Federal Court  Cour fédérale

Date: 20120405

Docket: IMM-6144-11

Citation: 2012 FC 396

Montréal, Quebec, April 5, 2012

PRESENT: The Honourable Madam Justice Tremblay-Lamer

BETWEEN:

PING GUAN PENG

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the Act] of a decision of an Immigration Officer [the Officer] dated July 25, 2011 in which the Officer refused to reopen the applicant's application for permanent residence in Canada.

[2] The applicant, Ping Guan Peng, is a Chinese citizen who was issued a permanent resident visa as an investor selected by the province of Quebec. Visas were also issued for his wife, who was pregnant at the time, and their first child. The applicant had requested that the processing of his

application be expedited so that the visas could be issued before the seventh month of his wife's pregnancy, when she would no longer be able to fly.

[3] On October 12, 2010, the family was issued permanent resident visas that were valid until May 16, 2011.

[4] On December 24, 2010, the applicant and his family travelled to the United States to visit friends. The visit was meant to be a short one, following which the family would travel to Canada. Unfortunately, problems arose with the applicant's wife's pregnancy and they were unable to leave the United States as planned. The applicant's second child was born in the United States on February 28, 2011.

[5] The applicant's wife and infant returned to China on March 30, 2011. Eventually, the applicant's wife left the infant in the care of his grandmother in China, and the applicant, his wife, and their first son arrived in Canada on May 11, 2011. Unfortunately, they were refused landing after they admitted that they had a second child, who was in China at the time.

[6] After they were refused landing, the family left Canada on May 14, 2011 and returned to China. Their permanent resident visas expired a few days later.

[7] Approximately two months later, on July 8, 2011, the applicant's representative contacted the Officer to ask that the application be reopened so that the infant could be added as another dependant. It is the refusal of this request that is under review in this application.

[8] Whether or not the Immigration Officer could reopen a positive decision on an application for permanent residence after the visas have expired is more than debatable.

[9] Nevertheless, even if the Officer had jurisdiction to reopen the application, I find that her decision was reasonable. Both the visa pick-up letter sent to the applicant's representative and the instructions issued along with the visas notify the applicant of the requirement that he report any changes to his family composition, such as the birth of a child, before arriving in Canada. The letter and instructions also informed him that he could be required to file a new application if he failed to report such changes.

[10] The central argument put forward by the applicant is that it would be easier to reopen his application and add his infant son than to start anew, and that it does not make sense to make him start over from the beginning. While it may in fact be easier for the applicant to proceed with the application he already submitted, that does not mean that the Officer's decision is unreasonable. It is evident that it falls "within the range of possible acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190).

[11] It is true that the requirement to submit a new application will put the applicant to additional expense and additional work, and will require that more resources be expended to process the new application. However, this requirement arises from the applicant's failure to either come to Canada and become a permanent resident before his son was born, or to report the birth to the Consulate before he traveled to Canada.

[12] Even if I were to accept the applicant's submission that this was an innocent mistake, the fact remains that the applicant did not follow the clear instructions to report any changes to the Consulate. As was noted in *Dong v Canada (Minister of Citizenship and Immigration)*, 2011 FC 1108, [2011] FCJ No 1370). the failure to report the change in his family composition is not only inconsistent with these repeated instructions, but it also violates an applicant's duty of candour and could have induced an error in the administration of the Act (*Dong* at para 54).

[13] While I agree with the applicant that there was no finding that he had misrepresented facts in his application and there is no evidence in the Court's record to suggest misrepresentation on his part, however, the fact that he is not prevented from reapplying for permanent resident status does not give him the right to have his earlier application reopened. Unfortunately, he will have to file a new application.

[14] The application for judicial review is therefore dismissed.

JUDGMENT

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

"Danièle Tremblay-Lamer"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-6144-11
STYLE OF CAUSE:	PING GUAN PENG and MCI
PLACE OF HEARING:	Montréal, Quebec
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APPEARANCES:

Stephen J. Fogarty	FOR THE APPLICANT
Charles Junior Jean	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Fogarty Law Firm Montréal, Quebec	FOR THE APPLICANT
Myles J. Kirvan Deputy Attorney General of Canada Montréal, Quebec	FOR THE RESPONDENT