

Federal Court



Cour fédérale

Date: 20230509

Docket: IMM-9328-21

Citation: 2023 FC 661

Ottawa, Ontario, May 9, 2023

PRESENT: Mr. Justice Norris

BETWEEN:

SHU ZHANG

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. OVERVIEW

[1] The applicant, a citizen of China, applied for a work permit through the temporary foreign worker (“TFW”) program as a project manager with VE Stone Ltd, a Surrey, British Columbia company specializing in kitchen renovations. In a decision dated January 11, 2021, a visa officer with Immigration, Refugees and Citizenship Canada (“IRCC”) refused the application on the basis that the applicant is inadmissible to Canada under

paragraph 40(1)(a) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (“*IRPA*”) due to misrepresentation. Specifically, the officer concluded that employment letters the applicant had submitted in support of his work permit application are likely fraudulent.

[2] The applicant now applies for judicial review of this decision under subsection 72(1) of the *IRPA*. He submits that the officer’s conclusion that the employment letters are likely fraudulent is unreasonable. As I explain in the reasons that follow, I do not agree. This application for judicial review will, therefore, be dismissed.

II. BACKGROUND

[3] The applicant was born in Inner Mongolia, China, in December 1977. He holds a Master’s degree in mechanical engineering. According to his TFW application, he has worked for a traffic engineering company, in finance, and, from July 2013 until June 2017, as a General Manager with Beijing Lufugong Decoration Engineering Design Co. Ltd., a company engaged in home renovation projects.

[4] In February 2020, VE Stone received a positive labour market impact analysis for a proposed position for the applicant as a project manager. Shortly after, the applicant submitted his first TFW application. That application was refused, however, apparently due to the applicant’s lack of office administration experience. The applicant then submitted a second TFW application on August 7, 2020.

[5] In support of both of his TFW applications, the applicant relied on his relevant work experience with Beijing Lufugong Decoration Engineering Design. In a covering letter that accompanied his second application, the applicant explained that he and a friend had jointly founded the company in 2013. The applicant also submitted a letter dated August 4, 2020, from Beijing Lufugong Decoration Engineering Design. It stated that the applicant had been employed by the company as General Manager from July 2013 to June 2017. The letter was signed by Li Feng, who is identified as the Financial Manager. A contact telephone number was also provided. A similar letter dated February 21, 2020, had been provided in support of the first TFW application. It, too, was signed by Li Feng and had the same contact number. It appears that the applicant resubmitted the February 21, 2020, letter in support of his second TFW application since both letters are found in the Certified Tribunal Record.

[6] As reflected in Global Case Management System (“GCMS”) notes, on review of the second TFW application, an IRCC officer determined that Beijing Lufugong Decoration Engineering Design’s business license had been revoked on April 25, 2016, yet the employment letter was dated August 4, 2020. The officer noted that it is illegal for a company to carry on business without a valid license. The officer also tried phoning the contact number provided on the employment letter; however, the person who answered stated he was not Li Feng and denied having any knowledge of the business.

[7] On December 22, 2020, IRCC sent the applicant a procedural fairness letter stating the concern that the letter from Beijing Lufugong Decoration Engineering Design appeared to be

fraudulent. The applicant was offered an opportunity to address this concern before a decision was made on his TFW application.

[8] I pause here to note that the procedural fairness letter refers to “the employment letter from Beijing Lufugong Decoration Engineering Design” even though there were two such letters on file. It is apparent from the GCMS notes that the first officer’s concern was with respect to the August 4, 2020, employment letter; however, the procedural fairness letter does not give a date for the employment letter in question. In any event, the grounds for concern apply equally to both letters since they were both signed by Li Feng, both had the same contact telephone number, and both post-dated the revocation of the company’s business license.

[9] In response to the procedural fairness letter, on December 29, 2020, the applicant provided a letter with the heading “Explanation for my experience at Beijing Lufugong Decoration Engineering Design.” Included with this letter were several administrative documents relating to the company indicating the applicant’s connection to the company as Executive Director, Manager and, since shortly after its founding, the sole shareholder. One of the documents included confirmation that the company’s business license had indeed been revoked on April 25, 2016.

[10] In his covering letter, the applicant does not directly address the genuineness of the employment letters from Beijing Lufugong Decoration Engineering Design. Instead, he states that the company was founded in February 2013 and it continued in operation until April 2016, when “the company’s business was interrupted.” He does not say what happened after this. The

applicant also states that “Some documents were lost or destroyed due to a long period of time.” According to the applicant, the administrative documents he had gathered and was now submitting established his work experience with Beijing Lufugong Decoration Engineering Design.

III. DECISION UNDER REVIEW

[11] The January 11, 2021, decision letter simply states the officer’s conclusion that the applicant had been found inadmissible to Canada under paragraph 40(1)(a) of the *IRPA* due to misrepresentation. The basis for this determination is set out in the officer’s GCMS notes.

[12] In the GCMS notes, the officer sets out several considerations supporting the conclusion that the employment letter from Beijing Lufugong Decoration Engineering Design is likely fraudulent. First, given that the company’s business license had been revoked as of April 25, 2016, and that it is illegal for an unlicensed company to carry on business, this raised a question as to how the applicant could have worked there until June 2017, as stated in the letter. It also raised a question as to how a letter could have come to be written on behalf of the company on February 21, 2020. (The officer does not expressly mention the August 4, 2020, letter but the same question would arise with respect to that letter.) Second, according to the employment letter, the registered capital of the company when it was founded was RMB 100,000 yet the applicant’s annual income was “about RMB 400,000.” Third, when IRCC attempted to contact the author of the employment letter at the telephone number given, the person who answered said they were not Li Feng and that they knew nothing about the matter.

[13] The officer noted that while the applicant had provided documents showing that the company went through various registration requirements in 2013, they did not address the concern about the authenticity of the employment letter.

[14] On the basis of these considerations, the officer was satisfied on a balance of probabilities that the applicant “did in fact submit fraudulent documentation as part of his application, thereby misrepresenting a material fact, and that this act of misrepresentation could have induced an error in the administration of the Act had it gone undetected.”

IV. STANDARD OF REVIEW

[15] The parties agree, as do I, that the officer’s decision should be reviewed on a reasonableness standard.

[16] A reasonable decision “is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker” (*Canada (Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 85). A decision that displays these qualities is entitled to deference from the reviewing court (*ibid.*). When applying the reasonableness standard, it is not the role of the reviewing court to reweigh or reassess the evidence considered by the decision maker or to interfere with factual findings unless there are exceptional circumstances (*Vavilov* at para 125).

[17] For a decision to be reasonable, a reviewing court “must be able to trace the decision maker’s reasoning without encountering any fatal flaws in its overarching logic, and it

must be satisfied that there is a line of analysis within the reasons that could reasonably lead the tribunal from the evidence before it to the conclusion at which it arrived” (*Vavilov* at para 102, internal quotation marks and citation omitted). On the other hand, “where reasons are provided but they fail to provide a transparent and intelligible justification [. . .], the decision will be unreasonable” (*Vavilov* at para 136).

[18] The onus is on the applicant to demonstrate that the officer’s decision is unreasonable. To set aside a decision on this basis, the reviewing court must be satisfied that “there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency” (*Vavilov* at para 100).

V. ANALYSIS

[19] The applicant’s arguments on review are limited to the reasonableness of the officer’s determination that the employment letters from Beijing Lufugong Decoration Engineering Design are likely fraudulent. The applicant has not persuaded me that the officer’s determination is unreasonable.

[20] The applicant submits that it was illogical for the officer to infer that there was something questionable about the applicant having continued to work for the company or for the company to have issued an employment letter after its business license was revoked. According to the applicant, the company could have continued to operate despite losing its business license. The applicant also submits that the officer should have considered that the person who received the call from IRCC about the August 4, 2020, employment letter might not have been Li Feng but,

rather, one of his assistants. The officer should also have considered that “it is customary for Chinese people living and working in China to be highly suspicious of investigative phone-calls, and refuse to cooperate with such phone-calls, for fear of bringing trouble to themselves and their companies” (*Applicant’s Further Memorandum of Argument*, para 15). Thus, according to the applicant, it was unreasonable for the officer to infer from the unsuccessful call attempting to verify the employment letters that the letters are likely fraudulent. Finally, the applicant submits that there is no intelligible link between, on the one hand, the apparent disparity between the capitalization of the company and his reported annual income and, on the other hand, the conclusion that the letters are likely fraudulent. Specifically, the officer gives no reason for thinking that, given the capitalization of the company, the applicant’s annual income had been reported inaccurately.

[21] I begin by noting that, even though he was not told why IRCC had concerns about the authenticity of the employment letter, the applicant does not argue that the procedural fairness letter was inadequate. As well, as I have already mentioned, the procedural fairness letter is ambiguous: it refers to “the” employment letter from Beijing Lufugong Decoration Engineering Design even though there were two such letters. Nevertheless, the applicant has not suggested that this lack of clarity impaired his ability to respond to the procedural fairness letter. In any event, as I also noted above, IRCC’s concerns apply equally to both letters. The officer’s conclusion that the applicant “did in fact submit fraudulent documentation as part of this application” can thus be read as applying to both employment letters.

[22] I agree with the applicant that the link the officer makes between the company's capitalization, the applicant's annual income, and the conclusion that the letters are likely fraudulent is neither transparent nor intelligible. Nevertheless, I am satisfied that the other two considerations cited by the officer reasonably support the conclusion that the employment letter is likely fraudulent.

[23] Having been told that there was a concern that the employment letter "appears to be fraudulent," the applicant did not address this issue directly in his response to the procedural fairness letter. Instead, he provided additional background information demonstrating his connection to the company, something that was not in issue. Contrary to the applicant's submissions on review, the officer did not conclude that the applicant had never worked for the company. Rather, the concerns related to what had happened since the company's business license was revoked on April 25, 2016. On review, the applicant does not claim that he did not know that the company's business license had been revoked (something that appears unlikely in any event given that he submitted a document in response to the procedural fairness letter confirming this very fact). In his letter responding to the procedural fairness letter, the applicant stated that the company's business had been "interrupted" in April 2016 yet he says nothing about what happened afterwards. Significantly given the submissions advanced on review, the applicant does not say that the company continued to operate despite losing its business license. Absent such a representation, there was no reason for the officer to consider this possibility.

[24] Furthermore, despite knowing there was a concern that the employment letter appeared to be fraudulent, and despite the purported author of the letter being an employee of the applicant's

own company, the applicant did not provide any information from or about that individual to IRCC in his response to the procedural fairness letter. He did not provide any information explaining the origins of the letters or anything to verify the authenticity of the letters. In the absence of any information from or about the author of the letters, there was no reason for the officer to consider the entirely speculative possibilities (suggested for the first time on review) that the person who answered the call to the number provided on the letters might have been Li Feng's assistant or might not have been truthful in denying any knowledge of the matter because they did not want to get involved.

[25] In short, not having put these scenarios or any evidence supporting them to the officer, the reasonableness of the decision is not impugned by the arguments now raised by the applicant on judicial review. On the information before the officer, including the applicant's response to the procedural fairness letter, the determination that the employment letters from Beijing Lufugong Decoration Engineering Design are fraudulent is altogether reasonable.

VI. CONCLUSION

[26] For these reasons, the application for judicial review will be dismissed.

[27] The parties did not suggest any serious questions of general importance for certification under paragraph 74(d) of the *IRPA*. I agree that no question arises.

JUDGMENT IN IMM-9328-21

THIS COURT'S JUDGMENT is that

1. The application for judicial review is dismissed.
2. No question of general importance is stated.

“John Norris”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-9328-21

STYLE OF CAUSE: SHU ZHANG v THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: HELD BY VIDEOCONFERENCE

DATE OF HEARING: NOVEMBER 22, 2022

JUDGMENT AND REASONS: NORRIS J.

DATED: MAY 9, 2023

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