

Federal Court



Cour fédérale

Date: 20131114

Docket: IMM-730-13

Citation: 2013 FC 1159

Calgary, Alberta, November 14, 2013

PRESENT: The Honourable Mr. Justice Campbell

BETWEEN:

JIA FENG WEN

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR ORDER AND ORDER

[1] The present Application is a challenge to a Visa Officer's (Officer) decision dated December 6, 2012 in which the determination was made that the Applicant does not meet the definition of dependent child found in s. 2 of the *IRPA Regulations*. The determination was based on a discrepancy in the Applicant's evidence, and the primary issue in the present Application is whether the Officer was fair to the Applicant in dealing with the discrepancy.

[2] The uncontested facts are stated by Counsel for the Applicant as follows:

The Applicant is a 28 year old Citizen of China. The Applicant's father, Wen Linji, applied for permanent residence in Canada as a member of the Quebec Investor class, The Applicant was included as an accompanying dependent on his father's application.

In connection with the application, the Applicant filed documentation confirming that he met the definition of accompanying dependent because he was a full-time student.

The documentation included correspondence which confirmed that:

- a. The Applicant was a full-time student and graduate of Jiangmen Vocational and Technical College from September 2003 until June 2006; and
- b. He remained a full-time student and was enrolled as a student at Taishan Panshi Television University from September 2007 until the date of the issuance of the letter which was December 2011.

In correspondence dated October 18, 2012, the Canadian High Commission in Hong Kong ("CHC-HK") advised the Applicant's father that they were not satisfied that the Applicant met the definition of a dependent child because there was insufficient evidence to indicate he had been continuously enrolled in and attending a post-secondary institution from July 2006 to September 2007.

In response to this correspondence, the Applicant provided a certificate confirming that he had studied Business Administration from September 2006 to July 2007 at Jiangmen Polytechnic, The Applicant provided a transcript which confirmed his grades during this period of study.

In correspondence dated December 6, 2012, a Visa Officer at CHC-HK refused the application stating that the Applicant did not meet the definition of dependent child. Therefore he was not eligible to be included in the application.

In his reasons [...] for refusal, the Officer further stated that:

"Satisfied of eligibility of parents. Accompanying son was over 22 at lock- in date. According to information provided, applicant has not been continuously enrolled in an credited institution since before the age of 22. He lists Taishan Panshi University from time of complete application submission in 01/2012 back to 2007/09 then

states from 09/2003 to 07/2006 Attendance at Jiangmen Polytechnic College. Gap of over a year between 07/2006 and 09/2007. R2 indicates continuous enrolment is necessary for eligibility as dependent child. The son is now 28, There is insufficient evidence to satisfy me that Wen Jiafeng meets definition per R2. Will give applicant opp to respond to concerns regarding Wen Jiafeng."

The Officer, in refusing the application, and after further documentation was provided stated that:

"Response received to PF letter. 'certificate' from Jiangmen Polytechnic indicating enrollment [sic] of dependent son in Business Administration from Sept 2006 to July 2007. This is a self serving documentment [sic]. Forms completed indicated that the dep son finished at this institution in July 2006. This document contradicts that information. Furthermore, no evidence has been submitted to indicate that the dep son studied at this institution at any other period. This doc states 'first year', no evidence of study from 2003 to 2006. Consequently my concerns have not been adequately addressed. Not satisfied Wen Jiafeng meets R2 def. Not satisfied he is eligible to be included in this application, deleted."

[Emphasis added]

(Applicant's Memorandum of Fact and Law, paras. 1-8)

[3] Counsel for the Applicant argues that it is apparent from the Officer's notes that the application was rejected on an underlying suspicion that the Applicant was misrepresenting his school attendance. As a result, Counsel relies upon Paragraph 10.3 of Chapter 2 of the Enforcement Manual "Evaluating Inadmissibility" ("ENF 2") to argue that the Officer should have provided the Applicant with an opportunity to explain the discrepancy before a decision was issued:

An individual should always be given the opportunity to respond to concerns about a possible misrepresentation. At a visa office, once the applicant has been given the opportunity to respond to the concerns, then the designated officer shall render a final decision regarding the misrepresentation to issue or refuse

the visa. At a port of entry or inland, the Minister's delegate shall determine whether or not to refer the case to the IRB for an admissibility hearing. It must be recognized that honest errors and misunderstandings sometimes occur in completing application forms and responding to questions. While in many cases it may be argued that a misrepresentation has technically been made, reasonableness and fairness are to be applied in assessing these situations.

(Applicant's Memorandum of Fact and Law, para. 21)

I agree with this argument.

[4] In my opinion, the Officer was required to provide the Applicant with an opportunity to address the numerous concerns raised by the documentation found to be "self serving" because the use of that term introduces suspicion into the decision-making process. Since the opportunity was not provided to the Applicant, I find that the decision was rendered in breach of the duty of fairness.

ORDER

THIS COURT ORDERS that

For the reasons provided, I set aside the decision under review and refer the matter back for reconsideration by a different immigration officer.

There is no question to certify.

“Douglas R. Campbell”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-730-13

STYLE OF CAUSE: JIA FENG WEN V THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: CALGARY, ALBERTA

DATE OF HEARING: NOVEMBER 13, 2013

**REASONS FOR ORDER AND
ORDER:** CAMPBELL J.

DATED: NOVEMBER 14, 2013

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