Federal Court Cour fédérale

Date: 20250612

Docket: IMM-5669-24

Citation: 2025 FC 1043

Toronto, Ontario, June 12, 2025

PRESENT: The Honourable Madam Justice Ferron

BETWEEN:

HUI-HSIU LIN

Applicant

and

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] While in Canada on a temporary student permit, the Applicant, Mrs. Hui-Hsin Lin, a Taiwanese national, applied for refugee status based on a fear of an attack on Taiwan from China. On March 19, 2024, the Minister's Delegate [Minister's Delegate], found the Applicant inadmissible to Canada for failure to comply with paragraph 20(1)(a) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the Act] and issued a Departure Order against her [Decision].

[2] The Minister's Delegate based their Decision on the fact that, per subsection 41(a) of the *Act*, on a balance of probabilities, there were grounds to believe the Applicant was a foreign national who failed to comply with the *Act* through an act or an omission which contravenes a provision of the *Act*. More specifically, as per section 20(1)(a) of the *Act*, that she was a foreign national who sought to remain in Canada to become a permanent resident but did not hold a visa or any other document required under the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [the Regulations]. The Applicant seeks the judicial review of the Decision.

[3] In brief, the Applicant first argues that the Minister's Delegate failed to observe principles of natural justice and procedural fairness by (1) proceeding with the admissibility interview process with Immigration, Refugees and Citizenship Canada [IRCC] on March 19, 2024, and (2)°concluding this process with the issuance of a departure order, all of which without providing an interpreter to the Applicant and without advising the Applicant of her right to counsel and providing her with the opportunity to retain counsel. She also argues that the conditional departure order was based on a misinterpretation of subsection 41(a) of the Act and issued without an evidentiary basis to support it and without providing reasons for the Decision.

[4] In support of her application for leave and judicial review, the Applicant filed her own affidavit, written in English and sworn on April 23, 2024, enclosing 10 exhibits. It should be noted that this affidavit was translated from English to Mandarin for the Applicant, as attested by an affidavit from an interpreter. However, no jurat is enclosed from the Applicant as required by Rule 80(2.1) of the *Federal Courts Rules*, SOR/98-106 [*Rules*]. The Applicant also filed the affidavit of Preevanda Sapru, a lawyer who has been practising immigration and refugee law since 1998 in Ontario, sworn on May 8, 2024, and enclosing two exhibits.

[5] The Minister of Public Safety [Minister], the Respondent, essentially submits that there was no breach of procedural fairness as the Applicant did not request an interpreter or counsel during the admissibility interview. Moreover, the Respondent adds that in an interview context, there is no automatic right to counsel. Finally, given the evidence and circumstances of this matter, he submits that the Decision was reasonable.

[6] The Respondent filed four affidavits sworn by the four IRCC officers who met the Applicant on March 19, 2024.

[7] At the hearing, the Applicant submitted four questions to be certified. The Respondent opposes the certification of these questions. Given the late filing, and under reserve, the Court allowed the parties to provide written submissions regarding the late filing and the merits of these questions.

[8] For the reasons that follow, the Court will dismiss the application and will not certify any questions.

II. Brief Summary of the Facts

[9] On August 14, 2023, the Applicant entered Canada with a student visa. In September 2023, she began her studies in an Early Childhood Education program. As part of that program, she completed two English courses and received “A” marks for each.

[10] On January 31, 2024, the Applicant filed a refugee claim. To do so, she states that she went on the Government of Canada "Claim refugee status from in Canada: How to Apply" online page and navigated through the refugee online application process with the help of family and a family friend as well as translation websites.

[11] In her application, under the question "Why did you decide to come to Canada (instead of another country or territory)?", the Applicant answered: "My sister lives in Canada and I feel safe to live in Canada. I have nowhere else to turn."

[12] Further, in her Basis of Claim form [BOC], she alleged (1) fear of escalating Chinese threats to Taiwan; (2) that there was no organization in Taiwan that would be able to protect her if war or conflict were to break out; (3) there was no safe place to move to in Taiwan if there was a military conflict with China and if the United States of America became involved; and (4) the recent presidential election in Taiwan saw someone elected whom China does not want.

[13] Also in her BOC, the Applicant indicated that her sister, not a lawyer, would be helping her with her refugee protection claim before the Refugee Protection Division [RPD]. At question 10(b) concerning the language of the hearing, the Applicant indicated she wished to have an interpreter for Mandarin, and signed the Declaration A of the BOC, which reads:

> I declare that the information I have provided in this form is complete, true and correct. I declare that I am able to read English and that I have fully read and fully understood the entire content of this form and all attached documents. My declaration has the same force and effect as if made under oath.

[14] On February 14, 2024, an officer issued a report per subsection 44(1) of the *Act* indicating that the Applicant was inadmissible to Canada for failure to comply with paragraph 20(1)(a) of the *Act* because she was a foreign national who sought to remain in Canada to become a permanent resident, but did not hold a visa or other document required under the Regulations.

[15] It should be noted that further to a question of the Court during the hearing regarding the fact that the 44(1) report found in the Court record appears to have been signed by the Applicant on February 14, 2024, the Applicant's counsel provided additional written submissions regarding the date of signature, as a "preliminary matter". The Applicant's submission is that she would have signed the 44(1) report during the March 19, 2024, interview, as opposed to the date indicated on the document as being signed by the Applicant on February 14, 2024. The Respondent confirmed this to be the case.

[16] On February 21, 2024, the Applicant completed her refugee medical examination as per the instruction letter she had received from IRCC.

[17] On February 22, 2024, the Applicant applied for a study permit extension. This was issued on March 13, 2024.

[18] On February 28, 2024, the Applicant received a notice from IRCC to return for an interview scheduled on March 19, 2024.

[19] On March 19, 2024, the Applicant attended the interview at IRCC's office with her sister who was not granted access to IRCC due to a security protocol indicating that for the initial

appointment, an applicant should generally enter alone if they are able to understand and converse in English. In this case, the first officer [First Officer] who met the Applicant that morning swore an affidavit indicating that they were of the view that she did not seem to have any difficulty understanding them or carrying on a conversation in English.

[20] During this initial interview, as per standard practices, the First Officer took the Applicant's biometrics, seized her passport and gave her an information sheet. This standard practice is fully described on the IRCC website, that the Applicant herself stated she visited. She was told to return to IRCC that afternoon for her appointment.

[21] The information sheet remitted by the First Officer provides a lot of information, including that (1) the Applicant would be meeting with an immigration officer to determine if her refugee claim was eligible; (2) she would be required to sign a few documents; (3) by making a refugee claim, the Applicant was saying that she planned on staying in Canada permanently; (4) given she had a refugee claim in process, her removal order was conditional, which meant it would come into force only if her claim was not successful, she withdrew or abandoned her claim, or the Immigration and Refugee Board of Canada [IRB] did not accept her claim; and (5) if the removal order came into force, she would have 30 days to leave Canada voluntarily. The sheet also stated that if she had any questions about the information contained therein, she could ask the immigration officer.

[22] Concerned with the information contained therein, the Applicant reached out to an immigration consultant, but the consultant was not available. She was told to attend the afternoon interview and that she could meet the consultant afterwards. There is no evidence in the record

that the Applicant requested for the afternoon interview to be postponed to another date so that the consultant (or a lawyer) may accompany her.

[23] The Applicant returned to IRCC in the afternoon with her sister who was granted access. They first met with a Case Processing Agent [Second Officer] who noted that the Applicant did not have questions about the information sheet given by the First Officer, did not request an interpreter, and was able to understand the details of their meeting with minimal help from her sister.

[24] In their affidavit, the Second Officer states that when they explained the notice of seizure and the documents that were being seized, the Applicant asked when she would be able to get them back, specifically the passport, as she and her sister had plans to enter the United States for shopping. The Second Officer states that they explained the standard procedure in every refugee claim was to seize the documents, and the Applicant was upset by this and asked if there was any way to have the passport returned to her. The Second Officer told her she could if she withdrew her claim, but that she would then need to leave Canada within 30 days. The Applicant indicated that she wanted to continue with her claim.

[25] The Applicant and her sister subsequently met with a Case Processing Officer [Third Officer] who found that the Applicant was in fact eligible to make a refugee claim and referred her claim to the IRB. It should be noted that the Third Officer is the Minister's Delegate. Accordingly, the Third Officer prepared the required documents, i.e., the Refugee Protection Claimant

Document, Confirmation of Referral, Section 44 Report, and Conditional Departure Order – and presented them to the Applicant and her sister who translated the documents for her.

[26] The Applicant refused to sign the Conditional Departure Order and requested additional time to review the document before signing. The Third Officer noted that while an applicant is not required to sign the Conditional Departure Order for it to be issued, they provided the Applicant with the additional time she requested, scheduling a further appointment for March 26, 2024. The Third Officer also asked their supervisor [Fourth Officer] to speak with the Applicant.

[27] Lastly, the Applicant met with the Fourth Officer who noted that when they met, the Applicant had questions regarding the Conditional Departure Order that had been issued by the Third Officer. The Fourth Officer noted that the Applicant spoke English, but her sister also translated for her, and that the Applicant did not request an interpreter. That said, the Fourth Officer also noted that the Applicant was emotional and upset that she might be required to leave Canada since she wanted to stay and complete her studies.

[28] The Fourth Officer explained that as a result of making a refugee claim, a Conditional Departure Order had to be issued against her in the event her claim was not successful. Despite trying to explain this to her, the Applicant remained upset and appeared not to understand. Accordingly, the Fourth Officer asked if the Applicant wanted to come back on a different date and have the Conditional Departure Order explained through an accredited translator; the Applicant agreed. Lastly, the Fourth Officer asked if the Applicant wanted to withdraw her refugee claim, to which the Applicant refused and stated she wanted more time to understand the

Conditional Departure Order. The Applicant was scheduled to return for an interview on March 26, 2024.

[29] Thus, that day, the Applicant met with a total of four IRCC representatives who all stated in their affidavits that the Applicant did not request an interpreter, nor legal counsel. Moreover, they all stated that the Applicant appeared to understand what was being said and the documents remitted to her. However, it appeared that the Applicant and her sister did not appear to fully understand the potential consequences of her refugee claim should it be denied.

[30] On March 26, 2024, the Applicant met again with the Fourth Officer, accompanied by a representative who was identified as a law clerk from the office of the Applicant's lawyer. An accredited interpreter with the IRB was also present by telephone.

[31] During that meeting, the Applicant's representative stated that the Applicant now wanted to withdraw her refugee claim and sought to have the Conditional Departure Order cancelled. The Applicant was told the withdrawal of her claim had to be requested directly with the IRB since the claim had already been referred to the IRB. Further, the Fourth Officer confirmed that the Conditional Departure Order would remain enforceable pending a withdrawal of the Applicant's claim, and that only the Canada Border Services Agency [CBSA] could make the decision whether the removal order would be enforced.

[32] On March 28, 2024, the Applicant submitted a notice of withdrawal of her claim, and on April 4, 2024, her withdrawal was confirmed.

[33] On April 2, 2024, the Applicant filed an application for judicial review.

[34] On September 4, 2024, in accordance with a Direction to Report issued on August 15, 2024, by CBSA, the Applicant departed for Taiwan and has not returned to Canada since that time.

III. Decision under Review

[35] The Decision under review is the March 19, 2024, Conditional Departure Order issued by the Minister's Delegate which states that the Applicant is inadmissible for failing to comply with the requirement of paragraph 20(1)(a) of the Act:

> Subsection 41(a) in that, on a balance of probabilities, there are grounds to believe is a foreign national who is inadmissible for failing to comply with this Act through an act or omission which contravenes, directly or indirectly, a provision of this Act, specifically:
>
> The requirement of paragraph 20(1)(a) of the Act that every foreign national, other than a foreign national referred to in section 19, who seeks to enter or remain in Canada must establish, to become a permanent resident, that they hold the visa or other document required under the Regulations.

IV. Submissions to this Court

A. *The Applicant's Submissions*

[36] First, with respect to the issue of the interpreter, the Applicant submits that given that she did not understand what was happening or its impact upon her, and the information sheet did not

effectively explain what she should do or how the process would affect her study permit, IRCC's decision to proceed without an interpreter invalidates the Decision to issue a departure order.

[37] The Applicant adds that although the right to an interpreter is not explicitly provided for in the *Act*, subsection 162(2) of the *Act* acknowledges that principles of fairness and natural justice guide the proceedings.

[38] She further adds that the right to an interpreter in proceedings, where the person concerned cannot fully participate because of language limitations, is recognized in Canadian law as a fundamental right, citing subsection 2(g) of the *Canadian Bill of Rights*, SC 1960, c 44 and section 14 of the Canadian *Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11 [*Charter*].

[39] According to the Applicant, this Court has recognized that there is a right to an interpreter at immigration proceedings, including during admissibility interviews/hearings (*Thambiah v Canada (Minister of Citizenship and Immigration)*, 2004 FC 15; *Kamara v Canada (Minister of Citizenship and Immigration)*, 2011 FC 243 at para 35-38 [*Kamara*]). She stresses that IRCC officers could not proceed without an interpreter, yet did so even though they knew her English skills were limited.

[40] The Applicant further argues that the presence of her sister did not overcome this breach as she was not an interpreter, and the Decision appeared to have already been made by that time. In her view, the presence of an interpreter at the subsequent meeting on March 26, 2024, also did

not overcome the breach of her right to an interpreter at the March 19, 2024, hearing as the Decision had already been made on March 19, 2024.

[41] She highlights that all three officers who met with the Applicant in the afternoon supported a later interview, with an interpreter and/or counsel, so she could understand the process. Thus, in her view, there is no evidence that she waived her right to an interpreter and the obligation on the part of the officers was to ensure that she could communicate and understand the proceeding; it is not dependent on her request (*Kamara* at para 39-41; *Segovia v Canada (Minister of Citizenship and Immigration)*, 2016 FC 1068 at para 7, 19-23).

[42] Finally, the Applicant stresses that the notion that she failed to request an interpreter is simply incorrect; in her online refugee claim application and in her BOC, she indicated that she required an interpreter.

[43] Second, on the issue of counsel, the Applicant submits that she had a right to counsel at the interviews on March 19, 2024, which was breached when the officers proceeded with the initial inadmissibility interview and the Minister's Delegate review without advising her of this right or offering to adjourn so that she could exercise it.

[44] According to her, the Federal Courts have recognized that there is a right to counsel in relation to immigration proceedings that will have a significant impact on the person concerned (*Ha v Canada (Minister of Citizenship and Immigration)*, 2004 FCA 49 at para 47-48, 53-55, 58, 66-68). She adds that even if there is no general right to notice of a right to counsel, in the case at bar, the officers knew that this particular applicant either needed legal advice or did not understand

the proceedings. The Applicant stresses that there was no apparent reason that it was necessary to complete the process that day.

[45] Third, the Applicant argues that the Decision of the Minister's Delegate to issue a departure order against her was made without evidence and was based on a misinterpretation of subsection 41(a) of the *Act*. More specifically, she submits that:

i. it is apparent that the IRCC has decided that any person who makes a refugee claim is automatically inadmissible because they are seeking to remain in Canada permanently and do not have the requisite visa, which is contrary to IRCC's own manual that contemplates the collection of evidence to prove non-compliance, not assumptions based on an intention to seek residence at some point in the future;

ii. the policy differs, for example, in the context of a foreign national spouse, whether in or out of status, who comes forward seeking to remain permanently in Canada under a family class sponsorship; in that context, there is no assumption that those who are in status become inadmissible for stating a desire to acquire permanent residence so why should this assumption occur for someone in status as per a student visa;

iii. To come within subsection 41(a) of the *Act*, a person must "contravene, directly or indirectly, a provision of this Act." It is not apparent how section 22 of the *Act* was breached; the Applicant has not even applied for permanent residence, she asked for refugee protection, a request which she has since withdrawn;

iv. Even if one could say that an intention to seek permanent residence, directly or through the refugee process, does engage section 22 of the *Act*, there is no contravention until there is a decision on the application; and

v. It appears that the IRCC officers wrote the report and issued the departure order against the Applicant solely on the basis of an assumption that her intention was to live permanently in Canada, which was unfair, unreasonable and particularly egregious because subsection 22(2) of the *Act* specifically recognizes that a person can have dual intent in relation to their time in Canda.

B. *The Minister's Submissions*

[46] The Minister replied to each argument raised by the Applicant. First, the Minister submits that there was no breach of procedural fairness as the Applicant did not request an interpreter, nor did she request counsel, as set out in the Affidavits of the four officers who met with the Applicant. Moreover, their affidavits as well as the Applicant's own evidence regarding her studies in English at Fanshawe College and her Declaration A of the BOC, supports that she speaks English and could carry on a conversation in English.

[47] The Minister adds that while the Applicant argues that neither the presence of her sister at the afternoon meeting on March 19th, nor the presence of the interpreter on March 26overcomes the breach in not having an interpreter on March 19th, she continues to ignore the fact that she did not request an interpreter and was able to participate in the interviews in English, including with the assistance of her sister.

[48] According to the Minister, the notes on which the officers relied in support of their affidavits were made just after their meetings with the Applicant. As such, they should be considered complete and correct and ought to be preferred over the Applicant's description in her affidavit of what occurred, which she made one month later (*Gebreselasse v Canada (Citizenship and Immigration)*, 2021 FC 865 at para 49, citing *Waked v Canada (Citizenship and Immigration)*, 2019 FC 885 at para 22).

[49] Second, with respect to the right to counsel, the Minister submits that the Applicant also did not request counsel at any time during any of her meetings. The Minister further submits that the Federal Court of Appeal has confirmed that "a refugee claimant does not have a right to counsel at an interview relating to their eligibility to claim refugee status." (*Canada (Citizenship and Immigration) v Paramo de Gutierrez*, 2016 FCA 211 at para 54 [*Paramo*], citing *Dehghani v Canada (Minister of Employment and Immigration)*, [1993] 1 SCR 1053 at 1077 [*Dehghani*]) According to the Minister, given the nature of the Applicant's meetings on March 19 and 26, which were not "hearings", there was no right to counsel.

[50] Moreover, it was not the Applicant who requested counsel, it was an officer who asked the Applicant if she was being assisted by counsel, and suggested she may want to speak to one for guidance.

[51] The Minister adds that contrary to the Applicant's submission, the Fourth Officer did not state that the process needed to be completed on March 19, 2024; they noted that IRCC was willing to wait to complete the interview at a later date if the Applicant was interested in hiring counsel.

[52] In response to the Applicant's issue with the finding that she was in breach of the Act by seeking to reside permanently in Canada without first obtaining a permanent resident visa or other document required before coming to Canada, the Minister asserts three specific problems:

i. the Applicant's own evidence supports this was her intention. As set out in her affidavit, the Applicant did not want to return to Taiwan because she was fearful of an attack from China and when filling out the refugee claim forms, she indicated that she had "nowhere else to turn" and that "it does not matter where [she goes] in Taiwan";

ii. the Information Sheet provided to the Applicant on March 19, 2024, clearly notes that making a refugee claim indicates an intention of planning to stay in Canada permanently; and

iii. the finding that the Applicant was not in compliance with the *Act* or its Regulations and ought to be issued a conditional departure order is in line with the jurisprudence (*Lion v Canada (Public Safety and Emergency Preparedness)*, 2019 FC 77 at para 12 [*Lion*]; *Kibos v Canada (Minister of Citizenship and Immigration)*, 2025 FC 316 at paras 19-23 [*Kibos*]).

V. Analysis

A. *Preliminary Issues*

[53] In their written submission, the Minister submits that as the Decision at issue was made by IRCC, the correct Respondent is the Minister of Citizenship and Immigration. Neither party addressed this during the hearing. In accordance with *Ministerial Responsibilities Under the Immigration and Refugee Protection Act Order*, SI/2015-52 at section 3, the Court agrees with the Minister. The style of cause will be amended to replace the Minister of Public Safety with the Minister of Citizenship and Immigration.

B. *Standard of Review*

[54] Both parties submit that the applicable standard of review is reasonableness. The Court agrees. This is in line with the Supreme Court of Canada's landmark decision in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] (see also *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 at para 7 [*Mason*]).

[55] In *Smajlaj v Canada (Citizenship and Immigration)*, 2025 FC 821, Justice Gascon provides a good summary of the role of a reviewing Court when the standard of review is reasonableness:

> [11] Where the applicable standard of review is reasonableness, the role of a reviewing court is to examine the reasons given by the administrative decision maker and to determine whether the decision is based on "an internally coherent and rational chain of analysis" and is "justified in relation to the facts and law that constrain the decision maker" (*Vavilov* at para 85; *Mason* at para 64). The reviewing court must therefore ask whether the "decision

> bears the hallmarks of reasonableness—justification, transparency and intelligibility" (*Vavilov* at para 99). Both the outcome of the decision and the decision maker's reasoning process must be considered in assessing whether these hallmarks are met (*Vavilov* at paras 15, 95, 136).
>
> [12] Such a review must include a rigorous evaluation of administrative decisions. However, as part of its analysis of the reasonableness of a decision, the reviewing court must take a "reasons first" approach and begin its inquiry by examining the reasons provided with "respectful attention," seeking to understand the reasoning process followed by the decision maker to arrive at its conclusion (*Mason* at paras 58, 60; *Vavilov* at para 84). The reviewing court must adopt an attitude of restraint and intervene "only where it is truly necessary to do so in order to safeguard the legality, rationality and fairness of the administrative process" (*Vavilov* at para 13), without "reweighing and reassessing the evidence" before it (*Vavilov* at para 125).
>
> [13] The onus is on the party challenging the decision to prove that it is unreasonable. Flaws must be more than superficial for the reviewing court to overturn an administrative decision. The court must be satisfied that there are "sufficiently serious shortcomings" (*Vavilov* at para 100).

[56] With respect to procedural fairness, although no standard of review is applied, the Court's exercise of review is "best reflected in the correctness standard" (*Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54 [*Canadian Pacific Railway*]; see also *Canadian Hardwood Plywood and Veneer Association v Canada (Attorney General)*, 2023 FCA 74 at para 57). The Court must ask whether the process was fair in view of all the circumstances and, as stated by the Federal Court of Appeal: "the ultimate question remains whether the applicant knew the case to meet and had a full and fair chance to respond." (*Canadian Pacific Railway* at paras 54, 56)

C. *Process Under Section 44 of the Act*

[57] This Court has confirmed that neither the officer (s. 44(1) reports), nor the Minister's delegate (s. 44(2) reports) need to consider or refer to any facts other than those underlying the alleged inadmissibility before making a referral decision to the IRB. In *Lin v Canada (Public Safety and Emergency Preparedness)*, 2019 FC 862, aff'd in 2021 FCA 81, leave to appeal to SCC refused, 39750 (March 17, 2022) [*Lin*], Justice Barnes described the nature of the section 44 process:

> [16] Neither the Officer nor the Delegate is authorized or required to make findings of fact or law. They conduct a summary review of the record before them on the strength of which they express non-binding opinions about potential inadmissibility. This is no more than a screening exercise that triggers an adjudication" It is at the adjudicative stage where controversial issues of law and evidence can be assessed and resolved (…) the referral process is intended only to assess readily and objectively ascertainable facts concerning admissibility. It does not call for a long and detailed assessment of issues that can be properly assessed and fully resolved in later proceedings." (*Lin et al v Canada (Public Safety and Emergency Preparedness)*, 2019 FC 862 at paras 16, 20 citing *Canada (Minister of Public Safety and Emergency Preparedness) v Cha*, 2006 FCA 126 at paras 47 and 48, [2007] 1 FCR 409).
>
> (see also *Obazughanmwen v Canada (Public Safety and Emergency Preparedness)*, 2023 FCA 151 at para 37, citing the above paragraph with approval) [emphasis in the original.]
>
> [17] Although the Court in Cha, above, was careful to limit the application of its reasons to cases involving foreign nationals I cannot identify a rational basis to extend a more generous substantive discretion to permanent residents under s 44. I accept that greater due process requirements may apply to permanent residents because they are at risk of losing their residency status. However, unlike some provisions in the IRPA that grant heightened substantive rights to permanent residents, s 44 treats foreign nationals and permanent residents alike. Accordingly, whatever the

> basis of inadmissibility may be, the discretion not to make a referral to the ID is the same for both classes
>
> …
>
> [20] For these reasons I conclude that the scope of discretion available to the Applicants in these cases is no greater than that described in Cha, above, which is to say that aggravating and disputed mitigating circumstances are effectively off the table. It is open to the Officer and the Delegate to reflect on "clear and non-controversial" facts concerning the grounds of inadmissibility – and presumably to entertain a submission about those facts – but the legal obligation extends no further than that.

[58] Further, and as stated by Justice Grammond in *Lion*:

> [12] … a departure order is typically issued as a matter of course when someone claims refugee status. It flows mechanically from the provisions of the Act and Regulations. No discretion is exercised and no detailed review of the situation is made. Save in exceptional circumstances, the issuance of a departure order does not raise issues that are amenable to judicial review.

[59] This is also confirmed by the Applicant's own evidence, as Ms. Sapru's affidavit states that in her experience, "[…] officers do not question the person to determine if they are in breach of their temporary status in Canada, but routinely prepared [sic] the section 44 report under the [Act] and issue a conditional departure order which becomes enforceable if the person's refugee claim is refused."

[60] In the present matter, the ground for inadmissibility stated in the subsection 44(1) report is subsection 41(a), namely failing to establish that the foreign national holds the visa or other document as required under paragraph 20(1)(a). This ground is one of the circumstances prescribed by the Regulations, meaning that the Minister may make a removal order (s. 44(2) *in fine*).

[61] Per subparagraph 228(1)(c)(iii) of the Regulations, if the 44(1) report provides that a foreign national is inadmissible under section 41 of the Act on grounds of failing to establish that the foreign national holds the visa or other document as required under section 20 of the *Act*, the report shall not be referred to the Immigration Division and an exclusion order shall be made. However, subsection 228(3) of the Regulations provides that if a claim for refugee protection is made and the claim has been determined to be eligible to be referred to the RPD, such as in the Applicant's case, a departure order is the applicable removal order.

D. *Procedural Fairness in Section 44 Proceedings*

[62] In *Cha v Canada (Minister of Citizenship and Immigration)*, 2006 FCA 126, at para 23 [*Cha*], the Federal Court of Appeal outlined that since immigration is a privilege, and not a right, foreign nationals who are temporary residents "receive little substantive and procedural protection throughout the Act." (see also *Shaikh v Canada (Public Safety and Emergency Preparedness)*, 2023 FC 634 at para 34)

[63] The Federal Court of Appeal in *Sharma v Canada (Public Safety and Emergency Preparedness)*, 2016 FCA 319, at para 34 [*Sharma*], also stated that "[a]ll of the relevant cases from the Federal Court stress that a relatively low degree of participatory rights is warranted in the context of subsections 44(1) and (2)". Justice Norris confirmed this principle in *Marcusa v Canada (Public Safety and Emergency Preparedness)*, 2019 FC 1092 at paragraph 22, noting that the duty of procedural fairness to foreign nationals in subsection 44(2) of the *Act* falls at the low end of the scale (citing *Cha* at paras 42-52; *Sharma* at paras 29-34). Further, Justice Diner summarized that the duty of fairness in subsection 44(1) and 44(2), proceedings confer two rights, i.e., the right to

make written or oral submissions and the right to obtain a copy of the reports (*Huang v Canada (Public Safety and Emergency Preparedness)*, 2015 FC 28 at para 84 [*Huang*]).

(1) Right to an interpreter

[64] The right to an interpreter provided in section 14 of the *Charter* was first discussed by the Supreme Court of Canada in *R v Tran*, 1994 CanLII 56 (SCC), [1994] 2 SCR 951 [*Tran*]. This case involved an accused under the *Criminal Code* whose English was insufficient to permit him to follow the proceedings without the assistance of an interpreter (*Tran* at 956). Therein, the Supreme Court of Canada established that the *Charter* right to an interpreter may be waived (*Tran* at 996-998) and emphasized that "the underlying principle behind all of the interests protected by the right to interpreter assistance under [section] 14 is that of linguistic understanding." (*Tran* at 977)

[65] The Supreme Court of Canada found that to be valid, a waiver of the right provided in section 14 of the *Charter* must be (1) clear; (2) unequivocal; (3) done with full knowledge of the rights the procedure was enacted to protect and the effect that waiver will have on those rights; and (4) personally made by the accused, after an inquiry by the Court through an interpreter to ensure that this person truly understands what they are doing, if necessary (*Tran* at 996-997).

[66] In *Mohammadian v Canada (Minister of Citizenship and Immigration)* (CA), 2001 FCA 191 [*Mohammadian*], the Federal Court of Appeal found at paragraphs 17, 18 and 20 that the analysis developed in *Tran* generally applied to a proceeding before the Refugee Division. In *Mohammadian*, the Federal Court of Appeal also agreed with the Federal Court's finding that the

claimant must indicate their concern with the quality of interpretation at the first instance as the Refugee Division would not know if the interpretation was deficient. (see also *Muradi v Canada (Citizenship and Immigration)*, 2024 FC 1661 at para 39 citing *Mohammadian*; *Singh v Canada (Citizenship and Immigration)*, 2010 FC 1161, at para 3)

[67] In the context of section 44 proceedings, this Court has held that a person may select a relative to proceed with the interpretation, which choice entails that this person's right to interpreter has been respected (*Huang* at para 91; see also *Indran v Canada (Citizenship and Immigration)*, 2015 FC 412 at para 16 in the context of citizenship proceedings).

(2) Right to counsel

[68] In *Dehghani v Canada (Minister of Employment and Immigration)*, 1993 CanLII 128 (SCC), [1993] 1 SCR 1053 [*Dehghani*], the Supreme Court of Canada found that "the principles of fundamental justice do not require that the appellant be provided with counsel at the pre-inquiry or pre-hearing stage of the refugee claim determination process." The Court added that in an immigration examination for information-gathering purposes, the right to counsel provided in section 7 of the *Charter* did not extend the circumstances of arrest and detention described in subsection 10(b) of the *Charter* (*Dehghani* at 1077). This was reaffirmed by the Federal Court of Appeal at paragraph 54 of *Paramo* in the context of a refugee claim eligibility interview.

[69] In *Cha*, the Federal Court of Appeal further established that there is no obligation for a person to be notified of their right to counsel, unless a statute requires it:

> [54] Absent a Charter right to be notified of a right to counsel on arrest or detention (paragraph 10(b) of the Charter [*Canadian Charter of Rights and Freedoms*, being Part I of the *Constitution Act*, 1982, Schedule B, Canada Act 1982, 1982, c. 11 (U.K.) [R.S.C., 1985, Appendix II, No. 44]]), I have found no authority for the proposition that a person is entitled as of right to be notified before a hearing that he or she has either a statutory right or a duty-of-fairness right to counsel. Once a person is sufficiently informed of the object and possible effects of a forthcoming hearing—absent sufficient notice, the decision rendered will in all likelihood be set aside—the decision maker is under no duty to go further.
>
> [55] It may be sound practice in certain cases to give notice in advance that counsel may be retained, but there is no duty to do so unless the statute requires it. The responsibility lies with the person to seek leave from the decision maker to be accompanied by counsel or to come at the hearing accompanied by counsel. If leave is denied or if counsel is not allowed to be present, that could become an issue in a judicial review of the decision ultimately rendered. Should the reviewing court be of the view that the duty of fairness included in the circumstances of the case the right to counsel, the decision might well be set aside.

[70] Furthermore, Justice Diner has previously stated that "there is no automatic right to counsel in section 44 proceedings" (*Huang* at para 90).

E. *There Was No Breach of Procedural Fairness.*

[71] In the Court's view, the Applicant has failed to establish a breach of procedural fairness.

[72] The Court agrees with the Minister that the officers' affidavits should be given more weight than the Applicant's, especially given the absence of the jurat. There are various decisions interpreting Rule 80(2.1) of the *Rules* that find that failure to comply with the requirements outlined therein can justify the Court giving the affidavit minimal or no probative value (*Caneo v*

Canada (Public Safety and Emergency Preparedness), 2021 FC 748 at para 20; *Alvarez Vasquez v Canada (Public Safety and Emergency Preparedness)*, 2018 FC 1083 at para 49 [*Alvarez*]; *Velinova v Canada (Citizenship and Immigration)*, 2008 FC 268 at para 14 [*Velinova*]).

[73] Furthermore, the case law supports giving more weight to an officer's affidavit as they have no reason to lie and lack interest in the outcome (*Gebremichael v Canada (Citizenship and Immigration)*, 2024 FC 884 at para 25; *Pompey v Canada (Citizenship and Immigration)*, 2016 FC 862 at para 36).

[74] Weighing all the evidence in the file, the Court is not convinced, on balance of probabilities, that the Applicant needed an interpreter in the context of the interview. There is ample evidence in the record, much of which provided by the Applicant herself, that her understanding and reading of English was sufficient. For instance, in addition to her studies in English at Fanshawe College, and the "A" marks she obtained, she signed a declaration in support of her BOC that confirms that she was able to read English and understand the entire content of the form and attached documents. This declaration also provides that it has the same force and effect as if made under oath.

[75] Moreover, except for what she indicated in her refugee claim as wanting the interview and the refugee protection hearing to be held in Mandarin, and for the fact that she would have liked her sister to accompany her in the context of the morning interview, the record clearly indicates that at no time in the March 19, 2024 interviews did she express a linguistic issue with what was being said.

[76] The four officers state in their respective affidavits that (1) the Applicant spoke English; (2) the Applicant did not request an interpreter; (3) when the sister was present with the Applicant, she translated for her; (4) the Applicant raised no issue with her sister's interpretation; and (5) the Applicant and her sister became upset when the Applicant's passport was seized and when presented with the Conditional Departure Order.

[77] Therefore, while the Court is not convinced from the evidence that the Applicant needed an interpreter for the interview process, the Court is of the view that the presence of her sister, at the Applicant's request, was sufficient to render the process fair.

[78] When reviewing the evidence holistically, the Court is of the view that the Applicant's lack of understanding was not linguistic in nature. The Applicant and her sister's reactions during the interview process suggest that they understood what was being said to them, which made them upset. Instead, the issue lies with the fact that the Applicant did not understand, prior to the Applicant making her refugee claim, the legal ramifications and consequences that could result, if her refugee claim was denied, which had nothing to do with interpretation of the English language. Again, the underlying principle of the right to an interpreter provided in section 14 of the *Charter* is solely of linguistic understanding (*Tran* at 977).

[79] As for the issue of right to counsel, in her BOC, the Applicant specifically indicated that her sister, not a lawyer or immigration consultant, would be assisting her as her counsel during her refugee protection claim. Thus, while her sister was initially refused access to the IRCC offices in the morning, in line with IRCC usual policies, she was subsequently allowed to enter to assist the Applicant in the afternoon.

[80] Regarding the morning meeting, per the Applicant's own affidavit, which is consistent with the First Officer's affidavit, the only actions taken by the First Officer were (1) to take her biometric information, (2) to take her passport; (3) give her an information sheet about the process that would unfold in the afternoon; and (4) tell her to return in the afternoon. Given this, the Court does not believe it was unfair for her sister to be denied access. Moreover, given this evidence, the Court disagrees with the Applicant assertion that the first officer who met the Applicant prepared and finalized the case against her that morning. There is just no evidence to support such an assertion.

[81] Between the morning meeting of March 19th, 2024, and the interview in the afternoon, in the presence of her sister, the Applicant's own evidence is that she consulted with friends who referred her to an immigration consultant. While it appears that the consultant was not available, the Applicant indicates that she was told to attend the afternoon meeting and that she could meet the consultant afterwards. As previously noted, there is no evidence in the record that the Applicant requested for the afternoon interview to be postponed at another date so that the consultant (or a lawyer) may accompany her.

[82] The case law clearly establishes that the section 44 process did not entitle the Applicant to an absolute right to counsel. Further, that there was no obligation for the officers to advise the Applicant that she could retain counsel. In any event, the "Information for Refugee Claimants" page, available on the Government of Canada's "Claim refugee status from in Canada: How to Apply" website page which the Applicant herself states she navigated, specifically mentioned the right to counsel.

[83] This is confirmed by Ms. Sapru's affidavit, which attaches a copy of the "Information for Refugee Claimants" website. This website outlines the refugee application process, including a refugee claimant's right to counsel. It thus appears likely that the Applicant was aware of her right to counsel as early as January 2024 when she completed her refugee application and so, if she wished to have legal counsel present, other than her sister, she should have taken the steps to have one present. Not only did the Applicant never requested legal counsel during the March 19, 2024, interviews, but she specifically indicated in her BOC that she had elected to have her sister act as her counsel, even though she was not a lawyer.

[84] The Applicant asserts that she did not know that her refugee application process would impact her student visa. However, and while this Court empathises with the Applicant, ignorance of the law is not a valid excuse (*Taylor v Canada (Minister of Citizenship and Immigration)*, 2007 FCA 349 at para 93; *Canada (Citizenship and Immigration) v Tefera*, 2017 FC 204 at para 28). Furthermore, it certainly should not be used to support a claim against the officers that there was a breach of procedural fairness on their part.

[85] In summary, the Court is of the view that there was no breach of procedural fairness in the present matter.

F. *The Decision is Reasonable.*

[86] As for the third argument submitted by the Applicant, regarding the fact that the Decision of the Minister's Delegate to issue a departure order against her was made without evidence, based on a misinterpretation of subsection 41(a) of the *Act* and that it is apparent that the IRCC has

decided that any person who makes a refugee claim is automatically inadmissible because they are seeking to remain in Canada permanently and do not have the requisite visa, this argument too must fail.

[87] It is important to remember that the Applicant was in Canada under a temporary student visa. To obtain same, she had to apply for her study permit before entering Canada (s. 213 of the Regulations), and she had to convince an officer, amongst other conditions, that she would leave Canada by the end of the period authorized for her stay (s. 11(1) and 22(1) of the Act; s.°179(b), 183(1)(a), 216(1)(b) of the Regulations). To enter Canada, she had to establish that she held the required visa under the Regulations and that she would leave Canada by the end of the period authorized for her stay (s. 20(1)(b) of the Act; s. 180 of the Regulations).

[88] However, when she filed a refugee claim, she was signaling an intention to remain in Canada permanently. This is an intention which goes contrary to her temporary student visa's condition outlined above that she would leave Canada at the end of her authorized stay.

[89] Moreover, the Applicant's own evidence supports that her intention was to remain in Canada permanently. Therefore, given the evidence and the applicable law, the Court cannot find that the Decision finding that the Applicant was not in compliance with the *Act* or its Regulations and ought to be issued a conditional departure order, was unreasonable (*Lion* at para 12; *Kibos* at paras 19-23).

[90] The Applicant's argument relating to the distinct policy in the context of a foreign national spouse, whether in or out of status, is unconvincing. Per the Applicant's own evidence, i.e.,

Ms. Sapru's affidavit, the objective of the *Public Policy under subsection 25(1) of the Act to Facilitate Processing in accordance with the Regulations of the Spouse or Common-law Partner in Canada Class* [Policy] is to "facilitate family reunification and facilitate processing in cases where spouses and common-law partners are already living together in Canada."

[91] The Court notes that section 123 of the Regulations provides that a "spouse or common-law partner in Canada class is hereby prescribed as a class of persons who may become permanent residents" [emphasis added], while section 210 of the Regulations state that the "student class is prescribed as a class of persons who may become temporary residents." [emphasis added] The Policy thus provides that a member of the spouse or common-law partner in Canada class may become a permanent resident, independent of their status in Canada, as this is expressly permitted by the Regulations. This is not comparable to the student class that is, by definition, a class of persons who may become temporary residents.

[92] The Court is also not convinced by the Applicant's reliance on the dual intent provided in subsection 22(2) of the *Act*. This subsection reads: "An intention by a foreign national to become a permanent resident does not preclude them from becoming a temporary resident if the officer is satisfied that they will leave Canada by the end of the period authorized for their stay".[emphasis added]

[93] The use of the term "becoming" suggests that this subsection applies to a foreign national that is not currently in Canada. In any event, such a foreign national must still satisfy an officer that they will leave Canada by the end of the period authorized for their stay, i.e., that they will abide by Canadian immigration laws. The Applicant's argument that this subsection may apply to

a temporary resident currently in Canada is thus irreconcilable with the express language used at subsection 22(2) of the *Act* as well as the various provisions of the *Act* and the Regulations cited at paragraph 92 of this decision.

[94] Moreover, the case law cited by the Applicant to support her argument confirms the Court's finding. For example, the Applicant referred to *Dang v Canada (Minister of Citizenship and Immigration)*, 2007 FC 15 at paras 16-18 [Dang]. At paragraph 17 of that decision, the Court found that "subsection 22(2) of the [Act] provides that an applicant can have a dual intent – an intention to become a permanent resident and an intention to become a temporary resident" [emphasis added]. The Applicant also referred to *Onyeka v Canada (Citizenship and Immigration)*, 2009 FC 336 at paragraph 24 [*Onyeka*], where the Court stated that "the concern is not whether or not a student visa applicant will want to obtain permanent residence in Canada, but whether they will remain in Canada illegally without status or beyond their authorized stay". [emphasis added]

[95] Thus, both *Dang* and *Onyeka* support the Court's reading of subsection 22(2) of the *Act* that the dual intent provided therein does not concern a temporary resident currently in Canada, as was the Applicant at the time of the Decision.

VI. Conclusion

[96] Given all of the above, this Court is of the view that there was no breach of procedural fairness. As for the reasonableness of the Decision, given that it is standard practice in similar circumstances, this Court cannot reach the conclusion that the Decision was unreasonable. Therefore, the application for judicial review will be dismissed.

VII. Questions to certify

[97] At the hearing, counsel for the Applicant presented four questions to certify. The Respondent objected, arguing that the Court's Practice Guidelines required advance notice of a proposed question for certification at least five days before the hearing.

[98] Both the issue of the timing of these submissions and whether the questions should be certified were taken under advisement. Thus, under reserve of this Court's decision regarding the timeliness of the proposed certified questions, counsel was provided with an opportunity to file written submissions on the proposed questions to certify. The written submissions received propose a slightly different wording than those presented at the hearing and are as follows:

a. Is it reasonable to automatically assume that a person, who holds a valid visa to remain in Canada temporarily to pursue a course of studies and who makes a refugee claim, is indicating a determinative intent to remain permanently, thus precluding a simultaneous dual intent to remain in Canada temporarily, therefore rendering them inadmissible under subsection 41(a) of the IRPA?

b. Is it a breach of the principles of fundamental justice for an officer to fail to offer interpretation assistance prior to issuing a departure order against a person who is having difficulty understanding the proceeding, where this may be because they lack the language skills to understand the proceedings?

c. Is it a breach of the principles of fundamental justice for an officer to fail to adjourn proceedings in which an order will be issued requiring the person to leave Canada, in

order to permit the person concerned to seek legal advice from counsel, notwithstanding that the person had an opportunity to retain counsel beforehand, when the officer is aware that the person does not understand the proceedings?

d. Is it a fetter of discretion for an officer to fail to adjourn a proceeding because it has been administratively scheduled to proceed at that time, when doing so effectively denies the person concerned the opportunity to fully participate in the hearing due to a lack of understanding of the process whether because of language limitations and/or knowledge?

[99] First, regarding timing, this Court agrees with the Respondent that the Court's *Consolidated Practice Guidelines for Citizenship, Immigration, and Refugee Protection Proceedings* (last amended on October 31, 2023) [*Guidelines*] are clear and provide that a party intending to raise a certified question must notify the other party at least five days prior to the hearing:

> 36. Pursuant to paragraph 74(d) of the IRPA, "an appeal to the Federal Court of Appeal may be made only if, in rendering judgment, the judge certifies that a serious question of general importance is involved and states the question" [emphasis added]. Parties are expected to make submissions regarding paragraph 74(d) in written submissions filed before the hearing on the merits and/or orally at the hearing. Where a party intends to propose a certified question, opposing counsel shall be notified at least five (5) days prior to the hearing, with a view to reaching a consensus regarding the language of the proposed question. [emphasis added]

[100] As Justice Gascon stated in *Medina Rodriguez v Canada (Citizenship and Immigration)*, 2024 FC 401:

> [44] …These *Guidelines* are there to be followed, and submitting a certified question at the last minute is not helpful to the Court nor fair for the opposing party. Moreover, a certified question is supposed to be a question of general importance. Arguably, these are not issues that should arise on the eve of judicial review or as an afterthought. In this case, counsel for Mr. Rodriguez has not provided any reason to explain the late submission of no less than five certified questions. Such a practice is strongly discouraged by the Court, and may be the basis for a refusal to consider the merits of a proposed certified question as it prejudices the other party as well as the Court and does not serve the interests of justice." In fact, there are many cases where this Court has refused to permit the Applicant to raise questions to certify presented in violation of the Court's Guidelines (see amongst others *Gardijan v Canada (Citizenship and Immigration)*, 2022 FC 421 at paras 52-55; *Adeosun v Canada (Citizenship and Immigration)*, 2021 FC 1089 at paras 75-77; *Rohan v Canada (Public Safety and Emergency Preparedness)*, 2024 FC 1351 at paras 41-44).

[101] In *Varela v Canada (Minister of Citizenship and Immigration)*, 2009 FCA 145 at paragraphs 23-24 [*Varela*], the Federal Court of Appeal stressed the overarching objective of subsection 74(d) of the IRPA in the statutory scheme:

> [23] This provision fits within a larger scheme designed to ensure that a claimant's right to seek the intervention of the courts is not invoked lightly, and that such intervention, when justified, is timely.

[102] In the present matter, counsel for the Applicant has not provided any reasonable explanation regarding this late filing of no less than four certified questions. Moreover, the proposed questions did not arise from any of the submissions made by the Respondent in their Further Memorandum of Fact and Law or during the hearing. The questions now proposed by counsel squarely relate to facts and issues which were contained in the parties' materials. As such, counsel for the Applicant could have served and filed their proposed certified questions at any

point after leave was granted. Therefore, in the circumstances, the Court is not prepared to permit the Applicant to raise the proposed certified questions.

[103] Despite the Applicant's failure to comply with the Guidelines, which is enough to deny certification, this Court decided to consider the proposed questions and is of the view that none of the questions meet the criteria for certification as set out by the Federal Court of Appeal in *Lunyamila v Canada (Public Safety and Emergency Preparedness),* 2018 FCA 22 at para 46.

[104] The Court agrees with the Respondent's submissions that the questions turn on specific facts and do not transcend the interests of the parties or are too specific to be considered questions of general importance. Moreover, the proposed questions do not arise from the facts or evidence of this case. For example, the Court found that the Applicant herself stated her intention to stay in Canada permanently in her BOC form. Further, that the Applicant's right to an interpreter was respected in this case given that her sister was present during the March 19, 2024, interviews, and that the Applicant's lack of understanding was not linguistic in nature. The Court also noted that the Applicant never requested an adjournment of the interview to allow an immigration consultant or a legal counsel to be present.

[105] The Court also notes some of the proposed questions raised have already been addressed by the Supreme Court of Canada and by the Federal Court of Appeal's case law, as outlined above. More specifically, *Tran* and *Mohammadian* squarely answer proposed question (b) while *Cha* answers proposed question (c). The Court also agrees with the Respondent that question (d) appears to be a rephrasing of questions (b) and (c).

JUDGMENT in IMM-5669-24

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is denied.
2. No question of general importance is certified.
3. The style of cause is amended, with immediate effect, by replacing "The Minister of Public Safety" with "The Minister of Citizenship and Immigration" as the Respondent.

"Danielle Ferron"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-5669-24
STYLE OF CAUSE:	HUI-HSIU LIN v MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	MAY 6, 2025
REASONS FOR JUDGMENT AND JUDGMENT:	FERRON J.
DATED:	JUNE 12, 2025

APPEARANCES:

Barbara Jackman	FOR THE APPLICANT HUI-HSIU LIN
Zoe Su WenChong Meva Motwani	FOR THE RESPONDENT MINISTER OF CITIZENSHIP AND IMMIGRATION

SOLICITORS OF RECORD:

Barbara Jackman Jackman & Associates Toronto, Ontario	FOR THE APPLICANT HUI-HSIU LIN
Zoe Su WenChong & Meva Motwani Department of Justice Toronto, Ontario	FOR THE RESPONDENT MINISTER OF CITIZENSHIP AND IMMIGRATION