

Federal Court



Cour fédérale

Date: 20090610

Docket: IMM-4765-08

Citation: 2009 FC 619

Ottawa, Ontario, June 10, 2009

PRESENT: The Honourable Mr. Justice Zinn

BETWEEN:

CHUANXI WANG

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The applicant seeks to set aside an Immigration Officer's (the Officer) refusal of his application for a study permit extension. The impugned decision is dated October 17, 2008. For the reasons that follow, his application for judicial review is dismissed.

Background

[2] Mr. Chuanxi Wang is a 26 year-old Chinese national. He first came to Canada on a student visa valid from December 24, 2001 through April 3, 2004. The visa was subsequently extended through to May 2008.

[3] Mr. Wang has been enrolled as a student at a variety of institutions in British Columbia since his arrival in Canada. From January 2002 through August 2004, he studied English as a Second Language (ESL) at Dorset College, Alice College, and Century College. From September 2004 through April 2005, he followed a course in aircraft maintenance at Dorset College, upon completion of which he transferred to the British Columbia Institute of Technology, where he obtained a diploma in aircraft maintenance engineering in October 2006. He then returned to Dorset College in January of 2007, enrolling in the University Transfer Program with the intention of later transferring to Acadia University to pursue a bachelor's degree in business. He did not attend the Fall 2007 semester for medical reasons, but reenrolled in January of 2008. He withdrew from the college during the Fall 2008 semester, following the respondent's decision not to renew his study permit.

[4] The applicant applied for renewal of his study permit in May of 2008, requesting that it be extended through to April 2010. He was interviewed by the Officer on October 9, 2008. The applicant provided the Officer with a variety of documents, such as college transcripts, college attendance records, examples of coursework, bank statements, and statements concerning his reasons for studying in Canada, his family situation, and

his future plans. Among other documents, he also presented a bill of lading for a shipment of household goods from China to Vancouver, and copies of his parents' Canadian permanent resident cards.

[5] At the interview, the applicant was questioned about his program of studies and his family. He told the Officer that he is financially supported by his parents and that his father owns a medical equipment business in China.

[6] In his affidavit filed in this proceeding, the applicant writes that his parents were granted Canadian permanent residence status in November 2007, following an application in 2005. The applicant was initially included in his parents' application, but he was later removed. He himself applied for permanent residence in Canada in May of 2008, after he had submitted his application to extend his study permit.

[7] The Officer's CAIPS notes contain the reasons for the refusal to renew the applicant's student visa:

Client originally entered Canada with the intention of obtaining a degree in business but spent over two years in studying aircraft maintenance engineering. Client stated that he wants to remain in Canada with his parents because his parents have already immigrated to Canada and it would be extremely hard for him to back to China by himself. Client provided a bill of lading from KLN container line listing a number of items shipped to Canada; client stated that the bill of lading shows that all his belongings are in Canada and that his family does not have anything left in China. When client was asked what he would do if his application was refused, client stated 'I will see the reason and if I have a proof to argue you, I still want to try. If I really can't, I can go back to China to study

but it is almost impossible because I wasted my time and money and only finished half’. Although client stated that he can go back to China, I am not satisfied that he will leave Canada at the end of the period authorized for his stay as per A 20(1)(b). Client has limited ties to China, his parents are in Canada, he has no employment and limited assets in China; client stated ‘my parents have already immigrated here, they shipped all my stuff here so this proves that in China, we don’t have anything left.’ Application refused.

[8] The applicant submits that the Officer erred in concluding that he would not leave Canada at the end of his authorized stay, and that “there was no evidence before the Officer” to support such a conclusion. He submits that his avowed intention to stay in Canada upon completion of his studies does not mean that he will not leave Canada if unauthorized to stay, and relies on *Zhang v. Canada (MCI)*, 2006 FC 1381, for the proposition that “an intention to apply to work in Canada or to apply to immigrate to Canada does not mean a student will not leave Canada if not authorized to remain.” He also draws the Court’s attention to subsection 22(2) of the *Immigration and Refugee Protection Act*, S.C. 2001 c. 27, which “expressly allows an applicant to seek permanent resident status and temporary resident status at the same time.” He further submits that it was unreasonable of the Officer to conclude that he has no family ties in China, as his father sends money to him from China and operates his business there.

[9] The respondent submits that the decision under review is reasonable and should not be upset. With respect to the applicant’s father’s presence in and ties to China, the respondent submits that it was reasonable for the Officer to consider the applicant’s parents’ immigration status in Canada as a factor pointing away from family ties to

China. The respondent submits that notwithstanding subsection 22(2) of the Act, the Officer still had to be satisfied that the applicant would leave Canada at the end of his studies, and that on the evidence before him, the Officer clearly was not.

Issue

[10] The only issue raised by the applicant is whether the Officer erred in refusing his application for a renewal of the study permit.

Analysis

[11] The following provisions of the Act govern the renewal of student permits:

20. (1) Every foreign national, other than a foreign national referred to in section 19, who seeks to enter or remain in Canada must establish,

(a) (...)

(b) to become a temporary resident, that they hold the visa or other document required under the regulations and will leave Canada by the end of the period authorized for their stay.

22. (2) An intention by a foreign national to become a permanent resident does not preclude them from

20. (1) L'étranger non visé à l'article 19 qui cherche à entrer au Canada ou à y séjourner est tenu de prouver :

a) (...)

b) pour devenir un résident temporaire, qu'il détient les visa ou autres documents requis par règlement et aura quitté le Canada à la fin de la période de séjour autorisée.

22. (2) L'intention qu'il a de s'établir au Canada n'empêche pas l'étranger de devenir résident temporaire sur

becoming a temporary resident if the officer is satisfied that they will leave Canada by the end of the period authorized for their stay.

preuve qu'il aura quitté le Canada à la fin de la période de séjour autorisée.

[12] The applicant submits that the Officer questioned the *bona fides* of his educational status. Admittedly, the applicant has had an unusual and chequered educational history in Canada. However, the Officer made no determination that the applicant was not a *bona fide* student nor is there any evidence that this was considered in the determination that the applicant had not satisfied the Officer that the applicant would return to China.

[13] To turn to the substance of the matter before the Court, the only issue is whether it was reasonable of the Officer, on the evidence before him, to doubt that the applicant would leave Canada at the end of his studies. In this respect I note that the applicant seems to have misconstrued the burden of proof. The burden lies on the applicant to satisfy the Officer that he would return to China, it does not lie on the Officer to show that the applicant would not likely leave Canada.

[14] The applicant's evidence was that he intends to remain in Canada with his family, that he has had his belongings shipped here, that "it would be extremely hard" for him to return to China, and that his family "has nothing left" in China. While subsection 22(2) of the Act allows that an applicant for a study permit may have a dual intent of also applying for permanent residence status, the evidence before the Officer strongly suggested that the applicant's only intent was to remain in Canada. His statement that he

“could” go back to China to study in the event his application were to be refused hardly outweighs the balance of the evidence suggesting that he would not. As previously noted, the burden was on the applicant to establish that he will leave Canada at the end of the study period. The Officer is required to assess the evidence presented and weigh that evidence to determine whether it establishes on the balance of probabilities that the applicant will leave Canada at the conclusion of his study permit.

[15] I find no fault in the Officer’s weighing of the evidence before him.

[16] The applicant submits that the Officer erred in saying that the applicant no longer had any family in China, as they had become permanent residents of Canada. It is submitted that given that the Officer was told that the applicant’s father sends money to him from China and operates a business there, it was unreasonable for the Officer to conclude that the applicant had no family ties in China “as it was apparent that the applicant’s father lived and worked in China.” With respect, that is not at all “apparent” from the record. Many persons operate businesses from outside the country where the business is located and many persons have money in other countries, especially when they have business interests there. It would have been a simple thing for the applicant to state to the Officer that his father still lived and worked in China – he did not. In fact, the Officer’s notes indicate that the applicant told him that “his family does not have anything left in China.” The Officer’s conclusion that the applicant no longer had family living in China was not unreasonable based on all of the information before him.

[17] Even if the Officer knew or should have known that the applicant's father remains in China, and that this is demonstrative of some tie to China which was overlooked, the family is clearly in the process of establishing a life in Canada. The Officer's conclusion that the applicant has "limited ties" to China would unlikely have been affected, and would still have been reasonable.

[18] It is further submitted that the Officer erred in considering as one of the factors, whether the applicant had employment or assets in China. It was submitted that as a student who was financially dependant on his parents, it was unreasonable for the Officer to expect that he would have had such income. The Officer cannot be faulted for noting that the applicant, unlike some, did not have assets or a job to return to in China. If he had, then these facts may have indicated that he had an incentive to return there. Thus it was a relevant consideration.

[19] This application is dismissed.

[20] Neither party proposed a question to be certified nor is there one.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that this application for judicial review is dismissed and no question is certified.

“Russel W. Zinn”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4765-08

STYLE OF CAUSE: CHUANXI WANG v.
THE MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: Vancouver, British Columbia

DATE OF HEARING: May 26, 2009

**REASONS FOR JUDGMENT
AND JUDGMENT:** ZINN J.

DATED: June 10, 2009

APPEARANCES:

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