

Federal Court



Cour fédérale

Date: 20160621

Docket: IMM-2225-15

Citation: 2016 FC 696

Ottawa, Ontario, June 21, 2016

PRESENT: The Honourable Mr. Justice Phelan

BETWEEN:

YIMING FAN

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] This is an application for judicial review of an Immigration Officer's [Officer] decision [Decision] denying the Applicant's permanent residence application and finding the Applicant to be inadmissible for a period of five years pursuant to s 40(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA], for having submitted a fraudulent Arranged Employment Offer [AEO].

II. Background

[2] The Applicant is a citizen of China who graduated from a Canadian university. The Applicant was introduced to Wellong International Investments Ltd, a company operated by a Mr. Wang. Wang also operated New Can Consultants Ltd. [New Can].

[3] The Applicant was offered a position with New Can. In addition, New Can assisted the Applicant with her immigration paperwork and obtained a positive AEO.

The offer and AEO were submitted as part of her immigration application.

[4] The Canada Border Services Agency [CBSA] made a notation in its FOSS system indicating that the Applicant had hired a “ghost consultant” for immigration proceedings. The notation went on to suggest, based on seized documents, that the many clients of the “consultant” were involved in falsified employment records and related fraudulent activities.

[5] The Applicant then received a procedural fairness letter from the Canadian Embassy outlining that she had failed to establish a *bona fide* job offer and that the offer she submitted was fraudulent.

[6] Wang was charged with 12 counts under *IRPA*, the *Criminal Code* and the *Income Tax Act* for various immigration related frauds.

[7] The Applicant responded to the fairness letter essentially pleading that she was unaware that the AEO was fraudulent.

[8] The Officer concluded, in his negative Decision, that there was sufficient evidence against the Applicant's prospective employer/consultant of fraudulent employment offers. The Officer further found that as a result of the *modus operandi* of the prospective employer, the Applicant would have been sufficiently aware of the fraud. Therefore, the Applicant was found inadmissible for a period of five years.

III. Analysis

[9] The Applicant contends that the Officer improperly ignored or rejected evidence, that the finding of misrepresentation (knowing or ought to have known) was based on insufficient evidence and that it was a breach of procedural fairness to make the misrepresentation finding against the Applicant before CBSA had concluded its broader investigation of her prospective employer.

A. *Standard of Review*

[10] The parties agree and I concur that it is well established that the standard of review of the Decision is reasonableness and that matters of procedural fairness are reviewed on a standard of correctness.

B. *Decision/Reasonableness*

[11] On the matter of misrepresentation findings, this Court has warned that they must be soundly based and not conclusionary leaps (see *Xu v Canada (Citizenship and Immigration)*, 2011 FC 784, 392 FTR 339; and *Zhang v Canada (Citizenship and Immigration)*, 2015 FC 463, 252 ACWS (3d) 778).

While there are problematic aspects of the plausibility findings, taken as a whole, there was a sufficient basis for the Officer's conclusions.

[12] An underlying issue with the Applicant's knowledge (actual and/or presumed) is her failure to show any due diligence or provide any other evidence to suggest that she was misled. The Applicant had lived and worked in Canada so it was reasonable to expect some caution or inquiry on her part. It was reasonable to conclude that, at minimum, there was wilful blindness.

C. *Procedural Fairness*

[13] With respect to this issue, the Applicant had a full opportunity to respond to the fairness letter. Further, there is no basis for suggesting that the Officer had to wait until the broader investigation was concluded. Each case stands on its facts and other than delay caused by waiting, the Applicant cannot show either unfairness or potential unfairness in proceeding on the facts in her case.

IV. Conclusion

[14] Therefore, this judicial review will be dismissed. There are no questions for certification.

JUDGMENT

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

"Michael L. Phelan"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2225-15

STYLE OF CAUSE: YIMING FAN v THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: VANCOUVER, BRITISH COLUMBIA

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JUDGMENT AND REASONS: PHELAN J.

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