Federal Court Cour fédérale

Date: 20231222

Docket: IMM-162-23

Citation: 2023 FC 1753

Ottawa, Ontario, December 22, 2023

PRESENT: Chief Justice Crampton

BETWEEN:

YUEKANG LI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] As hostile state actors increasingly make use of non-traditional methods to obtain sensitive information in Canada or abroad, contrary to Canada's interests, the Court's appreciation of what constitutes "espionage" must evolve.

[2] In the present proceeding, the Applicant, Mr. Li, requests the Court to set aside a decision (the **"Decision"**) by a visa officer (the **"Officer"**) rejecting his application for a Study Permit.

[3] The Officer rejected Mr. Li's application after concluding that he is inadmissible to Canada on security grounds. The Officer reached that conclusion after finding that there are reasonable grounds to believe that Mr. Li may engage in an act of espionage that is against Canada or that is contrary to Canada's interests, as contemplated by paragraph 34(1)(a) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [**IRPA**].

[4] Mr. Li maintains that the Decision was unreasonable in two principal ways. First, he submits that the Officer applied an overly broad definition of the word "espionage." Second, he states that the Officer misapprehended important evidence and ignored other evidence that ought to have been considered.

[5] I disagree. For the following reasons, this application will be rejected.

II. Background

[6] Mr. Li is a resident of the People's Republic of China (the **"PRC"**). In April 2022, the University of Waterloo accepted him into its PhD program in Mechanical and Mechatronics Engineering. Later that month, he submitted an application for a Study Permit (the **"Application"**), in relation to the four-year period of the PhD program, which was initially scheduled to begin in September 2022.

[7] Due to delays associated with background checks, Mr. Li obtained multiple deferrals of his start date in the program from the University of Waterloo. In granting the most recent deferral in April of this year, Mr. Li's prospective PhD supervisor advised Mr. Li that this would be "the last extension because the project has already started and I cannot wait any longer."

[8] In the meantime, in January of this year, Mr. Li applied for judicial review of "the ongoing failure, refusal, and/or unreasonable delay by Immigration, Refugees and Citizenship Canada" in processing his Application.

[9] In September, the Respondent filed an application under s. 87 of the IRPA for the non-disclosure of certain information from the certified tribunal record (the **"CTR"**).

[10] On November 10, 2023, Mr. Li learned from the redacted CTR that the Center for Immigration National Security Screening had recommended that there are reasonable grounds to believe that he is inadmissible to Canada pursuant to paragraph 34(1)(a) of the IRPA.

[11] On November 15, 2023, I issued an Order granting the Respondent's above-mentioned motion pursuant to s. 87 of the IRPA. I did so after finding that the disclosure of that information "would be injurious to national security or endanger the safety of any person," as contemplated by paragraph 83(1)(d) of the IRPA. In one of the recitals to my Order, I noted that the Respondent had represented that it did not intend to rely on the redacted information for the purpose of responding to Mr. Li's application for judicial review. During the hearing of this

application, the Respondent confirmed that the Officer did not rely on any redacted information in making the Decision.

[12] Further to a case management hearing on November 16, 2023, and subsequent exchanges with the parties, I directed the Respondent to make its decision on Mr. Li's Study Permit application by the close of business on December 8, 2023.

[13] On December 4, 2023, Mr. Li attended a "procedural fairness interview" to address the Officer's concerns that he may be inadmissible to Canada pursuant to paragraph 34(1)(a) of the IRPA.

III. The Decision

[14] At the outset of the Decision, the Officer explained that his concerns were based on Mr. Li's education, his field of study and research in Canada, and open-source information reporting on the PRC's reliance on non-traditional collectors of information, including science and technology students, to advance China's military and other interests.

[15] Regarding Mr. Li's education, the Officer noted that he obtained a bachelor's degree in Mechanical Engineering from Beihang University, and then a Master of Mechanical Engineering from the University of Colorado Boulder, where he studied remotely due to the COVID-19 pandemic. The Officer further noted that Mr. Li has a strong interest in microfluidics, a branch of micro/nanoscale science and technology, and that he indicated in his study plans that he wanted

to dedicate his career to improving China's underdevelopment of the application of advances to point-of-care technology in the field of public health.

[16] The Officer then referred to open-source reporting that Beihang University has a strong relationship with the defence industry in China. The Officer also discussed the PRC's strategic interest in certain high-tech industries, including "biopharma and advanced medical products."

[17] After elaborating upon the foregoing over the course of a lengthy analysis, the Officer concluded that there are reasonable grounds to believe that Mr. Li may be targeted and coerced into providing information that would be detrimental to Canada or contrary to Canada's interests, as set forth in paragraph 34(1)(a) of the IRPA.

IV. Preliminary Issue

[18] In the Respondent's written submissions, the Respondent took issue with the fact that Mr. Li had not filed an application for judicial review in respect of the Decision. Instead, the only application filed by Mr. Li concerned the Respondent's delay in making a decision on his Study Permit application. Given that the Respondent made that decision on December 8, 2023, the Respondent maintained that Mr. Li ought to have filed a separate application for judicial review of that Decision.

[19] I disagree. In my Direction dated November 20, 2023, as amended, I established a timetable for, among other things, the making of the Decision by December 8, 2023, the filing of any written submissions that parties may wish to make on the Decision by December 15, 2023,

and the hearing of the matter on December 18, 2023. That timetable was reached on a consensual basis with counsel to each of the parties during the case management conference on November 16, 2023.

[20] Although no reference was made during that case management conference to Rules 3, 55 or 75(1) of *Federal Courts Rules*, SOR/98-106, it was very clear to the Respondent that I was implicitly exercising my authority under the Rules to allow Mr. Li to amend his application for judicial review. As I explained during the case management conference, I was doing so in the interests of justice, having regard to the Respondent's very long delay in making the Decision, and the fact that the "absolutely last" deferral of Mr. Li's enrollment in the PhD program at Waterloo University will expire in the coming weeks.

V. Relevant Legislation

[21] Pursuant to section 33 of the IRPA, facts that constitute inadmissibility under sections 34 to 37 include facts arising from omissions and, unless otherwise provided, include facts for which there are reasonable grounds to believe that they have occurred, are occurring or may occur.

[22] Paragraph 34(1)(a) provides that a permanent resident or a foreign national is inadmissible on security grounds for engaging in an act of espionage that is against Canada or that is contrary to Canada's interests.

[23] The text of section 33 and paragraph 34(1)(a) are set forth in the Appendix to these reasons.

VI. Issues

[24] There are two principal issues in this proceeding. They are as follows:

1. Did the Officer apply an overly broad definition of the term "espionage" in reaching the Decision?

2. Did the Officer misapprehend or ignore important evidence?

VII. Standard of Review

[25] It is common ground between the parties that the standard of review applicable to the issues set forth above is whether the Decision was unreasonable. I agree: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65, at paras 16-17 [***Vavilov***].

[26] When reviewing a decision on a standard of reasonableness, the Court must approach the decision with "respectful attention" and consider the decision "as a whole": *Vavilov*, at paras 84–85. The Court's overall focus will be upon whether the decision is appropriately justified, transparent and intelligible. In other words, the Court will consider whether it is able to understand the basis upon which the decision was made and then to determine whether it "falls

within a range of possible, acceptable outcomes which are defensible in respect of the facts and the law": *Vavilov*, at paras 86 and 97.

[27] A decision which is appropriately justified, transparent and intelligible is one that reflects "an internally coherent and rational chain of analysis" and "is justified in relation to the facts and the law that constrain the decision maker": *Vavilov,* at para 85. It should also reflect that the decision maker "meaningfully grapple[d] with key issues or central arguments raised by the parties": *Vavilov*, at para 128.

[28] It is not the role of the Court to make its own determinations of fact, to substitute its view of the evidence or the appropriate outcome, or to reweigh the evidence. The Court's function is solely to assess whether the decision-maker's determinations and reasoning are reasonable: *Vavilov*, at paras 125–126; *Pascal v Canada (Citizenship and Immigration)*, 2020 FC 751, at para 7.

VIII. Analysis

A. *Did the Officer apply an overly broad definition of the term "espionage" in reaching the Decision?*

(1) The meaning of the term "espionage"

[29] Mr. Li maintains that the Officer erred by applying an overly broad definition of the term "espionage," as it is used in paragraph 34(1)(a) of the IRPA. More specifically, he states that the Officer included within that definition all non-traditional methods of intelligence collection. Mr.

Li asserts that this was unreasonable, because some forms of non-traditional collection of information do not constitute “espionage.”

[30] There is no definition of the term “espionage” in the IRPA or, it would appear, in any other Act of Parliament.

[31] However, Mr. Li submits that the term “espionage” has the following five characteristics:

> (1) There is an aspect of secrecy, clandestineness, surreptitiousness, or covertness in the way the information in question is gathered.
>
> (2) The information is collected without the other parties’ knowledge and consent.
>
> (3) The collector, by the time they are actively engaging in information gathering, does so under the control and direction of a foreign entity.
>
> (4) The information is regarded as secretive, as opposed to simply private.
>
> (5) The act is against Canada or contrary to Canada’s interests.

[32] I disagree. In my view, the jurisprudence supports a broader definition of “espionage.” At its most basic level, the concept of “espionage” contemplates the secret, clandestine, surreptitious or covert gathering *or* reporting of information to a foreign state or other foreign

entity or person. When such activity is against Canada or is contrary to Canada's interests, it falls within the purview of paragraph 34(1)(a).

[33] I will pause to observe that the fifth "characteristic" listed above is a distinct element of paragraph 34(1)(a). As such, it must be viewed as being separate and apart from what Parliament intended to be included within the definition of "espionage." That is to say, the words "that is against Canada or that is contrary to Canada's interests" qualify the type of espionage that is within the purview of paragraph 34(1)(a). Other types of espionage are not captured by that provision. For the present purposes, it is unnecessary to say more about this qualification.

[34] Mr. Li relies on this Court's decision in *Crenna v Canada (Citizenship and Immigration)*, 2020 FC 491, at paras 71-78 [***Crenna***] as authority for his position that the term "espionage" is limited to activity that has the five characteristics listed in paragraph 31 above. However, the Court in *Crenna* did not define "espionage" in that fashion. The Court's definition of "espionage" did not include the third and fourth "characteristics" identified by Mr. Li.

[35] In the course of its assessment, the Court in *Crenna* referred to several cases and dictionary definitions, as well as some testimony of an expert witness (Professor Wesley Wark), who appeared before the tribunal whose decision was under review. The Court then concluded: "The common thread running throughout these authorities is that espionage entails information *gathering* that is secret, clandestine, surreptitious or covert": *Crenna*, at para 78 (emphasis added).

[36] None of the jurisprudence or dictionary definitions reviewed by the Court in *Crenna* include the third and fourth "characteristics of espionage" identified by Mr. Li. That is to say, they do not state that the impugned activity must be conducted under the "control and direction" of a foreign entity, or that the information in question must be regarded as "secret."

[37] Moreover, the testimony of Professor Wark that was quoted by the Court was explicitly addressed towards "HUMINT" (intelligence gathering by means of human sources), as opposed to the broader term "espionage," as it is used in paragraph 34(1)(a) of the Act. Professor Wark stated:

> When I address issues of HUMINT, I generally describe this particular discipline of intelligence gathering as 'a form of espionage in which a state actor uses an agent under its control and direction to acquire information deemed useful to it using clandestine means.' The key characteristics here are three-fold: control and direction of an agent and clandestine means.
>
> *Crenna*, at para 74 (emphasis added by the Court)

[38] For the present purposes, it will suffice to reiterate that the Court in *Crenna* did not include these concepts of "control and direction" in ultimately arriving at its definition of "espionage," as quoted at the end of paragraph 35 above. It is also relevant to note that the Court in *Crenna* ultimately concluded that the impugned acts in that case did not give rise to reasonable grounds to believe that the applicant had engaged in espionage, because those acts were authorized. That is to say, the disclosure of the information in question to a foreign agent was authorized: *Crenna*, at paras 79 – 89.

[39] Mr. Li has not identified any other authority in support of his position that the key characteristics of "espionage" include (i) conducting the impugned activity under the "control and direction" of a foreign entity, or (ii) a requirement that the information in question is regarded as "secret."

[40] Although the Court in *Crenna* confined its definition of espionage to information *gathering* that is secret, clandestine, surreptitious or covert, I consider that the term "espionage" also includes the secret, clandestine, surreptitious, covert or unauthorized *disclosure* or *reporting* of information to a foreign state or other unauthorized entity or person. In my view, this interpretation is supported by some of the jurisprudence cited in *Crenna*.

[41] Specifically, in *Qu v Canada (Minister of Citizenship and Immigration)*, [2000] 4 FC 71 [***Qu FC***], this Court observed as follows:

> [45] The visa officer found, as a fact, the applicant had engaged in a constant pattern of reporting to the Embassy of China in Ottawa and provided intelligence on the activities of individuals in a Canadian student organization; he also attempted to subvert this organization to meet the goals and objectives of a foreign government. The elements of subversion which the visa officer had in mind are changing the previous mission of the [Concordia Students and Scholars' Association] from a pro-democracy activist association critical of the authorities in China to one which did not speak out at all against that government. As noted, these findings of fact or inferences drawn from them were not successfully challenged by the applicant.
>
> [46] I have no hesitation in concluding that the applicant's activities, as found by the visa officer, constitute espionage and subversion within the meaning of subparagraph 19(1)(*f*)(i) of the Act as those words are ordinarily understood and nourished as they are by an examination of federal legislation in *pari materia.*
>
> [Emphasis added.]

[42] It is readily apparent from the underlined words in the passages quoted immediately above that the Court in *Qu FC* considered the "reporting" and "providing" of information in relation to the apparently public activities of the Concordia Students and Scholars' Association to constitute "espionage." This is despite the fact that the Court proceeded to define "espionage" as being "simply a method of information gathering – by spying, by acting in a covert way": *Qu FC* at para 48. There was no suggestion that the information in question was secretly *gathered*, or that there was anything particularly secret about the nature of the information that was reported to the Chinese embassy.

[43] The Court's conclusion that the respondent's activities constituted "espionage" within the meaning of the predecessor provision to what is now paragraph 34(1)(a) of the IRPA was not disturbed on appeal: Qu v Canada (Minister of Citizenship and Immigration, 2001 FCA 399 [Qu FCA]. That predecessor provision was subparagraph 19(1)(f)(i) of the Immigration Act, RSC 1985, c I-2, which stated as follows:

19. (1) No person shall be granted admission who is a member of any of the following classes:	19. (1) Les personnes suivantes appartiennent à une catégorie non admissible:
[...]	[...]
f) persons who there are reasonable grounds to believe:	f) celles dont il y a des motifs raisonnables de croire qu'elles:
(i) have engaged in acts of espionage or subversion against democratic government, institutions or processes, as they are understood in Canada,	(i) soit se sont livrées à des actes d'espionnage ou de subversion contre des institutions démocratiques, au sens où cette expression s'entend au Canada,
[…]	[…]
except persons who have satisfied the Minister that their admission would not be detrimental to the national interest;	Le présent alinéa ne visant toutefois pas les personnes qui convainquent le ministre que leur admission ne serait nullement

préjudiciable à l'intérêt national;

[44] For greater certainty, the Federal Court of Appeal (the **"FCA"**) remitted the matter to the visa officer for redetermination in accordance with its reasons, which focused solely on the "subversion against democratic government, institutions or processes" element in subparagraph 19(1)(f)(i): *Qu FCA*. It bears underscoring that the FCA left untouched this Court's conclusion that the reporting of information that had apparently been gathered in a public setting amounted to "espionage."

[45] It is also relevant to note that the FCA held that Parliament "intended that a broad meaning be given to the words found in [subparagraph 19(1(f)(i)]": *Qu FCA*, at para 33. That presumably includes all of those words, including "espionage." Notwithstanding the subsequent amendments which separated some of the elements of paragraph 19(1)(f)(i) of the *Immigration Act* into distinct provisions of subsection 34(1) of the IRPA, the pre-IRPA jurisprudence with respect to the meaning of "espionage" continues to be good law: *Sumaida v Canada (Citizenship and Immigration)*, 2018 FC 256, at para 21.

[46] Another case referred to in *Crenna* is *Peer v Canada (Citizenship and Immigration)*, 2010 FC 752, aff'd 2011 FCA 91 [***Peer***]. Once again, the impugned activity in that case included the gathering of publicly available information. That information concerned details about the activities of Canadians and other foreign nationals while they were in Pakistan to perform at, or attend, arts and music festivals. The applicant was responsible for "keep[ing] an eye on these foreigners": *Peer*, at para 25. There was no suggestion that the activities of those foreigners were

in any way secret or clandestine. Rather, it was the *reporting* about their activities to authorities in Pakistan that constituted "espionage."

[47] In summary, and having regard to the foregoing, I consider that the term "espionage" contemplates (i) the secret, clandestine, surreptitious or covert gathering of information on behalf of a foreign government or other foreign entity or person, *or* (ii) the reporting or communication of information, whether surreptitiously or publicly gathered, to such a recipient. I further consider it reasonable to include within the definition of "espionage" the unauthorized reporting or communication of such information to a third party acting as an intermediary for the transmission of the information to such a recipient. When such activity is against Canada or is contrary to Canada's interests, it falls within the purview of paragraph 34(1)(a). This is so even if the information in question was gathered in public.

[48] Contrary to Mr. Li's submissions, it is not necessary to demonstrate that the impugned activity be under the control and direction of a foreign entity, or that the information be regarded as secretive in nature. It is also not necessary to establish that the information in question was *collected* without the knowledge and consent of the person(s) whose information was gathered and reported. It will suffice if that information, even if publicly available, was communicated or reported upon to a foreign state or other foreign entity or person, without any authorization. This interpretation is consistent with the FCA's teaching that the words in what is now subsection 34(1) of the Act be given a broad meaning: *Qu FCA*, at para 34.

[49] Mr. Li further maintains that espionage cannot be committed without intent or knowledge. Although he was not able to provide any authority in support of that submission, I am inclined to agree with his basic proposition. In my view, some element of knowing complicity or participation in one of the two types of activities described in paragraph 47 above is required. That is to say, it must be demonstrated that the person in question was aware that they were, or might be, either (i) gathering, in a secret, clandestine, surreptitious or covert manner, information on behalf of a foreign government or other foreign entity or person, *or* (ii) reporting or communicating information, whether surreptitiously or publicly gathered, to such a recipient.

[50] In the interests of completeness, it is relevant to add that the term "espionage" includes activities that are carried out on behalf of a foreign government, or other entity or person, pursuant to the laws of the foreign jurisdiction in question: *Afanasyev v Canada (Citizenship and Immigration)*, 2012 FC 1270, at para 19 [***Afanasyev***]. Furthermore, "espionage" does not contemplate any element of hostile intent, or that the person engaging in the impugned activity have an appreciation of how the gathered or reported information may be put to later use by its recipient(s): *Afanasyev* at para 19. It also does not contemplate that such activity have an illicit outcome as its goal: *Peer*, at para 34.

(2) Application to the Decision

[51] Having regard to the foregoing, I disagree with Mr. Li's submission that the Officer erred by applying an overly broad definition of the term "espionage" in making the Decision. I also disagree with Mr. Li's assertion that the Officer erred in determining that the non-traditional

collection of non-secret information relating to his field of study, microfluidics, could constitute "espionage," in the context described in the Decision.

[52] The Officer cited credible, open-source reports stating that the PRC relies on non-traditional collectors of information to target non-governmental organizations in Canada, including academic institutions and businesses. Such non-traditional collectors were identified as including individuals without formal intelligence training who have relevant subject matter expertise, including scientists and business people. The Officer noted that, according to a report of the U.S.-China Economic and Security Review Commission, entitled *Overseas Chinese Students and Scholars in China's Drive for Innovation* [the **"US Report"**], "the PRC heavily relies on their science and technology students to advance the goals of the Chinese Communist Party." Among other things, that publication describes the PRC's reliance on overseas Chinese students and scholars for its national development goals. It also describes the "sprawling ecosystem of [PRC] programs and incentives designed to ensure the scientific know-how and technologies these students and scholars acquire abroad are absorbed to advance its military-civil fusion strategy, benefitting China's commercial and defense sectors": US Report, at page 5.

[53] The Officer also noted that, through the non-traditional information collectors identified in the Decision, "[t]he PRC would then be able to take advantage of the collaborative, transparent and open nature of Canadian government, economy and society" by obtaining "sensitive and proprietary information or leading-edge technologies." The Officer added that the loss or unauthorized disclosure of such information could damage Canada's interests.

[54] The officer then linked Mr. Li's field of study, microfluidics, with China's strategic interests. In this regard, the Officer discussed open-sourced articles reporting upon the importance of the microfluidics industry to China's strategic ambitions. According to one of those articles, entitled *Why is China Becoming a Microfluidics Manufacturing Superpower?*, the development of microfluidic devices has created important new opportunities for medical research. These opportunities dovetail with China's Made in China 2025 plan, which targets 10 high-tech industries, including "biopharma and advanced medical products." A second article, entitled *Chinese microfluidics industry: a fast-moving eco-system*, notes that the Chinese government is recalling Chinese executives, researchers and engineers who have worked overseas, to lead innovative Chinese companies and increase their success in the microfluidics industry.

[55] Regarding Mr. Li's interest in microfluidics, the Officer observed that Mr. Li stated that he wanted to dedicate his career to improving China's underdevelopment in the application of advances to point-of-care technology in the field of public health. The Officer also noted that Mr. Li stated that he would prefer to study in Canada because he will have better opportunities to collaborate with industries and to deal with real-world problems. Given the foregoing, the Officer stated:

> Having a specialization in an industry that the PRC has named as one of their top 10 targeted high-tech industries (biopharma and advanced medical products) raises concerns that the applicant may be targeted by the PRC for use in their non-traditional methods of espionage that could lead to information being provided to the PRC that is contrary to Canada's interests.

[56] Given all of the foregoing, the Officer did not err in concluding that Mr. Li's gathering of information regarding microfluidics research and developments in the microfluidics field in Canada, on behalf of the PRC, would constitute "espionage" within the meaning of paragraph 34(1)(a). The same would be true with respect to the reporting or communication of such information to the PRC. It was not unreasonable for the Officer to so find.

[57] Mr. Li submits that the Officer relied on speculation in finding that there are reasonable grounds to believe that he may engage in activities that constitute "espionage." I disagree.

[58] The "reasonable grounds to believe" standard requires something more than mere suspicion, but less than what is required to establish proof on the balance of probabilities. "In essence, reasonable grounds will exist where there is an objective basis for the belief which is based on compelling and credible information": *Mugesera v Canada (Minister of Citizenship and Immigration)*, 2005 SCC 40, at para 114.

[59] The Officer's conclusion that there are "reasonable grounds to believe" that Mr. Li would engage in espionage if granted a permit to study at Waterloo University was based on Mr. Li's "education history and field of study as well as the PRC's use of non-traditional espionage techniques."

[60] With respect to his education history, the Officer noted that the Australian Strategic Policy Institute designated Beihang University as a very high security risk, due to various factors, including its strong relationship with the defence industry in China.

[61] Concerning Mr. Li's field of study, see the discussion of the Officer's conclusions at paragraphs 54-55 above. In addition, the Officer noted that, if Mr. Li were granted a visa to undertake his proposed PhD program at Waterloo University, he "would be in a unique position to provide the PRC with information that may in the future be detrimental to Canada or contrary to Canada's interests."

[62] Regarding the PRC's use of non-traditional espionage techniques, the Officer relied on credible, open-sourced reporting that the PRC uses overseas scientists, students and other non-traditional agents to collect commercially and militarily sensitive information to advance its strategic interests, to the detriment of Canada. These sources included public reports issued by the Canadian Security Intelligence Service (**"CSIS"**), a CBC news article quoting statements made by the Director of CSIS, the aforementioned US Report, the President's Proclamation 10043, and the articles referenced at paragraph 54 above.

[63] In my view, the foregoing considerations provided reasonable grounds to believe that Mr. Li may be recruited or coerced by the PRC to engage in the espionage activities described above and in greater detail in the Decision. It was not unreasonable for the Officer to so find. The open sources relied upon by the Officer were objective, credible and compelling. The Officer's reasons were appropriately justified, transparent and intelligible.

[64] It bears underscoring that section 33 of the IRPA provides that the facts that constitute inadmissibility under sections 34 to 37 include facts for which there are reasonable grounds to believe that they *may* occur.

[65] Mr. Li submits that the Officer erred by basing the Decision on a finding that he could provide the PRC with information "knowingly or unknowingly." As mentioned at paragraph 49 above, I agree that a person cannot be found to commit espionage if they are unaware that they are, or may be, engaging in activities that fall within the definition of that term. Nevertheless, the Officer's finding that Mr. Li could provide the PRC with information "unknowingly" did not render the Decision unreasonable. This is because the Officer also reasonably concluded that, if he were granted his visa to study at the University of Waterloo, there are reasonable grounds to believe that he may be coopted or coerced into providing sensitive information to the PRC.

[66] Mr. Li further maintained that the Officer erred by finding that he could commit espionage by providing the PRC with information after he completes his studies and returns to China. I disagree. It is not necessary for activities that would otherwise constitute "espionage" to be conducted while the individual in question is in Canada: *Afanasyev*, at para 18; *Peer*, at paras 36 and 40-41. The gathering of information within Canada and its subsequent reporting, outside Canada, to a foreign government or other foreign entity or person, is within the purview of the term "espionage", as it is used in paragraph 34(1)(a) of the IRPA.

[67] Mr. Li also asserts that the Officer erred by employing the phrase "detrimental to Canada or Canada's interests." However, it is readily apparent from a reading of the Decision as a whole that the Officer understood and applied the appropriate test, namely, that Mr. Li's potential espionage activities would be "against Canada" or "contrary to Canada's interests," as set forth in paragraph 34(1)(a). That language was used in many places in the Decision, including in the introduction and conclusion.

[68] In my view, it was not unreasonable for the Officer to adopt the definitions of those terms that he quoted from CIC Enforcement Manual 2. According to the Officer, that document defines "against Canada" as including "espionage activities conducted by a foreign state or organization in Canada." It also defines "contrary to Canada's interests" as including "espionage activity committed inside or outside of Canada that would have a negative impact on the safety, security or prosperity of Canada."

[69] It was also not unreasonable for the Officer to conclude that the potential activities of Mr. Li would satisfy either the foregoing definition of "against Canada" or the definition of "contrary to Canada's interests." Further relevant context for this finding is that the Officer noted that Mr. Li's application for a student visa to complete his Master's degree in person in the U.S. was refused on the basis of the President's Proclamation 10043. According to the Officer, that instrument states that the PRC "uses some Chinese students, mostly post-graduate students and post-doctorate researchers, to operate as non-traditional collectors of intellectual property and that entry of non-immigrants seeking entry to the USA pursuant to a F or J visa to study or conduct research in the United States would be detrimental to the interests of the United States."

[70] In summary, for all of the reasons set forth above, the Officer did not err in concluding that there were reasonable grounds to believe that Mr. Li is inadmissible on security grounds because he may engage in acts of espionage that is against Canada or that is contrary to Canada's interests. That conclusion was based on "an internally coherent and rational chain of analysis" and was appropriately "justified in relation to the facts and the law that constrain[ed] the [Officer]": *Vavilov*, at para 85.

B. *Did the Officer misapprehend or ignore important evidence?*

[71] Mr. Li maintains that the Officer erred in finding that he has maintained ties with Beihang University.

[72] I disagree. The Officer did not make any explicit statement in that regard. The Officer simply relied on Mr. Li's "education history," including his history at Beihang University, as one factor in his decision. The Officer's sole reference to potential ongoing ties between Mr. Li and that institution was made in response to Mr. Li's own statement that he had not maintained any such ties. In this regard, the Officer pointed out that Mr. Li had stated in his interview that it was his academic advisor from Beihang University, Dr. Peng, who influenced him to study at Waterloo University.

[73] Mr. Li states that the Officer misapprehended or overlooked evidence that Dr. Peng left Beihang University two years ago. However, in my view, this omission did not render the overall Decision unreasonable. Among other things, the fact that Dr. Peng left Beihang University two years ago does not demonstrate that he no longer has any links with that institution.

[74] More importantly, the Officer explicitly stated that Mr. Li's attendance at Beihang University did not, in and of itself, make him inadmissible under paragraph 34(1)(a). The Officer explained as follows: "It is not only the applicant's education history at Beihang University, but his education background combined with his field of study combined with the PRC's use of non-traditional methods of espionage that lead me to a finding of inadmissibility against the

applicant." In my view, this finding was appropriately justified, transparent and intelligible. It was also well grounded in the open-sourced reporting relied upon by the Officer.

[75] Mr. Li also submits that the Officer unreasonably ignored important evidence from his proposed thesis supervisor at the University of Waterloo, Dr. Carolyn Ren. The evidence in question is a letter from Dr. Ren, dated November 14, 2023. In that letter, Dr. Ren rejected the concern that the field of microfluidics could have military applications. Among other things, she asserted that military applications have never been interesting to the microfluidics community, and that microfluidics have inherent limitations preventing them from being used for such applications. She added that her laboratory at the University of Waterloo "has never done and will NOT do any research related to military applications …" Instead, that laboratory has been dedicated to developing various applications in the medical field.

[76] In my view, it was not unreasonable for the Officer to omit any mention of Dr. Ren's aforementioned letter. This is because the focus of the Officer's concerns was on the PRC's use of information he might provide, for its use in "biopharma and advanced medical products," which the Officer also described in terms of "new science, advanced technologies, and biomedical engineering and more". This is readily apparent from the following two passages that appear towards the end of the Decision:

> After reading the articles the applicant stated that he has never heard of Made in China 2025 and that he did not know about the landscape of the microfluidics industry until now. However, in his study plan he wants to dedicate his career to improve China's underdevelopment in the field of public health. Having a specialization in an industry that the PRC has named as one of their top 10 targeted high-tech industries (biopharma and advanced medical products) raises concerns that the applicant may be

> targeted by the PRC for use in their non-traditional methods of espionage that could lead to information being provided to the PRC that is contrary to Canada's interests.
>
> …
>
> The applicant himself stated that he prefers to study at the University of Waterloo than at his current university in Hong Kong as he would have better collaboration with industries and access to labs and real-world problems and other opportunities and experiences. The knowledge and information he could gain while pursuing his studies in Canada, which includes access to real labs, meeting others in his field of research, etc. could exploit Canada and take advantage of its collaborative and transparent nature and advance the PRC's interests in areas in new science, advanced technologies, and biomedical engineering and more.

[77] Based on this information, there are reasonable grounds to believe that the applicant is inadmissible on security grounds as he may engage in an act of espionage that is against Canada or that is contrary to Canada's interests.

[78] The foregoing also addresses Mr. Li's assertion that the Decision is unreasonable because it failed to address his proposal to include a condition in his Study Permit, to address the Officer's concerns about him engaging in research that may have military applications.

[79] In summary, for the reasons set forth above, I find that the Decision was not unreasonable on the ground that the Officer misapprehended or ignored important evidence. The Officer's decision fell well "within a range of possible, acceptable outcomes which are defensible in respect of the facts and the law": *Vavilov*, at para 86.

IX. Conclusion

[80] Given the findings made in parts VIII.A and VIII.B above, Mr. Li's application will be dismissed.

[81] At the end of the hearing of this application, the parties stated that the facts and legal issues raised do not give rise to a serious question of general importance for certification, as contemplated by paragraph 74(d) of the IRPA. Given the parties' position on this issue, and the fact that the "absolutely last chance" given to Mr. Li to enroll at the University of Waterloo will expire in a few weeks, I refrained from further exploring this issue with the parties.

JUDGMENT in IMM-162-23

THIS COURT'S JUDGMENT is that:

1. This Application for judicial review is dismissed.
2. There is no question for certification.

"Paul S. Crampton"
Chief Justice

APPENDIX — Relevant Legislation

Rules of interpretation	*Interprétation*
33 The facts that constitute inadmissibility under sections 34 to 37 include facts arising from omissions and, unless otherwise provided, include facts for which there are reasonable grounds to believe that they have occurred, are occurring or may occur.	33 Les faits — actes ou omissions — mentionnés aux articles 34 à 37 sont, sauf disposition contraire, appréciés sur la base de motifs raisonnables de croire qu'ils sont survenus, surviennent ou peuvent survenir.
Security	Sécurité
34. (1) A permanent resident or a foreign national is inadmissible on security grounds for	34. (1) Emportent interdiction de territoire pour raison de sécurité les faits suivants :
(a) engaging in an act of espionage that is against Canada or that is contrary to Canada's interests;	(a) être l'auteur de tout acte d'espionnage dirigé contre le Canada ou contraire aux intérêts du Canada;
[….]	[….]

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-162-23
STYLE OF CAUSE:	YUEKANG LI V THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	HELD BY VIDEOCONFERENCE
DATE OF HEARING:	DECEMBER 18, 2023
JUDGMENT AND REASONS:	CRAMPTON C.J.
DATED:	DECEMBER 22, 2023

APPEARANCES:

Raymond Lo	FOR THE APPLICANT
Ian Hicks	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Lo & Associates Richmond Hill, ON	FOR THE APPLICANT
Attorney General of Canada Toronto, ON	FOR THE RESPONDENT