

Federal Court



Cour fédérale

**Date: 20240722**

**Docket: IMM-4586-23**

**Citation: 2024 FC 1138**

**Toronto, Ontario, July 22, 2024**

**PRESENT: The Honourable Mr. Justice A. Grant**

**BETWEEN:**

**CHUNG MING LAM**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

**I. OVERVIEW**

[1] The Applicant seeks judicial review of a decision rejecting his application for an Open Work Permit. In that decision, a Delegated Officer also found the Applicant to be inadmissible to Canada for misrepresentation pursuant to paragraph 40(1)(a) of the *Immigration and Refugee Protection Act* [IRPA]. Under paragraph 40(2)(a) of IRPA, the Applicant remains inadmissible for a period of five years from the date of the misrepresentation decision.

[2] For the reasons that follow, I find that the Applicant has failed to establish any reviewable errors on the part of the Designated Officer. The Officer reasonably concluded, further to a fair process, that the Applicant did not demonstrate that he had legitimately obtained his claimed educational credentials. The Designated Officer therefore reasonably concluded that the Applicant had misrepresented a material fact that, if accepted, would have led to an error in the administration of the *IRPA*.

## II. BACKGROUND

[3] The Applicant, Chung Ming Lam, 50, is a citizen of Hong Kong. In October 2022, he applied for an Open Work Permit, under the *Public Policy: Open work permits for recent Hong Kong graduates* [the Program]. One of the eligibility requirements for the Program is that applicants must have graduated no more than 10 years prior, with one of the prescribed educational credentials. In support of his application, the Applicant submitted a Level 4 Diploma and a Level 5 Diploma in Business Management, both awarded by an entity known as Qualifi. He purportedly completed the Level 4 Diploma in September 2021 and the Level 5 Diploma in September 2022.

[4] On March 9, 2023, the Applicant appeared for an interview with a Visa Officer. The purpose of the interview related to the Applicant's diplomas and, specifically, to the Visa Officer's concerns that the Applicant had not legitimately obtained those educational qualifications. This concern arose, at least in part, from a published article, which indicated that some individuals had paid others to write assignments to obtain diplomas, which were then used to support work permit applications.

[5] In the interview, the Visa Officer disclosed their concerns and the content of the article, and provided the Applicant with an opportunity to respond. The Visa Officer also asked the Applicant questions regarding his knowledge of his educational program; the assessments he submitted; and the substance of his assignments. Following the interview, the Visa Officer determined that their concerns had not been adequately addressed, and referred the Applicant's file to a Delegated Officer for a review of misrepresentation under s.40 of the *IRPA*.

[6] The Delegated Officer agreed with the Visa Officer, and issued a decision-letter indicating that the Applicant's application had been refused due to misrepresentation.

[7] The GCMS notes from both the Designated Officer and the Visa Officer are extensive. The Designated Officer noted that there were numerous inconsistencies and illogical responses given by the Applicant in his interview, and that he was unable to recall concepts used in his own assignments and coursework, or to "answer questions that would be considered reasonable by someone who had legitimately [and recently] completed their coursework".

[8] The Designated Officer also noted that the Applicant's answers raised concerns about plagiarism. The Designated Officer ultimately concluded that the Applicant failed to demonstrate that he had legitimately obtained the educational credential in question.

### III. ISSUES

[9] The Applicant raises the following issues on judicial review:

- A. Did the Visa Officer act without and beyond jurisdiction by making an unreasonable decision on the facts when they concluded that the Applicant did not legitimately obtain his educational credentials?

- B. Did the Visa Officer err by providing a decision that is neither justified nor intelligible, in particular with respect to how the Applicant obtained his educational credential?

[10] The above issues essentially amount to the same question, namely whether the decision under review is reasonable. As such, I will consider them in tandem.

[11] The Applicant also makes somewhat oblique reference to a reasonable apprehension of bias arising from the Visa Officer's reliance on the news article referenced above. However, this argument was not vigorously pursued, and I frankly see little merit in it. I would only note that on my review of the detailed transcript from the interview, as well as the GCMS notes in general, I see no indication that the Visa Officer had a closed mind, or had pre-determined the referral to the Delegated Officer. Further, the decision in this matter was issued by the Designated Officer, who never referred to the article in question.

#### IV. STANDARD OF REVIEW

[12] As noted above, the applicable standard of review, in light of the issues raised by the Applicant, is reasonableness: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 23 [*Vavilov*]. A reasonable decision displays justification, transparency and intelligibility, with a focus on both the decision made and the reasons for it: *Vavilov* at para 15. A reasonable decision is one that contains an "internally coherent and rational chain of analysis" and is justified in relation to that facts and law that constrain the decision-maker: *Vavilov* at para 85.

V. ANALYSIS

[13] As a preliminary matter, the Applicant's submissions are generally focused on the reasonableness of the Visa Officer's decision, when the relevant decision-maker in this matter was actually the Delegated Officer. However, considering that the Visa Officer's findings triggered the involvement of the Designated Officer and formed much of the basis for the Designated Officer's final decision, the Visa Officer's observations and reasons are clearly implicated in the decision under review.

[14] The Applicant's submissions boil down to one main proposition, which is that the Visa Officer exceeded their jurisdiction by evaluating the *bona fides* of his diplomas, when the Officer had neither the expertise, nor the authority to do so. The Applicant submits that it is not within the jurisdiction of an officer to assess whether an applicant had obtained their educational credential legitimately, and that the Visa Officer erred in 'going behind' the credential. Therefore, the Applicant submits, the decision was unreasonable.

[15] However, as the Respondent points out, the Applicant does not provide any authority in support of their argument that it is outside the scope of an officer's jurisdiction to assess and make inquiries into the legitimacy of an educational credential. On the contrary, the core function of an officer's role is to determine whether applicants legitimately meet the requirements of the *IRPA*, and are not inadmissible. Subsection 11(1) of the *IRPA* provides:

**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.

[16] Further, I cannot agree with the Applicant that it is outside of an officer's jurisdiction, pursuant to s.40 of the *IRPA*, to assess whether an applicant legitimately obtained a diploma upon which they are relying in support of a work permit application – particularly when there is some evidence of a pattern of questionable activity related to diplomas. It is also important to recall here the considerable breadth of paragraph 40(1)(a) of the *IRPA*, which provides that:

**40 (1)** A permanent resident or a foreign national is inadmissible for misrepresentation

(a) for directly or indirectly misrepresenting or withholding material facts relating to a relevant matter that induces or could induce an error in the administration of this Act;

[17] This Court has affirmed the broad scope of responsibilities that officers have in determining inadmissibility under paragraph 40(1)(a): *Wang v Canada (Citizenship and Immigration)*, 2018 FC 368 at para 15; *Malik v. Canada (Citizenship and Immigration)*, 2021 FC 1004 at para 10.

[18] Where an educational credential forms an important component in an immigration application, it follows that officers are empowered – indeed, they are required – to assess all material facts related to that credential, including whether it was legitimately obtained.

[19] The Applicant submits that an officer does not have the knowledge or expertise to assess whether a degree was granted legitimately. While this may be true in some instances, in this case, I find the Applicant's argument distorts the nature of the inquiry pursued by the Visa Officer. I note the following from the Visa Officer's GCMS note entries:

- The Visa Officer had concerns related to the Applicant's educational credentials, and convoked an interview. Officers are entitled, indeed at times they are required, to

interview candidates as a part of the examination that officers perform under section 11 of the IRPA.

- In the interview, the Applicant was provided with the news article in question. The Visa Officer: a) accurately and fulsomely disclosed the contents of the article, b) offered to give the Applicant time to review the article, c) explained the nature of the concern, d) confirmed that the Applicant was not being accused of anything, but that the Visa Officer was interviewing several individuals, and e) provided the Applicant with an opportunity to respond.
- The Visa Officer asked the Applicant several questions about the nature of his educational program, with specific reference to assessment documents and assignments that the Applicant had voluntarily disclosed. The Applicant was largely unable to answer these questions.

[20] I could foresee a situation in which a visa officer could veer into an unreasonable line of questioning. This would occur, for example, if an officer's questions bore no connection to the purpose of the inquiry, or where the questions could not yield any reliable indication as to the genuineness of an individual's educational background. Contrary to the Applicant's submissions, however, this is not what occurred at his interview. The Visa Officer was not impermissibly "testing" the Applicant as to his studies, but asked appropriate questions to assess the credibility of the Applicant's implicit assertion that he had genuinely obtained the necessary educational credentials.

[21] Taken to its logical conclusion, the Applicant is essentially arguing that Visa Officers must take educational credentials at face value, and cannot make reasonable inquiries of Applicants into the authenticity of their claimed program of study. This proposition finds no support in either statute or jurisprudence.

[22] As a result of the above, I conclude that it was reasonable for the Designated Officer, upon review of the Applicant's application, the GCMS notes, and the transcript of the interview,

to conclude that the application did not meet the applicable requirements. It was also reasonable for the Designated Officer to find that the Applicant had misrepresented a material fact, pursuant to paragraph 40(1)(a) of the *IRPA*.

VI. CONCLUSION

[23] The application for judicial review should be dismissed.



**JUDGMENT in IMM-4586-23**

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

1. The application for judicial review is dismissed.
2. No question is certified for appeal.

"Angus G. Grant"  
\_\_\_\_\_  
Judge

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

**DOCKET:** IMM-4586-23

**STYLE OF CAUSE:** CHUNG MING LAM v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** JULY 3, 2024

**JUDGMENT AND REASONS:** GRANT J.

**DATED:** JULY 22, 2024

**APPEARANCES:**

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