

Federal Court



Cour fédérale

**Date: 20091217**

**Docket: IMM-1684-09**

**Citation: 2009 FC 1288**

**Ottawa, Ontario, December 17, 2009**

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

**BETWEEN:**

**CHAN LIAN MIAO**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] This concerns an application pursuant to section 72 of the *Immigration and Refugee Protection Act* submitted by Chan Lian Miao (the “Applicant”), a citizen of the Peoples Republic of China, seeking judicial review of a decision of a visa officer removing her from her mother’s application for permanent residence in Canada on the basis that the Applicant does not meet the definition of a dependent child as set out in the *Immigration and Refugee Protection Regulations* (the “Regulations”).

## Background

[2] The Applicant was included as a “dependent child” in the application for permanent residence of her mother Quiping Zhang, a protected person in Canada. On August 4, 2008, the Second Secretary, Immigration, of the Embassy of Canada in Beijing sent out a notice that the Applicant would be removed from this application. Two reasons were given for this removal:

Based on your application, Miao Chan Lian’s studies were suspended for a period of one year, from September 2005 to September 2006. Therefore, I am satisfied that Miao Chan Lian does not meet the definition of “dependent child” as set out in section 2 of the Immigration and Refugee Protection Regulations.

[...]

You were sent a letter, dated April 24, 2008 in which you were explained that our office had concerns that Miao Chan Lian’s had misrepresented her educational history and submitted a fraudulent Certificate of Enrollment from Shanghai Jiaotong University. You were given 30 days to respond to this information. Our office received, on May 12, 2008 an updated Certificate of Enrollment from Shanghai Jiaotong University for Miao Chan Lian, without further explanation. This document does not constitute a satisfactory and credible explanation to our letter sent on April 24, 2008 (sic).

In light of the verifications made with Shanghai Jiatong University and its affiliated school Angli Training School, I am satisfied that Miao Chan Lian submitted fraudulent documentation with regards to her educational history.

[3] Notwithstanding this notice, on August 12, 2008, an officer of the Case Processing Center of the Respondent in Vegreville, Alberta notified the Applicant’s mother that she would have another opportunity to provide additional information if she should choose to do so. By letter from her counsel dated September 29, 2008, the Applicant’s mother explained that her daughter was

attending the Foreign Language School of Shanghai Jiaotong University and not the Angli Training School affiliated to that University. Consequently, verification of attendance at the Foreign Language School was requested on the basis of various documents submitted, including a confirmation of enrolment.

[4] This request was forwarded to the Canadian visa officer in Beijing who concluded as follows on December 16, 2008:

Consultant requests that "Shanghai Jiaotong University - Foreign Language School" be contacted. I noted that, based on AFU notes, the Foreign Language Department of Shanghai Jiaotong University was indeed contacted and the check revealed that OAD was not their student. I also noted that very limited evidence of school attendance (such as transcripts) were (sic) submitted in support of this application. Noted that OAD turned 22 years old on 07AUG2006. Based on documentary evidence on file, am not satisfied that OAD has been full-time student since before the age of 22, and therefore, am satisfied that she does not meet definition of [dependent] child as set out in R2.

[5] The Second Secretary, Immigration, of the Embassy of Canada in Beijing consequently informed Case Processing Center in Vegreville of her decision on January 20, 2009 in the following terms:

After having thoroughly reviewed the application and all documentation submitted in its support, I am not satisfied that MIAO Chen (sic) Lian meets the definition of a dependent child as set out in R2. I am satisfied that she has not been enrolled in and attending school on a full time basis since before the age of 22 (since before 07AUG2006). Therefore, the decision to remove her from the application stands.

[6] A letter confirming this decision and dated January 21, 2009 was subsequently provided to the Applicant's mother, hence the application for judicial review of this decision.

**Position of the parties**

[7] The Applicant raises a procedural fairness issue, claiming that the visa officer in Beijing erred by ignoring the explanatory evidence provided by the Applicant's mother, and by so doing would have breached a duty of fairness towards the Applicant.

[8] The Respondent answers that the decision to exclude the Applicant from her mother's application was based on the fact that by her own admission, the Applicant's studies were suspended for one year, between September 2005 and September 2006, and consequently the Applicant falls outside the definition of a "dependent child" under the Regulations irrespective of whether or not she is now attending school. Consequently the procedural fairness argument is not determinative of the Applicant's status since irrespective of that argument, the Applicant does not meet the terms of the Regulations.

[9] Moreover, the Respondent adds that there has been no breach of procedural fairness since the Applicant was provided with two opportunities to address the concerns of the visa officer concerning her registration in full time studies, and no satisfactory response was provided. Consequently no breach of procedural fairness occurred in this case.

[10] The Applicant replies that though it is true that she suspended her studies for one year from September of 2005 until school resumed in September of 2006, this was because she had suffered a

fracture. She nevertheless maintained her enrolment at the Shanghai Jiaotong University Foreign Language School during that entire period even though she was not actually attending classes that year.

## Regulations

[11] The pertinent provisions of the Regulations relate to the definition of “dependent child” in section 2 which read as follows:

“dependent child”, in respect of a parent, means a child who

« enfant à charge » L’enfant qui :

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

a) d’une part, par rapport à l’un ou l’autre 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 adopté;

(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

(A) n’a pas cessé d’être inscrit à un

post-secondary institution that is accredited by the relevant government authority, and

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,

(iii) is 22 years of age or older and has depended substantially on the financial support of the parent since before the age of 22 and is unable to be financially self-supporting due to a physical or mental condition.

(iii) il est âgé de vingt-deux ans ou plus, 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 et ne peut subvenir à ses besoins du fait de son état physique ou mental.

### **Standard of review**

[12] In accordance with the jurisprudence of this Court, determinations of questions of fact by immigration officers concerning whether enrolment and attendance as a full-time student is genuine and meaningful for the purposes of the definition of “dependant child” are to be reviewed on a standard of reasonableness: *Sharma v. Canada (Minister of Citizenship and Immigration)*, 2002 FCT 906, [2002] F.C.J. No. 1178 (QL) at para. 8; *Kainth v. Canada (Minister of Citizenship and Immigration)*, 2002 FCT 1296, [2002] F.C.J. No. 1781 (QL) at para. 6; *Mazumder v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 444, [2005] F.C.J. No. 552 (QL) at para. 6.

[13] However, as a general rule, issues of natural justice and procedural fairness are to be reviewed on the basis of a correctness standard: *Canada (Citizenship and Immigration) v. Khosa*, [2009] 1 S.C.R. 339 at para. 43; *Sketchley v. Canada (Attorney General)*, 2005 FCA 404, [2005] F.C.J. No.2056 (QL) at para. 53.

## **Analysis**

[14] Concerning the procedural fairness argument, the Applicant or her parents were notified twice in writing about the concerns of the immigration authorities and given opportunities to respond and to provide additional information. No procedural fairness argument can be sustained on that basis.

[15] However, the Applicant goes further and argues that procedural fairness was breached since the immigration officials ignored the additional information and documentation provided. The record shows that this was not the case. The Canadian immigration officials in Beijing considered the additional information and documents, and deemed these insufficient to establish “dependent child” status. The Applicant’s mother had requested, through her counsel, that the Shanghai Jiaotong University Foreign Language School be contacted. The record shows that this school had been previously contacted by the immigration authorities in Beijing, and the school could not confirm that the Applicant was a student there.

[16] The Applicant was 22 years of age as of August 7, 2006.

[17] In order to qualify as a ‘dependent child’ after attaining the age of 22, a person who is not unable to financially self support himself or herself due to a physical or mental condition must establish that he or she has depended substantially on the financial support of the parent since before the age of 22 and, since before the age of 22, has been a student continuously enrolled in and

attending a post-secondary institution, and actively pursuing a course of academic, professional or vocational training on a full-time basis.

[18] The jurisprudence clearly establishes that a visa officer has the authority to determine whether the enrollment and attendance as a full-time student in an educational program of an alleged “dependent child” are genuine, meaningful and *bona fide*: *Sandhu v. Canada (Minister of Citizenship and Immigration)*, 2002 FCA 79, [2002] F.C.J. No. 299 (QL) at para. 24.

[19] Though the Applicant has presented documents which show that she may have been enrolled in a post-secondary institution during the one year period of September 2005 to September 2006 during which she turned 22, the record is clear that she neither attended that post-secondary institution nor actively pursued a course of academic training on a full-time basis.

[20] Nevertheless, the Applicant argues that her circumstances warrant the benefit of the definition of a “dependent child” and thus she should be deemed to have attended the post-secondary institution and actively pursued a course of study during the period of September 2005 to September 2006, on the basis that she was absent for reason of having suffered a fracture. It is useful to note in this regard that there was not much evidence submitted in regard to the nature of the alleged fracture which is said to justify the one year suspension of studies or any explanation as to why a fracture would have resulted in a withdrawal of studies for a one year period. In such circumstances, it was not unreasonable for the visa officer to find that an interruption in studies had occurred for that year.



[21] Moreover, though given an opportunity to provide additional documentation, the record before me shows no transcript of course results and no course schedule or other document confirming actual attendance in a post-secondary institution for the period subsequent to September 2007. As noted by the visa officer “very limited evidence of school attendance (such as transcripts) was submitted in support of this application”. This lack of documentation, coupled with the immigration authorities’ own investigation with the university’s Foreign Language School failing to confirm either enrollment or attendance by the Applicant, leads me to conclude that it was not unreasonable for the visa officer to infer in such circumstances that the Applicant was not actually attending a post-secondary institution.

### **Conclusion**

[22] In the result, the application for judicial review is dismissed.

### **Certification**

[23] The parties did not seek that I certify a question and no such question is justified here. Consequently, no question shall be certified pursuant to paragraph 74(d) of the *Immigration and Refugee Protection Act*.

**JUDGMENT**

**THIS COURT ORDERS AND ADJUDGES that:**

1. This application for judicial review is dismissed; and,
2. No serious question of general importance is certified.

"Robert Mainville"

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Judge

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

**DOCKET:** IMM-1684-09

**STYLE OF CAUSE:** CHAN LIAN MIAO v. MCI

**PLACE OF HEARING:** Toronto, Ontario

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