

CANADA / JUDGMENT

Dai v. Canada (Citizenship and Immigration)

2026 FC 494

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Federal Court

DECIDED

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Dai v. Canada (Citizenship and Immigration)

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Decision Content

Date: 20260414

Docket: IMM-4582-25

Citation: 2026 FC 494

Vancouver, British Columbia, April 14, 2026

PRESENT: Mr. Justice Gascon

BETWEEN:

YUNHUI DAI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview [1] The applicant, Yunhui Dai, seeks judicial review of a Pre-Removal Risk Assessment [PRRA] decision rendered on November 22, 2024 [Decision] by a senior immigration officer [Officer], pursuant to subsection 112(1) of the Immigration and Refugee Protection Act, SC 2001, c 27 [IRPA]. In the Decision, the Officer found insufficient evidence that Ms. Dai would be subject to risk of persecution, torture, risk to life, or risk of cruel and unusual treatment or punishment if she was removed to China, her country of citizenship.

[2] Ms. Dai submits that the Decision is both unreasonable and procedurally unfair. She argues that the Officer failed to assess the risk of her family, especially with respect to the impact of her removal on her Canadian-born children. Moreover, she submits that, in the case at hand, the Officer had a duty to issue a procedural fairness letter [PFL] and that the failure to do so constitutes “a complete oversight of the Officer’s duty when determining a PRRA” and “raises an inference of bias.” Ms. Dai asks this Court to quash the Decision and to remit the matter to a different officer to be reassessed.

[3] For the reasons that follow, Ms. Dai’s application for judicial review will be dismissed. I find that the Decision is reasonable in light of the relevant factual and legal constraints that bore on the Officer and was reached in a procedurally fair manner. In light of section 112 of the IRPA and the governing case law, it was perfectly open to the Officer to find that humanitarian and compassionate [H&C] and best interest of the child [BIOC] considerations fell outside the scope of a PRRA. With respect to Ms. Dai’s alleged risk in China based on her anticipated status as a foreign returnee having legal disputes abroad (in Canada), the Officer reasonably determined that the evidence was insufficient to meet the threshold to establish risk under sections 96 and 97 of the IRPA. Finally, in the present case, the Officer had no obligation to issue a PFL to Ms. Dai to allow her to alleviate their concerns about the insufficiency of the evidence submitted.

II. Background A. Factual context [4] Ms. Dai’s immigration history is lengthy and was set out by Justice Guy Régimbald in *Dai v Minister of Public Safety and Emergency Preparedness* (May 23, 2025), Ottawa IMM-11049-25 (FC), a decision which stayed the removal of Ms. Dai about a year ago. Only those facts relevant to the present application for judicial review will be summarized here.

[5] Ms. Dai is a citizen of China who entered Canada as a visitor in October 2018. She is married to a Canadian citizen, and two of her three children are also Canadian citizens. Her other child lives in China.

- [6] In September 2019, she applied for a work permit, which was approved in December 2019 and was valid until September 2020. On her work permit application, Ms. Dai declared that she was employed with a company, when in fact she was self-employed as a yoga instructor. This led to an admissibility hearing before the Immigration and Refugee Board of Canada and to the issuance, in November 2023, of an exclusion order against Ms. Dai based on the misrepresentation of her employment, pursuant to paragraphs 40(1)(a) of the IRPA and 229(1)(h) of the Immigration and Refugee Protection Regulations, SOR/2002-227.
- [7] Ms. Dai has two outstanding permanent resident applications in the Spouse or Common Law Partner in Canada stream. Her first application was filed in February 2023, refused in March 2024, and sent back for redetermination in January 2025 upon a settlement reached by the parties in Court File No. IMM-5357-24. Her second application, requesting consideration on H&C grounds, was filed in September 2024. These two applications remain pending.
- [8] In April 2024, Ms. Dai applied for a PRRA, which ultimately lead to the Decision currently under review. On a cover letter dated May 15, 2024, written and submitted by Ms. Dai's counsel, it is indicated that Ms. Dai's PRRA application is based on "Chinese country conditions, the best interests and welfare of her young Canadian children, their family establishment in Canada, and the significant prejudice that the children, spouse and family will face, if she is removed from Canada and returned to China." In a further undated cover letter written and submitted by Ms. Dai's counsel, it is indicated that Ms. Dai faces imminent risk of persecution and cruel or unusual treatment if returned to China, "[g]iven China's increasing control over returnees involved in foreign disputes." In that respect, Ms. Dai's counsel specified that the risk of his client stems from her "involvement in legal disputes with Immigration, Refugee and Citizenship Canada [IRCC]," placing her "squarely within a category of individuals that the Chinese government has increasingly subjected to exit bans, surveillance, and other forms of transnational repression." Finally, in a cover letter dated July 19, 2024, Ms. Dai's counsel argued that, in deciding the PRRA application, the Officer "should account for the irreparable harm that her removal would cause to her family, particularly her young Canadian children," citing *Fashola v Canada (Public Safety and Emergency Preparedness)*, 2024 CanLII 53895 (FC) [Fashola].
- [9] In May 2025, the Court granted Ms. Dai a stay of removal pending the determination of her application for leave and judicial review relating to a decision of a Canada Border Services Agency officer refusing a request for deferral of her removal scheduled for May 25, 2025, in Court File No. IMM-11049-25. Leave was granted by the Court but the application for judicial review was discontinued in March 2026, prior to the scheduled hearing on the merits.
- [10] This leaves only the PRRA Decision to be judicially reviewed.

B. The PRRA Decision [11] In the Decision, the Officer first noted that Ms. Dai alleged facing risk to life or cruel and unusual punishment from the Chinese government for being a foreign returnee having legal disputes overseas with IRCC. The Officer also noted that Ms. Dai had put forth H&C and BIOC grounds to be considered in her PRRA application, specifically with respect

to her two minor Canadian-born children. The Officer also summarized the contents of a May 6, 2023 report from Finlay Counselling and Mediation Service related to the BIOC [Finlay Report] and a March 20, 2024 psychologist report from Dr. Mark Bodnarchuk.

[12] The Officer started their analysis by noting that BIOC and H&C considerations are not assessed under a PRRA application and that, as such, only Ms. Dai's alleged risk as a returnee with legal disputes overseas would be assessed pursuant to sections 96 and 97 of the IRPA. In refusing Ms. Dai's PRRA application, the Officer set out their analysis as follows:

Upon review of the submissions, I find the applicant has submitted insufficient evidence to substantiate her alleged risks in China. Some of the country condition documents submitted do not pertain to the risks presented by the applicant. As well, there is insufficient objective evidence for me to determine that the applicant would be at risk from the Chinese government in regards [sic] to her legal dispute in Canada. Furthermore, the applicant has not demonstrate [sic] why the Chinese government would specifically target her and look into her immigration history in Canada. Additionally, the applicant's psychology report, pictures, and counselling report do not demonstrate that the applicant would be at risk from the Chinese government and authorities if she returns.

C. Standard of review [13] The Supreme Court of Canada's landmark decision in Canada (Minister of Citizenship and Immigration) v Vavilov, 2019 SCC 65 [Vavilov] established a presumption that reasonableness is the applicable standard in judicial reviews of the merits of administrative decisions (Pepa v Canada (Citizenship and Immigration), 2025 SCC 21 at para 35 [Pepa]; Mason v Canada (Citizenship and Immigration), 2023 SCC 21 at para 7 [Mason]), unless the circumstances lend themselves to the application of one of the recognized exceptions to this presumption (Canadian Society of Authors, Composers and Music Publishers v Entertainment Software Association, 2022 SCC 30 at para 28; Vavilov at paras 33–64, 69–72).

[14] The parties both submit, and I agree, that the standard of reasonableness applies to decisions regarding a PRRA (Flores Carrillo v Canada (Minister of Citizenship and Immigration), 2008 FCA 94 at para 36; Smajlaj v Canada (Citizenship and Immigration), 2025 FC 821 at para 10; Kiss v Canada (Citizenship and Immigration), 2024 FC 363 at para 12; Singh v Canada (Citizenship and Immigration), 2024 FC 202 at para 14 [Singh]; Bah v Canada (Citizenship and Immigration), 2023 FC 570 at para 11; Rinchen v Canada (Citizenship and Immigration), 2022 FC 437 at para 15; Garces Canga v Canada (Citizenship and Immigration), 2020 FC 749 at para 20 [Garces Canga]).

[15] 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” (Pepa at para 46; Mason at para 64; Vavilov at para 85). The reviewing court must therefore ask whether the “decision bears the hallmarks of reasonableness—justification, transparency and intelligibility” (Vavilov at para 99, citing notably *Dunsmuir v New Brunswick*, 2008 SCC 9 at

paras 47, 74).

- [16] 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 (Pepa at paras 46–47; 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).
- [17] The standard of reasonableness is rooted in the principle of judicial restraint and deference, and it requires reviewing courts to show respect for the distinct role that the legislature has chosen to give to administrative decision makers, more particularly on findings of fact and the weighing of evidence (Mason at para 57; Vavilov at paras 13, 24, 46, 75). Absent exceptional circumstances, a reviewing court will not interfere with the factual findings of an administrative decision maker (Vavilov at paras 125–126, citing *Canada (Canadian Human Rights Commission) v Canada (Attorney General)*, 2018 SCC 31 at para 55; *Doyle v Canada (Attorney General)*, 2021 FCA 237 at para 3).
- [18] 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).
- [19] Despite the presumption of reasonableness, the approach to be taken with respect to procedural fairness issues has not changed following Vavilov (Vavilov at para 23). It has typically been held that correctness is the applicable standard of review for determining whether a decision maker complies with the duty of procedural fairness and the principles of fundamental justice (*Mission Institution v Khela*, 2014 SCC 24 at para 79; *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 43; *Canada (Attorney General) v McBain*, 2017 FCA 204).
- [20] However, although the reviewing exercise is akin to correctness review, the Federal Court of Appeal has affirmed that questions of procedural fairness are not truly decided according to any particular standard of review. Rather, it is a legal question to be answered by the reviewing court, and the court must be satisfied that the procedure was fair having regard to all of the circumstances (*Algoma Steel Inc v Canada (Attorney General)*, 2023 FCA 164 at para 22 [Algoma Steel]; *Canadian Hardwood Plywood and Veneer Association v Canada (Attorney General)*, 2023 FCA 74 at para 57; *Canadian Association of Refugee Lawyers v Canada (Immigration, Refugees and Citizenship)*, 2020 FCA 196 at para 35, leave to appeal to the Supreme Court of Canada dismissed, no 39522 (August 5, 2021); *Lipskaia v Canada (Attorney General)*, 2019 FCA 267 at para 14; *Canadian Airport Workers Union v International Association of Machinists and Aerospace Workers*, 2019 FCA 263 at paras 24–25; *Perez v*

Hull, 2019 FCA 238 at para 18; *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54 [CPR]).

- [21] Consequently, the test is whether, given the particular context and circumstances of the case, the process followed by the administrative decision maker was fair and gave the parties concerned the right to be heard, as well as a full and fair opportunity to be informed of the evidence to be rebutted and to have their case heard (*Algoma Steel* at para 22; *CPR* at para 56; *Higgins v Canada (Attorney General)*, 2018 FCA 49 at para 17). No deference is owed to the decision maker on issues of procedural fairness (*Amer v Shaw Communications Canada Inc*, 2023 FCA 237 at para 51; *Maritime Employers Association v Syndicat des débardeurs (Canadian Union of Public Employees, Local 375)*, 2023 FCA 93 at para 81).

III. Analysis A. The Decision is reasonable [22] In her challenge of the reasonableness of the Decision, Ms. Dai first argues that the Officer did not carry out an analysis with respect to sections 96 and 97 of the IRPA, and rather unilaterally mischaracterized her submissions as H&C evidence to avoid conducting the required risk-analysis. Ms. Dai also complains about the lack of any discussion or assessment of the evidence of harm that a removal would cause to her children. Ms. Dai claims that these omissions render the Decision unreasonable.

- [23] I do not agree.

- [24] Further to my review of Ms. Dai's PRRA application, I find it clear that it contained extensive BIOC and H&C-related submissions and thus, the Officer did not err in characterizing those submissions as such. In fact, counsel's submissions in support Ms. Dai's PRRA application, set out in a letter dated May 15, 2024, contain almost exclusively H&C representations, with sections titled "Marriage and Family Life," "Best Interest of the Children," "Law – H and C Considerations," "Kanthasamy and the Humanitarian and Compassionate Assessment," and "Family in Canada and Consequences of Separation."

- [25] Although the same officer may sometimes determine both a PRRA application and an H&C application, the two decision-making processes must not be confused nor duplicated (*Varga v Canada (Minister of Citizenship and Immigration)*, 2006 FCA 394 at para 12 [Varga]). Sections 25 and 112 of the IRPA edict two distinct decision-making processes that ought not to be conflated. A PRRA application is concerned with the assessment of risk factors on the basis of sections 96 and 97 of the IRPA, not with an assessment of H&C factors (*B Saleh v Canada (Citizenship and Immigration)*, 2025 FC 1402 at para 30; *Singh* at para 33; *Ritual v Canada (Citizenship and Immigration)*, 2021 FC 717 at paras 34, 38 [Ritual]; *Azimi v Canada (Public Safety and Emergency Preparedness)*, 2015 FC 1177 at paras 21–22; *Mandida v Canada (Citizenship and Immigration)*, 2010 FC 491 at paras 32–35 [Mandida]; *Kim v Canada (Minister of Citizenship and Immigration)*, 2005 FC 437 at para 70).

- [26] One shall not mix up, like Ms. Dai evidently did here, the concepts of (i) hardship, relevant on an H&C application, (ii) risk, assessed on a PRRA, and (iii) irreparable harm, considered on stays of removal, as well as the jurisprudence relating to these three different assessments. Indeed, counsel for Ms. Dai admitted at the hearing that he was unaware of any precedents in which the concepts of hardship in H&C applications or harm in stays of removal were adopted and applied by the Court in precedents relating to PRRA decisions.
- [27] Ms. Dai claims that “[t]he Officer’s duty is to assess risk, and there was clearly no [f]amily risk assessed in this matter.” Ms. Dai notes that the risk analysis “ought to be carried out by an Officer for every single applicant [and] every single time.” This argument is manifestly ill-founded as it ignores the fact that Ms. Dai’s husband and children in Canada did not apply for a PRRA. In fact, because they are all Canadian citizens, they are not eligible to apply for nor be granted refugee protection pursuant to section 112 of the IRPA. Moreover, in a PRRA, only risks to applicants — that is, to Ms. Dai — are relevant (Varga at para 9).
- [28] In addition, as the Federal Court of Appeal and this Court have held, the interests of children, including those born in Canada, who may be adversely affected by a parent’s removal need not to be considered in the context of PRRAs or before the making of every decision under the IRPA which may adversely affect them (Varga at paras 6, 13; de Guzman v Canada (Minister of Citizenship and Immigration), 2005 FCA 436 at para 105; Ritual at paras 34–35; Mandida at para 33). These interests will rather be properly assessed in Ms. Dai’s pending H&C application, but not as part of her PRRA application. As ably argued by counsel for the Respondent at the hearing, the precedents in Varga, Ritual, and Mandida clearly establish that a PRRA is strictly limited to the risks faced by applicants and that PRRA officers are not required to consider the interests of Canadian-born children in PRRA applications.
- [29] There is therefore no doubt that the Officer committed no reviewable error in refusing to consider Ms. Dai’s evidence based on H&C factors and in giving it no weight. In ruling as they did, the Officer was entirely consistent with the statutory framework and the case law.
- [30] I accept that the PRRA Officer could have considered whether the fact that Ms. Dai’s Canadian-born children would accompany her to China following her removal would expose her to a greater risk of persecution, as this was a matter within the PRRA Officer’s jurisdiction (Varga at para 17). However, the Officer cannot be faulted for not conducting such analysis in this case as counsel for Ms. Dai clearly indicated, in both his May 2024 and July 2024 submissions, that “[t]he couple has not decided how they would handle such a situation.” In other words, the evidence established that it was uncertain whether Ms. Dai’s children would move to China with their mother or remain in Canada with their father and grandparents.

- [31] Moreover, in the May 6, 2023 Finlay Report related to the BIOC, Ms. Dai indicated that her husband and her had decided that if she was “deported” from Canada, the oldest child “would stay in Canada.” Ms. Dai’s husband declared that the oldest child “would not be able to go” with her mother to China.
- [32] Finally, Ms. Dai’s submissions go to great length to argue that the Officer should have accounted “for the irreparable harm that her removal would cause to her family, particularly her young Canadian children,” relying on *Toth v Canada* (Minister of Employment and Immigration), 1988 CanLII 1420 (FCA) and citing case law emanating from removal decisions (*Rivera Leon v Canada* (Citizenship and Immigration), 2023 FC 699 at para 16; *Setireki v Canada* (Public Safety and Emergency Preparedness), 2023 CanLII 42225 (FC) at para 13; *Garcia Garcia v Canada* (Immigration, Refugees and Citizenship), 2019 CanLII 73603 (FC) at para 4; *Chinese Business Chamber of Canada v Canada*, 2005 FC 142 at para 57; *Kanagasabapathy v Canada* (Minister of Citizenship and Immigration), 2004 FC 441 at para 12).
- [33] With respect, Ms. Dai’s reliance on *Toth* is misplaced. The Federal Court of Appeal decision in *Toth* and the case law cited by Ms. Dai (such as *Fashola*) all go to the irreparable harm criterion applicable in the context of motions for a stay of removal. This case law is of little to no relevance in PRRA applications and related judicial reviews of negative PRRA decisions, like is the case here. Ms. Dai’s argument that the tripartite test for a motion for a stay of removal has inherent parallels to the PRRA analysis as both consider risks turns a blind eye on the fact that “risk” in a PRRA context and “harm” in a removal situation are assessed under two different legal frameworks.
- [34] Finally, Ms. Dai does not seem to challenge the Officer’s assessment with respect to her alleged risk in China because of her status as a foreign returnee having legal disputes in Canada, that is with IRCC. In any event, I would have been satisfied that the Officer reasonably concluded that Ms. Dai had submitted insufficient evidence to substantiate her alleged risks upon return to China.
- [35] In sum, I am convinced that the Officer applied the correct legal test in assessing Ms. Dai’s PRRA application by focusing on her alleged risks in China for being a foreign returnee having legal disputes overseas with IRCC, and not on the extensive BIOC and H&C factors submitted. In my view, the Officer reasonably found that Ms. Dai had not provided sufficient evidence to demonstrate that she, in China, had a well-founded fear of persecution as a Convention refugee under section 96 of the IRPA or would be personally subject to a danger of to torture or to a risk of cruel and unusual treatment of punishment under section 97 of the IRPA.

B. There was no breach of procedural fairness [36] Ms. Dai also argues that the Officer ought to have issued her a PFL in the present context. Ms. Dai submits that, if the Officer had a concern with respect to her children’s and/or her family’s risks per section 97 of IRPA, despite the evidence and representations presented, they had a duty to issue a PFL, rather than affording no

weight to all supporting information and documentation pertaining to the family's risk. Thus, says Ms. Dai, this breach of procedural fairness is material to the extent that it raises an inference of bias or amounts to a complete oversight of the Officer's duty when determining a PRRA. Had she been afforded the chance to respond to the Officer's concerns, Ms. Dai would have argued the principles set out in Toth and Fashola.

[37] These arguments are without any merit.

[38] First, it is incumbent on persons applying for a PRRA to establish, on a balance of probabilities, that they are persons in need of protection (*Sesay v Canada* (Citizenship and Immigration), 2025 FC 1189 at para 34 [Sesay]; *Garces Canga* at para 29; *Adetunji v Canada* (Citizenship and Immigration), 2012 FC 708 at para 19; *Ferguson v Canada* (Citizenship and Immigration), 2008 FC 1067 at para 22). Applicants carry that burden and, to this end, they are required to put their best foot forward (*Oppong-Sagoe v Canada* (Citizenship and Immigration), 2025 FC 1154 at para 35; *Garces Canga* at para 29, *Ikeji v Canada* (Citizenship and Immigration), 2016 FC 1422 at para 47). In other words, the onus is on applicants to ensure that they present sufficient evidence before the PRRA officer to support their claim for protection and establish they would personally be subject to a risk upon return.

[39] The PRRA Officer had no obligation to issue Ms. Dai a PFL to allow her to make further submissions related to her case. It is rather the PRRA applicant who must place before the officer all the evidence necessary for them to make a decision, as the officer does not play a role in the submission of evidence and the officer has no obligation to solicit applicants for better or additional evidence or to inform them if the evidence is insufficient or flawed (*Popoola v Canada* (Citizenship and Immigration), 2025 FC 1784 at para 39; *Sesay* at para 35; *Garces Canga* at para 29; *Lupsa v Canada* (Citizenship and Immigration), 2007 FC 311 at paras 12–13).

[40] In addition to the Officer not owing any duty to proactively reach out to Ms. Dai, I do not see why the Officer would have been required to further inquire into the risk faced by the children or the family upon return to China. As noted above, Ms. Dai's husband and children in Canada are Canadian citizens and, as such, they are not subject to removal and thus ineligible for refugee protection pursuant to section 112 of the IRPA. Moreover, there was no evidence before the Officer to suggest that Ms. Dai's husband and children in Canada would accompany her in China if she was removed from the country. Furthermore, as discussed above and despite Ms. Dai's submissions to the contrary, the Officer was entitled to give no weight to the evidence related to BIOC and H&C factors as it was simply not relevant to the PRRA analysis.

[41] Finally, and contrary to Ms. Dai's assertions, the Officer never made any credibility findings, veiled or not, which would have triggered an obligation to issue a PFL to Ms. Dai. In the Decision, the Officer instead duly considered and assessed the evidence put forward by Ms. Dai and concluded it was insufficient to support her claim of a risk of persecution, torture, risk to life, or risk of cruel and unusual treatment or punishment if she was removed to China. The Officer's assessment was clearly one of insufficient evidence.

IV. Conclusion [42] For all these reasons, Ms. Dai's application for judicial review is dismissed. I am satisfied that the Decision was responsive to the evidence submitted, and that the Officer's findings regarding the absence of risk upon return to China have the qualities that make the Officer's reasoning logical and consistent in relation to the relevant legal and factual constraints. Ms. Dai has failed to discharge her onus of demonstrating that there are any fundamental flaws or shortcomings in the Officer's analysis or that the Decision was reached in a procedurally unfair manner.

[43] There are no questions of general importance to be certified.

JUDGMENT in IMM-4582-25

THIS COURT'S JUDGMENT is that:

This application for judicial review is dismissed, without costs.

There is no question of general importance to be certified.

"Denis Gascon"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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