Federal Court  Cour fédérale

Date: 20111109

Docket: IMM-7204-10

Citation: 2011 FC 1279

Ottawa, Ontario, November 9, 2011

PRESENT: The Honourable Mr. Justice Rennie

BETWEEN:

SHU CHEN

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The applicant, Shu Chen is a Chinese national. He has a wife, Ji Weiwei, and a son. Mr. Chen applied for permanent residency in Canada on August 4, 2010. On October 13, 2010 his application was refused by the Visa Officer (Officer) at the Canadian Embassy in Beijing, China. The applicant scored 65 out of the minimum-necessary 67 points required to be successful in his application category. The Officer awarded points as follows:

	Points Assessed	Maximum Possible
Age	10	10
Education	25	25
Official Language Proficiency	9	24
Experience	21	21
Arranged Employment	0	10
Adaptability	0	10
TOTAL:	65	100

[2] This application for judicial review is limited to a review of the Officer's failure to award points for the applicant's spouse in the Adaptability category - this is the only ground that the applicant has advanced. Mr. Chen does not take issue with the other points allocated to him, but argues that he should have been awarded four (4) points in the Adaptability category, as opposed to the zero (0) he received, based on his wife's educational credentials.

[3] The applicant's wife attended two post-secondary schools, the Huaihai Communications Vocational College from September 1988 to July 1991 and the Correspondence Institute of Party School of the Central Committee of Communist Party of China from August 1995 to December 1997. However, the applicant's spouse's education was not recognized by China Academic Degree and Graduate Education Development Centre (CADGEDC), a Chinese government organization that certifies post-secondary educational credentials.

[4] The letter provided to the applicant by Citizenship & Immigration Canada (CIC) explaining the refusal of his application is of a boilerplate type; however, the Officer wrote in respect of the applicant's application:

> I have now completed the assessment of your application for a permanent resident visa as a skilled worker. I have determined that you do not meet the requirements for immigration to Canada.
>
> […]
>
> You have obtained insufficient points to qualify for immigration to Canada, the minimum requirement being 67 points: You have not obtained sufficient points to satisfy me that you will be able to become economically established in Canada.
>
> […]
>
> Following an examination of your application, I am not satisfied that you meet the requirements of the Act and the regulations for the reasons explained above. I am therefore refusing your application.

[5] The Field Operating Support System (FOSS) / Computer Assisted Immigration Processing System (CAIPS) notes which form part of the decision, provide some limited insight into the Officer's reasoning:

> ADAPTABILITY
> 0 (PA is married, no relative in Canada, no previous work/study in Canada, no arranged employment.)
> ---
> TOTAL
> 65
>
> As per CADGEDC, spouse has a diploma from Party school which is not belong [sic] to national education system, no points given in above grid. vo pls review spouse's education.

[6] The applicant argues that the Visa Officer did not give credit, as he ought to have, for his wife's education. To be specific, he argues that the Officer made an error in law by treating the CADGEDC recognition as a necessary requirement under the *Immigration and Refugee Protection Act*, 2001, c. 27 (*IRPA*) and *Immigration and Refugee Protection Regulations* (SOR/2002-227) (the

Regulations) in order to establish post-secondary educational credentials and breached procedural fairness in failing to consider other documentary evidence in support of his application.

The Correspondence Institute of Party School of the Central Committee of Communist Party of China

[7] Considerable deference is given to the decision of a visa officer assessing an application in the Federal Skilled Worker (FSW) Class. As stated in *Akbar v Canada*, 2008 FC 1362 at paras 11-12:

> The particular expertise of visa officers dictates a deferential approach when reviewing their decision. The assessment of an applicant for permanent residence under the FSWC is an exercise of discretion that should be given a high degree of deference. To the extent that this assessment has been done in good faith, in accordance with the principles of natural justice applicable, and without relying on irrelevant or extraneous considerations, the decision of the visa officer should be reviewed on the standard of unreasonableness (*Kniazeva v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 268 (CanLII), 2006 FC 268 at para. 15; *Dunsmuir v. New Brunswick*, 2008 SCC 9 (CanLII), 2008 SCC 9).
>
> The DIO is authorized to make decisions relative to the issuance of visas. He has greater expertise in this regard than the Court and that expertise attracts deference (*Singh Tiwana v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 100 (CanLII), 2008 FC 100).

[8] The onus was on the applicant to satisfy the Visa Officer that his wife's educational credentials qualified under the *Regulations*. He was aware, from his own application, that her education was not accepted by CADGEDC. It was his onus to provide evidence that, despite this fact, her education should still be recognized. The evidence he provided did not satisfy the Visa Officer.

[9] The CADGEDC report supplied to CIC by the applicant stated:

> Ms. Ji Wewel (DOB: July 20, 1969) has completed her academic program of Economic Management in Party School of the Central Committee of C P C from 1995 to 1997 This academic program is not [sic] belong to the National Education System.

[10] On July 19, 2010 Shu Chen wrote the Immigration Section of the Canadian Embassy in Beijing a letter in which he cited the definition of "educational credential" in the *Regulations* and conceded that although the Correspondence Institute of Party School of the Central Committee of Communist Party of China provides a post-secondary education program to party members, government officers and other "normal" citizens, it does not belong to the National Education System and hence is not an institution that can be certified by CADGEDC. This letter was included with the August 4, 2010 application.

[11] In *Jiang v Canada (Citizenship and Immigration)*, 2009 FC 1145, an applicant for permanent residence from China relied on two post-secondary diplomas, but without a CADGEDC certificate. Like the applicant here, the applicant in that case provided certificates from the schools and an explanation as to why CADGEDC did not certify her credentials. This Court found that reliance on CADGEDC certification was simply a matter of weight and was not an improper fettering of discretion. Justice James W. O'Reilly wrote at paragraph 7:

> Ms. Jiang asks the Court to find that the officer erred when she concluded that her evidence of accreditation was insufficient and that her explanation for not being able to obtain accreditation from the CADGEDC was inadequate. In my view, the officer was entitled to give the evidence provided by Ms. Jiang whatever weight she felt it deserved. I cannot find her conclusion - that the certificate supplied by Ms. Jiang was insufficient – was unreasonable. There was no evidence that the Shanghai Panel Telecommunications Group was a proper accrediting authority; nor was there evidence that the Shanghai Technician School was an accredited institution.

[12] An applicant for permanent residence in the FSW class bears the onus of submitting sufficient evidence in support of his or her application. A visa applicant ought to know, from a reading of the *Regulations*, that an application involves proof of accreditation of education credentials in order to gain adaptability points and the onus is on the applicant to provide sufficient information to satisfy a visa officer that the education credential in issue meets the requirements of the *Regulations*.

[13] The July 19, 2010 letter indicates that the applicant knew that his spouse's education credential from the Correspondence Institute of Party School of the Central Committee of Communist Party of China was not approved by CADGEDC and that CIC ordinarily relies on CADGEDC to demonstrate that an education credential is recognized by China. The onus was on him to provide satisfactory evidence of accreditation in respect of his spouse's education. The Officer's exercise of discretion was, in light of the evidence before him, reasonable.

The Huaihai Communication Vocational College

[14] The applicant's application included evidence of his spouse's educational background:

> Graduation Certificate from the Huaihai Communications Vocational College dated July 30, 1991. This was notarized by a notary public office and submitted with the August 4, 2010 application the Visa Office in Beijing.
>
> Certification from the Huaiyin Institute of Technology, formerly the Huaihai Communications Vocational College, dated June 15, 2010 This was submitted with the August 4 2010 application the Visa Office in Beijing
>
> Certification from the Huai'an Municipal Bureau of Education. This was submitted with the August 4, 2010 application the Visa Office in Beijing.

> Sealed transcripts provided by the Huaiyin Institute of Technology for Weiwei Ji were also provided with the August 4, 2010 application.

[15] The applicant stresses that the documents from the Municipal Bureau of Education, *prima facie*, meet the criteria of the *Regulations*. The document was however, given no weight by the Officer, and, in my view, rightly so. It does nothing to meet or respond to the regulatory criteria of "educational credentials".

[16] There are two issues embedded in the assessment of a FSW application: the substantive training or education and the certification. Proof of the former without the later, as in this case, does not meet the legislated requirements. Proof of attendance or graduation does not address or respond to the regulatory requirement of accreditation. The *Regulations* are directed to accreditation or regulation, a matter which is unaddressed by a graduation certificate. The graduation certificate, or diploma, or degree is some evidence that the individual has obtained training or education, but it is not evidence in respect of the accreditation of the school that granted the degree. The documents do not link the education certificate received to any institution "… recognized by the authorities responsible for registering, accrediting, supervising and regulating such institutions in the country of issue." as required by the *Regulations*.

[17] In sum, the applicant provided no evidence that the Huaihai Bureau of Education, a municipal authority, was sanctioned to recognize and accredit educational institutions in China. He provided no evidence that the Party school was recognized by any authority. The Visa Officer's

conclusion that the certificates provided were insufficient was reasonable, and fell in the range of possible and acceptable solutions which are defensible in respect of the facts and law.

The Officer did not err in law by treating CADGEDC recognition as a requirement

[18] The second issue in this application is whether the Visa Officer improperly fettered his discretion by rejecting the application by reason of the absence of a CADGEDC certification. The applicant contends that the Officer treated CADGEDC qualification as an unwritten policy prerequisite and thus improperly fettered his discretion in not looking at the substance of the supporting documents and what might lie behind them. In support, he relies on *Wang v Canada (Citizenship and Immigration)*, 2009 FC 1107, at paras 34-38. In *Wang*, the officer erred in rejecting presumptively the authenticity of the educational documents without giving the applicant an opportunity to respond. It is in this type of situation that the officers are expected to raise concerns.

[19] The CAIPS notes indicate that the Visa Officer's reason for not accepting the spouse's certificate in respect of the Party School was the absence of CADGEDC certification, but silent on the effect of graduation certificates supplied from the Huaihai Communications Vocational College. The certifications provided with respect to the Huaihai Vocational School says nothing about accreditation, they simply confirm reenrollment. Again, there was no link between the document and the substantive issue to which section 73 of the *Regulations* is directed – namely the status, authority and accreditation of the institution providing the CADGEDC certification would have addressed the issue of accreditation of the institution granting the certificate. In my view, where the Officer was faced with no evidence addressing the regulatory requirement, he did not fetter his

discretion by commenting on the type of evidence which, if tendered, would have met the requirement.

No Opportunity to be Heard

[20] I now turn to the third ground of this application, the alleged failure to provide the applicant further opportunity to respond to the Officer's concerns. In *Kaur v Canada (Citizenship and Immigration)*, 2010 FC 442 this Court held that there is no obligation on a visa officer making an assessment of a skilled worker application to clarify evidence or provide an opportunity to rebut unsatisfactory evidence, especially when determining whether the evidence of the applicant meets the requirements of the *IRPA*. In *Kaur*, the applicant for permanent residence came from India. She applied as a skilled worker as a cook but did not provide sufficiently clear evidence of her duties and experience. She claimed, as does the applicant herein, that the visa officer had an obligation to provide her an opportunity to respond and provide further evidence if he was not satisfied with her documentation. This Court held:

> The Applicant bears, and failed to discharge, the onus of submitting sufficient evidence in support of her application. Fairness did not require the visa officer to advise the Applicant of the inadequacy of her materials. The Applicant was not entitled to an interview to correct her own failings.
>
> I agree with the Minister. The Applicant failed to discharge her burden to present adequate evidence in support of her obligation, and the visa officer had no duty to assist her in doing so. As Justice Marshall Rothstein, then of the Federal Court, Trial Division, held in *Lam v. Canada (Minister of Citizenship and Immigration)*, [1998] F.C.J. No. 1239 (F.C.T.D.) at par. 3-4, the argument that an applicant might present *prima facie* evidence which, though insufficient to support his or her application will nevertheless trigger a duty to seek clarifications of this evidence :

> gives an advantage to applicants for permanent residence who file ambiguous applications. This cannot be correct.
>
> A visa officer may inquire further if he or she considers a further enquiry is warranted. Obviously, a visa officer cannot be wilfully blind in assessing an application and must act in good faith. However, there is no general obligation on a visa officer to make further inquiries when an application is ambiguous. The onus is on an applicant to file a clear application together with such supporting documentation as he or she considers advisable. The onus does not shift to the visa officer and there is no entitlement to a personal interview if the application is ambiguous or supporting material is not included.

[21] It is true that in some cases a visa officer will have a duty to put his concerns to an applicant. However, after having reviewed the cases where such a duty was found to exist, Justice Richard Mosley explained in *Hassani v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1283, [2007] 3 FCR 501, at para 24, that "…it is clear that where a concern arises directly from the requirements of the legislation or related regulations, a visa officer will not be under a duty to provide an opportunity for the applicant to address his or her concerns." (See also, e.g., *Roberts v Canada (Citizenship and Immigration)*, 2009 FC 518 at para 20 and the cases cited there for applications of that principle).

[22] The question whether an applicant has the relevant experience, training or education and requisite certificates, as required by the *Regulations* and thus qualified for the trade or profession in which he or she claims to be a skilled worker is "…based directly on the requirements of the legislation and regulations." and falls squarely within the reasoning of Mosley J. in *Hassani*. Therefore it was up to the applicant to submit sufficient evidence on this question and the Visa Officer was not under a duty to apprise him of his concerns or to conduct more detailed inquiries to

resolve the latent ambiguity: *Kaur*, paras 9-12. Visa officers are not expected to engage in a dialogue with the applicant on whether the *Regulations* are satisfied.

[23] For these reasons, the application for judicial review is dismissed.

[24] No question for certification has been proposed and none arises.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review be and is hereby dismissed. No question for certification has been proposed and none arises.

"Donald J. Rennie"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-7204-10
STYLE OF CAUSE:	SHU CHEN v. THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	St. John's, Newfoundland and Labrador
DATE OF HEARING:	September 7, 2011
REASONS FOR JUDGMENT AND JUDGMENT:	RENNIE J.
DATED:	November 9, 2011

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