Federal Court  Cour fédérale

Date: 20241204

Docket: IMM-13083-22

Citation: 2024 FC 1965

Ottawa, Ontario, December 4, 2024

PRESENT: The Hon Mr. Justice Henry S. Brown

BETWEEN:

JING WANG

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Nature of the matter

[1] This is an application for judicial review of a decision by an Immigration Officer [Officer] of Immigration, Refugees and Citizenship Canada [IRCC] dated February 17, 2020 [Decision], which refused the Applicant's application for permanent residence. The Officer found the Applicant inadmissible for misrepresentation under s 40(1)(a) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*] because she failed to disclose a divorce obtained

in August 2019, which could have induced an error in the administration of *IRPA* since her ex-spouse was included in her application as a dependent. The Applicant submitted unsuccessfully she had no knowledge of, and did not participate in the divorce.

II. Facts

[2] The Applicant is a 37-year-old Chinese citizen who applied for permanent residence as a member of the provincial nominee class in February 2019. The Applicant declared her spouse [spouse or husband] and their child in her application. She said they had been married since 2008 and submitted a supporting marriage certificate.

[3] During the processing of the application, IRCC received information on two occasions indicating, first, that the Applicant's spouse had engaged in bigamy, and second, that the Applicant and her spouse had been divorced since August 2019.

A. *First PFL regarding bigamy*

[4] The Global Case Management System [GCMS] notes state:

> During processing of this application, this office received information to the effect that [husband] had married a person other than Ms. Wang on 24 March 2018. The submission included photos of the couple at the wedding ceremony and copy of the marriage certificate. The copy of the Hong Kong Certificate of Marriage … was confirmed to be genuine after verification with the Births, Deaths & Marriage Registration section of the Hong Kong Immigration Department.

[5] Following this, the Applicant was sent a Procedural Fairness Letter [PFL] on January 7, 2022 [PFL1]. This letter states:

> After careful and thorough consideration of all aspects of your application and the supporting information provided, it appears that you do not meet the requirements for a permanent resident visa because [husband] a person described in paragraph **36(2)(c)** of the Immigration and Refugee Protection Act. [Husband] would therefore be criminally inadmissible to Canada.
>
> …
>
> Based on information available, I have reasonable grounds to believe that [husband] committed in Hong Kong SAR on 24MAR2018 an offence, namely Bigamy. This act constitutes an offence under the laws of the place where it occurred. If committed in Canada, this would constitute an offence under article 290(1) of the Criminal Code of Canada punishable by way of indictment.
>
> … It appears that your family member is inadmissible to Canada. As a result, you would also be inadmissible.
>
> [Emphasis in original]

[6] PFL1 also raised "concerns that you / [husband] misrepresented [husband's] marital status," because the Applicant "did not declare that he entered into a subsequent marriage with another person."

[7] In her response to PFL1, dated January 21, 2022, the Applicant stated she was not aware her husband had engaged in bigamy and "has decided to divorce her husband immediately." Per the GCMS notes, the Applicant provided documentation for the dissolution of the marriage and for her custody of the child.

B. *Second PFL regarding August 2019 divorce*

[8] On February 18, 2022, IRCC received a second letter from a third party with information that the Applicant and her husband had divorced in August 2019 but subsequently entered Canada together on a tourist visa in October 2019.

[9] This information led IRCC to send a second PFL dated August 18, 2022 [PFL2], stating:

> I have concerns that you misrepresented your marital status. A verification was conducted, and it has come to my attention that you and [husband] have been legally divorced since 21 August 2019. You did not notify our office of this change in marital status and proceeded to travel to Canada under false pretenses with [husband] following your divorce. I have concerns that you misrepresented material facts which could have / did induce an error in the application of the Immigration and Refugee Protection Act.
>
> The only divorce certificate you provided to this office is dated March 24, 2022.

[10] On this issue, the GCMS notes state:

> In the meantime, this office received a Divorce Registration Examination Processing Form, sent by a third party, indicating that Ms. Wang and [husband] had registered a divorce with the Huiji District Civil Affairs Bureau, Marriage Registration Office on 21 August 2019. The Divorce Registration Examination Processing Form dated on 21 August 2019 contains both parties' photos, signatures and fingerprints indicating that both parties were present and did not use representatives to complete this process. After verification of the document with the issuing office, it was confirmed that the said Divorce Registration Examination Processing Form is genuine and was issued by their office. The staff of the Huiji District Civil Affairs Bureau were also able to confirm:
> - The photos on the form we had asked to verify were a match to the photos in their record.
> - The divorce certificate number in link with the form is LA10108

> - This form confirms that PA and declared spouse divorced in August 2019.
>
> I note that both procedures (2019 and 2022 alleged divorces) were registered in districts located in two different cities of the Henan Province (Muye District, Xinxiang City, Henan vs Huiji District, Zhengzhou, Henan).
>
> [Emphasis added]

[11] The Applicant's response to PFL2 on September 18, 2022 "stated that she was not aware of the divorce in 2019" and "questioned the legal validity of the 2019 divorce which she has no knowledge nor did she participat[e]." The Applicant provided a statutory declaration to this effect, which said it was "impossible" for the Applicant to have been divorced in 2019:

> 9. This latest [procedural fairness] letter of August 18, 2022 comes as a complete surprise to me. I have several questions as to the accuracy of the 2019 Divorce: if I am in fact legally divorced from [husband] in 2019, the Henan People's Court would not be granting me a divorce in 2022, as part of the divorce proceedings, I have to surrender my Marriage Certificate and my marriage details to [husband] would be verified by the People's Court, if I was in fact already divorced from [husband], then this would be part of the record kept by the local police under the Hukou (household registration record) and the People's Court would refused to grant another divorce. It is not possible to have a divorce between Yacong Liu and me if I did not participated or consented to the divorce application in 2019 and have no knowledge of the divorce. China has a strict Hukou registration and record keeping system about personal details of its citizens and any change to marital status would be recorded and verified.
>
> 10. I am of the opinion that the alleged 2019 divorce is highly suspicious and question the legal validity of the 2019 Divorce. In any event. I have absolutely no knowledge of it and did not consent or participated as a party to the 2019 Divorce.
>
> [*Sic*; emphasis added]

[12] This statutory declaration was commissioned electronically in British Columbia, presumably for the Consultant she engaged as her representative.

[13] Notably, the declaration is expressed to be based on personal knowledge, except where stated to be on information and belief. However, nothing in her affidavit indicates she had specialized personal knowledge of legal, procedural, and practice issues relating to the administration of divorce law in China. Nor does she state she received these opinions from someone else, although I have no difficulty finding her registered representative was involved.

[14] She did not ask to see any of the documents relied upon by the Officer.

[15] Nor has she disputed the validity of the details of the divorce after receiving the relevant documents in this proceeding, nor did she provide any other basis to doubt the validity of the 2019 divorce.

III. Decision under review

[16] The Officer found the Applicant misrepresented the material facts of her marital status by failing to declare divorce of August 2019.

[17] On review of the documents before them, the Officer found:

> • On 21 August 2019, Jing Wang and [husband] completed and signed a Divorce Registration Examination Processing Form in person (not via legal representatives) with the Huiji District Civil Affairs Bureau, Marriage Registration Office to register their divorce.

> • Following the receipt of the PFL sent by this office on 22 January 2022 regarding potential inadmissibility concerns in link with bigamy for [husband], you filed for divorce with the Henan Province, Xinxiang City Muye District Intermediate People's Court. Judge HAO, Zhangyong rendered his civil judgment decision on 24 March 2022. You subsequently declared [husband] as your ex-spouse and requested this office to remove him from your application.

[18] The Officer considered the Applicant's response to PFL2 and found it not sufficient to overcome their concerns. The GCMS notes, which form part of the Officer's Reasons, state:

> In the meantime, this office received a Divorce Registration Examination Processing Form, sent by a third party, indicating that Ms. Wang and [husband] had registered a divorce with the Huiji District Civil Affairs Bureau, Marriage Registration Office on 21 August 2019.
>
> The Divorce Registration Examination Processing Form dated on 21 August 2019 contains both parties' photos, signatures and fingerprints indicating that both parties were present and did not use representatives to complete this process. After verification of the document with the issuing office, it was confirmed that the said Divorce Registration Examination Processing Form is genuine and was issued by their office. The staff of the Huiji District Civil Affairs Bureau were also able to confirm:
> - The photos on the form we had asked to verify were a match to the photos in their record.
> - The divorce certificate number in link with the form is LA10108
> - This form confirms that PA and declared spouse divorced in August 2019.
>
> I note that both procedures (2019 and 2022 alleged divorces) were registered in districts located in two different cities of the Henan Province (Muye District, Xinxiang City, Henan vs Huiji District, Zhengzhou, Henan).
>
> …
>
> I note that the applicant's response indicates that Jing WANG had no knowledge of the 21 August 2019 divorce proceedings, did not consent to the divorce application in 2019 and, did not participat[e] in said proceedings. In addition, Ms. Wang declares that she is unable to explain why her marital status was changed by the 2019

> divorce and that she had tried to contact [husband] without success. PFL response further expresses Ms. WANG's concerns as to the validity of the divorce registered with the Huiji District Civil Affairs Bureau, Marriage Registration Office on 21 August 2019 and submits that the 2022 divorce would not have been granted by the Henan Province, Xinxiang City Muye District Intermediate People's Court if she had already been divorced in 2019. However, Ms. Wang does not support her declarations and expressed opinions with factual evidence. At this point, I am satisfied applicant has been provided procedural fairness and an opportunity to respond to our concerns. I have considered the response to our office's PFL letter and do not find the response sufficient to overcome the concerns.
>
> Starting in August 2019, Ms. Wang misrepresented the material fact of her marital status as the spouse of [husband]. Applicant's marital [status] changed and PA failed to inform this office of this change. Applicant did not provide a reasonable explanation as to why this was not declare[d]. Applicant did not provide reasonable explanation and factual evidence as to why the 2019 divorce proceeding could not have occur and as to why it was impossible that the 2022 divorce judgement had been authorized by a court in the Muye District, if they had already divorced in Huiji District.
>
> [Emphasis added]

[19] The Decision concludes:

> You have misrepresented the material facts regarding your relationship with [husband] and your marital status. This information is material because it is relevant to the eligibility of [husband] as your spouse and family member in this application. The misrepresentation or withholding of this material fact induced or could have induced errors in the administration of the Act as [husband] could have been issued an immigrant visa for which he was not entitled.
>
> As a result, you are inadmissible to Canada for a period of five years from the date of this letter.
>
> …
>
> For the reasons set out above, I am satisfied that you are inadmissible and I am therefore refusing your application.

IV. Issues

[20] The Applicant raises the following issues:

1. What is the standard of review?

2. Did the officer breach natural justice by considering extrinsic evidence not disclosed to the applicant and by making a credibility finding without notice?

3. Did the officer err in law because they failed to consider the innocent misrepresentation exception?

4. Was the decision reasonable?

[21] Respectfully, at issue is whether the Decision procedurally fair and or reasonable.

V. Standard of Review

[22] The parties and I agree that the standard of review for the Officer's Decision is reasonableness. On the issue of procedural fairness, the Applicant submits the standard is correctness. The Respondent submits questions of procedural fairness do not lend themselves to a standard of review analysis; rather, the reviewing Court must be satisfied the process was fair having regard to all of the circumstances. With respect, in the immigration context, recent the jurisprudences establishes officers must give applicants the gist of their concern.

A. *Procedural fairness*

[23] The Respondent submits that although frequently referred to as a correctness standard, the Federal Court of Appeal has stated questions of procedural fairness are not decided according to any particular standard of review, particularly when bias is alleged. And see *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at paragraph 55-6 [*Canadian Pacific Railway*] [per Rennie JA]:

> [55] Attempting to shoehorn the question of procedural fairness into a standard of review analysis is also, at the end of the day, an unprofitable exercise. Procedural review and substantive review serve different objectives in administrative law. While there is overlap, the former focuses on the nature of the rights involved and the consequences for affected parties, while the latter focuses on the relationship between the court and the administrative decision maker. Further, certain procedural matters do not lend themselves to a standard of review analysis at all, such as when bias is alleged. As Suresh demonstrates, the distinction between substantive and procedural review and the ability of a court to tailor remedies appropriate to each is a useful tool in the judicial toolbox, and, in my view, there are no compelling reasons why it should be jettisoned.
>
> [56] No matter how much deference is accorded administrative tribunals in the exercise of their discretion to make procedural choices, the ultimate question remains whether the applicant knew the case to meet and had a full and fair chance to respond. It would be problematic if an *a priori* decision as to whether the standard of review is correctness or reasonableness generated a different answer to what is a singular question that is fundamental to the concept of justice—was the party given a right to be heard and the opportunity to know the case against them? Procedural fairness is not sacrificed on the altar of deference.
>
> [Emphasis added]

[24] I will also follow a more recent Federal Court of Appeal judgment relying on "the long line of jurisprudence, both from the Supreme Court and" the Federal Court of Appeal itself, that

"the standard of review with respect to procedural fairness remains correctness": see *Canadian Association of Refugee Lawyers v Canada (Immigration, Refugees and Citizenship*), 2020 FCA 196 at paragraph 35 per de Montigny JA (as he then was). Notably, to the same effect is the well settled judgment of the Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v Khosa*, 2009 SCC 12, per Binnie J at paragraph 43:

> [43] Judicial intervention is also authorized where a federal board, commission or other tribunal
>
> *(b) failed to observe a principle of natural justice, procedural fairness or other procedure that it was required by law to observe;*
>
> No standard of review is specified. On the other hand, *Dunsmuir* says that procedural issues (subject to competent legislative override) are to be determined by a court on the basis of a correctness standard of review. Relief in such cases is governed by common law principles, including the withholding of relief when the procedural error is purely technical and occasions no substantial wrong or miscarriage of justice (*Pal*, at para. 9). This is confirmed by s. 18.1(5). It may have been thought that the Federal Court, being a statutory court, required a specific grant of power to "make an order validating the decision" (s. 18.1(5)) where appropriate.

[25] In *Dunsmuir v New Brunswick*, 2008 SCC 9 at paragraph 50, the Supreme Court of Canada also establishes what is required on the correctness standard of review:

> [50] When applying the correctness standard, a reviewing court will not show deference to the decision maker's reasoning process; it will rather undertake its own analysis of the question. The analysis will bring the court to decide whether it agrees with the determination of the decision maker; if not, the court will substitute its own view and provide the correct answer. From the outset, the court must ask whether the tribunal's decision was correct.

B. *Reasonableness*

[26] With regard to reasonableness, in *Canada Post Corp v Canadian Union of Postal Workers*, 2019 SCC 67, issued at the same time as the Supreme Court of Canada's decision in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65, [2019] 4 SCR 653 [*Vavilov*], the majority per Justice Rowe explains what is required for a reasonable decision, and what is required of a court reviewing on the reasonableness standard:

> [31] 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). Accordingly, when conducting reasonableness review "[a] reviewing court must begin its inquiry into the reasonableness of a decision by examining the reasons provided with 'respectful attention' and seeking to understand the reasoning process followed by the decision maker to arrive at [the] conclusion" (*Vavilov*, at para. 84, quoting *Dunsmuir*, at para. 48). The reasons should be read holistically and contextually in order to understand "the basis on which a decision was made" (*Vavilov*, at para. 97, citing *Newfoundland Nurses*).
>
> [32] A reviewing court should consider whether the decision as a whole is reasonable: "what is reasonable in a given situation will always depend on the constraints imposed by the legal and factual context of the particular decision under review" (*Vavilov*, at para. 90). The reviewing court must ask "whether the decision bears the hallmarks of reasonableness – justification, transparency and intelligibility – and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision" (*Vavilov*, at para. 99, citing *Dunsmuir*, at paras. 47 and 74, and *Catalyst Paper Corp. v. North Cowichan (District)*, 2012 SCC 2, [2012] 1 S.C.R. 5, at para. 13).
>
> [33] Under reasonableness review, "[t]he burden is on the party challenging the decision to show that it is unreasonable" (*Vavilov*, at para. 100). The challenging party must satisfy the court "that any shortcomings or flaws relied on ... are sufficiently central or significant to render the decision unreasonable" (*Vavilov*, at para. 100).
>
> [Emphasis added]

[27] In the words of the Supreme Court of Canada in *Vavilov*, a reviewing court must be satisfied the decision-maker's reasoning "adds up":

> [104] Similarly, the internal rationality of a decision may be called into question if the reasons exhibit clear logical fallacies, such as circular reasoning, false dilemmas, unfounded generalizations or an absurd premise. This is not an invitation to hold administrative decision makers to the formalistic constraints and standards of academic logicians. However, a reviewing court must ultimately be satisfied that the decision maker's reasoning "adds up."
>
> [105] In addition to the need for internally coherent reasoning, a decision, to be reasonable, must be justified in relation to the constellation of law and facts that are relevant to the decision: *Dunsmuir*, at para. 47; *Catalyst*, at para. 13; *Nor-Man Regional Health Authority*, at para. 6. Elements of the legal and factual contexts of a decision operate as constraints on the decision maker in the exercise of its delegated powers.
>
> [106] It is unnecessary to catalogue all of the legal or factual considerations that could constrain an administrative decision maker in a particular case. However, in the sections that follow, we discuss a number of elements that will generally be relevant in evaluating whether a given decision is reasonable, namely: the governing statutory scheme; other relevant statutory or common law; the principles of statutory interpretation; the evidence before the decision maker and facts of which the decision maker may take notice; the submissions of the parties; the past practices and decisions of the administrative body; and the potential impact of the decision on the individual to whom it applies. These elements are not a checklist for conducting reasonableness review, and they may vary in significance depending on the context. They are offered merely to highlight some elements of the surrounding context that can cause a reviewing court to lose confidence in the outcome reached.
>
> [Emphasis added]

[28] The Supreme Court of Canada in *Vavilov* at paragraph 86 states, "it is not enough for the outcome of a decision to be justifiable. Where reasons for a decision are required, the decision must also be justified, by way of those reasons, by the decision-maker to those to whom the

decision applies." *Vavilov* provides further guidance that a reviewing court decide based on the record before them:

> [126] That being said, a reasonable decision is one that is justified in light of the facts: *Dunsmuir*, para. 47. The decision maker must take the evidentiary record and the general factual matrix that bears on its decision into account, and its decision must be reasonable in light of them: see *Southam*, at para. 56. The reasonableness of a decision may be jeopardized where the decision maker has fundamentally misapprehended or failed to account for the evidence before it. In *Baker*, for example, the decision maker had relied on irrelevant stereotypes and failed to consider relevant evidence, which led to a conclusion that there was a reasonable apprehension of bias: para. 48. Moreover, the decision maker's approach would *also* have supported a finding that the decision was unreasonable on the basis that the decision maker showed that his conclusions were not based on the evidence that was actually before him: para. 48.
>
> [Emphasis added]

[29] *Vavilov* makes it abundantly clear the role of this Court is not to reweigh and reassess the evidence unless there are "exceptional circumstances." The Supreme Court of Canada instructs:

> [125] It is trite law that the decision maker may assess and evaluate the evidence before it and that, absent exceptional circumstances, a reviewing court will not interfere with its factual findings. The reviewing court must refrain from "reweighing and reassessing the evidence considered by the decision maker": *CHRC*, at para. 55; see also *Khosa*, at para. 64; *Dr. Q*, at paras. 41-42. Indeed, many of the same reasons that support an appellate court's deferring to a lower court's factual findings, including the need for judicial efficiency, the importance of preserving certainty and public confidence, and the relatively advantageous position of the first instance decision maker, apply equally in the context of judicial review: see *Housen*, at paras. 15-18; *Dr. Q*, at para. 38; *Dunsmuir*, at para. 53.
>
> [Emphasis added]

[30] The Federal Court of Appeal held in *Doyle v Canada (Attorney General)*, 2021 FCA 237 [*Doyle*], that the role of this Court is not to reweigh and reassess the evidence unless there is fundamental error:

> [3] In doing that, the Federal Court was quite right. Under this legislative scheme, the administrative decision-maker, here the Director, alone considers the evidence, decides on issues of admissibility and weight, assesses whether inferences should be drawn, and makes a decision. In conducting reasonableness review of the Director's decision, the reviewing court, here the Federal Court, can interfere only where the Director has committed fundamental errors in fact-finding that undermine the acceptability of the decision. Reweighing and second-guessing the evidence is no part of its role. Sticking to its role, the Federal Court did not find any fundamental errors.
>
> [4] On appeal, in essence, the appellant invites us in his written and oral submissions to reweigh and second-guess the evidence. We decline the invitation.

[31] Moreover, *Vavilov* requires the reviewing court to assess whether the decision is subject to judicial review meaningfully grapples with the key issues:

> [127] The principles of justification and transparency require that an administrative decision maker's reasons meaningfully account for the central issues and concerns raised by the parties. The principle that the individual or individuals affected by a decision should have the opportunity to present their case fully and fairly underlies the duty of procedural fairness and is rooted in the right to be heard: Baker, at para. 28. The concept of responsive reasons is inherently bound up with this principle, because reasons are the primary mechanism by which decision makers demonstrate that they have actually listened to the parties.
>
> [128] Reviewing courts cannot expect administrative decision makers to "respond to every argument or line of possible analysis" (*Newfoundland Nurses*, at para. 25), or to "make an explicit finding on each constituent element, however subordinate, leading to its final conclusion" (para 16). To impose such expectations would have a paralyzing effect on the proper functioning of administrative bodies and would needlessly compromise important values such as efficiency and access to justice. However, a

> decision maker's failure to meaningfully grapple with key issues or central arguments raised by the parties may call into question whether the decision maker was actually alert and sensitive to the matter before it. In addition to assuring parties that their concerns have been heard, the process of drafting reasons with care and attention can alert the decision maker to inadvertent gaps and other flaws in its reasoning: *Baker*, at para. 39.

[32] As the Federal Court of Appeal recently held in *Canadian National Railway Company v Halton (Regional Municipality)*, 2024 FCA 160, reviewing courts must not take an "unduly formalistic approach" [e.g., in matters related to human health] but instead, seek to understand the challenged decision to determine if it is rational and logical as a whole, not seize on inconsequential errors or omissions:

> [43] CN and the Attorney General of Canada submit, and I agree, that in reviewing the decisions, the Federal Court took an unduly formalistic approach in searching for an enumerated list of six SAEEs [significant adverse environmental effects]: two "direct" (or project-specific) and four cumulative. The Federal Court, satisfied that the Minister's Decision did not refer to or discuss a "direct" SAEE on human health as it relates to air quality, determined that there was "no reason" to review the decision in detail: FC Reasons at para. 97. This was an error.
>
> [44] *Vavilov* tells us that decisions being reviewed for reasonableness must be read in light of the record, holistically, and contextually: paras. 96-97. A reviewing court must give the reasons "respectful attention", seek to understand the challenged decision, and determine if, as a whole, it is rational and logical—not seize on inconsequential errors or omissions: *Vavilov* at paras. 84-85 and 99-100.
>
> [45] On discovery of a missing reference to a "direct" [significant adverse environmental effect, SAEE] in a bullet point in the Summary portion of the Minister's Decision, the Federal Court ought to have considered whether the Minister nonetheless took into account the substance of the review panel's findings on the adverse effects on human health related to air quality, both project-specific and cumulative. On reviewing the Minister's Decision as a whole, in light of the review panel's report, I have determined that the Minister did just that.

[Emphasis added]

VI. Relevant legislation

[33] Most relevant to this application is ss 40(1) and 40(2)(a) of *IRPA*, which state:

Misrepresentation	**Fausses déclarations**
40 (1) A permanent resident or a foreign national is inadmissible for misrepresentation	**40 (1)** Emportent interdiction de territoire pour fausses déclarations les faits suivants :
(a) for directly or indirectly misrepresenting or withholding material facts relating to a relevant matter that induces or could induce an error in the administration of this Act;	**a)** directement ou indirectement, faire une présentation erronée sur un fait important quant à un objet pertinent, ou une réticence sur ce fait, ce qui entraîne ou risque d'entraîner une erreur dans l'application de la présente loi;
…	…
Application	**Application**
(2) The following provisions govern subsection (1):	**(2)** Les dispositions suivantes s'appliquent au paragraphe (1):
(a) the permanent resident or the foreign national continues to be inadmissible for misrepresentation for a period of five years following, in the case of a determination outside Canada, a final determination of inadmissibility under subsection (1) or, in the case of a determination in	**a)** l'interdiction de territoire court pour les cinq ans suivant la décision la constatant en dernier ressort, si le résident permanent ou l'étranger n'est pas au pays, ou suivant l'exécution de la mesure de renvoi…

> Canada, the date the removal order is enforced…

VII. Analysis

A. *Was the Applicant denied procedural fairness?*

[34] The Applicant submits she was entitled to be given notice of the details of extrinsic (documentary etc.) evidence relied upon by the Officer. She says she did not have a fair opportunity to meaningfully respond to the Officer's concerns because she did not have the actual divorce document in question nor theie particulars. She submits it was a breach of natural justice for the Officer to "not provide particulars of where the divorce was registered or more importantly a copy of the divorce so that the applicant can review it and verify its authenticity." The Applicant submits this amounted to "only partially disclosing the case." For example, the Applicant asks: "How could she provide factual evidence to challenge the authenticity of a document she had not seen? How could she locate a document if she did not know where it was issued?"

[35] The Applicant refers to *Pusat v Canada (Citizenship and Immigration)*, 2011 FC 428 [*Pusat*], where Justice Mosely set aside a decision relying on a document that had not been disclosed to an applicant.

[36] However, I note that in *Pusat*, relied on by the Applicant, the applicant made a point of asking for copies of the material albeit without success: "[t]he respondent did not answer any of the applicant's counsel's three letters" requesting disclosure of any evidence of the applicant's

membership in a terrorist group (para 6), and "applicant's counsel was not given the opportunity to make submissions following the interview" (para 8).

[37] The Applicant also cites *Gebremedhin v Canada (Citizenship and Immigration)*, 2013 FC 380 [per Snider J], which emphasizes that "[t]he relevant question is not whether the document was provided but whether the information was disclosed to the Applicant" (at para 9), and *Asanova v Canada (Citizenship and Immigration)*, 2020 FC 1173 [per Norris J], which outlines the importance of applicants having a meaningful opportunity to respond to credibility concerns (at paras 29-32).

[38] The Respondent submits and I agree that in the immigration context the jurisprudence recently and very well supports the proposition that procedural fairness does not require disclosure of all relevant extrinsic documents, but rather that the Applicant be given an adequate understanding of the "gist of the concerns" (*El Rifai v Canada (Citizenship and Immigration)*, 2024 FC 524 at paragraph 4 [per Grammond J]. I am certainly not persuaded the Applicant, a foreign national applying for status in Canada, has the *Charter* rights of full disclosure available to criminal accused in Canada as provided in *R. v. Stinchcombe*, [1991] 3 S.C.R. 326; submissions to that effect are of course doctrinally unsound.

[39] The following reasons of Justice Grammond in the immigration context are consistent with the Federal Court of Appeal's holding in *Canadian Pacific Railway*, cited above:

> [4] Moreover, the fact that the officer relied on verifications with the bank and considered the fact that other fraudulent documents had similar characteristics does not constitute extrinsic evidence that had to be disclosed to Mr. El Rifai: *Kong* at paragraph 28. It is

> true that some decisions of this Court state that a visa officer who intends to rely on extrinsic evidence must give the applicant an opportunity to provide submissions in this regard: *Kniazeva v Canada (Citizenship and Immigration)*, 2006 FC 268 at paragraph 21; *Youssef v Canada (Citizenship and Immigration)*, 2011 FC 399 at paragraph 12; *Sharma v Canada (Public Safety and Emergency Preparedness)*, 2022 FC 779 at paragraph 28. In such situations, however, procedural fairness does not require that all documents in the officer's possession be provided to the applicant: *Maghraoui v Canada (Citizenship and Immigration)*, 2013 FC 883 at paragraph 22; *Jemmo v Canada (Citizenship and Immigration)*, 2021 FC 1381 at paragraph 33. Rather, procedural fairness "does demand that the Applicant be given an adequate understanding of the gist of the concerns": *Geng v Canada (Citizenship and Immigration)*, 2023 FC 773 at paragraph 74. The scope of this requirement must be assessed on the basis of the circumstances of each case.
>
> [Emphasis added]

[40] In my respectful view, the second procedural fairness letter told the Applicant the gist of the Officer's concerns, namely that the Officer had information that there was a legal divorce dated August 21, 2019, and that it had gone through a verification process. To quote PF2:

> I have concerns that you misrepresented your marital status. A verification was conducted, and it has come to my attention that you and [husband] have been legally divorced since 21 August 2019.

[41] The Applicant argues these particulars and or the divorce document(s) should have been sent by the Officer at the time the Officer sent PF2. I disagree.

[42] The particulars sought are those set out in the GCMS notes, quoted above:

> The Divorce Registration Examination Processing Form dated on 21 August 2019 contains both parties' photos, signatures and fingerprints indicating that both parties were present and did not use representatives to complete this process. After verification of the document with the issuing office, it was confirmed that the said

> Divorce Registration Examination Processing Form is genuine and was issued by their office. The staff of the Huiji District Civil Affairs Bureau were also able to confirm:
> - The photos on the form we had asked to verify were a match to the photos in their record.
> - The divorce certificate number in link with the form is LA10108
> - This form confirms that PA and declared spouse divorced in August 2019.
>
> I note that both procedures (2019 and 2022 alleged divorces) were registered in districts located in two different cities of the Henan Province (Muye District, Xinxiang City, Henan vs Huiji District, Zhengzhou, Henan).
>
> [Emphasis added]

[43] To begin with, at one point the Applicant suggested it was not clear if the Officer even had document(s) to give her. There is no merit in this assertion because it is "unduly formalistic." It seems clear to me the Officer was referring to documentary and or extrinsic evidence. It really does not matter which. The letter states the Officer's concern the Applicant was "legally divorced" as of a certain date and a "verification was conducted." From this the Applicant and/or her registered Consultant would or should have known a document was almost certainly available. Notably the Applicant does not suggest let alone depose that divorces in China are not documented.

[44] Moreover the fact the Applicant and her Consultant representative would or should have known document(s) were available is supported by the questions asked in paragraph 9 of the Applicant's statutory declaration: it proceeds on that very basis. Further, the absence of any documentary information is difficult if not impossible to reconcile with PFL2's assertion a "verification" was conducted.

[45] On balance I am satisfied the Applicant and her representative knew or ought to have known IRCC had documentary and perhaps other extrinsic evidence of a legal divorce and its verification.

[46] Given this, in my very respectful view, the Applicant's representative (note, not counsel before this Court) could and should have asked for either a summary or a copy of the documentation relied on, as took place in the jurisprudence the Applicant relies on namely Justice Mosely's *Pusat* decision.

[47] The onus to succeed on a claim like this is always on the Applicant. It is her duty to put her best foot forward in her application, which duty continues and applies to her response to PFL2. In a case like this, it was not enough to sit on one's hands, as the Applicant did here, file a bare denial with unsupported opinion evidence (as the Officer reasonably found), and then argue breach of natural justice warranting judicial intervention by the Federal Court.

[48] Perhaps the Officer would have said no, but and with respect, IRCC must be taken to know that a procedurally unfair or unreasonably decision refusing to provide a document or extrinsic material might be set aside on judicial review – because that in fact is what occurred in *Pusat*.

[49] Other than providing the gist of the Officer's concerns per the Court's procedural fairness letter PFL2, I am not persuaded this is a case for turning over the GSMS notes or any other material except in response to a properly framed request. As noted, I am not persuaded the

Applicant, a foreign national applying for status in Canada, has anything akin to the *Charter* rights of full disclosure available to criminal accused in Canada esxtablished in *R. v. Stinchcombe,* [1991] 3 S.C.R. 326; submissions to that effect are of course doctrinally unsound.

[50] Further, the Applicant's position begs the question: now that she has the information what does she say to the fact it reveals the 2019 divorce is verified by Chinese authorities and contains not only the Applicant's photo and signature and but fingerprint information establishing her presence?

[51] The Applicant does not deny the documents contain her photograph, her signature or that is has her fingerprint information. It seems to me the Applicant is asking this Court to speculate whether the divorce is a product of fraud and or misfeasance, but without evidence filed per *Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency (Access Copyright),* 2012 FCA 22.

[52] The Applicant similarly submits the officer erred by making a credibility finding without offering the Applicant a chance to respond. This submission has no merit. The Officer was simply not satisfied with the Applicant's explanation on the information before them, and preferred the verified divorce documentation. I will not reweigh or reassess that evidence.

B. *Was the Decision reasonable?*

[53] The Applicant submits the Decision was unreasonable, essentially for 1) failing to consider the innocent misrepresentation exception, and 2) failing to deal with the Applicant's

explanation that the August 2019 divorce could not have been authentic given that she was successfully able to get a divorce in March 2022.

[54] On this second point, as already noted, the Applicant responded to PFL2 with a bald assertion she knew nothing about and did not participate in the divorce. She continued (and continues here) by offering her own unsupported opinions in relation to the law, practices and procedures applicable in family law and divorce courts within the Chinese legal system. The weighing and assessing of this evidence is beyond judicial review, per *Vavilov* and *Doyle* as matters of weighing and assessing evidence. There are neither exceptional circumstance nor fundamental error in this context.

[55] On innocent misrepresentation, the Applicant cites: *Medel v Canada (Minister of Employment and Immigration) (CA)*, 1990 CanLII 12991 (FCA), [1990] 2 FC 345 [*Medel*]; *Canada (Citizenship and Immigration) v Modaresi*, 2016 FC 185 at paragraph 18; *Baro v Canada (Citizenship and Immigration)*, 2007 FC 1299 [*Baro*]; *Osisanwo v Canada (Citizenship and Immigration)*, 2011 FC 1126. At paragraph 15 of *Baro*, Justice O'Reilly summarizes the test for the rare innocent misrepresentation exception, outlined in *Medel*, as being "where applicants can show that they honestly and reasonably believed that they were not withholding material information."

[56] The Applicant submits this rare exception applies to the case at Bar. I am not persuaded. First of all, this "defence" was not put to the officer by this Applicant despite the fact she was represented. This is a complete answer. The Officer cannot be faulted for not considering issues

not advanced by a represented Applicant before them, now raised as a new issue on judicial review.

[57] Moreover, the Officer was not required to send a further PFL, given the Applicant's bald denial and unsupported opinions. She had the gist of the concerns and did not seek the underlying material. Having received the underlying material, it is not challenged.

[58] On the failure to deal with her explanation for the 2019 divorce, the Applicant submits the Decision does not provide any basis for understanding why the Officer rejected her submission. There is no merit in this submission. In this respect the Officer was again simply weighing and assessing the evidence, namely the verified divorce document versus a bare denial coupled with unsupported opinions of an unqualified individual. Connecting the dots, it is obvious and I find the Officer reasonably preferred the verified divorce documents, which in any event is a decision for the Officer to make, not this Court, per *Vavilov* and *Doyle*.

[59] The Decision meets the tests of reasonableness.

VIII. Conclusion

[60] I conclude this application for judicial review must be dismissed because the Decision is reasonable and made with procedural fairness.

IX. Certified question

[61] Neither party proposes a question for certification, and I agree none arises.

X. Costs

[62] This is not a case for costs.

JUDGMENT in IMM-13083-22

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. No question of general importance is certified.

3. There is no Order as to costs.

"Henry S. Brown"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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