

Federal Court



Cour fédérale

**Date: 20230713**

**Docket: IMM-9962-22**

**Citation: 2023 FC 954**

**Ottawa, Ontario, July 13, 2023**

**PRESENT: The Honourable Mr. Justice Favel**

**BETWEEN:**

**YANXIA YANG**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. Overview

[1] Yanxia Yang [Applicant] seeks judicial review of an Immigration, Refugees and Citizenship Canada [IRCC] officer's [Officer] September 9, 2022 decision [Decision] refusing the Applicant's Labour Market Impact Assessment [LMIA]-exempt work permit [WP] application. The Officer was not satisfied that the Applicant would leave Canada at the end of her stay pursuant to paragraph 200(1)(b) of the *Immigration and Refugee Protection Regulations*,

SOR/2002-227 [IRPR]. The Officer found that the Applicant failed to sufficiently demonstrate that her admission to Canada to establish and operate a business may generate significant economic, social, or cultural benefits or opportunities for Canadian citizens or permanent residents pursuant to paragraph 205(a) of IRPR.

[2] The application for judicial review is dismissed. The Decision was reasonable.

## II. Background Facts

[3] The Applicant is a 35-year-old citizen of China seeking to establish a food exporting company [Business] in Prince Edward Island [PEI]. The Applicant possesses post-secondary education in international trade as well as management and sales experience in the food safety industry in China.

[4] On or around November 16, 2020, the Applicant applied to PEI's Provincial Nominee Program, a program for foreign nationals seeking to obtain permanent resident status in Canada. In support of her application, the Applicant provided a copy of her business plan prepared by Grant Thornton LLP and dated June 2021 [Business Plan]. The Business Plan outlined a company overview, industry analysis, operational plan, and financial projection.

[5] As a condition of acceptance, the Applicant entered into a Business Impact Work Permit Performance Agreement, wherein the Applicant agreed to apply for a WP, establish residence in PEI, invest a minimum amount in her Business, and implement the Business Plan, among other

terms and conditions. Should she satisfy these criteria, the Applicant would receive nomination support for permanent residence from the PEI Office of Immigration.

[6] On June 1, 2022, the PEI Office of Immigration approved the Applicant as a Provincial Nominee Candidate. The PEI Office of Immigration provided a letter in support of the Applicant's WP application.

[7] In a letter dated August 1, 2022, the Applicant's representative enclosed a temporary residence application on behalf of the Applicant, her husband, and their two children. The application included the Business Plan, PEI's letter of support, proof of funds, a certificate of incorporation, and three Agreements of Intent for Project Cooperation between the Applicant and various Chinese companies pertaining to the sale of Canadian food imports in China [Agreements]. The terms of the Agreements provided that the companies are responsible for the sale of the Applicant's Canadian food imports in China and that specific products and prices will be negotiated once the Applicant establishes her Business. IRCC received the Applicant's WP application on August 12, 2022.

### III. The Decision

[8] The Officer refused the Applicant's WP application, having not been satisfied that the Applicant would leave Canada at the end of her stay in light of the requirements within paragraph 205(a) of *IRPR*.

[9] The Officer's Global Case Management System [GCMS] notes, forming part of the reasons for the Decision, are reproduced in their entirety below:

File reviewed. C11 case. Client is seeking a LMIA-exempt WP as an entrepreneur. PA wants to establish an exporting business in PEI that will focus on food products. I note that client has obtained a support letter from PEI, which state they are interested in nominating her as a provincial nominee.

However I note that they have chosen to keep her as a prospective nominee rather than an actual one, as they would like to see how and if she sets up a business in their territory.

I have reviewed client's business plan. I note that it is dated June 2021; it appears client has not modified it since her first WP refusal in 2021. Client could have taken this opportunity to provide additional information.

I note the following points from the business plan and other documents on file:

- Client does not intend to hire a number of Canadian citizens or PRs
- Client has not previously visited PEI: she is thus establishing a business plan without having first-hand experience of the market where she wants to open a business.

From the documents on file, it seems like most research was conducted online. She does not appear to have business partners/contacts in Canada that could do some research for her. While this is not mandatory for an entrepreneur, previous trips to Canada or contact lists would show that there are already some partnerships/ties established.

- I also note client's English language skills are intermediate (B2).

The client's business plan states the following: "Ms. Yang will face tough competition from other Canadian exporters, as well as other international exporters, all competing to supply the Chinese markets with high quality products. Atlantic Canada Export lists over 100 companies who export Atlantic Canadian seafood to Asia. Some of the well-known local food exporters are (LIST OF NAMES) (...) The above operators from PEI are also agriculture growers and processors."

It is unclear from the documents on file what skills or other advantages client has to distinguish herself in this already crowded market.

With the info in front of me, it is difficult to conclude that her business plan is viable and that client is in a good position to be successful in this competitive market.

While I have put some weight on the provincial assessment that her business plan is viable, I note that the province has not elected to give her a provincial nomination right away as they would want to see how she sets up the business first.

Moreover, I have to consider whether her business in Canada would provide "significant benefits" to Canada. As discussed above, she has no intention to employ residents of Canada, at least not for the foreseeable future. She also wants to start a business in an already crowded market, with investments limited at a few millions \$CAD.

On balance, I am not satisfied client has demonstrated that their admission to Canada to begin establishing or operating their business may generate significant economic, social or cultural benefits or opportunities for Canadian citizens or permanent residents pursuant to paragraph R205(a).

This application is refused. Accompanying family members will be refused accordingly.

#### IV. Issue and Standard of Review

[10] The sole issue for determination is whether the Decision was reasonable.

[11] I agree with the parties that the merits of the Decision are to be reviewed on the standard of reasonableness. None of the exceptions outlined in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov] arise in this matter (at paras 16-17).

A reasonableness review requires the Court to examine outcome of the decision and its underlying rationale to assess whether the decision, as a whole, "bears the hallmarks of

reasonableness—intelligibility, transparency, and justification—and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision” (*Vavilov* at paras 87, 99). If the reasons of the decision-maker allow a reviewing Court to understand why the decision was made and determine whether it falls within the range of acceptable outcomes, the decision will be reasonable (*Vavilov* at paras 85-86).

V. Analysis

A. *Applicant’s Position*

[12] The Decision was unreasonable. The Officer failed to provide a transparent and intelligible justification (*Vavilov* at para 136).

[13] Firstly, the Officer drew a negative inference from the Applicant’s status as a Provincial Nominee Candidate. It is unclear why the Officer did so, particularly in light of the explanation within PEI’s letter of support.

[14] Secondly, the Officer failed to consider evidence contradicting their finding that the Applicant does not have business partners or contacts in Canada that could do research for her (*Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, [1999] 1 FC 53 at para 17, [1998] FCJ No 1425 [*Cepeda-Gutierrez*]). The Applicant provided a copy of her Business Plan from Grant Thornton LLP, who are contacts in Canada.

[15] Similarly, the Officer failed to consider evidence contradicting their finding that the Applicant does not have skills or other advantages to distinguish herself in a crowded market (*Cepeda-Gutierrez* at para 17). The Applicant advanced her Business Plan as well as three Agreements for Project Cooperation regarding PEI food exports.

[16] Lastly, the Officer erred in their overall determination as to whether the Applicant's Business would provide significant benefits to Canada. There is no explanation as to how or why the Applicant's several million Canadian dollar investment would not provide significant benefits. Not only this, the Officer's stated amount of the Applicant's investment is significantly inaccurate, as reflected in the Business Plan and other materials. The Business Plan also explained that the Applicant intended to hire two part-time employees, contrary to the Officer's finding that the Applicant had no intention to employ Canadian residents.

B. *Respondent's Position*

[17] The Decision was reasonable and the Officer's reasons were intelligible. IRCC's publication entitled Significant Benefit to Canada [R205(a) – C10 – Canadian interests – International Mobility Program] provides that LMIA-exempt work permits under paragraph 205(a) of *IRPR* require clear and compelling evidence. Here, the Officer engaged with the Applicant's application and relied on their experience and expertise in concluding that the Applicant failed to demonstrate that her Business Plan was viable or that her Business would result in significant benefits to Canada.

[18] Firstly, the Officer did not draw a negative inference from the Applicant's status as a Provincial Nominee Candidate. Rather, the Officer assessed the weight that ought to be afforded to PEI's letter of support, finding that it should receive some weight. The Officer was not required to agree with PEI's assessment, and gave sufficient reasons why granting the WP would not amount to a significant benefit to Canada (*Sarfraz v Canada (Citizenship and Immigration)*, 2019 FC 1578 at para 22; *Shang v Canada (Citizenship and Immigration)*, 2021 FC 633 at paras 62, 68-69 [*Shang*]).

[19] Secondly, the Officer reasonably found that the Applicant does not have business partners or contacts in PEI (*Sen v Canada (Citizenship and Immigration)*, 2022 FC 777 at para 16 [*Sen*]). While the Applicant engaged Grant Thornton LLP to complete the Business Plan, there is no indication that they would help her establish her Business upon her arrival. The Officer also noted that the Applicant has never travelled to PEI and has no first-hand experience with the local market.

[20] Thirdly, the Officer reasonably concluded that the Applicant had not distinguished herself in a competitive market. The Applicant's own Business Plan acknowledged the competitive nature of the Chinese market with numerous established exporters. While the Applicant's Business Plan explained that there is opportunity for success if she offers "top tier service options", she does not explain what this entails or how they will be implemented. Similarly, the Agreements, consisting of one-page contracts with limited details, are not strong evidence that the Business would be successful. Accordingly, the Officer was not required to refer to them in light of the backdrop of well-established competitors in the market. As noted by the Officer, the



Applicant's initial work permit was refused in 2021 due to concerns with the Business' operation. The Applicant could have modified her Business Plan to prove its viability when she reapplied, but chose not to do so.

[21] Lastly, the Officer's statement regarding the Applicant's limited investment is supported by the evidence, including the representative's letter and the Business Plan. This statement must be read in its entirety. The Officer was clearly concerned that investment may be insufficient to render the Business Plan viable in light of the crowded and competitive market. Further, the Business Plan does not clearly state that the Applicant intends to hire Canadians or permanent residents. The Applicant ought to have explicitly stated so in light of paragraph 205(a) of *IRPR*.

### *C. Conclusion*

[22] The Decision was reasonable. The Applicant has failed to show otherwise (*Vavilov* at para 100).

[23] Pursuant to paragraph 205(a) of *IRPR*, a work permit may be issued to a foreign national who intends to perform work that "would create or maintain significant social, cultural or economic benefits or opportunities for Canadian citizens or permanent residents" (emphasis added).

[24] I agree with the Respondent that the Officer did not draw a negative inference from the Applicant's status as a Provincial Nominee Candidate. While an Officer is required to acknowledge and consider a support letter, they need not agree with it (*Shang*):

[68] ...The Officer was not required to agree with the opinions in the support letters or to find that the letters satisfied him that the requirements of the *Regulations* were met, but the Officer was required to consider them and at least acknowledge why less or no weight was given to them. There is no indication in the reasons that the Officer did so.

[Emphasis added.]

[25] Here, the Officer assessed PEI's letter of support, noting that PEI selected the Applicant as a Prospective Nominee Candidate, and ultimately placed some weight on PEI's assessment that the Business Plan is economically viable. However, the Officer's opinion differed from that of PEI's in light of their view that the Applicant has no intention to employ Canadian residents for the foreseeable future, has not previously visited PEI, intends to start her Business in a crowded and competitive market, and has limited investments. The Officer's conclusion is consistent with the jurisprudence and entitled to deference.

[26] Further, the Officer did not fail to consider contradictory evidence in finding that the Applicant does not have business partners or contacts in Canada that could do research for her. Officers are presumed to have considered all of the evidence before them (*Solopova v Canada (Citizenship and Immigration)*, 2016 FC 590 at para 28). When one reads the Officer's reasons in their entirety, it is clear that the Officer considered the totality of the evidence before them (*Cepeda-Gutierrez* at para 16). The Officer noted:

I note the following points from the business plan and other documents on file:

...

- Client has not previously visited PEI: she is thus establishing a business plan without having first-hand experience of the market where she wants to open a business.

From the documents on file, it seems like most research was conducted online. She does not appear to have business partners/contacts in Canada that could do some research for her. While this is not mandatory for an entrepreneur, previous trips to Canada or contact lists would show that there are already some partnerships/ties established.

[Emphasis added.]

[27] Having reviewed the record, there is no contradictory evidence that points to a different conclusion (*Sen* at para 22). The Officer considered the Business Plan, the footnotes of which solely reference online sources. The Business Plan and other submitted documents do not provide any indication that Grant Thornton LLP is an established business partner or contact that could go beyond online sources and help the Applicant establish her Business. There is also nothing to indicate that Grant Thornton LLP has remained engaged since finalizing the Business Plan in June 2021. In any event, the aforementioned consideration was not determinative to the Officer's Decision. Read in its entirety, I see no reason to disturb this reasoning.

[28] Thirdly, there is no legislative requirement for an applicant to "distinguish" oneself from competitors. However, I am persuaded by the Respondent's submissions that the Officer's wording needs to be read in the context of the requirement that an applicant must demonstrate significant benefits in Canada pursuant to paragraph 205(a) of *IRPR*. While the Applicant's Business Plan explained that she has "an extensive experience and relationship in the Chinese food industry", and that she "intends to utilize her personal and professional connections in the Chinese food industry" to supply high quality products, the Applicant has not provided any submissions as to how these constitute distinguishing skills or advantages as compared to the

other established exporters. Similarly, the Applicant fails to explain how the Agreements themselves constitute a distinguishable advantage.

[29] Contrary to the Applicant's submissions, the Officer does explain why they are not satisfied that the Business would provide significant benefits in Canada. The Officer does not state that the Applicant's investment in itself would not provide significant benefits. Rather, the Officer explains that the Applicant "wants to start a business in an already crowded market, with investments limited at a few millions \$CAD" (emphasis added). In other words, the Officer's concerns clearly arose from the sufficiency of the Applicant's investment in the context of market's crowded and competitive environment.

[30] As for the Officer's stated investment amount, the Applicant has failed to point to any specific evidence to demonstrate the unreasonableness of the Officer's conclusion. The Applicant's Business Plan and other materials establish that the Applicant intended to provide an initial investment of \$150,000 CAD. The Applicant also explained that she and her spouse have a jointly owned net worth of approximately \$6.5 million CAD, and she jointly has immediate access to approximately \$1 million CAD. The Applicant provided proof, but no proof of outside sources of financing.

[31] Lastly, the Business Plan does not explicitly state that the Applicant intends to employ Canadian residents. Rather, it provides that the Applicant intends to hire a part-time logistics associate and a part-time sales manager, listing specific minimum requirements for each position. During the hearing, the Court asked the parties whether the Business Plan had to explicitly state

that Canadian residents were to be employed. The Applicant stated that it goes without saying while the Respondent reiterated their written submissions that it is a requirement under *IRPR* and therefore, it must be set out in the Business Plan. The onus is on the Applicant to put their best foot forward and the Business Plan clearly does not mention the hiring of Canadian residents.

[32] When read holistically, the Decision was reasonable.

VI. Conclusion

[33] For the aforementioned reasons, the application for judicial review is dismissed.

[34] The parties do not propose a question for certification and I agree that none arises.

**JUDGMENT in IMM-9962-22**

**THIS COURT'S JUDGMENT is that:**

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

"Paul Favel"

---

Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-9962-22

**STYLE OF CAUSE:** YANXIA YANG v THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION

**PLACE OF HEARING:** VANCOUVER, BRITISH COLUMBIA

**DATE OF HEARING:** JUNE 27, 2023

**JUDGMENT AND REASONS:** FAVEL J.

**DATED:** JULY 13, 2023

**APPEARANCES:**

RICHARD KURLAND FOR THE APPLICANT

DEVI RAMACHANDRAN FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

KURLAND, TOBE FOR THE APPLICANT  
VANCOUVER, BRITISH  
COLUMBIA

ATTORNEY GENERAL OF FOR THE RESPONDENT  
CANADA  
VANCOUVER, BRITISH  
COLUMBIA