

Federal Court



Cour fédérale

Date: 20160715

**Dockets: IMM-1340-15
IMM-1592-15**

Citation: 2016 FC 805

Ottawa, Ontario, July 15, 2016

PRESENT: The Honourable Mr. Justice O'Reilly

Docket: IMM-1340-15

BETWEEN:

THI THANH HIEN TRAN

Applicant

and

**THE MINISTER OF CITIZENSHIP &
IMMIGRATION CANADA**

Respondent

Docket: IMM-1592-15

AND BETWEEN:

THI HONG PHAM

Applicant

and

**THE MINISTER OF CITIZENSHIP &
IMMIGRATION CANADA**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Ms Thi Hong Pham, sponsored by her daughter, applied to immigrate in Canada as a member of the family class. She included her son, Mr Tran Trong Hau, as a dependent in the application because, even though he was over the age of 22, he was a full-time student at the time. An immigration officer found that the documentation relating to Mr Tran's studies was fraudulent, and concluded that Ms Pham and Mr Tran were inadmissible to Canada for misrepresentation.

[2] Ms Pham and her daughter each brought an application for judicial review of the officer's decision. As a preliminary matter, the applications have been combined here as they both relate to the same decision. In addition, the Minister has consented to Ms Pham's request for an extension of time to commence her application.

[3] Ms Pham argues that, although she included Mr Tran as a dependent in the application, the gaps in his educational record disqualified him from being considered a dependent. Therefore, she submits, the officer should not have considered whether his education documentation was genuine. She maintains that the officer acted unfairly and rendered an unreasonable decision. She asks me to quash the officer's decision and to order another officer to reconsider the sponsorship application in respect of Ms Pham and the rest of the family, without including Mr Tran.

[4] I cannot find a basis for overturning the officer's decision and must, therefore, dismiss this application for judicial review. In my view, the officer treated Ms Pham and Mr Tran fairly and came to a conclusion that was supported by the evidence.

[5] There are two issues:

1. Did the officer treat Ms Pham and Mr Tran unfairly?
2. Did the officer err in finding misrepresentation?

II. Issue One – Did the officer treat Ms Pham and Mr Tran unfairly?

[6] Ms Pham argues that she and her son were treated unfairly because they did not have a real opportunity to address the officer's concerns regarding the educational documentation in their application. She submits that they were, in effect, ambushed by the officer at an interview with questions about Mr Tran's education.

[7] I disagree. The officer provided Ms Pham and Mr Tran an adequate opportunity to respond to discrepancies in the evidence. The officer sent letters to Ms Pham requesting transcripts and other evidence of educational programs. In response, she supplied documentation. At the interview, the officer explicitly notified Ms Pham that misrepresentation was an issue. The officer pointed out contradictions between the documentation Ms Pham had provided and information that the officer retrieved directly through the college.

[8] Therefore, in the circumstances of this case, the applicants had sufficient notice of the officer's concerns and an adequate opportunity to respond (*Kunkel v Canada (Minister of Citizenship and Immigration)*, 2009 FCA 347, at para 11).

III. Issue Two – Did the officer err in finding misrepresentation?

[9] In an unusual submission, Ms Pham argues that, even though she included her son as a dependent, the officer should never have considered the quality of the materials she filed in support of that claim. In her view, the officer should have noticed that there was gap in Mr Tran's education and concluded that her son was not a dependent. The officer should have stopped there, she claims, and not considered the genuineness of the evidence relating to Mr Tran's academic pursuits.

[10] I cannot agree with Ms Pham. Since Ms Pham claimed that Mr Tran was her dependent, the officer had a duty to review the evidence supporting that contention. Further, contrary to Ms Pham's submission, it was not obvious that Mr Tran did not meet the definition of a dependent.

[11] Ms Pham maintains that gaps in Mr Tran's education clearly demonstrate that he was not continuously enrolled in full-time studies and that he could never have met the definition of a dependent. I see no support for Ms Pham's proposed interpretation of the definition of a dependent. At the time of her application, a dependent was defined as a person who is under the age of 22 or, if over the age of 22, has been engaged in full-time studies before attaining that age and has continued thereafter (*Immigration and Refugee Protection Regulations*, SOR/2002-227, s 2(1) – see Annex (now repealed)). A gap in studies prior to turning 22 years of age did not

disqualify a person from being a dependent. The question is whether the person was enrolled in full-time studies before turning 22 and continued in those studies thereafter. There was no obvious basis for concluding that Mr Tran did not meet the definition of a dependent.

[12] Ms Pham also submits that the evidence does not support the officer's finding that false information was included in the materials she provided to the officer. In an effort to dispute the officer's findings, Ms Pham has placed fresh evidence before the Court on this application for judicial review. However, I can only consider the evidence that was actually before the officer in deciding whether the officer's decision was reasonable. While Ms Pham submits that the new evidence supports her procedural fairness submissions, I find that the fresh evidence actually attempts to address the merits of the officer's decision. In particular, the affidavit of Kim Ngan Nguyen explains and interprets the evidence before the officer regarding certain educational programs with additional background information that was not in front of the officer at the time of the decision.

[13] The essential problem with Ms Pham's application was that the officer could not find support for her assertion that Mr Tran was enrolled in school at various times after he turned 22. In response to the officer's inquiries, Ms Pham provided additional information, but the officer was simply unable to confirm its veracity.

[14] Accordingly, I find that the officer had a duty to consider the evidence put forward by Ms Pham in support of her application, and had a valid basis for concluding that the information Ms

Pham had supplied was not genuine. Therefore, I cannot conclude that the officer's conclusion was unreasonable.

IV. Conclusion and Disposition

[15] The officer did not treat Ms Pham unfairly or render an unreasonable decision. I must, therefore, dismiss this application for judicial review. Neither party proposed a question of general importance for me to certify, and none is stated.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The request for an extension of time is granted.
2. Files IMM-1340-15 and IMM-1592-15 are joined.
3. The application for judicial review is dismissed.
4. No question of general importance is stated.

“James W. O'Reilly”

Judge

ANNEX

*Immigration and Refugee Protection Regulations, SOR/2002-227**Règlement sur l'immigration et la protection des réfugiés, DORS/2002-227*

dependent child

enfant à charge

2. In respect of a parent, means a child who

2. L'enfant qui :

(a) has one of the following relationships with the parent, namely,

a) d'une part, par rapport à l'un de ses parents :

(i) is the biological child of the parent, if the child has not been adopted by a person other than the spouse or common-law partner of the parent, or

(i) soit en est l'enfant biologique et n'a pas été adopté par une personne autre que son époux ou conjoint de fait,

(ii) is the adopted child of the parent; and

(ii) soit en est l'enfant adoptif;

(b) is in one of the following situations of dependency, namely,

b) d'autre part, remplit l'une des conditions suivantes :

(i) is less than 22 years of age and not a spouse or common-law partner,

(i) il est âgé de moins de vingt-deux ans et n'est pas un époux ou conjoint de fait,

(ii) has depended substantially on the financial support of the parent since before the age of 22 - or if the child became a spouse or common-law partner before the age of 22, since becoming a spouse or common-law partner - and, since before the age of 22 or since becoming a spouse or common-law partner, as the case may be, has been a student

(ii) il est un étudiant âgé qui n'a pas cessé de dépendre, pour l'essentiel, du soutien financier de l'un ou l'autre de ses parents à compter du moment où il a atteint l'âge de vingt-deux ans ou est devenu, avant cet âge, un époux ou conjoint de fait et qui, à la fois :

(A) continuously enrolled in and attending a post-secondary institution that is accredited by the relevant government authority, and

(A) n'a pas cessé d'être inscrit à un établissement d'enseignement postsecondaire accrédité par les autorités gouvernementales compétentes et de fréquenter celui-ci,

(B) actively pursuing a course of academic, professional or vocational training on a full-time basis, or

(B) y suit activement à temps plein des cours de formation générale, théorique ou professionnelle,

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SOLICITORS OF RECORD

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AND DOCKET: IMM-1592-15

STYLE OF CAUSE: THI HONG PHAM v THE MINISTER OF CITIZENSHIP
& IMMIGRATION CANADA

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: FEBRUARY 24, 2016

JUDGMENT AND REASONS: O'REILLY J.

DATED: JULY 15, 2016

APPEARANCES:

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