

Federal Court



Cour fédérale

Date: 20130425

Docket: IMM-4569-12

Citation: 2013 FC 434

Ottawa, Ontario, April 25, 2013

PRESENT: The Honourable Madam Justice Simpson

BETWEEN:

XIAODONG CHEN

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR ORDER AND ORDER

[1] Xiaodong Chen [the Applicant] has applied 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 a Citizenship and Immigration Canada Visa Officer [the Visa Officer] made at the Consulate General of Canada in Detroit [the Consulate], dated May 2, 2012, wherein the Visa Officer refused the Applicant's application for permanent residence as a member of the Canadian Experience Class [the Decision].

[2] For the following reasons, the application will be dismissed.

Background

[3] The Applicant is a 27 year-old male and a citizen of China. He arrived in Canada on August 22, 2005 on a student visa and completed his studies at the University of Windsor where he was granted a degree in business administration and computer science. He was issued a work visa, which was valid from March 2010 to March 2013.

[4] In March 2010, the Applicant was hired by a wood flooring company, Senlong (Canada) Wood Products Ltd. [Senlong]. For one year, until March 2011, the Applicant worked four days a week at Senlong. Then, from March 2011 until June 2011, the Applicant worked for Senlong on a full-time basis.

[5] The Applicant's application for permanent residence was submitted on June 8, 2011, based on his experience at Senlong. He listed two National Occupational Classification [NOC] Codes: retail/wholesale buyer (NOC 6233) and customer service supervisor (NOC 6211). He was required to show that he held those positions for a period of one year.

[6] Senlong's General Manager, Ms. Jessie Zhang [the Employer], provided a letter dated June 3, 2011 [the Letter] in support of the Applicant's application. She provided a lengthy list of his duties. However, the Visa Officer's notes show that on April 12, 2012, before she interviewed the Applicant, she spoke to the Employer by phone. During that telephone call, when asked what work the Applicant did for Senlong, the employer simply replied that:

- He was a sales representative;

- He dealt with customer complaints;
- He sometimes helped in the warehouse loading and unloading product.

Needless to say, this description failed to indicate that the Applicant was a buyer or that he played any supervisory role. In other words, the Employer failed to give the Visa Officer most of the information which had been in the Letter.

[7] The Employer also told the Visa Officer that:

- She had provided the Applicant with 2-3 months of training;
- The Applicant was paid monthly, usually by cheque but sometimes in cash;
- The Employer supervised the workers at Senlong;
- Senlong had six employees whom she described as follows:
 - 2 sales persons
 - 1 accountant
 - 1 warehouse manager
 - 1 manager

Assuming that as the General Manager she was #6, there was no mention of either a Buyer or a Customer Service Supervisor.

[8] On April 12, 2012, the Applicant was interviewed at the Canadian Consulate in Detroit [the Interview]. At the Interview, he was informed by the Visa Officer that she believed that he acted only as a salesman at Senlong. The Applicant was given thirty days to provide additional documents to support his application.

[9] The Applicant did provide further material [the Additional Material] in a timely way and it will be discussed below. However, on May 2, 2012, notwithstanding the Additional Material, the Visa Officer refused his application for permanent residence.

[10] The Visa Officer took handwritten notes during the Interview and 21 minutes after it concluded, she transcribed them into the Global Case Management System [the Notes]. The Applicant alleges that the Notes are not reliable and that the evidence he provided in an affidavit sworn approximately three months after the Interview is to be preferred.

[11] I do not accept this submission and have concluded that the Notes are the best evidence of the statements made by the Applicant during the Interview. I have reached this conclusion because i) the handwritten notes were contemporaneous and promptly transcribed, ii) there is no allegation that the Visa Officer had any reason to misstate what the Applicant told her, and iii) the Applicant's evidence is not reliable on other matters. For example, the Employer told the Visa Officer that she had trained him for 2-3 months at Senlong in Canada but he denied receiving any such training. He said instead that he was trained at Senlong's manufacturing facility in China but this was not mentioned by the Employer when she was asked about his experience. Further, the Employer said that the Applicant was paid by cheque and sometimes in cash but the Applicant denied ever receiving cash.

[12] The reliability of the Notes is particularly important because the Visa Officer records and relies heavily on the fact that, when asked about his duties as a buyer for Senlong the Applicant was asked to name companies from whom he made purchases and he could not name even one. The

Applicant however maintains that this is incorrect and that he was able to name three different companies. He suggests that the Notes are unreliable because although they were handwritten as they spoke during the Interview the Notes were transcribed in the past tense. However, in my view changing the tense of the Notes does not diminish their accuracy. It would be quite reasonable for a Visa Officer to write “He says X” in hand during an interview and then transcribe that statement in the Notes as “He said X” because, by the time of transcription, the statement would have been made in the past.

[13] The Applicant submits that the Visa Officer did not give reasonable weight to the Additional Material. It included an affidavit of April 25, 2012 sworn by the Employer [the Affidavit] who had described herself in the Letter as Senlong’s General Manager but signed the Affidavit as its President. The Affidavit said the following:

- The Applicant’s position was “Assistant Buyer and Retail/Wholesale Customer Service Supervisor”;
- As assistant buyer he:
 - i. Ordered products by sending written purchase orders to suppliers. Products would be delivered to the store or directly to customers;
 - ii. He kept track of inventory;
 - iii. When suppliers delivered products he would initial his approval of the amount to be paid on the bill of lading – copies of initialled bills of lading were attached [the Bills];
 - iv. He would assist sales people when retail customers wanted lower prices because his approval was required;

- As Customer Service Supervisor he:
 - i. Kept good relationships with suppliers and customers;
 - ii. Dealt with customers' post-installation complaints;
 - iii. He retained independent professional investigators to prepare reports on customer complaints – a sample Flooring Inspection Report was attached [the Report].

[14] The difficulty with the Affidavit is that the appended exhibits did not address the Officer's concerns. The Bills showed the Applicant's name next to the words "authorized signature" but the name Jenny Du appeared next to the word "contact" and there was no information in the Affidavit describing her role as a contact or his responsibilities as a signatory.

[15] The Report shows that the following three parties were present at the inspection:

- The home owner;
- Jenny Du "Senlong";
- The Applicant "Customer Service"

Again, this does not indicate that the Applicant had a supervisory role and does not distinguish whatever role he may have played from the one played by Ms. Du.

[16] The Additional Material also included undated letters from two companies that supplied Senlong with wood products. The letter from Fortune Gate Timber Products uses vague language saying it often "dealt" and "interacted" with the Applicant as Senlong's Assistant Buyer but it nowhere clearly says that he purchased its products on Senlong's behalf. However, the Additional

Material does include one purchase order from Senlong to Fortune Gate Timber Products dated 12/10/2010 which shows Jenny Du as the Senlong “contact” and shows the Applicant as providing the “authorized signature”. Again, this document gives no information about the Applicant’s actual responsibilities and therefore does not corroborate the Affidavit when it describes him as a “buyer”.

[17] The letter from Biyuls Canada states that the Applicant “placed purchase orders”. The difficulty is that no such purchase orders were appended to the Affidavit.

[18] In these circumstances it was, in my view, reasonable for the Officer to conclude that the Additional Material was not sufficient to allay her concerns.

[19] No question was posed for certification pursuant to section 74(d) of the Act.

ORDER

THIS COURT ORDERS that:

The application is hereby dismissed.

“Sandra J. Simpson”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4569-12

STYLE OF CAUSE: XIAODONG CHEN v.
THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: March 11, 2013

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

DATED: April 25, 2013

APPEARANCES:

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Ms. Laoura Christodoulides FOR THE RESPONDENT

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