Federal Court  Cour fédérale

Date: 20110209

Docket: IMM-3554-10

Citation: 2011 FC 142

Ottawa, Ontario, February 9, 2011

PRESENT: The Honourable Mr. Justice Simon Noël

BETWEEN:

SHU LIANG SUN

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The present Reasons for Judgment and Judgment pertain to a decision from Visa Officer Chung, from the Canadian consulate in Hong Kong, refusing to grant the Applicant status as a permanent resident in the Investor Class under the provisions of the *Immigration and Refugee Protection Act*, SC 2001, c 27 ("IRPA"). Leave was granted by Justice Mosley on November 3, 2010.

[2] The Visa Officer received Mr. Sun's application for Permanent Residence under the Investor Class on April 11, 2007. On October 13, 2008, the Visa Officer sent an email to the Applicant's immigration consultant asking that supporting documents and the application be submitted by February 10, 2009. This deadline was extended to May 18, 2009. The full application was received on May 11, 2009. Concerned about the source of Mr. Sun's funds, more particularly the loan from his brother-in-law Mr. Li, the Visa Officer sent a letter on March 11, 2010 (the "fairness letter"), outlining the concerns about the absence of sufficient and substantiated proof of the origin of the seed capital borrowed from Mr. Li. The Applicant was given thirty (30) days to respond to this letter, which he did. The Visa Officer was not satisfied with the additional evidence put forth by the Applicant and rejected his permanent residency application, on the grounds that the legality of the source of Mr. Sun's funds was not ascertained.

The Applicable Law

[3] The *Immigration and Refugee Protection Regulations*, SOR 2002/227 ("IRPR") set out various criteria to meet the Investor Class category for Permanent Residency. Generally, section 90 states the following:

Members of the class 90. (1) For the purposes of subsection 12(2) of the Act, the investor class is hereby prescribed as a class of persons who may become permanent residents on the basis of their ability to become economically established in Canada and who are investors within the meaning of subsection 88(1).	Qualité 90. (1) Pour l'application du paragraphe 12(2) de la Loi, la catégorie des investisseurs est une catégorie réglementaire de personnes qui peuvent devenir résidents permanents du fait de leur capacité à réussir leur établissement économique au Canada et qui sont des investisseurs au sens du paragraphe 88(1).

Minimal requirements (2) If a foreign national who makes an application as a member of the investor class is not an investor within the meaning of subsection 88(1), the application shall be refused and no further assessment is required.	Exigences minimales (2) Si le demandeur au titre de la catégorie des investisseurs n'est pas un investisseur au sens du paragraphe 88(1), l'agent met fin à l'examen de la demande et la rejette.

[4] As indicated, section 88 of the IRPR indicates what the Investor Class consists of. More precisely, at issue was the requirement provided by the definition of "investor" that the Applicant was required to show he had "legally obtained" a net worth of at least $800,000. To meet this burden, section 10(1)(c) of the IRPR provides the following:

Form and content of application 10. (1) Subject to paragraphs 28(b) to (d), an application under these Regulations shall (…) (c) include all information and documents required by these Regulations, as well as any other evidence required by the Act;	Forme et contenu de la demande 10. (1) Sous réserve des alinéas 28b) à d), toute demande au titre du présent règlement : (…) c) comporte les renseignements et documents exigés par le présent règlement et est accompagnée des autres pièces justificatives exigées par la Loi;

[5] This requirement is complemented by the following provisions of IRPA:

Examination by officer 15. (1) An officer is authorized to proceed with an examination where a person makes an application to the officer in accordance with this Act.	Pouvoir de l'agent 15. (1) L'agent peut procéder à un contrôle dans le cadre de toute demande qui lui est faite au titre de la présente loi.
Obligation — answer truthfully 16. (1) A person who makes an application must answer	Obligation du demandeur 16. (1) L'auteur d'une demande au titre de la présente loi doit

truthfully all questions put to them for the purpose of the examination and must produce a visa and all relevant evidence and documents that the officer reasonably requires.	répondre véridiquement aux questions qui lui sont posées lors du contrôle, donner les renseignements et tous éléments de preuve pertinents et présenter les visa et documents requis.

[6] Hence, the burden is on the Applicant to provide the evidence to establish that his net worth of at least $800,000 was “legally obtained”.

The Standard of Review

[7] The core issue put forth by the Applicant is that of the Visa Officer’s appreciation of the evidence put forth by the Applicant in regards to the source of his funds. The Applicant hints that this is a procedural fairness question to be reviewed on the standard of correctness, as it is argued that the fairness letter sent was not clear enough to give the Applicant a reasonable opportunity to respond to the concerns. Furthermore, it is argued that there was no evidence that the funds were obtained illegally, making the Visa Officer’s concerns unreasonable. Also, it is said that the Visa Officer did not meaningfully address the evidence submitted in response to the fairness letter.

[8] As a fairness letter was sent and the Applicant responded to it, there is nothing to suggest a breach of procedural fairness. As will be seen, the content of the fairness letter was clear.

[9] It is clear that the issue arising is one of the Visa Officer’s assessment of the evidence put forward by the Applicant. It is reviewable under the standard of reasonableness, as it is a determination of fact and law (*Dunsmuir v New Brunswick*, 2008 SCC 9). Although not stated

explicitly, the reasonableness standard was adopted by Justice Zinn in *Vassan v Canada (Citizenship and Immigration)*, 2009 FC 1049.

The Fairness Letter

[10] The Visa Officer's fairness letter is argued to have been unclear in regards to what information needed to be put forward to satisfy the "legality" requirement to meet the Investor Class requirements. It is thus relevant to reproduce the relevant elements of this letter in order to address the Applicant's argument in regards to its clarity and assuage concerns about procedural fairness:

> This is to advise you of *my serious concern* that you do not appear to qualify for selection as an investor. In order to qualify under the investor class for immigration to Canada you must identify all assets and liabilities, which make up your personal net worth, *and satisfy an officer as to the source of your funds and assets, including demonstrating that they were legally obtained.*
>
> *Based on the documentation you have submitted, I am concerned that you have not sufficiently demonstrated the source of your funds or that they have been legally obtained and that you are not inadmissible. I would like to remind you that the onus is on you, the applicant, to demonstrate when you obtained your funds, how they were obtained, the source and method of transfer, and that all the taxation and other applicable laws were complied with.* Specifically, you appeared to have borrowed RMB 1,9 million yuan from your brother-in-law, Li Qiu Bin, in 1998 to set up your business. Hence, you failed to present sufficient and substantiated proof for the origin of *your seed capital*. [emphasis added]

[11] It is clear that this letter sets out the Visa Officer's concerns with Mr. Sun's application. Basically, more detail was sought on the loan given by Mr. Li, his brother-in-law. The letter indicates particular aspects of this loan: how funds were obtained, source and method of transfer, taxation and legal requirements met. As Mr. Sun brought forth evidence to answer these concerns, it is thus clear that procedural fairness was not breached. The Visa Officer did not make a

determination before the Applicant's response was received, as the CAIPS notes indicate. Hence, the Applicant fails in his argument that there was a breach of procedural fairness or that the letter was unclear. In this respect, the findings are very similar to those made in *Li v Canada (Minister of Citizenship and Immigration)*, 2006 FC 599. Further, the Applicant's submissions did not present any information or documentation supporting his argument that the fairness letter was imprecise or unclear, other than stating that "what is absent in this request is a specific request for the source of the money that was loaned by Mr. Li to the applicant" and that it was unclear that what was sought was the source of Mr. Li's funds.

[12] Section 16(1) of IRPA sets out that the Applicant has to oblige to a reasonable and relevant request for documentation by the Officer. In this case, it is clear that the information sought was relevant for processing the permanent residence application. It inquires about the legitimacy of the "seed capital" in order to establish a "legally obtained minimum net worth." Also, the information pertaining to the loan in 1998 (which was the seed capital of the Applicant's business), was not unreasonable in the circumstances and nothing in the file indicates that obtaining such information was beyond Mr. Sun's grasp.

The Reasonableness of the Visa Officer's Decision

[13] Reviewing a decision on the reasonableness standard of review has very clear implications. The Court must not re-weigh the evidence, or substitute its decision for that of the Visa Officer. Rather, the Court must address whether the decision falls within the range of reasonable and acceptable outcomes defensible in fact and in law (*Dunsmuir*, above, at para. 47).

[14] The Applicant was awarded, by way of a fairness letter, the opportunity to address the Visa Officer's concerns. The CAIPS notes indicate that this additional information was indeed considered, which was further confirmed by the Visa Officer's affidavit. More precisely, the CAIPS notes indicated that "the LTR [*sic*] from brother-in-law merely stated that he had lent Applicant RMB2M [*sic*]. No substantiated evidence submitted for how brother-in-law was able to accumulate funds to lend to applicant. Applicant has already been reminded of onus on him to demonstrate source of funds".

[15] The only arguably new information submitted after the fairness letter in regards to the source of the funds comes from Mr. Li's affidavit. Here, it is said that the funds loaned to the Applicant "came from my income accumulated from my work for years and engagement in trade". Surely, this does not address the concerns set out in the fairness letter. More specific evidence was required, namely to ensure that the funds were indeed "legally obtained". It was the Officer's duty to verify that the net worth was legally obtained and that the Applicant met the requirements to be considered an "investor" within the meaning of the definition set out in section 88(1) of the IRPR. This determination requires precise information, as the fairness letter implied. As the Visa Officer noted, the statements of Messrs. Li and Sun do not amount to "substantiated evidence".

[16] The Visa Officer's request for information by way of the fairness letter was "reasonably required", as indicated by subsection 16(1) of IRPA. Also, as case law recognizes, there was no need for the Visa Officer to suggest that the Applicant was involved in illegal activity before seeking additional information (*Martirossian v Canada (Citizenship and Immigration)*, 2001 FCT 1119). The Visa Officer needed to verify that the funds were obtained legally, as was required by

the IRPR. This need was clearly stated in the fairness letter and the Applicant failed to meaningfully address the concerns raised.

[17] As such, the impugned decision is reasonable and falls within the range of acceptable outcomes defensible in fact and law. The application is denied.

[18] No question is submitted for certification, and none arises.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed.

No question is certified.

"Simon Noël"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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STYLE OF CAUSE:	SHU LIANG SUN v. MCI
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