

Federal Court



Cour fédérale

**Date: 20160714**

**Docket: IMM-5560-15**

**Citation: 2016 FC 809**

**Ottawa, Ontario, July 14, 2016**

**PRESENT: The Honourable Mr. Justice Diner**

**BETWEEN:**

**GELEK PALMO**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. Nature of the Matter

[1] This is an application for judicial review under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the Act] of a decision [the Decision] by a visa officer [the Officer] to refuse the Applicant's application for permanent residence. I agree that the matter must be returned to a different officer for reconsideration.

## II. Background

[2] The Applicant, born on May 8, 1974, currently lives in Dharamsala, India. According to her narrative, she grew up and ultimately raised her family in a small, isolated village in Tibet where she met her spouse and where they moved in together at approximately sixteen years of age. As their community does not make a distinction between a marriage and a common-law relationship, they have no formal marriage document. They raised four children, all of whom were born at home. Given the remoteness of their village, none of those children have birth certificates, nor was there ever any need to register their births.

[3] In 2005, the Applicant and her spouse decided to send their eldest daughter, Dashi Chokyi, to attend a school in India operated by the Dalai Lama, as there was no opportunity for her continued education in their village. About six weeks after Dashi Chokyi's departure from the village, the couple learned that she had made it safely to India with the help of an agent. It was their understanding that she would be placed in one of the Dalai Lama's schools.

[4] They had no contact with Dashi Chokyi after she left the village – the Applicant had no telephone or other means to contact her, and in any event, it was not safe for them to be in contact, given the circumstances of her daughter's departure.

[5] In 2010, the Applicant's village was hit by an earthquake that destroyed their home and killed many, including the Applicant's in-laws. When the Chinese authorities learned of a subsequent anti-government protest planned by displaced persons, including the Applicant's

spouse, the Applicant and her spouse fled on foot to Nepal. Worried about the dangers involved in crossing the Nepalese border, they left their three remaining children in the care of their aunt.

[6] Once in Kathmandu, Nepal, the Applicant and her spouse were finally able to obtain their daughter Dashi Chokyi's phone number. When they contacted her, she told them that she was not attending school. Subsequent efforts by her parents to reach her failed as she would not answer the phone.

[7] The Applicant's spouse then left for Canada and made a refugee claim. In September of 2011, the Applicant, now alone, travelled to India. She arrived in Dharamsala in October. Not long thereafter, she ran into her daughter, who informed her that she was still not in school and was living with an Indian man. When the Applicant expressed her and her husband's disappointment, Dashi Chokyi told her that she did not want anything to do with them anymore.

[8] The Applicant's spouse was accepted as a Convention refugee in Canada on January 25, 2012. He then submitted an application for permanent residence as a protected person in February 2012. He included the Applicant as an accompanying dependent while listing his three minor children (still in Tibet) as non-accompanying dependents.

[9] A few months after the application was submitted, the Applicant approached her daughter and explained that her father was going to try to bring them to Canada. Dashi Chokyi advised her, however, that she did not want to come. The Applicant states that this was the last time she saw her daughter.

[10] On July 15, 2013, the Canadian High Commission in New Delhi [CHC] sent a letter to the Applicant requesting copies of various identity and marriage-related documents. The Applicant's spouse provided a statutory declaration explaining that, for the reasons described above, none of these documents could be provided.

[11] On May 26, 2014, CHC sent a follow-up letter stating that there was insufficient information to establish the relationship between the Applicant, her spouse, and Dashi Chokyi and requiring an explanation as to why the latter was not included as a dependent in the permanent residence application. After receiving this letter, the Applicant returned to her daughter's home, but she had left and the neighbours did not know where she had gone. The Applicant states she continued to search for her daughter but was unable to find her.

[12] The couple sent a response to CHC, including an affidavit explaining why they did not include their daughter as a dependent on their application: that they were estranged from her, unable to locate her, and could not find any information about her whereabouts. They also told CHC that they were no longer certain that Dashi was even eligible as a dependent because they were unsure of her marital status.

[13] On May 29, 2014, CHC sent a further letter to the Applicant stating that her documentary evidence was insufficient to establish the relationship between the parents and Dashi, but that the results of a DNA test would suffice instead.

[14] The Applicant and her spouse could not provide any DNA test results, however, because of their estrangement from their daughter. Instead, they provided additional evidence of their relationship, including copies of text messages, the phone cards, and statements from two friends from the small village in Tibet, evidencing their on-going relationship through the years after the Applicant's spouse obtained his positive refugee decision.

[15] The Applicant's interview took place on October 13, 2015, and the Officer refused the application two days later on the basis that the Applicant provided "several inconsistencies answers and could not provide a credible or plausible explanation for [her] inconsistencies and discrepancies" (Certified Tribunal Record at 2 [CTR]). The Officer based the refusal on subsections 11(1) and 16(1) of the Act, which read as follows:

11 (1) A foreign national must, before entering Canada, apply to an officer for a visa or for any other document required by the regulations. The visa or document may be issued if, following an examination, the officer is satisfied that the foreign national is not inadmissible and meets the requirements of this Act.

16 (1) A person who makes an application must answer truthfully all questions put to them for the purpose of the examination and must produce a visa and all relevant evidence and documents that the officer reasonably requires.

[16] In the Global Case Management System [GCMS] notes that accompany the Decision, the Officer provided the following additional analysis:

While I am satisfied that the PA [the Applicant] have [*sic*] some type of romantic relationship which has continued for many years, I am not satisfied that the PA has been truthful at interview. She has provided implausible explanations for her discrepancies, and non-credible responses to many questions. While I recognize that there is some secrecy and lack of knowledge of the whole process when a Tibetan child is sent from Tibet to India, it is not reasonable that a mother would send her 14 years old [*sic*]

daughter to another country and not know basic information such as the school, the agent or the friend who referred the agent. Further, the PA's explanation of including a specific address for Dashi on the Family Information Form in 2013 changed significantly, which diminishes her overall credibility. Further, which [sic] I can understand that the PA may not have had direct contact with Dashi after she left Tibet, I don [sic] not find her answer truthful regarding her assertion that she did not know Dashi's whereabouts for six years, given that she received news six weeks after leaving Tibet that Dashi was safely in India.

[...]

While none of the inconsistencies and discrepancies, in and of themselves, are reflective of low-credibility, when taken in combination, I am not satisfied that the PA is credible in her responses and has been truthful and, therefore, has insufficient information to be satisfied that PA has complied with the Act. This application is refused under A11 and A16.

(CTR at 3)

### III. Analysis

[17] The Applicant submits that the Officer erred in making unreasonable credibility and implausibility findings and misconstruing the evidence. As such, the standard of review that applies is reasonableness (*Ramalingam v Canada (Citizenship and Immigration)*, 2011 FC 278 at para 14; *Mescallado v Canada (Citizenship and Immigration)*, 2011 FC 462 at para 14).

[18] On the issue of credibility, given the abundance of evidence on file documenting the fact that the Applicant and her spouse had been together for many years, had children together, and stayed strongly connected during their separation, it was incumbent on the Officer to provide some explanations as to why the Applicant's evidence on her family situation was not believed

or credible, rather than just citing “implausible explanations”, and “non-credible responses to many questions” without further detail.

[19] The Officer did raise a specific credibility issue relating to the Applicant’s daughter’s address as listed on the Applicant’s immigration forms, stating that the Applicant’s explanations regarding this address “changed significantly” (CTR at 3).

[20] I do not see, however, how any evidence on this point could reasonably call into question the Applicant’s credibility. There is only one address on the Family Information Form that she submitted and that was the last address that the Applicant states where she knew her daughter lived. Nor does a review of the GCMS notes and the interview transcript contained therein show that there is any inconsistency in the Applicant’s explanation about the address. She states that she understood from the interpreter that she had to put an address there and therefore she put her daughter’s last known address. The same interpreter that she referred to was the same individual who signed the forms as an interpreter. The last known address is a perfectly justifiable approach in these circumstances. I do not find it reasonable to draw a negative credibility finding from these facts.

[21] The Officer also appears to have drawn a negative credibility finding from the fact that the Applicant asserted that she had no contact with her daughter for six years but that she also received news six weeks after Dashi Chokyi left to India that she had arrived safely at a school there. Again, I do not find that this finding is reasonable. On light of the larger cultural and political context of rural Tibet, which is discussed more below, it does not strike me as non-

credible that the Applicant would not, upon hearing news of her daughter's safety, either be able or desire to inquire further. Along the same lines, the fact that the Applicant did not learn the details of her daughter's departure once her and her husband left Tibet again does not raise credibility issues – the agent had been engaged some six years prior, and that part of the story was long past.

[22] As for the Officer's finding that the Applicant's explanations were implausible, I find it equally unreasonable. Plausibility findings should only be made in the clearest of circumstances (*Ansar v Canada (Minister of Citizenship and Immigration)*, 2011 FC 1152 at para 17). This is because, as noted in *Santos v Canada (Minister of Citizenship and Immigration)*, 2004 FC 937 at para 15, "plausibility findings involve a distinct reasoning process from findings of credibility and can be influenced by cultural assumptions or misunderstandings. Therefore, implausibility determinations must be based on clear evidence, as well as a clear rationalization process supporting the Board's inferences, and should refer to relevant evidence which could potentially refute such conclusions".

[23] A reasonable finding of implausibility, then, would have to take into account the cultural, economic, and political context of rural Tibet, and it is not clear to me that the Officer adequately did so.

[24] The Applicant, for example, explained in the interview that she knew little and sought to learn little about her daughter's whereabouts in India because she was concerned about her family's safety should the Chinese authorities learn about Dashi Chokyi's departure. Indeed, in



the GCMS notes, the Officer even acknowledged the necessity of such an approach (“I recognize that there is some secrecy and lack of knowledge of the whole process when a Tibetan child is sent from Tibet to India” (CTR at 3). Nonetheless, the Officer found it unreasonable that a mother would send her 14-year-old daughter to another country without knowing details about the school there, the agent who facilitated the departure, or the friend who referred the agent, and found her explanation on this point.

[25] The error in this analysis is that it failed to take into account the fact that the Applicant is from rural Tibet, has no formal education, and lived in a village so remote that her husband had to leave town for several days to even find an agent to facilitate the exit. The Applicant provided evidence that, in rural Tibetan culture, such business was the role of men, while women stayed home and minded the children. The Officer addressed none of these facts in analyzing the plausibility of the Applicant’s narrative, and while the Applicant’s lack of knowledge about the specifics of her daughter’s trip to India might be implausible in a Canadian context, the Officer failed to explain why it was thus within the political climate and remote location in which the Applicants were situated. As such, the Officer’s dismissal of the Applicant’s “implausible explanations” was unreasonable.

[26] In sum, as with the credibility findings, I do not find that the Officer adequately or in clear enough terms explained why the Applicant’s responses regarding her daughter are implausible in light of the evidence. For these reasons, the matter will be returned for reconsideration by another visa officer.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that:**

1. This application for judicial review is allowed. The matter is referred back to the visa office for reconsideration;
2. There is no award as to costs; and
3. There are no questions for certification.

"Alan S. Diner"

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-5560-15

**STYLE OF CAUSE:** GELEK PALMO v THE MINISTER OF CITIZENSHIP  
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