Federal Court  Cour fédérale

Date: 20200511

Docket: IMM-1086-19

Citation: 2020 FC 606

Ottawa, Ontario, May 11, 2020

PRESENT: The Honourable Madam Justice Elliott

BETWEEN:

LIGUO AN
MIN WANG

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] This is an application for judicial review of the decision of an immigration officer [Officer] dated January 31, 2019 [Decision] denying the Applicants' application for permanent residence. The Officer also found the Applicants to be inadmissible to Canada for five years because of misrepresentation.

[2] For the reasons that follow, this judicial review is allowed and the Decision will be set aside.

II. **Background Facts**

[3] The Applicants, Liguo An and Min Wang are citizens of China. In January 2016, their daughter Ruoqi An, who is a permanent resident of Canada, applied to sponsor the Applicants to become permanent residents.

[4] On April 12, 2017, the Officer sent the Applicants a procedural fairness letter [PFL]. The PFL stated the Officer had concerns that the Applicants had not fulfilled the requirement under subsection 16(1) of the *Immigration and Refugee Protection Act* [*IRPA*], which requires that applicants must answer truthfully all questions put to them for the purpose of examination and must produce a visa and all relevant evidence and documents that the Officer reasonably requires.

[5] In the PFL, the Officer raised issues with Ms. Wang's employment history. The Officer noted that Ms. Wang declared her employment information on her Schedule A form, but "[t]he employment information declared, however, is inconsistent with the same indiocated [sic] in her PRC Household Registration recored/booklet [sic] (Hukou) dated April 2010."

[6] The Officer stated that based on all documentation and information available, there were concerns that the Applicants had "provided untruthful employment history/background information" in support of their immigration application. The PFL stated that if the Applicants

are found to have engaged in misrepresentation, they may be found to be inadmissible under section 40(1)(a) of the *IRPA*, and would be inadmissible to Canada for five years.

[7] The Applicants submitted a response to the PFL on May 2, 2018, with the assistance of an immigration consultant. In their submissions, their representative stated that it is not mandatory for a person to update their Hukou unless the person moves out of the area or the family structure changes. Their response also included the articles of association for Beijing North Continent Biological Engineering Co., Ltd. and a certificate from Beijing Norland Engineering Co., Ltd. confirming Ms. Wang's employment from June 2003 to September 2015.

III. **Preliminary Issue: Style of Cause**

[8] In their written materials and in oral submissions, the parties agreed that the Applicants' daughter, Ruoqi An, is not a proper applicant in this judicial review and that her name should be removed from the style of cause.

[9] I agree. Ruoqi An is not "directly affected" by the matter, as required by subsection 18.1(1) of the *Federal Courts Act*, RSC 1985, c F-7. Ruoqi An is already a permanent resident of Canada and even though she is sponsoring her parents, her legal rights are not directly affected by this application: *Chinenye v Canada (Minister of Citizenship and Immigration)*, 2015 FC 378 at paragraphs 17 to 20.

[10] Accordingly, the style of cause is so amended with immediate effect.

IV. **Decision Under Review**

[11] The GCMS notes of the Officer constitute the reasons for the Decision.

[12] The Officer found that the Applicants had misrepresented or withheld material facts about Ms. Wang's employment history and/or background, and that this misrepresentation made them inadmissible to Canada under section 40 of the *IRPA*.

[13] The Officer found that the employment information in Ms. Wang's Schedule A form was inconsistent with the Hukou filed by the Applicants, as identified in the PFL.

[14] The Officer reviewed the Applicants' response to the PFL. The Officer noted the Applicants' argument that it is not mandatory to update the residential address or job title on a Hukou unless a person moves out of the area or the family structure changes. The Officer also noted the Applicants' statement that they decided to change their company's structure in 2011 and updated their Hukou in 2011 to reflect this change in employment.

[15] The Officer observed that the employment certificate was consistent with Ms. Wang's Schedule A form, as both documents stated that she worked at Beijing North Continent Biological Engineering Co., Ltd. from June 2003 to September 2015. However, the Officer found that this explanation did not address the fact that Ms. Wang's place of employment on her Hukou, registered April 2010, is "Beijing No. 2207 Factory", which was not declared on the Schedule A form.

[16] The Officer found that the employment certificate was not sufficient to explain why Ms. Wang's employment at Beijing No. 2207 Factory in 2010 was not declared on the Schedule A form, even though that date falls within the period where she declared she was working at Beijing North Continent Biological Engineering Co., Ltd.

[17] The Officer stated that the onus was on the Applicants to provide truthful, complete and correct information in their application. The Officer was satisfied that the Applicants were provided procedural fairness and an opportunity to respond to their concerns. The Officer found that the Applicants' response to the PFL was not sufficient to overcome these concerns.

[18] The Officer concluded that, on a balance of probabilities, the Applicants misrepresented or withheld material facts regarding Ms. Wang's employment history and background. The Officer found that this misrepresentation was material because it could have induced an error in the administration of the *IRPA* and the issuance of an immigrant visa to the Applicants without all of the information necessary to make the admissibility assessment. The misrepresentation could have induced an error because the Officer would not have realized that the Applicants were inadmissible to Canada for having provided untruthful information. The misrepresentation would also have led the Officer to believe that a thorough assessment of Ms. Wang's background and admissibility had been conducted.

[19] The Officer found that this misrepresentation made the Applicants inadmissible to Canada under section 40 of the *IRPA*.

V. **Issues**

[20] The issue is whether the Officer reasonably concluded that the Applicants made a material misrepresentation in their application for permanent residence.

[21] The Applicants argue that the Decision is unreasonable on three grounds. First, the Officer misapprehended the information in the Hukou, which states that as of April 2010, Ms. Wang was retired from Beijing No. 2207 Factory. Second, the Officer did not question the Applicant's explanation that there is no obligation to update the Hukou, and yet found that the mention of a previous employer on the Hukou amounted to misrepresentation. Third, the Applicants argue that there can be no misrepresentation where the information is disclosed elsewhere in the application.

[22] The Applicants also argue that the Officer breached procedural fairness by failing to provide sufficient detail in the PFL. The lack of detail meant that the Applicants did not have a full chance to respond to the Officer's concerns.

[23] The Applicants say that if the PFL had been clear, they would have been able to provide an acceptable answer to the Officer.

[24] As I have found the Decision to be unreasonable, it is not necessary to determine whether the process was procedurally unfair to the Applicants.

VI. **Standard of Review**

[25] Recently, the Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] extensively reviewed the law of judicial review of administrative decisions. The Supreme Court confirmed that judicial review of an administrative decision is presumed to be on the standard of reasonableness subject to certain exceptions, none of which apply on these facts: *Vavilov* at paragraph 23.

[26] A decision is reasonable if the decision-making process is justified, transparent and intelligible resulting in a determination that falls within the range of possible, acceptable outcomes which are defensible on the facts and law: *Dunsmuir v New Brunswick*, 2008 SCC 9 at paragraph 47 [*Dunsmuir*].

[27] In *Vavilov*, the requirements of a reasonable decision are re-stated as possessing "an internally coherent and rational chain of analysis that is justified in relation to the facts and law": *Vavilov* at paragraph 85.

[28] I find that further submissions from the parties are not required. The result in this matter would be the same under the pre-*Vavilov* framework established in *Dunsmuir*.

VII. **Analysis**

[29] The GCMS notes show that the Officer considered the explanation provided by the Applicants' representative in response to the PFL. The Officer did not accept the explanation for the following reason:

> The explanation does not address the fact that the dependent wife's place of employment on her Hukou, registered April 2010 states "Beijing No. 2207 Factory", which is not declared on the Schedule A Background/Declaration Personal History.

[30] A review of the Hukou for Min Wang, Mr. An's wife, shows that the information recorded states:

Service Location	Beijing No. 2207 Factory (changed)
Profession	Retired (changed)

[31] It is clear on the face of the Hukou that by April 28, 2010 at the latest, Ms. Wang was not employed at Beijing No. 2207 Factory, but rather was retired from it. Nonetheless, the Officer stated that she was employed there, which was the cause of the Officer's PFL.

[32] One of the main arguments by the Respondent is that since there were inconsistencies between the Hukou and the Schedule A information, the Officer did not have to specify more than that. If the Applicants required clarification, they could have asked for it.

[33] The Applicants reply that there was no requirement to set out Ms. Wang's history in Schedule A beyond ten years. Therefore, information about working at Beijing No. 2207 Factory was not required since it ended in 2003. In any event, the Hukou did disclose that she had retired from, in other words, ceased working at, Beijing No. 2207 Factory.

[34] The Schedule A to which the Officer referred in the PFL was dated December 29, 2015. It indicates that from June 2003 to September 2015 Ms. Wang was employed at Beijing North Continent Biological Engineering Co., Ltd.

[35] In addition to the information in the Hukou, and in the December 29, 2015 Schedule A, Ms. Wang's updated Schedule A dated May 19, 2017 was also before the Officer. It shows that between January 1, 2007 and September 2015 she was employed as Vice President of Beijing North Continent Biological Engineering Co., Ltd. It also shows that Ms. Wang was retired as of September 2015.

[36] These two Schedules do not mention Beijing No. 2207 Factory. That is consistent with Ms. Wang's Hukou showing that she was retired from Beijing No. 2207 Factory.

[37] As already noted, there was other information presented to the Officer to support that Ms. Wang's employment was only with Beijing North Continent Biological Engineering Co., Ltd. at the relevant time.

[38] When the Applicants' representative responded to the PFL they set out the following corporate history, believing that the PFL must be concerned with her employment with Beijing North Continent Biological Engineering Co., Ltd.:

- Ms. Wang and Mr. An funded Beijing North Continent Biological Engineering Co., Ltd. in June 2003;
- Certified Articles of Association were provided to substantiate the ownership;
- In 2011 the Applicants transferred their shares to effect business changes;
- Ms. Wang updated her employment information on January 7, 2011;
- Beijing North Continent Biological Engineering Co., Ltd., was known as Beijing Norland Biological Engineering Co., Ltd.;
- the Applicants kept working for Beijing North Continent Biological Engineering Co., Ltd. after the transfer of their shares and that company certified that Ms. Wang worked there as a Vice President from June 2003 to September 2015.

[39] The corporate letter certifying that Ms. Wang was employed from June 2003 to September 2015 was signed by a person named Wenwen Ren. It is on company letterhead and contains a complete street address as well as telephone and fax numbers. If the Officer did note the information but was not persuaded by it or wanted to verify it, they had all the necessary contact information.

VIII. **Summary and Conclusion**

[40] The Officer did not mention anywhere in the GCMS notes that Ms. Wang was retired from Beijing No. 2207 Factory. To the contrary, they referred to it in the GCMS notes as her "place of employment".

[41] The Officer noted that the information in the certified corporate letter coincided with the employment listed on Ms. Wang's Schedule A, from 2003/06 to 2015/09. The Officer's conclusion was that "I do not find this sufficient to explain why the employment at 'Beijing No. 2207 Factory' was not declared on the Schedule A" (my emphasis).

[42] That conclusion was followed by the statement that the Hukou registration date of April 2010 fell within the period that Ms. Wang declared she was working at Beijing Norland Biological Engineering Co., Ltd.

[43] The Officer did not reasonably explain why the certified corporate letter from Beijing North Continent Biological Engineering Co., Ltd. confirming Ms. Wang's employment there from June 2003 to September 2015 was not sufficient to overcome the Hukou reference to being retired from Beijing No. 2207 Factory.

[44] The Officer did not attempt to question or reconcile how Ms. Wang could be employed by two separate corporate entities - Beijing No. 2207 Factory and Beijing Norland Biological Engineering Co., Ltd. - at the same time.

[45] The Officer did not dispute, nor did the Respondent, that the Hukou did not have to be updated in this case. Yet, the Officer found the wording in the Hukou determinative as "the dependent wife's place of employment on her Hukou, registered April 2010 states "Beijing No. 2207 Factory" which is not declared on the Schedule A Background/Declaration Personal History."

[46] The Officer had conflicting evidence that they failed to weigh or explain.

[47] I find it more likely, given the repeated reference to Ms. Wang being employed at Beijing No. 2207 Factory, that the Officer misconstrued the Hukou, despite acknowledging it did not need to be updated.

[48] The Officer failed to provide any understandable reason for not accepting the information in the certified corporate letter, which substantiated the Applicants' Schedule A information.

[49] On reviewing the reasons provided in light of the facts in the underlying record, I find that the Officer's analysis is not based on an internally coherent and rational chain of analysis that is justified in relation to the facts and law. The Officer's reasons fail to meet the requirements of being justified, transparent and intelligible.

[50] The shortcoming demonstrated with respect to what the Officer saw as a conflict between the Hukou and the information in Schedule A is sufficiently central and significant to render the Decision unreasonable: *Vavilov* at paragraph 100.

[51] The Decision, including the finding that the Applicants misrepresented a material fact, will be set aside.

[52] This matter will be returned for re-determination by another Officer.

[53] There is no serious question of general importance for certification on these facts.

[54] No costs are awarded.

JUDGMENT in IMM-1086-19

THIS COURT'S JUDGMENT is that:

1. The style of cause is amended to remove Ruoqi An as an applicant, effective immediately.
2. The application is allowed.
3. The Decision, including the finding that the Applicants misrepresented a material fact, is set aside.
4. This matter is returned for re-determination by another Officer.
5. There is no serious question of general importance for certification on these facts.
6. No costs are awarded.

"E. Susan Elliott"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-1086-19
STYLE OF CAUSE:	LIGUO AN ET AL v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
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