

Date: 20080318

Docket: IMM-2345-07

Citation: 2008 FC 361

Toronto, Ontario, March 18, 2008

PRESENT: The Honourable Mr. Justice Hughes

BETWEEN:

YING HUANG and LI LIYUN

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The Applicant Li Liyun is an adult female citizen of the People's Republic of China. The other Applicant, Ying Huang is her daughter and a Canadian citizen. It is not clear why the daughter is or needs to be an Applicant in this matter. A review of the Tribunal Record indicates that the lawyer acting as solicitor of record for the Applicants, one Aliamisse O. Mundulai is the fiancé of Ying Huang and he filed an affidavit in support of Li Liyun's application for a visa to visit Ying Huang and himself in Canada.

[2] I have grave concerns as to the conduct of Mr. Mundulai in the events arising a few days before the scheduled date for the hearing of this application and his failure to appear at the hearing.

Toward the end of the week prior to the day scheduled for the hearing, Mr. Mundulai wrote to the Court, copying the Counsel for the Respondent, a letter simply stating that he was unavailable on the date scheduled for the hearing and proposing alternative dates. No reason for the unavailability was stated. If the Respondent had consented I would have adjourned the matter. However, the Respondent did not consent and Mr. Mundulai was instructed by the Registry to prepare a motion requesting an adjournment which he did. At the time he asked that the motion be heard on Monday, March 17, the day before the scheduled date for the hearing. Accordingly, the Motion was set down to be heard on the Monday. The Registry endeavoured several times to contact Mr. Mundulai or someone at this office with no success. Only a voicemail answering service was available and messages left were unanswered. Counsel for the Respondent indicated that his office had sent a fax to Mr. Mundulai as to the hearing and it went unanswered. The motion was heard on Monday, and was dismissed. The only basis offered in the Motion Record for seeking an adjournment was unexplained “personal reasons”. The Registry again endeavoured to contact Mr. Mundulai or someone in his office to no avail. The hearing of the matter thus proceeded to be heard, as scheduled, on Tuesday. Mr. Mundulai did not appear despite the Court delaying matters for a period of time to allow the premises to be searched and Mr. Mundulai’s name to be called several times.

[3] This conduct by Counsel exhibits a disregard of his obligations to the Court and fellow Counsel. One cannot simply ask and expect to secure an adjournment for “personal reasons” without more. Counsel are to make themselves available and to respond to communications from the Court Registry promptly and courteously.

[4] The Applicant Liyun has twice applied for a temporary resident visa and has twice been refused. The first application was refused on November 28, 2006. At that time, it was noted that several pieces of information that were required were lacking. No review of that decision was sought.

[5] The Applicant Liyun applied for a second time for a temporary resident visa to visit Canada which was received by the Minister's office in Beijing, China on May 15, 2007. On May 28, 2007 a written decision was made and sent to the Applicant Liyun refusing the application. The stated reasons for that decision were:

In reaching a decision, an officer considers several factors; these may include the applicant's travel and identity documents, reason for travel to Canada, contacts in Canada, financial means for the trip, ties to country of residence (including immigration status, employment and family ties) and whether the applicant would be likely to leave Canada at the end of his/her authorized stay. I am not satisfied that you meet the requirements of the Act and Regulations for the reasons indicated below:

...

I am not satisfied that you are sufficiently well-established and/or have sufficient ties in your country of residence to motivate your departure from Canada at the end of your authorised period of stay.

[6] The Applicant seeks judicial review of that decision. For the reasons that follow, I find that the application is dismissed.

[7] The Respondent filed an affidavit from the Officer who made the decision in question. The Officer reviews her CAIPS notes and states that there were several documents that ought to have

been filed that were not and that the Officer had doubts as to some of the material filed particularly with respect to investments in China.

[8] Most importantly, the Officer's affidavit stated that "*In coming to my decision...*" consideration was given to discrepancies between the Applicant Liyun's first and second visa application. It was noted that in the first, Liyun described herself as a retired office clerk and in the second as a retired chemical engineer. In one the daughter was described as single, the other described as a spouse. The Officer concludes in her affidavit that "*taking into consideration these discrepancies*" and the "*unclear*" documentation, the application was refused.

[9] Visa Officers are allowed a reasonable level of discretion in assessing the factual circumstances presented by an applicant and I find that the Officer in this circumstance acted reasonably.

[10] Accordingly, the application must be dismissed. There is no question for certification.

JUDGMENT

For the Reasons given:

1. The application is dismissed;
2. There is no question for certification;
3. No Order as to cost.

"Roger T. Hughes"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2345-07

STYLE OF CAUSE: **YING HUANG and LI LIYUN v. THE MINISTER OF CITIZENSHIP AND IMMIGRATION**

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: March 18, 2008

REASONS FOR JUDGMENT AND JUDGMENT: Hughes, J

DATED: March 18, 2008

APPEARANCES:

NO APPEARANCE

Mr. Michael Butterfield

FOR THE APPLICANT
YING HUANG and LI LIYUN
FOR THE RESPONDENT
MINISTER OF CITIZENSHIP AND
IMMIGRATION

SOLICITORS OF RECORD:

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FOR THE APPLICANT

FOR THE RESPONDENT
THE MINISTER OF CITIZENSHIP AND
IMMIGRATION