

Federal Court



Cour fédérale

**Date: 20191021**

**Docket: IMM-1915-19**

**Citation: 2019 FC 1318**

**Vancouver, British Columbia, October 21, 2019**

**PRESENT: The Honourable Madam Justice Heneghan**

**BETWEEN:**

**YONG CHENG**

**Applicant**

**and**

**THE MINISTER OF PUBLIC SAFETY AND  
EMERGENCY PREPAREDNESS**

**Respondent**

**JUDGMENT AND REASONS**

[1] Mr. Yong Cheng (the “Applicant”) seeks judicial review of the decision by a Canada Border Services Agency officer, acting as a delegate (the “Delegate”) of the Minister of Public Safety and Preparedness (the “Respondent”), referring him to an admissibility hearing pursuant to subsection 44(2) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the “Act”).

[2] The Applicant sought permanent residence in Canada as a member of the Family Immigration Class, as defined in subsection 117(1) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 (the “Regulations”). He was sponsored by his wife, who is a permanent resident. In applying for permanent residence for the Applicant, his wife made a false statement about her employment in Canada that was determined to be a misrepresentation within the meaning of the Act.

[3] Subsequently, the Applicant was referred for an admissibility hearing, pursuant to subsection 44(2) of the Act, before the Immigration and Refugee Board, Immigration Division (the “ID”) to determine if he is inadmissible to Canada for misrepresentation, as described in paragraph 40(1)(a) of the Act.

[4] The Applicant now argues that the decision of the Delegate is unreasonable since the Delegate had the choice not to make the referral to the ID. He also submits that the Delegate breached the duty of procedural fairness because he did not consider the submissions made on his, the Applicant’s, behalf in respect of the referral to the ID.

[5] The Respondent submits that the Delegate properly exercised his discretion in making the referral and that there is no basis for judicial intervention.

[6] Any issue of procedural fairness is reviewable on the standard of correctness; see the decision in *Canada (Citizenship and Immigration) v. Khosa*, [2009] 1 S.C.R. 339.

[7] The merits of the Delegate's decision are reviewable on the standard of reasonableness; see the decision in *Lin v. Canada (Public Safety and Emergency Preparedness)*, 2019 FC 862 at paragraph 9.

[8] The Applicant bases his arguments about a breach of procedural fairness upon the policy set out in the Immigration, Refugees and Citizenship Canada Operational Manual ENF 6. This policy provides that a delegate must take into account any representations made by an individual or counsel.

[9] I see no merit in the Applicant's arguments on this issue.

[10] A decision maker is presumed to have considered all the evidence and the submissions before making a decision. Silence by the Delegate about the Applicant's arguments does not mean that those arguments were not considered.

[11] As for the Applicant's challenge to the merits of the Delegate's decision, I refer to the recent decision of Justice Barnes in *Lin, supra*, where the Court described the purpose of a section 44 report as a "screening" function; see paragraph 16.

[12] The Delegate here did not make a finding about the alleged misrepresentation. The Applicant can advance his arguments in that regard before the ID.

[13] The Applicant has not shown any reviewable error on the part of the Delegate. The referral decision meets the applicable legal test of reasonableness, as referenced above, and there is no basis for judicial intervention.

[14] The Applicant seeks certification of the question that was certified by Justice Barnes in *Lin, supra*, as follows:

What is the scope of discretion afforded by s 44 of the IRPA to refer the case of a permanent resident to the Immigration Division for an admissibility hearing on the ground of misrepresentation under s 40 and was that discretion properly exercised in these cases?

**JUDGMENT in IMM-1915-19**

**THIS COURT'S JUDGMENT is that** the application for judicial review is dismissed

and the following question will be certified:

What is the scope of discretion afforded by s 44 of the IRPA to refer the case of a permanent resident to the Immigration Division for an admissibility hearing on the ground of misrepresentation under s 40 and was that discretion properly exercised in these cases?

“E. Heneghan”

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Judge

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

**DOCKET:** IMM-1915-19

**STYLE OF CAUSE:** YONG CHENG v. THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

**PLACE OF HEARING:** VANCOUVER, BRITISH COLUMBIA

**DATE OF HEARING:** OCTOBER 17 , 2019

**JUDGMENT AND REASONS:** HENEGHAN J.

**DATED:** OCTOBER 22, 2019

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