

Federal Court



Cour fédérale

Date: 20130503

Docket: IMM-6269-12

Citation: 2013 FC 465

Ottawa, Ontario, May 3, 2013

PRESENT: The Honourable Mr. Justice Scott

BETWEEN:

CHENGZE ZHOU

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Introduction

[1] This is an application by Mr. Chengze Zhou (the Applicant) for judicial review of a decision rendered by immigration officer Jaylene Hamilton (the Officer) on May 23, 2012, wherein the Officer, pursuant to paragraph 179(b) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [IRPR], refused the Applicant's application for a temporary resident visa (the

Application) on the basis that she was not satisfied he would leave Canada at the end of his authorized stay.

[2] For the following reasons, this application for judicial review is dismissed.

II. Facts

[3] The Applicant is a 56-year-old citizen of the People's Republic of China (PRC). On or about May 17, 2012, the Applicant applied for a temporary resident visa for the stated purpose of business exploration in Canada.

[4] On or about May 23, 2012, the Officer considered the Application and the supporting documents submitted by the Applicant. The Officer entered the reasons for her refusal in the Global Case Management System (GCMS) and determined that the Applicant was not a genuine visitor who would leave at the end of his authorized stay.

[5] The Officer's reasons for refusing the Applicant's Application, as entered in the GCMS, read as follows:

Applicant seeks entry for exploratory visit to Canada. Applicant has limited previous travel. Applicant has submitted limited evidence in support of his ability to invest in Canada (largely in form of unverifiable photocopied documents and poor quality computer generated print outs). Applicant has submitted limited evidence of personal establishment in PRC. Bank docs show mostly large recent lump sum deposits which appear incommensurate with stated income, evidence of funds history are [sic] computer generated print outs with no verifiable security features. Other docs in support of establishment are largely in the form of photocopies with no

verifiable security features. I am not satisfied that the applicant is a genuine visitor to Canada who will depart Canada at the end of the period for authorized stay.

[6] The Officer advised the Applicant that his Application was refused by letter dated May 23, 2012.

III. Legislation

[7] Subsections 11(1), 20(1) and 22(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 2, and section 179 of the *IRPR* provide as follows:

Immigration and Refugee Protection Act, SC 2001, c 27

Loi sur l'immigration et la protection des réfugiés, LC 2001, c 27

11. (1) A foreign national must, before entering Canada, apply to an officer for a visa or for any other document required by the regulations. The visa or document may be issued if, following an examination, the officer is satisfied that the foreign national is not inadmissible and meets the requirements of this Act.

11. (1) L'étranger doit, préalablement à son entrée au Canada, demander à l'agent les visa et autres documents requis par règlement. L'agent peut les délivrer sur preuve, à la suite d'un contrôle, que l'étranger n'est pas interdit de territoire et se conforme à la présente loi.

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,

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

...

[...]

(b) to become a temporary resident, that they hold the visa or other document

b) pour devenir un résident temporaire, qu'il détient les visa ou autres documents

required under the regulations and will leave Canada by the end of the period authorized for their stay.

requis par règlement et aura quitté le Canada à la fin de la période de séjour autorisée.

22. (1) A foreign national becomes a temporary resident if an officer is satisfied that the foreign national has applied for that status, has met the obligations set out in paragraph 20(1)(b) and is not inadmissible.

22. (1) Devient résident temporaire l'étranger dont l'agent constate qu'il a demandé ce statut, s'est déchargé des obligations prévues à l'alinéa 20(1)b) et n'est pas interdit de territoire.

*Immigration and Refugee Protection Regulations,
SOR/2002-227*

*Règlement sur l'immigration et la protection des réfugiés,
DORS/2002-227*

179. An officer shall issue a temporary resident visa to a foreign national if, following an examination, it is established that the foreign national

179. L'agent délivre un visa de résident temporaire à l'étranger si, à l'issue d'un contrôle, les éléments suivants sont établis :

(a) has applied in accordance with these Regulations for a temporary resident visa as a member of the visitor, worker or student class;

a) l'étranger en a fait, conformément au présent règlement, la demande au titre de la catégorie des visiteurs, des travailleurs ou des étudiants;

(b) will leave Canada by the end of the period authorized for their stay under Division 2;

b) il quittera le Canada à la fin de la période de séjour autorisée qui lui est applicable au titre de la section 2;

(c) holds a passport or other document that they may use to enter the country that issued it or another country;

c) il est titulaire d'un passeport ou autre document qui lui permet d'entrer dans le pays qui l'a délivré ou dans un autre pays;

(d) meets the requirements applicable to that class;

d) il se conforme aux exigences applicables à cette catégorie;

(e) is not inadmissible; and

e) il n'est pas interdit de territoire;

(f) meets the requirements of subsections 30(2) and (3), if they must submit to a medical examination under paragraph 16(2)(b) of the Act.

f) s'il est tenu de se soumettre à une visite médicale en application du paragraphe 16(2) de la Loi, il satisfait aux exigences prévues aux paragraphes 30(2) et (3).

IV. Issues and standard of review

A. Issues

1. *Did the Officer err in refusing the Applicant's Application?*
2. *Did the Officer breach the duty of procedural fairness in failing to notify the Applicant of her concerns regarding his Application?*

B. Standard of review

[8] The standard of review for a visa officer's refusal to issue a temporary resident visa because the officer does not believe an applicant would leave Canada after his or her authorized period of stay is reasonableness (see *Doret v Canada (Minister of Citizenship and Immigration)*, 2009 FC 447 at para 19). Visa officers are recognized as having expertise in assessing applications for temporary

resident visas, and the Court must, therefore, show deference to their decisions on judicial review (see *Ngalamulume v Canada (Minister of Citizenship and Immigration)*, 2009 FC 1268 at para 16).

[9] The question of whether the Officer should have notified the Applicant of her concerns regarding the adequacy or credibility of the documents he provided raises natural justice or procedural fairness issues. Where such issues arise, no deference is due and the Court must verify whether the requirements of procedural fairness have been followed (see *Lawal v Canada (Minister of Citizenship and Immigration)*, 2008 FC 861 at para 15; *C.U.P.E. v Ontario (Minister of Labour)*, 2003 SCC 29 at para 100, [2003] 1 SCR 539; *Jin v Canada (Minister of Citizenship and Immigration)*, 2008 FC 1129, at para 13). That said, the level of procedural fairness owed by the Officer in this case was minimal (see *Cha v Canada (Minister of Citizenship and Immigration)*, 2006 FCA 126 at para 23, [2007] 1 FCR 409; *Zhang v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1381 at para 37).

V. Parties' submissions

A. Applicant's submissions

[10] The Applicant alleges that the Officer committed a reviewable error by failing to consider all of the evidence before her and provide adequate reasons for not issuing the visa. The Applicant notes that the fact that it was necessary for the Officer to elaborate on her reasons for refusing the visa in an affidavit is indicative of their inadequacy (see for example *Ogunfowora v Canada*

(Minister of Citizenship and Immigration), 2007 FC 471, and *Canada (Minister of Citizenship and Immigration) v Wong*, 2009 FC 1085).

[11] The Applicant further submits that the Officer's decision is unreasonable in light of the nature and volume of the documents filed with his visa application. The documents in question included the following: notarized copies of the business licences for Ziyun Real Estate Developments Co., Ltd. (Ziyun) and Huayang Capital Investments Co., Ltd. (Huayang); the articles of association for both of the above-mentioned companies along with the balance sheet for Ziyun, which indicates, among other things, that the value of the Applicant's share of the equity in Ziyun is at least CAD\$7.31 million; a survey posted on the government of Liaoning province's website indicating that Ziyun is the number two real estate development firm in Anshan City; and a notarized copy of the Applicant's property certificate.

[12] The Officer's conclusion that the amounts deposited as a lump sum in his bank account were incommensurate with his stated income ignores the fact, it is argued, that the Applicant's stated wage does not reflect his asset level as a high net worth business owner. Furthermore, the Officer's conclusion that the Applicant had limited travel experience was unfair, given that his passport was issued in January 2010 and he had travelled to Korea and Japan in August 2011 and made a six-country trip to Europe (with stops in Italy and Geneva) in January 2012.

[13] In addition, the Applicant argues that he received invitations from "credible officers" in British Columbia who had themselves conducted a due diligence investigation regarding his capacity to invest in Canada and that "on this score alone, the Visa Officer should have given the

Applicant the opportunity to pursue his submission that the purpose of the visit is business exploration” (Applicant’s Memorandum of Argument, para 34).

[14] Finally, the Applicant maintains that the Officer breached the duty of procedural fairness in failing to alert him of her concerns regarding his visa application. The Officer’s conclusion was based on a negative credibility finding with respect to the evidence he had adduced and in such instances officers are required to provide an applicant an opportunity to respond (see *Hassani v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1283 at para 24 [*Hassani*]). In addition, the Officer made reference to extrinsic and unknown evidence when she noted that the Applicant’s documents did not bear the security features that often appear on original documents in China (e.g. serial numbers, ultraviolet security features, watermarks, etc.). She was therefore under an obligation to alert the Applicant to this concern (see *Nadarasa v Canada (Minister of Citizenship and Immigration)*, 2009 FC 1112 at para 26 [*Nadarasa*]).

B. Respondent’s submissions

[15] The Respondent submits that the Officer’s decision was reasonable and that the allegation that the Officer failed to provide sufficient reasons for her decision is without merit. The Respondent maintains that the GCMS Notes are intelligible and sufficiently explain why the Applicant’s visa was refused. The Officer clearly indicated that the documentary evidence submitted was inadequate because it was mostly in the form of “unverifiable photocopied documents and poor quality computer generated print outs”. As for the Applicant’s claim regarding the Officer’s affidavit, the Respondent maintains that the affidavit does not go beyond the content of

the GCMS Notes or the certified record. The affidavit simply highlights the fact that the publicly available document checklist indicates that original bank statements were required, and provides slight elaboration on what the Officer meant by “verifiable security features”.

[16] Regarding the Applicant’s claim that the Officer failed to analyze all of the evidence adduced, the Respondent submits that visa officers are presumed to have considered all of the evidence before them and that there is nothing to suggest the Officer failed to do so in this case.

[17] As for the Applicant’s claim that the Officer was required to alert him to her concerns with the evidence he had submitted, the Respondent cites this Court’s decision in *Liu v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1025 at para 16 [*Liu*], where it is stated that

[A]n applicant’s failure to provide adequate, sufficient or credible proof with respect to his visa application does not trigger a duty to inform the applicant in order for him to submit further proof to address the finding of the officer with respect to the inadequacy, deficiency or lack of credibility. . . .

[18] Finally, the Respondent maintains that the GCMS Notes only refer to the documents provided by the Applicant and that the document checklist stating the requirement for original documents was completed and submitted by the Applicant. The Applicant’s claim that the Officer relied on external evidence in drawing her conclusions is consequently unfounded.

VI. Analysis

1. Did the Officer err in refusing the Applicant’s Application?

[19] The Applicant alleges that the Officer committed a reviewable error by failing to consider all of the evidence before her and provide adequate reasons for not issuing the visa. The Respondent insists that the Officer considered all of the evidence and provided clear and intelligible reasons for refusing issuance of the visa.

[20] The Court agrees with the Respondent for the following reasons. Firstly, the Officer is presumed to have reviewed all of the evidence (*Florea v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 598 (QL) (FCA)) and is not required to make reference to every document submitted (*Hassan v Canada (Minister of Employment and Immigration)* (1992), 147 NR 317, [1992] FCJ No 946 (QL) (FCA)). Upon reading the Officer's GCMS Notes, the Court finds that she clearly considered all the evidence adduced by the Applicant. The Officer acknowledged that the Applicant had received invitations in accordance with the *Checklist for Personal or Professional Affairs (Attending an Academic Conference, Exploratory Visits, Legal Matters)* (the Checklist) (see GCMS Notes 6 and 7). The Officer also assessed documents related to the Applicant's previous travel, his income, his financial assets and his personal establishment in the PRC, and indicated that the documents failed to convince her that he could invest in Canada and would return to the PRC, thereby justifying her refusal.

[21] As the Respondent correctly submitted, an officer's duty to provide reasons when evaluating a temporary resident visa application is minimal (see *Singh v Canada (Minister of Citizenship and Immigration)*, 2009 FC 621 at para 9). An administrative tribunal's reasons are sufficient if they "allow the reviewing court to understand why the tribunal made its decision and permit it to determine whether the conclusion is within the range of acceptable outcomes" (*Newfoundland and*

Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board), 2011 SCC 62 at para 16, [2011] 3 SCR 708). In this case, the reasons clearly indicate that the Officer refused the application primarily because the Applicant failed to provide appropriate documentation.

[22] The Applicant's most important argument is that the Officer's conclusion is unreasonable in light of the nature and volume of the documents filed with his visa application. The documents in question included the following: notarized copies of the business licences for Ziyun and Huayang; the articles of association for both of the above-mentioned companies along with the balance sheet for Ziyun, which indicates, among other things, that the value of the Applicant's share of the equity in Ziyun is at least CAD\$7.31 million; a survey posted on the government of Liaoning province's website indicating that Ziyun is the number two real estate development firm in Anshan City; and a notarized copy of the Applicant's property certificate.

[23] During the hearing, counsel for the Applicant claimed that the Officer had failed to consider all the documentation submitted because with the rejection letter he only received part of all the documentation he had presented. The Court has reviewed the certified tribunal record and must reject that argument as it is clear from the GCMS Notes that all the documentation was reviewed. It is also clear that the Officer did consider the application as one relating to an exploratory visit even though it was initially submitted as relating to company-to-company business.

[24] The Applicant submits that the Officer's conclusion that the amounts deposited as a lump sum in his bank account are incommensurate with his stated income ignores the fact that the Applicant's stated wage does not reflect his asset level as a high net worth business owner.

Furthermore, the Officer's conclusion that the Applicant had limited travel experience was unfair given that his passport was issued in January 2010 and he had travelled to Korea and Japan in August 2011 and made a six-country trip to Europe (with stops in Italy and Geneva) in January 2012.

[25] Finally, the Applicant argues that he received invitations from "credible officers" in British Columbia who had themselves conducted a due diligence investigation regarding his capacity to invest in Canada and that "on this score alone, the Visa Officer should have given the Applicant the opportunity to pursue his submission that the purpose of the visit is business exploration" (Applicant's Memorandum of Argument, para 34).

[26] While the Court acknowledges that the Officer's assessment of the Applicant's travel experience was unfair, the Officer's principal justification for refusing the application was the inadequacy of the documents submitted in support of the application. According to the Checklist, the Applicant was required to submit "original bank documents showing financial history over several months" and evidence of assets in China such as an "original property certificate". The Officer found the documents submitted by the Applicant inadequate because they were "largely in form of unverifiable photocopied documents and poor quality computer generated print outs". Given the Applicant's failure to fulfill the Checklist requirement to provide original documents attesting his ability to invest in Canada, the Court finds that the Officer's decision refusing to issue a temporary resident visa fell "within a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47, [2008] 1 SCR 190).

2. *Did the Officer breach the duty of procedural fairness in failing to notify the Applicant of her concerns regarding his Application?*

[27] Was the Officer required to alert the Applicant to the inadequacy of the documents he submitted?

[28] The case law of this Court is clear in establishing that an officer is under no obligation to alert an applicant to his or her concerns regarding an application because of the unsatisfactory nature of the evidence provided. The “onus is on the Applicant to provide all relevant supporting documentation and sufficient credible evidence in support of his application” (*Pacheco Silva v Canada (Minister of Citizenship and Immigration)*, 2007 FC 733 at para 20; see also *Lam v Canada (Minister of Citizenship and Immigration)* (1998), 152 FTR 316 (FCTD); *Liu*, at para 16).

Furthermore, an officer need not notify an applicant of his or her concern where it “arises directly from the requirements of the legislation or related regulations” (*Hassani*, at para 24). In this case, the Officer’s concerns regarding the Applicant’s funds and assets arose directly from the requirements of the *IRPR* (see paragraphs 179(b) and (d)).

[29] While it is true that a duty to notify does arise “where the credibility, accuracy or genuine nature of information submitted by the applicant in support of their application is the basis of the visa officer’s concern” (*Hassani*, at para 24), the Officer in this case was not questioning the credibility of the documents so much as their failure to meet the Checklist requirement that satisfactory evidence be provided. Had the Applicant filed original bank statements and had the

Officer questioned their authenticity, then the duty of fairness would have required the Officer to alert the Applicant to her concerns.

[30] The Applicant lastly alleges that the Officer introduced an extrinsic and unknown requirement when she made reference to the security features that often appear on original documents in China (e.g. serial numbers, ultraviolet security features, watermarks, etc.). The Applicant argues that in such instances an officer must afford an applicant an opportunity to respond or to provide documents with such features (see *Nadarasa*, at para 26). The Court disagrees. The Officer made reference to the security features simply to explain why original documents are required.

[31] In sum, this application will be denied because the Court finds that the Officer properly considered the evidence presented by the Applicant and provided adequate reasons for its rejection.

JUDGMENT

THIS COURT'S JUDGMENT is that

1. The application is dismissed; and
2. There is no question of general interest to certify.

"André F.J. Scott"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-6269-12

STYLE OF CAUSE: CHENGZE ZHOU
v
THE MINISTER OF CITIZENSHIP
IMMIGRATION

PLACE OF HEARING: Vancouver, British Columbia

DATE OF HEARING: March 7, 2013

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

DATED: May 3, 2013

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