

Federal Court



Cour fédérale

**Date: 20240710**

**Docket: IMM-7437-23**

**Citation: 2024 FC 1084**

**Ottawa, Ontario, July 10, 2024**

**PRESENT: Mr. Justice O'Reilly**

**BETWEEN:**

**JUNMIN SHI**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. Overview

[1] Junmin Shi, a citizen of China, arrived in Canada in 2019 and requested refugee protection. The Refugee Protection Division denied his claim in 2023. He was scheduled to be removed from Canada in the spring of 2023. Just before the removal date, Mr Shi and his spouse, Huixian Chen, filed a spousal sponsorship application. Mr Shi asked an officer of the Canadian Border Services Agency to defer his removal while the sponsorship application was being processed. Mr Shi also asked the officer to consider that Ms Chen was dependant on him for physical and emotional support after she had been injured in a car accident.

[2] The officer denied Mr Shi's request for a deferral. Mr Shi then commenced an application for leave and judicial review of the deferral decision. I granted him a stay of removal pending the disposition of that application. I heard the submissions of the parties on the application for judicial review at a hearing on May 29, 2024.

[3] Mr Shi argues that the officer's deferral decision was unreasonable because the officer erred in concluding that no spousal sponsorship application had actually been filed. In addition, says Mr Shi, the officer failed to recognize that Ms Chen relied heavily on Mr Shi's assistance and needed him to remain in Canada to support her. Mr Shi asks me to quash the officer's decision and order another officer to reconsider the request for a deferral.

[4] The sole issue is whether the officer's deferral decision was unreasonable.

[5] I can find no basis for overturning the officer's decision. The officer could not find evidence of the spousal sponsorship application and, even if one had been filed, the existence of an outstanding application did not justify a deferral. The officer also considered Ms Chen's personal circumstances and reasonably concluded that she had sources of support beyond Mr Shi. I must, therefore, dismiss this application for judicial review.

## II. Was the Officer's Decision Unreasonable?

[6] Mr Shi submits that the officer should have looked beyond the records of Immigration, Refugee and Citizenship Canada (IRCC) to determine whether a spousal sponsorship application

had been filed. In particular, Mr Shi maintains that the officer should have considered the supporting documents he filed in support of his deferral request.

[7] In addition, Mr Shi contends that the officer unreasonably concluded that Ms Chen could rely on her family members for support, and failed to recognize that her condition would inevitably decline if he were removed from Canada.

[8] I disagree with Mr Shi's conclusions.

[9] The burden fell on Mr Shi to satisfy the officer that a deferral was justified. Mr Shi claimed that the sponsorship application had been filed, but he did not provide proof. He presented the officer with documents that might have supported a spousal sponsorship application, but the documents did not prove that an application had actually been submitted. But even if it had, the existence of an outstanding spousal sponsorship application would not necessarily justify a deferral. I cannot find that the officer's conclusion on this point was unreasonable.

[10] With respect to Ms Chen's health, the officer concluded that Ms Chen has family support and access to Canadian medical care. On Mr Shi's stay application, I considered the fact that Mr Shi's removal from Canada could cause irreparable harm to Ms Chen's well-being. But the circumstances of a stay application differ from those on a deferral request. In the context of a stay application, "the Court can, and often does, consider a request for a stay of removal in a more comprehensive manner than an enforcement officer can consider [on] a request for a

deferral” (*Kreishan v Canada (Citizenship and Immigration)* 2019 FCA 223 at para 126).

Accordingly, a finding of irreparable harm on a stay does not necessarily mean that the officer erred in refusing a deferral. Based on the evidence that was before the officer, the decision to deny the deferral was not unreasonable.

### III. Conclusion and Disposition

[11] The officer’s denial of a deferral of Mr Shi’s removal from Canada was not unreasonable. It was intelligible, justifiable, and transparent in light of the evidence before the officer. I must, therefore, dismiss this application for judicial review. Neither party proposed a question of general importance for me to certify, and none is stated.

**JUDGMENT IN IMM-7437-23**

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

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

"James W. O'Reilly"  
Judge

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

**DOCKET:** IMM-7437-23  
**STYLE OF CAUSE:** JUNMIN SHI v. THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION  
**PLACE OF HEARING:** TORONTO, ONTARIO  
**DATE OF HEARING:** MAY 29, 2024  
**JUDGMENT AND REASONS:** O'REILLY J.  
**DATED:** JULY 10, 2024

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