

Federal Court



Cour fédérale

Date: 20200123

Docket: IMM-1125-19

Citation: 2020 FC 112

Ottawa, Ontario, January 23, 2020

PRESENT: Mr. Justice Russell

BETWEEN:

XIAONING ZANG

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. INTRODUCTION

[1] This is an application under s 72 (1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA], for judicial review of the decision of a Visa Officer [Officer], dated December 19, 2018 [Decision], denying the Applicant's work permit application.

II. BACKGROUND

[2] The Applicant is a citizen of China. She currently resides in the City of Hong Kong with her husband and daughter.

[3] The Applicant sought a two-year work permit in Canada to work as the Chief Financial Officer [CFO] for 2043167 Alberta Ltd. [Company], a start-up residential construction company in Alberta in which the Applicant has invested \$600,000 and is a majority shareholder. The Applicant notes that her husband and daughter will accompany her to Canada should she obtain the requested work permit. Her husband also applied for an open work permit as a dependant of the Applicant.

[4] On February 28, 2018, the Company received a Labour Market Impact Assessment [LMIA] from Employment and Social Development Canada/Service Canada, which concluded that hiring a foreign national to work as the Company's CFO would have a "positive or neutral impact on the Canadian labour market." The LMIA therefore invited the Applicant to submit her work permit application to Immigration, Refugees and Citizenship Canada [IRCC]. The LMIA noted that the job requirements included a Bachelor's degree as well as verbal and written English language skills. The Company's phone number is listed in the LMIA as "(999) 999-9999" while its mailing address is listed as a mailbox.

[5] The Applicant first applied for a work permit in May 2018 but was subsequently refused on August 3, 2018. The Applicant says she was refused on that occasion for providing

“insufficient evidence and documentation.” Consequently, she submitted another work permit application on August 22, 2018, which is the subject of this application for judicial review.

[6] In a letter dated August 14, 2018 from the Chief Executive Officer of the Company, which the Applicant submitted with her application, her prospective employer provided the job description for the CFO position. In this letter, it is noted that the Company requires a qualified CFO to oversee and help establish the Company’s financial strategy. This includes overseeing all of the Company’s financial transactions, overseeing the financial aspects of several construction projects, maintaining government permits, preparing reports for the board of directors, and visiting construction sites to produce progress reports on each project.

[7] The Applicant submitted evidence that she holds a degree from the Flight Attendant Department of the Civil Aviation College of China as well as a certificate in Administration from the Postgraduate Advanced Training Programme of Northeast Normal University. She also submitted her *Curriculum Vitae* which notes that she worked as the Assistant to the General Manager at Set Sheng International Trade Limited [Set Sheng] from 2006 to 2012, as Deputy Manager, Administration at Set Sheng from 2012 to 2015, and as Marketing Director at Sinolink Consultants Services Ltd. [Sinolink] since 2015. Along with the performed work duties set out in her *Curriculum Vitae*, the Applicant provided a letter indicating that Sinolink is a consultancy firm specializing in overseas investment, including real estate and business investments in Canada and the United States of America.

[8] To demonstrate her English language skills, the Applicant submitted evidence confirming that she had obtained a Certificate for College English Level-4 in January 2003 while studying at the Flight Attendant Department of the Civil Aviation College of China.

III. DECISION UNDER REVIEW

[9] On December 19, 2018, the Applicant received a letter from the Officer denying her application for a work permit. The Officer indicated that her application did not meet the requirements of the *IRPA* nor the *Immigration and Refugee Protection Regulations, SOR/2002-227 [Regulations]*. In particular, the Officer found: (1) that the Applicant had not demonstrated that she adequately met the job requirements of her prospective employment; and (2) that the purpose of the Applicant's visit did not satisfactorily demonstrate that she would leave Canada at the end of her authorized stay.

[10] The Officer's notes elaborate on the reasons for rejecting the Applicant's work permit application.

[11] First, the Officer noted the Applicant's education as a flight attendant with a graduate certificate in administration, her work experience primarily in administrative support and later in marketing, and her lack of experience in residential construction. However, in considering this evidence as whole, the Officer found that the evidence does not demonstrate that the Applicant has the required experience and education to fulfill the requirements of the position offered.

[12] Second, the Officer noted that it does not appear reasonable that the Company, which is at the start-up stage, would offer the CFO position, with an annual salary of \$120,993, to the Applicant who has no experience in the Canadian residential construction market. The Officer also noted that it is not clear when the Company was established, nor how much the Applicant invested in it. Also, there was no trace of this Company on the internet, the mailing address is a mailbox, and the phone number is listed as “(999) 999-9999.”

[13] Third, the Officer found that the Applicant had not demonstrated that she had the required English language skills as per the job requirements listed in the LMIA.

IV. ISSUES

[14] The issues raised in the present matter are the following:

1. Did the Officer’s Decision violate the Applicant’s right to procedural fairness?
2. Did the Officer unreasonably fail to assess important evidence that ran contrary to their findings?

V. STANDARD OF REVIEW

[15] This application was argued prior to the Supreme Court of Canada’s recent decisions in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov] and *Bell Canada v Canada (Attorney General)*, 2019 SCC 66. This Court’s judgment was taken under reserve. The parties’ submissions on the standard of review were therefore made under the *Dunsmuir v New Brunswick*, 2008 SCC 9 [Dunsmuir] framework. However, given the circumstances in this matter, and the Supreme Court of Canada’s instructions in *Vavilov* at

para 144, this Court found that it was not necessary to ask the parties to make additional submissions on the standard of review. I have applied the *Vavilov* framework in my consideration of the application and it does not change the applicable standards of review in this case nor my conclusions.

[16] In *Vavilov*, at paras 23-32, the majority sought to simplify how a court selects the standard of review applicable to the issues before it. The majority did away with the contextual and categorical approach taken in *Dunsmuir* in favour of instating a presumption that the reasonableness standard applies. However, the majority noted that this presumption can be set aside on the basis of (1) clear legislative intent to prescribe a different standard of review (*Vavilov*, at paras 33-52), and (2) certain scenarios where the rule of law requires the application of the standard of correctness, such as constitutional questions, general questions of law of central importance to the legal system as a whole and questions regarding the jurisdictional boundaries between two or more administrative bodies (*Vavilov*, at paras 53-64).

[17] Both the Applicant and the Respondent submitted that the standard of review applicable to the issue of procedural fairness was that of correctness while the standard of review applicable to the Officer's assessment of the Applicant's work permit application was that of reasonableness.

[18] Some courts have held that the standard of review for an allegation of procedural unfairness is "correctness" (*Mission Institution v Khela*, 2014 SCC 24 at para 79; *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at paras 59 and 61 [*Khosa*]). The Supreme

Court of Canada's decision in *Vavilov* does not address the standard of review applicable to issues of procedural fairness (*Vavilov*, at para 23). However, a more doctrinally sound approach is that no standard of review at all is applicable to the question of procedural fairness. The Supreme Court of Canada in *Moreau-Bérubé v New Brunswick (Judicial Council)*, 2002 SCC 11 stated that the issue of procedural fairness:

requires no assessment of the appropriate standard of judicial review. Evaluating whether procedural fairness, or the duty of fairness, has been adhered to by a tribunal requires an assessment of the procedures and safeguards required in a particular situation (*Moreau-Bérubé*, para 74).

[19] As for the standard of review applicable to the Officer's assessment of the work permit application, there is nothing to rebut the presumption that the standard of reasonableness applies in this case. The application of the standard of reasonableness to this issue is also consistent with the existing jurisprudence prior to the Supreme Court of Canada's decision in *Vavilov*. See *Toor v Canada (Citizenship and Immigration)*, 2019 FC 1143 at para 6; *Baran v Canada (Citizenship and Immigration)*, 2019 FC 463 at paras 15-16; and *Bui v Canada (Citizenship and Immigration)*, 2019 FC 440 at paras 22-23.

[20] When reviewing a decision on the standard of reasonableness, the analysis will be concerned with whether it "bears the hallmarks of reasonableness — justification, transparency and intelligibility — and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision" (*Vavilov*, at para 99). Reasonableness is a single standard of review that varies and "takes its colour from the context" (*Vavilov*, at para 89 citing *Khosa*, above, at para 59). These contextual constraints "dictate the limits and contours of the space in which the decision maker may act and the types of solutions it may adopt" (*Vavilov*, at para 90).

Put in another way, the Court should intervene only when “there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency” (*Vavilov*, at para 100). The Supreme Court of Canada lists two types of fundamental flaws that make a decision unreasonable: (1) a failure of rationality internal to the decision-maker’s reasoning process; and (2) untenability “in light of the relevant factual and legal constraints that bear on it” (*Vavilov*, at para 101).

VI. STATUTORY PROVISIONS

[21] The following statutory provisions of the *IRPA* are relevant to this application for judicial review:

Application before entering Canada

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.

Obligation on entry

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,

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

Visa et documents

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.

Obligation à l'entrée au Canada

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) pour devenir un résident temporaire, qu'il détient les

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

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

Regulations

32 The regulations may provide for any matter relating to the application of sections 27 to 31, may define, for the purposes of this Act, the terms used in those sections, and may include provisions respecting

(a) classes of temporary residents, such as students and workers;

...

Règlements

32 Les règlements régissent l'application des articles 27 à 31, définissent, pour l'application de la présente loi, les termes qui y sont employés et portent notamment sur :

a) les catégories de résidents temporaires, notamment les étudiants et les travailleurs ;

...

[22] The following provisions of the *Regulations* are relevant to this application for judicial review:

Work permits

200 (1) Subject to subsections (2) and (3) — and, in respect of a foreign national who makes an application for a work permit before entering Canada, subject to section 87.3 of the Act — an officer shall issue a work permit to a foreign national if, following an examination, it is established that

(b) the foreign national will leave Canada by the end of the

Permis de travail — demande préalable à l'entrée au Canada

200 (1) Sous réserve des paragraphes (2) et (3), et de l'article 87.3 de la Loi dans le cas de l'étranger qui fait la demande préalablement à son entrée au Canada, l'agent délivre un permis de travail à l'étranger si, à l'issue d'un contrôle, les éléments ci-après sont établis :

b) il quittera le Canada à la fin de la période de séjour qui lui

period authorized for their stay under Division 2 of Part 9;	est applicable au titre de la section 2 de la partie 9;
...	...
200 (3) An officer shall not issue a work permit to a foreign national if	200 (3) Le permis de travail ne peut être délivré à l'étranger dans les cas suivants :
(a) there are reasonable grounds to believe that the foreign national is unable to perform the work sought;	a) l'agent a des motifs raisonnables de croire que l'étranger est incapable d'exercer l'emploi pour lequel le permis de travail est demandé ;
...	...

VII. ARGUMENTS

A. *Applicant*

[23] The Applicant argues that: (1) the Officer breached her right to procedural fairness by making credibility findings without offering the Applicant an opportunity to respond; and (2) erred in unreasonably failing to acknowledge important evidence concerning the Applicant's work experience, English language skills, and her prospective employer's support. For these reasons, the Applicant submits that this application for judicial review should be allowed.

(1) Procedural Fairness

[24] The Applicant argues that the Officer breached her right to procedural fairness by making credibility findings concerning the evidence of her English language skills as well as her employer's establishment without providing her with an opportunity to respond to these

concerns. The Applicant cites and relies upon this Court's decisions in *Egheoma v Canada (Citizenship and Immigration)*, 2016 FC 1164 at paras 12-14 and *Bajwa v Canada (Immigration, Refugees and Citizenship)*, 2017 FC 202 at paras 62-65.

[25] First, the Applicant argues that the graduate certificate confirming that she passed the College English Test for Level-4 in January 2003, as well as the fact that her employer was satisfied with her language skills, was sufficient to demonstrate that she met the language requirements as they are stated in the LMIA. The Applicant argues that this case is analogous to *Li v Canada (Citizenship and Immigration)*, 2012 FC 484 where this Court found that procedural fairness required the Officer to give the applicant an opportunity to respond to concerns regarding the applicant's language skills based on 20-year-old school records showing passing grades in English.

[26] Second, the Applicant submits that the Officer's notes clearly reveal that the Officer had credibility concerns regarding the Applicant's proposed employer. The Applicant points to the fact that the Officer simultaneously found that the company was a start-up, yet drew a negative inference from its lack of online presence, mailing address, and phone number. As such, the Applicant holds that the Officer should have provided her with an opportunity to respond to these matters.

(2) Assessment of Evidence

[27] The Applicant also submits that the Officer failed to acknowledge important, relevant evidence that ran contrary to their findings in this case. The Applicant says that it is trite law that

officers must engage with evidence that runs contrary to their final decision and explain why they preferred other evidence. See *Omijie v Canada (Citizenship and Immigration)*, 2018 FC 878 at paras 25-26. Specifically, the Applicant argues that the Officer erred by ignoring the evidence regarding her performed work duties, the evidence of her English language skills, and the letter from the Applicant's proposed employer stating the consequences should the application be rejected.

[28] First, the Applicant argues that the Officer improperly focused on her past job titles to the exclusion of the evidence of her performed job duties. The Applicant argues that, by doing so, the Officer improperly focused on her administrative support experience. Had the Officer considered her performed jobs duties, the Officer would have found her work experience to be clearly aligned with the LMIA and the job description provided by the prospective employer, which is largely focused on financial oversight and administration rather than construction. Though the Applicant holds that the Officer improperly held that experience in construction was a job requirement in this case, the Applicant notes that the evidence of her performed jobs duties also demonstrates that she has gained significant experience in Canadian real estate in her current role at Sinolink.

[29] In addition, the Applicant states that the Officer improperly focused on her education as a flight attendant while completely ignoring her education in administration. Had the Officer properly assessed her education, the Applicant holds that they would have found that she met the job requirements.

[30] Second, the Applicant argues that the Officer's finding that she did not have the requisite English language skills for the position is not based on the record and is unintelligible as the Officer clearly ignored the evidence that she obtained a Certificate for College English Level-4 in January 2003.

[31] Third, the Applicant submits that the Officer failed to consider the letter of support from her prospective employer detailing the Applicant's investment in the company and the consequences should her application be refused. The Applicant points to the fact that the Officer noted that it is unclear how much the Applicant invested in the company when the letter of support clearly states that the company would lose her \$600,000 investment provoking the loss of seven full-time jobs within three months. The Officer also fails to note the Company's stated contact phone number.

B. *Respondent*

[32] The Respondent argues that: (1) the Officer did not breach the Applicant's right to procedural fairness as the Officer was not required to offer the Applicant an opportunity to address the insufficient evidence submitted; and (2) the Officer considered the totality of the evidence submitted and, as such, it was open to them to find that the Applicant had failed to demonstrate that she met the requirements of the *IRPA* and the *Regulations*. For these reasons, the Respondent submits that this application for judicial review should be dismissed.

(1) Procedural Fairness

[33] The Respondent submits that the Officer was under no obligation to raise doubts or concerns with the Applicant, nor follow-up with her, as it was the Applicant who had the onus to provide sufficient evidence to demonstrate that she met the requirements of the *IRPA* and its *Regulations*. Indeed, the Respondent states that the Officer was not required to give the Applicant a “running score” at any step of the proceeding, nor to advise the Applicant of the deficiencies in her evidence. The Respondent cites and relies upon this Court’s decisions in *Roberts v Canada (Citizenship and Immigration)*, 2009 FC 518 at para 21 as well as *Nehme v Canada (Minister of Citizenship and Immigration)*, 2004 FC 64 at para 18.

[34] Further, the Respondent argues that the Officer was not required to advise the Applicant of the deficiency in her evidence regarding her English language skills. The Respondent states that the LMIA clearly indicated that English language skills were required and it was reasonable to expect that further evidence would be needed to demonstrate the language skills required to conduct high-level executive work. Despite this, the Respondent notes that the Applicant provided no evidence of English language proficiency but for a certificate issued approximately 15 years ago.

[35] The Respondent also submits that the Officer was not required to advise the Applicant of the deficiencies in the evidence concerning the establishment of the Company and its ability to pay an inexperienced CFO \$120,993 per year. The Respondent notes that this is because there

was little objective evidence submitted indicating that the prospective employer was more than a company on paper.

(2) Assessment of Evidence

[36] The Respondent argues that the Officer considered the totality of the evidence concerning the Applicant's education and experience as well as the evidence submitted concerning her language abilities. The Respondent notes that it is trite law that a decision-maker is presumed to have considered all the evidence. However, given the deficiencies in the evidence presented in this case, the Respondent notes that it was reasonable for the Officer to find that the Applicant had not demonstrated that she met the requirements of the *IRPA* or the *Regulations*.

[37] The Respondent submits that it was reasonable for the Officer to conclude that the Applicant had not established that she could adequately meet the job requirements for her prospective employment. The Officer considered the totality of the Applicant's post-secondary education and correctly noted that the majority of her work experience was in administration. Upon assessing the totality of the evidence, it was open to the Officer to conclude that the Applicant's education and work experience did not provide her with the necessary skills to work as CFO in the Canadian residential construction market, an industry in which she has no significant experience. The Respondent further notes that it was appropriate for the Officer to give little weight to the Applicant's evidence concerning her skills and performed job duties as it was little more than her own self report.

[38] The Respondent further submits that it was reasonable for the Officer to conclude that the Applicant had failed to demonstrate that she had the English language skills required to meet the job requirements. The Applicant provided no evidence of her English test score nor any evidence of recent English language studies. Although the Respondent admits that the Applicant provided evidence that she passed the College English Test for Level-4, the Respondent notes that these results are approximately 15 years old and the Applicant provided no evidence as to what language abilities “Level-4” denotes. Given the lack of evidence of sufficient English language skills, the Respondent says that the Officer had no choice but to reject the Applicant’s work permit application pursuant to s 200(3)(a) of the *Regulations*.

VIII. ANALYSIS

[39] The Applicant says that the Officer expresses and relies upon credibility concerns that were never put to her. In particular, she says that the Officer challenged whether the Company (the Applicant’s prospective employer) even exists, and she highlights the Officer’s mistakes about the Company phone number and the information on the Applicant’s investment in the Company.

[40] These are clear mistakes of fact. An actual contact number for the Company was provided and the Company’s letter of August 21, 2018 under the hand of Mr. Vadnais clearly states that the Applicant has invested “600,000” in the Company. Notwithstanding these mistakes, the basis for the Decision is that the Officer was not convinced that “the PA has the required knowledge and education to fulfill the position that was offered to her in Canada” and the reasons make it clear that the Officer was not convinced from the information in the

application that the Applicant has the required knowledge and experience to fulfill the CFO position offered by the Company, or the necessary language training ability to fulfill the requirements of the job offered.

[41] On these two fundamental issues, I do not see that credibility is raised. The essential core of the Decision is the Officer's assessment of the Applicant's evidence on knowledge and experience and language ability against the requirements found in the job description.

[42] The Officer's Decision to refuse the Applicant's application for a work permit is based upon two principal grounds:

- (a) The Applicant failed to demonstrate to the Officer's satisfaction that she "has the required knowledge and education to fulfill the position that was offered to her in Canada" and this includes a lack of "experience in house construction";
- (b) The Applicant "provided little proof of her language ability and does not seem to have language training for her work in Canada. PA has not demonstrated that she has the required language ability to fulfil the job she was offered."

[43] These are stand-alone grounds. Either one is sufficient to justify the refusal of a work permit.

[44] In her affidavit for this judicial review application, the Applicant tells the Court why she was hired as a CFO for the Company:

Since 2015/04, I have been working for Sinolink Consultants Services Limited (“Sinolink”) with the position of Marketing Director. Sinolink is a boutique type of consultancy firm registered in Hong Kong SAR with specialization in providing overseas investment (including real estate and business investments in USA and Canada). I work closely with regionally renowned private banks in Hong Kong to focus on high net worth to ultra-high net worth client in the Greater China area. During the course of my professional services, I need to spend most of the time in Beijing and Shenzhen to provide support to service agents as well as sales pitching to my own prospective clients whom I personally acquainted through my past activities in the upper class society. The remuneration I received was on commission basis.

I am familiar with overseas investments and I feel confident that I can set up a successful business in Canada. I am convinced that by investing in 2043167 Alberta Limited as majority shareholder, I will be able to start and manage a successful business in Canada. This opportunity will enable me to invest in home construction business, the industry that I personally think is booming and safer in terms of business risk. Once being admitted to work in Canada, I intend to assume the role of Chief Financial Officer (“CFO”) in 2043167 Alberta Limited to oversee the entire financial aspect of this Company. But at the same time, I shall re-negotiate the terms of employment with Sinolink that hopefully will enable me to return to the company when I conclude my role in Canada. Based on my successful past experience in business operations in China, I am confident that I can master this CFO role through the assistance of local professionals such as accountancy, lawyers, and engineers. After all, this is a piece of my major investment and I must properly safeguard it and do everything I can to make it successful.

[45] So the Applicant herself says that she was hired because of her extensive investment in the Company and because she can assist the Company to organize its financial reporting with banks.

[46] The fact that the Applicant has personally invested in the Company does not mean, per se, she is qualified to be the CFO, and the fact that she knows how to deal with banks does not mean she meets the requirements or other responsibilities set out in the job description.

[47] As regards the Applicant's qualifications for the CFO position, the Officer specifically lists the stated requirements and then refers to the Applicant's education and background:

PA has her education as flight attendant and with a certificate of graduate courses on administrative management. PA's work experience is mostly in administrative support and later marketing, it does not appear to me that the PA has the required knowledge and education to fulfill the position that was offered to her in Canada. PA also does not appear to have experience in house construction.

[48] The Applicant says that "the Officer made findings regarding the Applicant's suitability for the position contrary to the evidence in the Record to such an extent as to draw into question the attention paid by the Officer to the entirety of the application."

[49] As regards the Applicant's evidence of her qualifications and experience, she complains that the Officer does not mention the specifics of her evidence in the Decision. However, the Officer refers specifically to the job description, the Applicant's education, her certificate of graduate courses on administrative management, her work experience in administrative support and later marketing, so I think the Applicant and the Court can safely assume that the Officer is referring to the evidence she submitted on these matters.

[50] The principal evidence submitted to the Officer on this issue is the Applicant's own letter of August 18, 2018, her *Curriculum Vitae* and the Company's letter of August 14, 2018.

[51] In her letter, the Applicant says that:

- (a) She is working for Sinolink Consultants Services Limited (Sinolink) as a Marketing Director. In this position she says that she works “closely with regionally renowned private banks in Hong Kong to focus on high net worth to ultra-high net worth client [*sic*] in the Greater China area.” She says she also provides “support to service agents as well as sales pitching to my own prospective clients whom I personally acquainted [*sic*] through my past activities in the upper class society.” This sounds very impressive to me, but I don’t think it tells the Officer very much about whether the Applicant can adequately fill the position of CFO for a start-up Alberta company in the construction sector;
- (b) She says that she is “familiar with overseas investments and I feel confident that I can set up a successful business in Canada.” Confidence is admirable, but it is no substitute for actual qualifications and experience, and it is difficult to see how a familiarity with overseas investments provides the experience needed to “assume the role of Chief Financial Officer (“CFO”) in 2043167 Alberta Limited to oversee the entire financial aspect of the Company.”
- (c) She says that she is “confident that I can master this CFO role through the assistances of local professionals such as accountancy [*sic*], lawyers, and engineers.” Once again, this indicates that the Applicant is relying upon her own self-confidence rather than past experience and qualifications. And her conceding she will need other professionals to master the role suggests to me that, at present, she does not necessarily have the experience.

[52] The Applicant's *Curriculum Vitae* points to her experience in Marketing, Administration, and as Assistant to the General Manager of Set Sheng, but provides even less detail than her personal letter as to what the Applicant has actually done that qualifies her for the role of CFO of this particular Company in the construction business.

[53] The Company letter of August 14, 2018 provides details of the Job Description and the Company's assessment of the Applicant's qualifications:

Job Description

At this time, 2043167 Alberta Ltd. requires a qualified Chief Financial Officer to oversee and help establish financial strategies within our organization. In this role. Ms. Zang will oversee all financial transactions of the company, including accounts receivable, accounts payable, month end report, bank reconciliations, and GST filing and payroll. She will utilize her financial expertise to manage the financial oversight of several projects under construction at the same period of time, and will be required to keep government permits, expenses, taxes payable, WCB reporting and income documented. She will also be required to prepare reports for the board of directors of the joint venture on a monthly basis. In this role. Ms. Zang will be required to visit the construction sites to develop progress reports on each project located in various towns in Southern Alberta.

2043167 Alberta Ltd. is a start-up company just gaining traction in the Canadian market. The company intends to add to the stability of the construction industry in Southern Alberta, as market research indicates that smaller communities are having difficulty maintaining their population base in part due to the inability to find stable employment. This project will generate employment for skilled professionals in the construction industry for years to come. As the first employee in Canada. Ms. Zang's initial duty will be to create and implement a sound financial strategy for the company moving forward. She will be responsible to manage multiple construction projects, including government permits, expenses, taxes, WCB reporting, and income. Her daily involvement in the success of the company is integral. **The current projections for construction of approximately 4 homes per year would translate to more than 13 jobs in Southern Alberta with an income of approximately \$70,000/annum per employee.**

The building of homes in small centres will help with employment as the construction company will have to employ persons to help build. Each home provides approximately 3 man years of labour. Since the plan is to build 4 homes per year. that equates to 12 man years of labour. This construction would also create 1 full time job for the investor and at least 2 full time support staff which adds up to 15 Man years of labour per year. In addition, there would be approximately 2.5 additional man years in sub-trades that are needed to construct these homes for a total of 17.5 years of man labour. From the government's perspective, this equates to approximately $(17.5 * 60,000) = \$1,005,000$ of revenue being generated a year which would amount to Government revenue of approximately \$250,000.

This projects provides good jobs, provides affordable housing to lower income individuals, strengthens small communities, and will help provide housing to smaller communities which will encourage larger companies to relocate to small communities. **Ms. Zang's investment has-already initiated the construction of two homes in the Raymond area. The first home has been completed and is sold, and the second home has been completed and is going in the market with in the month. We are currently in negotiations with The Town of Raymond to form a joint venture where we will be building senior homes (1,000 sq ft-12-14 units)**

Without Mr. Zang's initial investment and current direction of all financial operations, 2043167 Alberta Ltd. would collapse and all ongoing and intended construction projects in Canada would immediately halt. This would in turn result in significant revenue loss and job loss for both the company and the construction industry in Southern Alberta.

Ms. Xiaoning Zang

Ms. Zang is superbly qualified to fulfil the mandate as Chief Financial Officer for 2043167 Alberta Ltd. in Alberta. She obtained an MPA from Northeast Normal University in China in 2014. Ms. Zang is a skilled management professional with extensive experience in finance and administration, and has been employed with Sinolink Consultants Services Ltd. in China since 2015.

Most recently, Ms. Zang was employed as Marketing Director with Sinolink Consultants Services Ltd. In China. In this role, she was responsible to manage the development and implementation of the investment projects division, and was responsible for monitoring

all financial aspects of major projects within the scope of her employ. She was accountable for developing and maintaining strong business relationships with customers in order to successfully drive business development. Ms. Zang played a critical role in many financial transactions and was integral in moving the company forward with success. Prior to that role, she was employed as the Deputy Manager, Administration with Set Sheng International Trade (Shanghai) Limited from 2012 - 2015 where she was accountable for managing operational costs of inventory control, setting wage target, and directing recruitment, training, and staff development initiatives to maximize productivity and revenue potential through the successful development of a strong sales team. Ms. Zang was also previously employed as Assistant to the General Manager of Set Sheng International Trade (Shanghai) Limited from 2006 - 2012 where she administered financial processes including accounts payable and accounts receivable. She was also responsible for streamlining direct office services including departmental finances, records, and budget preparation.

In the above noted positions. Ms. Zang gained the necessary skills and experience required for the position of Chief Financial Officer for 2043167 Alberta Ltd. She has a demonstrated track record in financial strategy development and implementation.

[Emphasis and errors in original.]

[54] If the job responsibilities are compared with the Applicant's qualifications and past experience, it isn't readily apparent why she is "superbly qualified" for this particular job in this particular industry. The Company appears to be satisfied with the Applicant's self-confidence, but although the Applicant obviously has financial experience, the Officer was concerned about her lack of experience in the "Canadian home construction market."

[55] All in all, when the evidence on past experience that was before the Officer is examined, it is not difficult to see why, notwithstanding the Applicant's self-confidence and success in other endeavours, the Officer was not convinced that she has the experience required for this

particular job in this particular industry. I might have come to a different conclusion myself, but this is a weighing issue and I don't think there is enough there for me to say that the Officer's assessment was unreasonably neglectful of the evidence before him/her.

[56] The Officer's assessment of the evidence regarding the Applicant's language abilities was that she had

provided little proof of her language ability and does not seem to have language training for her work in Canada. PA has not demonstrated that she has the required language ability to fulfill the job she was offered.

[57] Once again, this looks to me like a sufficiency of evidence issue, not a credibility issue.

[58] The only evidence the Applicant provided for her language ability was her personal letter and a certificate for a College English Test that indicated she has taken part "in the national College English Test for Level – 4" and that she passed.

[59] The personal letter shows ability with written English, but it is not clear that this was the Applicant's own effort and normal level of writing skill. As regards verbal fluency, the College English Test certificate does not assist the Officer to know what level she achieved and whether this meets the demands of the job which, as the Company points out, will require the Applicant, *inter alia*, "to visit the construction sites to develop progress reports on each project located in various towns in Southern Alberta." The certificate also suggests that the Applicant studied English some 15 years ago, and there is no evidence of her present language skills.

[60] In *Kaur v Canada (Citizenship and Immigration)*, 2017 FC 782, Justice Manson found that “the Visa Officer clearly raised credibility concerns about the Applicant’s English language IELTS certificate... yet effectively gave her no opportunity to address at least his credibility concerns regarding her English proficiency” (at para 21).

[61] In the present case, I see no credibility issues with regard to the Applicant’s language abilities given the demands of this particular job. This is a sufficiency of evidence issue and I cannot say that, given the evidence before him/her, the Officer’s findings were unreasonable.

[62] My conclusion is that, at its core, this Decision is about the insufficiency of evidence to show that the Applicant could meet the requirements of a CFO position in an Alberta company in small town construction. Given the evidence, I cannot say that the Officer’s findings and conclusions are unreasonable and, for this reason, must refuse the application.

[63] Counsel agree there is no question for certification and I concur.

JUDGMENT IN IMM-1125-19

THIS COURT'S JUDGMENT is that

1. The application is dismissed.
2. There is no question for certification.

“James Russell”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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STYLE OF CAUSE: XIAONING ZANG v THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

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