

Between:

HING YING HO,

Applicant,

- and -

THE MINISTER OF CITIZENSHIP
AND IMMIGRATION,

Respondent.

REASONS FOR ORDER

HEALD, D.J.

This is an application for judicial review of the decision of a visa officer at the Commission for Canada in Hong Kong dated August 26, 1996. By that decision the visa officer refused the applicant's application for permanent residence in Canada.

FACTS

The within application was filed under the category of investor. On May 2, 1996, the applicant was interviewed by visa officer Patricia Brown at the Commission's office in Hong Kong. An interpreter was present. Following the interview, visa officer Brown made extensive notes. It is apparent from these notes that the visa officer seriously questioned the applicant's credibility. She doubted whether the applicant was actually managing the business or whether she was merely acting as a sales representative possessed with signing authority. She also questioned whether the applicant possessed the required financial net worth through her own endeavours.

The visa officer added that this applicant appeared to be "number 2 wife (concubine)" to one Li Wang Chun. The applicant seems to have shared two flats with Li, his legal wife, and the two children of the Applicant and Li. Li owned the company where this applicant was employed. The applicant provided details of property said to be owned jointly by herself and Li. However, the visa officer concluded that this property had been purchased by Li, and not by this applicant. The visa officer further observed that the applicant's stated income was not supported by her statement of assets. Accordingly, the visa officer asked the applicant to provide specific documentation supportive of her application. She specifically inquired as to the source of the applicant's wealth as well as to the specifics of her job duties within Li's company. Further documentation was supplied as requested. On May 31, 1996, applicant's counsel, in a letter to the Commission, detailed the applicant's financial background. There was an acknowledgement that she had received much of her wealth from Li. However, the letter also stated that approximately two million dollars of her assets came from her own initiatives and activities.

In the visa officer's notes of August 26, 1996, she observed that in her view, based on the documentation before her, the applicant had not operated, controlled or directed a business. Accordingly, it was not necessary to further pursue the personal net worth issue.

On August 26, 1996, the visa officer sent a refusal letter to the applicant in which two reasons were given for the refusal: 1) the Applicant had not shown that she had successfully operated, controlled or directed a business; 2) she had not demonstrated that she had accumulated five hundred thousand dollars net worth through her own endeavours. The visa officer concluded: "You have not provided any documentation to show that you are anything other than an employee in this business."

On September 20, 1996, the applicant filed this application for judicial review.

ISSUES

1. Did the visa officer commit reviewable error in her interpretation of the definition of "investor" as set out in subsection 2(1) of the *Immigration Regulations, 1978*?
2. Did the visa officer commit reviewable errors of fact?

ANALYSIS

Section 2(1) of the regulations provides that a prospective investor immigrant, such as this applicant, must satisfy the visa officer that she:

- a) has successfully operated, controlled or directed a business;
- b) has made a minimum investment, since the date of the investor's application for an immigrant visa as an investor; and
- c) has a net worth, accumulated by the immigrant's own endeavour of at least \$500,000.00

In her reasons the visa officer concluded that the applicant had not met requirements (a) and (c) (*supra*). She also stated that since the applicant had not satisfied requirement (a) it was not necessary to further pursue requirement (c). On this basis, it is apparent that the foundation for the refusal of the visa officer was the failure to satisfy requirement (a). The visa officer had determined that the applicant had not successfully operated, controlled or directed a business.

The applicant submits that the visa officer fettered her discretion and misinterpreted the regulations in the following excerpt from her notes "... discussed budget and she seemed knowledgeable. But doesn't mean she operates business. Has no shares in business. Is paid salary and commission."

I do not agree with this submission. In my view the statement that the applicant had no shares in the business is directly relevant to the issue of whether the

applicant controls the business. The consideration of the level of the applicant's position in the company is undoubtedly an appropriate area of inquiry in determining whether the applicant operates or directs a business. The discussion of salary related to credibility. It was also germane to the applicant's personal net worth requirement. When this statement is taken in context, I do not agree that it amounts to a fettering of the visa officer's discretion.

The applicant makes the further submission that the visa officer failed to assess the applicant's accomplishments in directing the company's sales and marketing activities in China. The record does not support this submission. The visa officer, after summarizing the evidence in this area, concludes that the applicant is a sales representative and is not in charge of the business. At most she had a staff of four to manage but they were not under her immediate direction. In my view, the visa officer did not err in concluding that the applicant was a sales representative in or for China and that she carried on with the support of other employees of the company.

The applicant relies on the *Cheng* decision.¹ The *Cheng* case is distinguishable on the facts. Cheng had been employed by one of the largest toy manufacturers in Hong Kong since 1982. Since 1992, he had total responsibility for all sales in Mainland China as well as in the Hong Kong area. A sales representative *per se* does not qualify in the investor class.

¹*Cheng v. Canada (Secretary of State)* (1994), 25 Imm.L.R. (2d) 162.

It was decided in the *Chen* case², that the visa officer is required to consider disjunctively whether the applicant operated, controlled or directed a business. In the case at bar, the visa officer addressed the question as to whether the applicant controlled a business through ownership. This explains why she requested documentation to confirm that the applicant did indeed operate the Guangzhou office of her company. The record seems to indicate that the visa officer might well have decided that confirmation of this fact would have supported the applicant's position. However, the documentation supplied did not confirm the facts asserted by the applicant.

²*Chen v. Canada (M.E.I.)* (1993), 60 F.T.R. 73, 20 Imm.L.R. 290

CONCLUSION

My impression from the totality of the evidence herein is that the applicant had much difficulty in separating her financial resources from those of her husband Li and in producing documentation in support of her claim.

In my view the visa officer provided the applicant with a fair and reasonable opportunity to make submissions and recommendations. Accordingly, I conclude that the visa officer did not commit reviewable error. As a result, the within application for judicial review is dismissed.

CERTIFICATION

Counsel for the applicant suggested certification of the following serious question of general importance pursuant to Section 83 of the *Immigration Act*: "Is there a duty on a visa officer to afford humanitarian and compassionate considerations to all applicants before a final decision is made?"

Counsel for the respondent quite properly observed that Section 2.1 of the *Immigration Regulations* empowers and requires the Minister to consider the existence of compassionate or humanitarian considerations and authorizes him to issue exemptions in appropriate circumstances.

On this basis, the request for certification pursuant to Section 83 is declined.

(Sgd.) "Darrel V. Heald"
Deputy Judge

Vancouver, British Columbia
August 14, 1997

