam Justice Sadrehashemi**

**BETWEEN:**

**JING LI**

**Applicant**

**and**

**MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. Overview

[1] The Applicant, Ms. Li, is challenging the decision of a Senior Immigration Officer (“Officer”) to refuse her application for permanent residence on humanitarian and compassionate grounds (“H & C Application”). She has been living in Canada for approximately five years with her husband, who is a Canadian citizen. Ms. Li’s husband is currently ineligible to sponsor her

through the spousal sponsorship program because of criminal convictions and having recently filed for bankruptcy.

[2] In considering the length of the separation between Ms. Li and her husband, as well as extended family members in Canada, the Officer noted that Ms. Li's husband could apply for a record suspension (also known as a pardon) if he wanted to shorten the time period during which he was ineligible to sponsor her. The availability of a record suspension is not a relevant factor in these particular circumstances because it would not shorten the period of ineligibility. The length of separation between the spouses and extended family in Canada was a key factor for seeking relief. Accordingly, the consideration of this irrelevant factor in this assessment rendered the Officer's decision unreasonable.

[3] For the reasons set out below, I grant this judicial review.

## II. Factual Content

[4] Ms. Li is a citizen of China. She came to Canada in October 2016 and married her spouse, who is a Canadian citizen, shortly after. She has remained in Canada continuously since then. She owns a house in Alberta where she lives with her spouse. Ms. Li and her husband live near to her elderly in-laws, whom Ms. Li sees on a daily basis, assisting with their care. Ms. Li has also cultivated a relationship with her husband's children and grandchildren.

[5] In 2018, Ms. Li submitted her first H & C Application. This application was refused in 2020. Ms. Li challenged this refusal by filing an application for leave and judicial review, but discontinued it before leave was decided.

[6] In September 2020, Ms. Li made her second H & C Application, which is the subject of this judicial review application. Ms. Li's application was based on her establishment in Canada, particularly her family ties to her spouse and his family, the best interests of her grandchildren (through marriage), and the discrimination and hardship she would face upon return to China. Further, Ms. Li emphasized that due to her husband's previous criminal convictions and bankruptcy filing, he would be unable to sponsor her for permanent residence through the spousal sponsorship process.

[7] The second H & C Application was refused on March 17, 2021.

### III. Issues and Standard of Review

[8] On judicial review, Ms. Li has raised a number of arguments about the merits of the H & C decision. In reviewing the decision of the Officer, I have applied a reasonableness standard of review. The Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] confirmed that reasonableness is the presumptive standard of review when reviewing administrative decisions on their merits. This case raises no issue that would justify a departure from that presumption.

[9] Ms. Li also raised a procedural fairness issue, arguing that the Officer should have given her an opportunity to respond to their assumption that Ms. Li's spouse could apply for a record suspension. As I have decided that the availability of a record suspension was an irrelevant consideration in these circumstances, I need not consider this procedural fairness issue.

#### IV. Analysis

[10] Foreign nationals applying for permanent residence in Canada can ask the Minister to use their discretion to relieve them from requirements in the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] because of humanitarian and compassionate factors (IRPA, s 25(1)). The Supreme Court of Canada in *Kanhasamy v Canada (Minister of Citizenship and Immigration)*, 2015 SCC 61 [Kanhasamy], citing *Chirwa v Canada (Minister of Citizenship and Immigration)* (1970), 4 IAC 338, confirmed that the purpose of this humanitarian and compassionate discretion is “to offer equitable relief in circumstances that ‘would excite in a reasonable [person] in a civilized community a desire to relieve the misfortunes of another’” (at para 21).

[11] Given that the purpose of humanitarian and compassionate discretion is to “mitigate the rigidity of the law in an appropriate case”, there is no limited set of factors that warrant relief (*Kanhasamy* at para 19). The factors warranting relief will vary depending on the circumstances, but “officers making humanitarian and compassionate determinations must substantively consider and weigh all the relevant facts and factors before them” (*Kanhasamy* at para 25; *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 at paras 74-75 [Baker]).

[12] In this application, a key factor raised by Ms. Li was her separation from her spouse and extended family members in Canada. Accordingly, the length of this separation was an important part of understanding the nature of the hardship facing Ms. Li and her family in Canada.

[13] The possibility of seeking a record suspension was not raised by Ms. Li in her H & C Application. The Officer did their own research and concluded that Ms. Li's spouse could consider applying for a record suspension in order to shorten the period of his ineligibility to sponsor Ms. Li.

[14] There was a dispute between the parties in their written submissions as to the time period that would need to elapse from the completion of all sentences before a request for a record suspension could be made: Ms. Li's counsel argued it was ten years and the Minister argued it was five years. At the oral hearing, Ms. Li's counsel conceded that the five-year period was accurate in these circumstances given when the offence occurred.

[15] In any event, as I explained at the hearing, regardless of the time period, five or ten years, seeking a record suspension in these circumstances would do nothing to shorten the period of ineligibility for sponsorship. Like applications for record suspensions, the applicable regulations governing eligibility to sponsor also require that a period of at least five years have elapsed since the completion of a sentence (s 133(2)(b) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227).

[16] I find the Officer's consideration of the possibility of seeking a record suspension to be irrelevant to the length of separation facing Ms. Li and her spouse and other family members in Canada. Ms. Li's husband could not seek a record suspension or be eligible to sponsor his spouse until at least five years had elapsed from April 2021 when his probation period for his most recent offence ended.

[17] The Officer relied on an irrelevant factor in making their assessment on the nature of the hardship facing Ms. Li and her husband and family in Canada. I find the length of separation to be a significant part of the hardship assessment in this case. Considering the availability of a record suspension may have affected the ultimate weight afforded to the impact of Ms. Li's separation from her husband and her extended family in Canada. I find the Officer's consideration of this irrelevant factor to be "sufficiently central or significant to render the decision unreasonable" (*Vavilov* at para 100).

[18] The application for judicial review is allowed. No question for certification was raised by the parties and none arises.

**JUDGMENT IN IMM-2132-21**

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

1. The application for judicial review is allowed;
2. No question for certification was raised by the parties and none arises.

"Lobat Sadrehashemi"

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Judge

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

**DOCKET:** IMM-2132-21

**STYLE OF CAUSE:** JING LI v MINISTER OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** HELD BY VIDEOCONFERENCE

**DATE OF HEARING:** JANUARY 10, 2022

**JUDGMENT AND REASONS:** SADREHASHEMI J.

**DATED:** MAY 17, 2022

**APPEARANCES:**

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Cynthia Lau FOR THE RESPONDENT

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