IAD File No. / Nº de dossier de la SAI : VC3-06334
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Reasons and Decision – Motifs et décision

RESIDENCY OBLIGATION

Appellant(s) and	Shufang ZHANG	**Appelant(e)(s) et**
Respondent	Minister of Citizenship and Immigration	**Intimé(e)**
Date(s) of Hearing	January 11, 2024 February 9, 2024	**Date(s) de l'audience**
Place of Hearing	Heard by videoconference	**Lieu de l'audience**
Date of Decision	April 4, 2024	**Date de la décision**
Panel	Mark Ferrari	**Tribunal**
Counsel for the Appellant(s)	Jerry R.S. Zhang	**Conseil de l'appelant(e) /des appelant(e)s**
Designated Representative(s)	N/A	**Représentant(e)(s) désigné(e)(s)**
Counsel for the Minister	Alicia Billings	**Conseil du ministre**

REASONS FOR DECISION

OVERVIEW

[1] Shufang ZHANG (Appellant) is an 81-year-old citizen of China who became a permanent resident of Canada in 2014.

[2] Since landing, the Appellant has mostly resided in Canada. While the evidence concerning the number of trips was equivocal, she has returned to China for visits since landing. In November 2019 the Appellant visited China and has not been in Canada since then.

[3] In 2022 the Appellant applied for a Permanent Resident Travel Document (PRTD) and was found not to be in compliance with the residency obligation requirements of section 28 of the *Immigration and Refugee Protection Act* (IRPA).[1]

[4] The Appellant does not challenge the legal validity of the finding that she has not met her residency obligation requirements. However, the Appellant appeals the decision to the Immigration Appeal Division (IAD) on humanitarian and compassionate grounds. Therefore, the issue in this case is whether pursuant to paragraph 67(1)(c) of the IRPA the IAD should use its authority to grant discretionary relief and permit the Appellant to retain her permanent resident status despite a breach of the residency obligation.

[5] I find that the Appellant has not met the onus of proof. Based on the evidence before me and on a balance of probabilities, taking into account the best interests of a child directly affected by the decision, there are not sufficient humanitarian and compassionate considerations to warrant special relief in light of all the circumstances of the case. Therefore, the appeal is dismissed.

[1] *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.

ANALYSIS

[6] The Appellant, her daughter, and her pastor testified at the hearing. I have considered the testimony, the materials in the Record, the documentary evidence and the parties' submissions.

Legal validity and extent of non-compliance

[7] I find that the determination that the Appellant did not meet her residency requirements to be legally valid.

[8] Section 28 of the IRPA provides for a number of ways to meet the residency obligation. According to the documentary evidence, the Appellant was in Canada for 538 days during the relevant period.[2]

[9] The Appellant did not challenge the legal validity of the decision that she did not meet her residency requirements. There is little evidence that the Appellant met the residency requirements in any other manner.

Framework for humanitarian and compassionate considerations

[10] The IAD has the authority to consider special relief and permit the Appellant to retain her permanent resident status despite a breach of the residency obligation. The test to be applied in the exercise of that jurisdiction is that the IAD must be satisfied that at the time that the appeal is disposed of, taking into account the best interests of a child directly affected by the decision, sufficient humanitarian and compassionate considerations warrant special relief in light of all the circumstances of the case.

[11] Considerations in granting special relief are myriad and vary with each individual, but can include:

[2] Record, p. 62.

a) the extent of non-compliance with the residency obligation;

b) the reason the Appellant left and remained outside Canada;

c) whether efforts were made to return to Canada at the first opportunity;

d) the Appellant's degree of establishment in Canada;

e) the Appellant's family ties to Canada;

f) the hardship and dislocation that would be caused to the Appellant's family members in Canada if the Appellant lost his status in Canada;

g) the hardship that would be caused to the Appellant if the appeal was dismissed; and,

h) the best interests of a child directly affected by the decision.

[12] The residency obligations are not onerous. They only require 730 days in any five-year period and those days do not have to be continuous. In this case, there is a substantial shortfall of the required 730 days of residency. In order for the appeal to be allowed, humanitarian and compassionate factors commensurate with the seriousness of the breach and circumstances of this case are required.

Reasons for leaving Canada and efforts to return to Canada at the first opportunity

[13] When considering the evidence overall, I find the reasons the Appellant left and remained outside Canada for extended periods, and her efforts to return to Canada at the first opportunity, are not of assistance when considering the granting of special relief. I have accorded these significant weight.

[14] The Appellant testified that she visited China in November 2019 to visit her son who was living there. She also wanted to travel to Japan with friends where they would take a cruise. While she was in China, the coronavirus pandemic began in the country. The Appellant testified that due to the restrictions that resulted from the pandemic, she could not return to Canada and had to remain in Canada. She attempted to return to Canada in 2022 when the restrictions were lifted.

[15] The evidence concerning this point lacked cogency. The Appellant's responses to questions were often conflicting or lacked coherence. I find that this raises concerns over the credibility of the testimony, and this has reduced the weight that I can attribute to the testimony.

[16] For example, the Appellant testified that she did not return to Canada when she heard about the pandemic as she felt it was unsafe to travel. However, according to the evidence, after she had learned of the pandemic and formulated her opinion on the safety of travel, she did travel to Japan on December 26, 2019 and then went on a cruise.[3] There was no reasonable explanation for why the Appellant would accept travelling to Japan and on a cruise ship, but not accept taking a flight to Canada. There was some evidence presented that the Appellant was worried about the high risk of infection on flights.[4] However, there was little evidence to explain why being in enclosed spaced during travel to Japan or on a cruise ship presented a lesser risk.

[17] As another example, the Appellant testified that even if she could have found a flight to Canada, she would not have flown alone. That said, the Appellant did fly alone from Canada to China. When questioned on this, the Appellant testified that she flew on a Chinese airline and that they were not able to fly her back to Canada. However, there was little evidence provided on when Chinese airlines stopped flying to Canada. According to the evidence, the Appellant testified that she made no attempt to contact other non-Chinese airlines to see if they had flights. While it is appreciated that the Appellant would prefer to take a Chinese airline, there were not attempts to contact other airlines that might have been providing flights to see if they could provide assistance to her to overcome any barriers to travel such as language.

[18] The Appellant also testified that she could not return to Canada as the requirements for travel were troubling. Requirements such as the need to wear a mask on the plane, or take a PCR test before and after travel were noted.[5] While possibly inconvenient, it was not clear from the evidence how a requirement such as wearing a mask on a plane would be a barrier to returning to Canada.

[3] Exhibit A-1, p. 1.
[4] Exhibit A-1, p. 1.
[5] Record, p. 8.

[19] The Appellant did testify that she could not receive a vaccine approved by the Canadian government in China, and that this would be a barrier for her to return. Of note, the Appellant and her family did not make attempts to contact the Canadian government abroad or at home. The notes from the visa office indicate that permanent residents were exempt from many of the requirements for travel since March 2020. Further, the notes state that flights to Canada were available.[6] There was no cogent explanation why the Canadian government was not contacted to see if they could have helped, or at least provided this information. Further, there was no reasonable explanation why the Appellant or her family did not take the time to research this topic and determine her options to return to Canada prior to 2022.

Establishment in Canada

[20] I find the Appellant's establishment in Canada to be of limited assistance when considering special relief. Overall, the evidence shows that the Appellant has little establishment in Canada despite the number of years that she has been a permanent resident.

[21] The Appellant has no work experience in Canada and she has no assets in Canada.

[22] The Appellant has made social and community connections through her church. She regularly attends their events and assists with some of their volunteer activities. The church's pastor wrote a letter in support of the Appellant's appeal.[7]

Consideration related to family in Canada

[23] I find the hardship to the Appellant's family in Canada is not of assistance when considering the granting of special relief in this appeal.

[6] Record, p. 61.
[7] Record, p. 86.

[24] The Appellant's daughter, her son-in-law and her four grandchildren currently live in Canada. At the time of the hearing they were all adults except for the two youngest grandchildren who were teenagers.

[25] Prior to landing in Canada, the Appellant had been living apart from most of her family members in Canada for some time. In deciding to live and settle in Canada, the Appellant's family in Canada made the choice to live geographically apart from one another. From the evidence, they have been able to thrive. They have successfully pursued academic and professional goals, and have integrated into the culture and community. There was also little evidence of any hardship to the Appellant stemming from their decision to live in different countries.

[26] From the evidence, the Appellant and her family have strong relations amongst themselves. They are supportive of the Appellant being able to retain her permanent resident status and wrote letters of support.[8] There would likely be emotional strain if the Appellant could not return to permanently reside in Canada. However, this is not unforeseen in situations where the outcome of an appeal leads to physical separation. There was little evidence that any emotional strain would constitute an undue hardship.

[27] The Appellant and her family have been able to maintain communication with one another for many years despite the distance between them, and there was little evidence that this would not continue. Also, the Appellant can explore options such as a visitor's visa or super visa to determine if these would increase the opportunities for visits or co-habitation.

Hardship to the Appellant should the appeal be dismissed

[28] Overall, I find that the Appellant would face no undue hardship if the appeal were to be dismissed and she were to remain in China, this factor is not of assistance.

[29] The Appellant has spent much of her life in China. She is familiar with the language and culture.

[8] Exhibit A-1, pp. 13-17.

[30] The Appellant has been living in her daughter's home in China and there was little evidence that this arrangement could not continue. The Appellant's son lives in China and he has good relations with the Appellant. The Appellant's older sister also lives in China though they do not see one another often.

[31] At the time of the hearing the Appellant's son was living in another part of China as he was caring for his sick father-in-law. There was little evidence to show whether this arrangement is temporary or long term. Also, there was little evidence to show that the Appellant could not reside closer to her son, even on a temporary basis, as he cares for his father-in-law.

[32] As mentioned, the Appellant became involved with her church while living in Canada. While in China she is able to attend church services online. She is also able to participate in a daily study group. I acknowledge that virtual participation with her church may not offer the same level of social connection as in-person participation. While this has been considered, it does not weigh significantly in favour of the granting of special relief.

Best interests of a child directly impacted by the decision

[33] The Appellant's two youngest grandchildren were identified as children whose best interests needed to be considered in this appeal. I find that this factor is not of assistance when considering the granting of special relief.

[34] The Appellant's grandchildren are teenagers and according to the testimony they have a good relationship with their grandmother. While I do not dispute this, I find that the depth of the relationship appeared to be overstated at times. The Appellant was not able to answer basic questions related to the grandchildren's age or schooling. It would be expected that this information would be known by the Appellant if they had the depth of relationship that was presented.

[35] During submissions, the Appellant's Representative Without Fee stated the Appellant's inability to recall her grandchildren's age or grade in school is reflective of the fact that this information is not pertinent in the Appellant's culture. I have given this argument little weight. There was little evidence to

support this argument. Further, this argument was made during submissions and Minister's Counsel did not have the opportunity to cross-examine on this point.

[36] While most children do confer some benefit from having a loving and supportive grandparent in close proximity to them, there was little evidence in this appeal that it was necessary for the children's best interests. They have been able to grow and thrive despite the fact that the Appellant has been absent in their lives for many years.

[37] In deciding to reside and raise their family in Canada, the grandchildren's parents knew that the Appellant would not be living in the same country. While it was hoped that they could sponsor the Appellant in the future, there was no guarantee that this would occur, and they faced the possibility that a sponsorship would never be possible. In the absence of evidence to suggest otherwise, the choices made by the parents of the children are presumed to be in the child's best interests.

CONCLUSION

[38] The Appellant has not met the onus of proof. Based on the evidence before me, taking into account the best interests of a child directly affected by the decision, there are not sufficient humanitarian and compassionate considerations to warrant special relief in light of all the circumstances of the case. The appeal is dismissed.

NOTICE OF DECISION

The appeal is dismissed.

(signed by) Mark Ferrari

Mark Ferrari

April 4, 2024

Date

Judicial Review – Under section 72 of the *Immigration and Refugee Protection Act*, you may make an application to the Federal Court for judicial review of this decision, with leave of that Court. You may wish to get advice from counsel as soon as possible, since there are time limits for this application.