

Federal Court



Cour fédérale

Date: 20250909

Docket: IMM-11911-24

Citation: 2025 FC 1473

Ottawa, Ontario, September 9, 2025

PRESENT: Mr. Justice Norris

BETWEEN:

NING XIONG

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] Ning Xiong, the applicant, is a citizen of China. After entering Canada as a visitor in February 2018, she made an unsuccessful claim for refugee protection. In December 2019, shortly after the refugee claim was rejected, Ms. Xiong married Eli Kong Sang Chiu, a naturalized Canadian citizen. In May 2020, Ms. Xiong applied for permanent residence as a spouse or common law partner in Canada under Mr. Chiu's sponsorship. Immigration, Refugees and Citizenship Canada (IRCC) refused the application in March 2023 but, after Ms. Xiong

brought an application for judicial review of the decision, it agreed to reconsider the matter.

Meanwhile, Ms. Xiong's application for a pre-removal risk assessment was refused in September 2023.

[2] On June 21, 2024, an officer with IRCC refused the spousal sponsorship application again. While the officer was satisfied that Ms. Xiong and Mr. Chiu were legally married, the officer was not satisfied that they cohabited with one another, as is required for Ms. Xiong to be considered Mr. Chiu's spouse under paragraph 124(a) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 (*IRPR*). As well, the officer found that, pursuant to paragraph 4(1)(b) of the *IRPR*, Ms. Xiong could not be considered Mr. Chiu's spouse because the officer was not satisfied that their marital relationship is genuine.

[3] The applicant has applied for judicial review of this decision under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (*IRPA*). She submits that the decision is unreasonable because the officer relied on inconsequential details and discrepancies and drew unfounded inferences to conclude that she had not established that she and Mr. Chiu reside together and that their relationship is genuine.

[4] As I will explain, while some parts of the officer's analysis do not stand up to scrutiny, the applicant has not persuaded me that there is any basis to interfere with the officer's ultimate findings. This application for judicial review will, therefore, be dismissed.

[5] The parties agree, as do I, that the officer's decision should be reviewed on a reasonableness standard. While reasonableness review "finds its starting point in the principle of judicial restraint and demonstrates a respect for the distinct role of administrative decision makers," it is nevertheless "a robust form of review" (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 12; *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 at para 63). 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). When conducting reasonableness review, a reviewing court must take a "reasons first" approach that examines and evaluates the justification the administrative decision maker has given for its decision, always bearing in mind the history of the proceeding and the administrative context in which the decision was made (*Mason*, at paras 58-60). Absent exceptional circumstances, it is not the role of a reviewing court to interfere with an administrative decision maker's assessment of the evidence or factual findings (*Vavilov*, at paras 125-126).

[6] In support of the sponsorship application, Ms. Xiong provided IRCC with various documents to prove her marriage to Mr. Chiu and to demonstrate that the two of them live together and that their relationship is genuine. These included photographs of the two of them together, telephone records, residential leases, banking records, tax returns, and a life insurance policy for Mr. Chiu showing Ms. Xiong as the sole beneficiary.

[7] IRCC officers interviewed Ms. Xiong and Mr. Chiu separately on two occasions: on February 13, 2023 (in connection with the first time the sponsorship application was considered) and again on April 25, 2024 (in connection with the reconsideration of the application).

[8] After the second interview, the officer who interviewed Ms. Xiong sent her a procedural fairness letter setting out the officer's concern that the relationship between Ms. Xiong and Mr. Chiu "may be a relationship of convenience." The officer explained that this concern was based on the following: "Limited proof of cohabitation, limited proof of financial interdependence, some answers to questions during the interview were different such as how many bedrooms were in the new location, when they moved there, who lived there with them and how the sponsor got to his last medical appointment." Ms. Xiong was given an opportunity to provide additional information to address these issues.

[9] Ms. Xiong's representative responded to the procedural fairness letter by letter dated May 8, 2024. The representative also provided additional documents including recent banking and telephone records.

[10] As noted, the officer was not satisfied that Ms. Xiong and Mr. Chiu reside together or that their marriage is genuine. In summary, the officer's reasons for so concluding were the following:

- The answers Ms. Xiong and Mr. Chiu gave to questions during the interview "were mostly similar and would indicate a knowledge of each other" but "there were major inconsistencies as well."

- Ms. Xiong and Mr. Chiu claimed to reside together in an apartment in Toronto but they gave inconsistent accounts of the living arrangements there. While the officer does not elaborate on this in the decision, the notes of the interviews indicate that Mr. Chiu said they had moved to their current residence in August or September 2023 but Ms. Xiong said they moved there in December 2023. Mr. Chiu described the apartment as having three bedrooms but Ms. Xiong described it as having two bedrooms. Mr. Chiu said that two students lived there with them but Ms. Xiong said only one student lived with them.
- Cellular telephone bills for both Ms. Xiong and Mr. Chiu that itemized their calls were provided. The couple do not share a phone plan. The officer found that the call logs “do not demonstrate communication expected of a couple in a genuine relationship or that they are in each other’s presence.” Furthermore, Ms. Xiong’s call logs indicate that she spends “much time” outside Toronto (in Aurora). Notably, during the interview, both Ms. Xiong and Mr. Chiu said that they spent the day before the interview (April 24, 2024) at home together (their apartment is in Toronto) except when they went grocery shopping together yet Ms. Xiong’s phone bill suggests she was in Aurora the entire day (the first call on that date was at twelve minutes after midnight and the last call was at one minute to midnight and there were many others in between these times) and that she called Mr. Chiu that evening.
- Both Ms. Xiong and Mr. Chiu said that Ms. Xiong works occasionally as a housekeeper or cleaner but on her most recent Schedule A form Ms. Xiong stated that she is unemployed.

- Mr. Chiu was asked at the interview how he had gotten to his most recent medical appointment. He responded that “mostly” his wife drives him but “sometimes” a friend takes him. On the other hand, Ms. Xiong responded that Mr. Chiu had taken the bus. Ms. Xiong’s representative addressed this apparent discrepancy in the letter responding to the procedural fairness letter, stating that, while Ms. Xiong would usually drive Mr. Chiu to his medical appointments, she had been unable to on March 13, 2024 (the date of the last appointment) because she had to work. While she believed Mr. Chiu had taken the bus to the doctor’s office that day, in fact a friend had driven him. Ms. Xiong picked him up after the appointment. The officer noted that while this explanation for the original discrepancy “may be plausible . . . there was no proof submitted to support the explanation.”
- Two months of transactions for a joint bank account were provided but they did not establish financial interdependence (although they did demonstrate payments for the insurance policy, a factor the officer gave “positive weighting” to). There was a significant amount of activity in the account, which indicated financial means. The officer found that this contradicted the claim by Ms. Xiong and Mr. Chiu that they did not have joint assets or go out because of their limited financial means. As well, a recent statement provided by Ms. Xiong demonstrating that the couple have a joint bank account was prepared at a branch in Aurora, even though the couple claim to live in Toronto. (A similar statement provided by Mr. Chiu was prepared at a branch in Scarborough on a different date.)
- Ms. Xiong and Mr. Chiu speak different languages – respectively, Mandarin and Cantonese.

- Ms. Xiong's immigration background shows a "strong motivation to stay in Canada."

[11] As mentioned above, Ms. Xiong submits that the decision is unreasonable because the officer relied on inconsequential details and discrepancies and drew unwarranted inferences in concluding that she had not established that she and Mr. Chiu reside together or that they are in a genuine marriage.

[12] In some respects, these submissions are well founded. I agree that the officer's statement that the phone records "do not demonstrate communication expected of a couple in a genuine relationship or that they are in each other's presence" lacks transparency and intelligibility. What, exactly, did the officer expect to see if the couple were in a genuine relationship and "in each other's presence," as the officer puts it? It is true that there were relatively few calls between Ms. Xiong and Mr. Chiu but, arguably, this is consistent with them living together and rarely going out, as they claimed. Put another way, without some indication of the benchmark the officer had in mind, one cannot understand why the officer gave the phone records the probative value she did.

[13] Similarly, in the May 8, 2024, letter, the representative attempted to explain the different answers given during the interviews concerning the number of bedrooms in the apartment by stating that there are two bedrooms and a den. Since one of the other tenants sleeps in the den, this was why Mr. Chiu said there were three bedrooms. The officer was not required to accept this explanation but she should have addressed it before concluding that inconsistencies in the

accounts of the “living arrangements” suggested that Ms. Xiong and Mr. Chiu did not live together. Her failure to do so leaves the analysis lacking transparency and intelligibility.

[14] As well, the officer does not explain the relevance of what Ms. Xiong said about her employment status on her Schedule A and this is far from clear. Surely the important point was that Ms. Xiong and Mr. Chiu both said she worked occasionally.

[15] Finally, the reference to only two months of bank statements having been provided appears to be an error. Even assuming that the officer was referring to the documents provided in response to the procedural fairness letter (the officer had acknowledged earlier in the decision that other bank statements had been provided previously), the officer was mistaken: in fact, four months (January, February, March and April 2024) had been provided in response to the procedural fairness letter.

[16] On the other hand, several of the officer’s key findings cannot be impugned on a reasonableness standard of review.

[17] It was open to the officer to conclude that the phone records indicated that Ms. Xiong spent a substantial amount of time (at all times of the day) in Aurora. In the absence of any explanation for why she spent so much there, it was not unreasonable for the officer to find that the phone records were inconsistent with Ms. Xiong’s claim to be living with Mr. Chiu in Toronto (specifically, Scarborough).

[18] As well, setting aside whether the apartment should be described as having two bedrooms or three, it remained the case that Ms. Xiong and Mr. Chiu gave inconsistent answers when describing how many other people live there – Mr. Chiu said there were two others but Ms. Xiong said there was one. This is hardly an inconsequential detail. Notably, the representative’s response to the procedural fairness letter asserts that two students live in the apartment with Ms. Xiong and Mr. Chiu but it does not address why Ms. Xiong stated otherwise in her interview.

[19] Furthermore, on the evidence provided, it was open to the officer to find a lack of financial interdependence between Ms. Xiong and Mr. Chiu. While the officer may have been mistaken in thinking that only two months of bank statements had been provided in response to the procedural fairness letter, the statements for the two additional months in 2024 simply confirmed regular withdrawals for payment for the insurance policy, something the officer had duly noted. No other entries (whether on these bank statements or on any of the others in the record) were highlighted or explained. In short, the additional bank statements the officer appears to have overlooked do not shed any further light on the question of financial interdependence. (Both Ms. Xiong and Mr. Chiu had confirmed in the interview that they also had individual bank accounts.)

[20] Finally, standing on its own, the fact that Ms. Xiong and Mr. Chiu speak different languages may not be inconsistent with their living together or being in a genuine relationship but the officer did not rely on only this factor; it was one among several that the officer considered. Likewise, it was open to the officer to conclude that Ms. Xiong’s immigration

history demonstrated that she had a strong motivation to remain in Canada. This, too, was only one factor among several that the officer reasonably considered.

[21] In sum, while the decision is far from perfect, read as a whole and in light of the record, it reasonably supports the ultimate findings that Ms. Xiong had not established that she lives with Mr. Chiu or that the two of them are in a genuine marriage. No doubt this result was disappointing for Ms. Xiong but she has not established any basis for me to interfere with it. Consequently, this application for judicial review must be dismissed.

[22] The parties did not suggest any serious questions of general importance for certification under paragraph 74(d) of the *IRPA*. I agree that no question arises.

JUDGMENT IN IMM-11911-24

THIS COURT’S JUDGMENT is that

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

“John Norris”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-11911-24

STYLE OF CAUSE: NING XIONG v THE MINISTER OF CITIZENSHIP
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PLACE OF HEARING: TORONTO, ONTARIO

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JUDGMENT AND REASONS: NORRIS J.

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