Federal Court		Cour fédérale

Date: 20110322

Docket: IMM-4451-10

Citation: 2011 FC 349

[REVISED CERTIFIED ENGLISH TRANSLATION]

Ottawa, Ontario, March 22, 2011

PRESENT: The Honourable Mr. Justice Boivin

BETWEEN:

MINISTER OF CITIZENSHIP AND IMMIGRATION

Applicant

and

HAIQING JIANG

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review by the Minister of Citizenship and Immigration of a decision dated July 13, 2010, by the Immigration Appeal Division of the Immigration and Refugee Board (the panel). The panel allowed Haiqing Jiang's appeal and determined that she had met the residency obligation imposed on permanent residents under section 28 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the Act).

[2] The panel found that Ms. Jiang, through her employment with Investissement Québec in China, was "assigned full-time as a term of one's employment to a position outside Canada" within the meaning of subsection 61(3) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 (the Regulations). The panel determined that being hired locally outside Canada, i.e. in China, met the requirements of the Act and the Regulations.

[3] Ms. Jiang represented herself at the hearing before this Court.

Factual background

[4] The respondent, Ms. Jiang, is a Chinese citizen. She became a permanent resident of Canada on June 25, 2003.

[5] In order to meet the residency obligation set out in the Act, Ms. Jiang was required to have accumulated at least 730 days of residency. The five-year period that was reviewed by the immigration officer was from November 14, 2003, to November 13, 2008. Ms. Jiang therefore needed to demonstrate that, during this period, she was physically present in Canada or employed outside Canada on a full-time basis with a provincial public service.

[6] Neither party disputes that Ms. Jiang had been physically present in Canada for 66 days between November 1, 2003, and January 19, 2004. From January 2004 to January 2007, Ms. Jiang worked on several fixed-term contracts for Investissement Québec in China.

[7] From January 4, 2007, to November 13, 2008, namely, a period equivalent to 679 days, Ms. Jiang worked full-time in China on an open-ended contract for Investissement Québec.

[8] On November 27, 2008, a decision was made against Ms. Jiang by an immigration officer in Beijing, China, who found that she had failed to meet the residency obligation under section 28 of the Act. As a consequence, her permanent resident permit was revoked.

[9] Ms. Jiang appealed the decision before the Immigration Appeal Division of the Immigration and Refugee Board, pursuant to subsection 63(3) of the Act.

Impugned decision

[10] The panel allowed Ms. Jiang's appeal and set aside the immigration officer's decision. The panel ruled that Ms. Jiang had accumulated 745 days over the reference period, namely, fifteen days in excess of the required threshold. In the opinion of the panel, Ms. Jiang was assigned on a full-time basis with Investissement Québec in China and met the requirement under subsection 61(3) of the Regulations.

[11] Before the panel, the Minister claimed that only the days when she was physically present in Canada could be counted. During the 2007-2008 year, the Minister argued that Ms. Jiang had not been assigned on a full-time basis as a term of the employment to a position outside Canada, in accordance with subsection 61(3) of the Regulations.

[12] First, the panel determined that Investissement Québec, Ms. Jiang's employer, met the definition of public administration found in subsection 3(4) of the *Public Administration Act*, R.S.Q., chapter A-6.01, thereby finding that Investissement Québec is a provincial public service within the meaning of subparagraph 28(1)(*a*)(iii) of the Act and subsection 61(3) of the Regulations.

[13] The panel then noted that particular attention had been given to the competition for the position of investment attaché at the Beijing Bureau du Québec, a position for which Ms. Jiang was hired following the competition. The panel referred to the *Protocole d'entente entre la Ministre des Relations Internationales et la Société Investissement Québec concernant la présence de représentants d'Investissement Québec au sein des représentations du Québec à l'étranger* [Memorandum of Understanding between the Minister of International Relations (Quebec) and Investissement Québec regarding Investissement Québec representatives' presence within organizations representing Quebec abroad] (the memorandum).

[14] The panel noted that the words, "assigned as a term of employment to a position outside Canada," in subsection 61(3) of the Regulations, must not be interpreted in the same way as the phrase, "assigned abroad," as per the memorandum. The panel also noted that Ms. Jiang's position is a case that turns on its own facts, with no comparable case having been documented to date.

[15] The panel then examined recent decisions by the Immigration Appeal Division of the Immigration and Refugee Board regarding subsection 61(3) of the Regulations to see whether the words "assigned as a term of employment to a position outside Canada" had previously been

interpreted in a particular way. The panel noted that in *Ai v. Canada (Minister of Citizenship and Immigration)*, [2007] IADD No. 9, at para. 10, the panel stated:

> [10] If an individual is to take advantage of the exception provided in the legislation, he must be able to demonstrate with credible documentary evidence that he has been substantively employed in a full-time capacity by a Canadian company. While the appellant alleges he is employed by a Canadian company, there was no credible documentary evidence that the appellant has been paid by the Canadian company, that the Canadian company has issued employment and taxation documents related to the appellant's work for a Canadian company or that the appellant filed tax documents in Canada reflecting employment income from a Canadian business.

[16] The panel then noted that in Ms. Jiang's case, the docket included 2007 and 2008 T4 forms issued by the Department of Foreign Affairs and International Trade Canada. In addition, these included Ms. Jiang's contributions to the Canada Pension Plan and Employment Insurance Canada.

[17] The panel also made a distinction between *Ai*, above, and Ms. Jiang's situation, emphasizing that it was not the purpose of Ms. Jiang's employment at Investissement Québec to enable her to meet the requirements of her residency obligations under the Act.

[18] The panel found that, in the various decisions it had reviewed, there was a lack of credible evidence motivating the refusal to grant the appellants the exception set out in subparagraph 28(2)(*a*)(iii) of the Act and subsection 61(3) of the Regulations. However, in Ms. Jiang's case, the panel found that the testimony of both Ms. Jiang and Mr. Granger, her immediate supervisor, was detailed, consistent and sincere.

[19] The panel was also of the view that their testimony was supported by substantial documentary evidence indicating that Investissement Québec is a provincial public service, that Ms. Jiang was employed full-time under an open-term contract from January 4, 2007, through November 13, 2008, that there was no break in the contract, that she does receive compensation from Investissement Québec and that she contributes to the Canada Pension Plan and Employment Insurance Canada.

[20] As to how to interpret the word "assigned" in subsection 61(3) of the Regulations, the panel submitted that the Regulations did not define the word and the case law did not address the subject. The panel therefore proceeded to interpret the word "assigned" in a way that reflected the spirit and purpose of the Act, and Parliament's intentions (see *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27).

[21] In order to do this, the panel referred to a number of dictionaries as a source of information regarding the ordinary and grammatical meaning of the word "assigned" in an employment context. The panel determined that in this context there could be no other meaning than "appointed, designated or intended for".

[22] Thus, the panel decided that neither section 28 of the Act, nor section 61 of the Regulations make any reference to the fact that the assignment must necessarily be carried out on Canadian soil or that it must be the result of a competition that was open only to nationals of countries other than Canada and who reside in that other country.

[23] Finally, the panel added that attempting to differentiate between individuals hired in Canada and those hired outside Canada, or individuals based on whether they receive a travel and housing allowance in order to reside outside Canada, or individuals based on the recipients of competition postings under which they are hired, results in an absurd outcome, which Parliament cannot have envisaged when drafting section 61 of the Regulations.

Relevant provisions

[24] Section 28 of the Act and section 61 of the Regulations are relevant to the case at bar. Section 28 of the *Immigration and Refugee Protection Act* reads as follows:

Rights and Obligations of Permanent and Temporary Residents	*Droits et obligations des résidents permanents et des résidents temporaires*
Residency obligation	Obligation de résidence
28. (1) A permanent resident must comply with a residency obligation with respect to every five-year period.	**28.** (1) L'obligation de résidence est applicable à chaque période quinquennale.
Application	Application
(2) The following provisions govern the residency obligation under subsection (1):	(2) Les dispositions suivantes régissent l'obligation de résidence :
(*a*) a permanent resident complies with the residency obligation with respect to a five-year period if, on each of a total of at least 730 days in that five-year period, they are	*a*) le résident permanent se conforme à l'obligation dès lors que, pour au moins 730 jours pendant une période quinquennale, selon le cas :
(i) physically present in Canada,	(i) il est effectivement présent au Canada,

(ii) outside Canada accompanying a Canadian citizen who is their spouse or common-law partner or, in the case of a child, their parent,

(ii) il accompagne, hors du Canada, un citoyen canadien qui est son époux ou conjoint de fait ou, dans le cas d'un enfant, l'un de ses parents,

(iii) outside Canada employed on a fulltime basis by a Canadian business or in the federal public administration or the public service of a province,

(iii) il travaille, hors du Canada, à temps plein pour une entreprise canadienne ou provinciale,

(iv) outside Canada accompanying a permanent resident who is their spouse or common-law partner or, in the case of a child, their parent and who is employed on a full-time basis by a Canadian business or in the federal public administration or the public service of a province, or

(iv) il accompagne, hors du Canada, un résident permanent qui est son époux ou conjoint de fait ou, dans le cas d'un enfant, l'un de ses parents, et qui travaille à temps plein pour une entreprise canadienne ou pour l'administration publique fédérale ou provinciale,

(v) referred to in regulations providing for other means of compliance;

(v) il se conforme au mode d'exécution prévu par règlement;

(*b*) it is sufficient for a permanent resident to demonstrate at examination

b) il suffit au résident permanent de prouver, lors du contrôle, qu'il se conformera à l'obligation pour la période quinquennale suivant l'acquisition de son statut, s'il est résident permanent depuis moins de cinq ans, et, dans le cas contraire, qu'il s'y est conformé pour la période quinquennale précédant le contrôle;

(i) if they have been a permanent resident for less than five years, that they will be able to meet the residency obligation in respect of the five-year period immediately after they became a permanent resident;

(ii) if they have been a permanent resident for five years or more, that they have

met the residency obligation in respect of the five-year period immediately before the examination; and

(*c*) a determination by an officer that humanitarian and compassionate considerations relating to a permanent resident, taking into account the best interests of a child directly affected by the determination, justify the retention of permanent resident status overcomes any breach of the residency obligation prior to the determination.

c) le constat par l'agent que des circonstances d'ordre humanitaire relatives au résident permanent — compte tenu de l'intérêt supérieur de l'enfant directement touché — justifient le maintien du statut rend inopposable l'inobservation de l'obligation précédant le contrôle.

[25] Section 61 of the *Immigration and Refugee Protection Regulations* reads as follows:

DIVISION 2

Residency obligations

Canadian business

61. (1) Subject to subsection (2), for the purposes of subparagraphs 28(2)(*a*)(iii) and (iv) of the Act and of this section, a Canadian business is

(*a*) a corporation that is incorporated under the laws of Canada or of a province and that has an ongoing operation in Canada;

(*b*) an enterprise, other than a corporation described in paragraph (*a*), that has an ongoing operation in Canada and

SECTION 2

Obligation de résidence

Entreprise canadienne

61. (1) Sous réserve du paragraphe (2), pour l'application des sous-alinéas 28(2)*a*)(iii) et (iv) de la Loi et du présent article, constitue une entreprise canadienne :

a) toute société constituée sous le régime du droit fédéral ou provincial et exploitée de façon continue au Canada;

b) toute entreprise non visée à l'alinéa *a*) qui est exploitée de façon continue au Canada et qui satisfait aux exigences suivantes :

(i) that is capable of generating revenue and is carried on in anticipation of profit, and

(ii) in which a majority of voting or ownership interests is held by Canadian citizens, permanent residents, or Canadian businesses as defined in this subsection; or

(i) elle est exploitée dans un but lucratif et elle est susceptible de produire des recettes,

(ii) la majorité de ses actions avec droit de vote ou titres de participation sont détenus par des citoyens canadiens, des résidents permanents ou des entreprises canadiennes au sens du présent paragraphe;

(*c*) an organization or enterprise created under the laws of Canada or a province.

c) toute organisation ou entreprise créée sous le régime du droit fédéral ou provincial.

Exclusion

(2) For greater certainty, a Canadian business does not include a business that serves primarily to allow a permanent resident to comply with their residency obligation while residing outside Canada.

Exclusion

(2) Il est entendu que l'entreprise dont le but principal est de permettre à un résident permanent de se conformer à l'obligation de résidence tout en résidant à l'extérieur du Canada ne constitue pas une entreprise canadienne.

Employment outside Canada

(3) For the purposes of subparagraphs 28(2)(*a*)(iii) and (iv) of the Act, the expression "employed on a full-time basis by a Canadian business or in the public service of Canada or of a province" means, in relation to a permanent resident, that the permanent resident is an employee of, or under contract to provide services to, a Canadian business or the public service of Canada or of a province, and is assigned on a full-time basis as a term of the

Travail hors du Canada

(3) Pour l'application des sous-alinéas 28(2)*a*)(iii) et (iv) de la Loi respectivement, les expressions « travaille, hors du Canada, à temps plein pour une entreprise canadienne ou pour l'administration publique fédérale ou provinciale » et « travaille à temps plein pour une entreprise canadienne ou pour l'administration publique fédérale ou provinciale », à l'égard d'un résident permanent, signifient qu'il est l'employé ou le fournisseur de

employment or contract to	services à contrat d'une entreprise canadienne ou de l'administration publique, fédérale ou provinciale, et est affecté à temps plein, au titre de son emploi ou du contrat de fourniture :
(*a*) a position outside Canada;	*a*) soit à un poste à l'extérieur du Canada;
(*b*) an affiliated enterprise outside Canada; or	*b*) soit à une entreprise affiliée se trouvant à l'extérieur du Canada;
(*c*) a client of the Canadian business or the public service outside Canada.	*c*) soit à un client de l'entreprise canadienne ou de l'administration publique se trouvant à l'extérieur du Canada.
…	[…]

Issue

[26] In this application for judicial review, the issue to be determined is the following:

Was the panel's interpretation of subparagraph 28(2)(a)(iii) of the Act and of subsection 61(3) of the Regulations reasonable?

Standard of review

[27] The Minister submits that the applicable standard of review in the case under review is correctness, given that he claims the panel erred in its interpretation of subparagraph 28(2)(*a*)(iii) of the Act and section 61(3) of the Regulations.

[28] In *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190, at para. 54, the Supreme Court of Canada held that "… Deference will usually result where a tribunal is interpreting its own

statute or statutes closely connected to its function, with which it will have particular familiarity: *Canadian Broadcasting Corp. v. Canada (Labour Relations Board)*, [1995] 1 S.C.R. 157, at para. 48; *Toronto (City) Board of Education v. O.S.S.T.F., District 15*, [1997] 1 S.C.R. 487, at para. 39. …".

[29] In this case, the Immigration Appeal Division of the Immigration and Refugee Board is a specialized tribunal whose enabling statute is the *Immigration and Refugee Protection Act*. The issue of interpretation raised in this matter relates to sections of the Act and the Regulations which are not outside its area of expertise. These sections are also closely connected to its function and the issue in this matter raises inextricably intertwined legal and factual questions. The panel has a particular knowledge and it is regularly called upon to determine whether assignments abroad allow an individual to accumulate days of residence in Canada. In a recent decision, the Supreme Court of Canada reiterated that courts must show considerable deference when reviewing decisions by administrative tribunals that pertain to their enabling statutes (see *Smith v. Alliance Pipeline Ltd.*, 2011 SCC 7, [2011] SCJ No 7).

[30] Similarly and by analogy, the interpretation of the accumulation of days in a citizenship context where Citizenship judges are called upon to consider the accumulation of days in accordance with paragraph 5(1)(*c*) of the *Citizenship Act*, c. C-29, the Court has established that the applicable standard of review is reasonableness.

[31] Accordingly, the applicable standard of review in this application for judicial review is reasonableness.

Analysis

[32] The purpose of subsection 28(2) is to allow the permanent resident to accumulate days of residence abroad when, as in this case, the provincial public service assigns them to a full-time position outside Canada. Subsection 28(2) sets out various scenarios whereby a permanent resident may continue to meet the residency obligation even when they are not in Canada.

[33] The Minister submits that there is a distinction between an overseas assignment and being employed, on a permanent basis, in a position outside Canada. Thus, the Minister claims that, in this case, the evidence shows that the competition held by Investissement Québec in 2006, i.e. the competition that led to Ms. Jiang being hired as an investment attaché at the Bureau du Québec in Beijing, was restricted to Chinese nationals living in Beijing and to locally recruited Chinese employees working at the Canadian Embassy at the time. Consequently, the Minister adds that individuals living in Canada at the time the competition was held, including permanent residents, could not apply for this employment and could not have been assigned to this employment within the meaning of subsection 61(3) of the Regulations.

[34] The Minister also argues that the memorandum creates a distinction between advisors assigned abroad by Investissement Québec and employees recruited locally. In the Minister's view, Ms. Jiang was a locally recruited employee. The Minister also submits that regular advisors return to the Société's regular staff in Quebec at the end of their posting abroad while locally recruited employees are employees recruited abroad; they are not posted abroad by Investissement Québec and are not eligible to return to Quebec to fill another position.

[35] According to the Minister, both the *Juridictionnaire* and the case law of this Court in citizenship matters consider that an "assignment" to a position outside Canada denotes work in an area or location for a temporary period. At the hearing, the Minister insisted that the interpretation of the word "assigned" should have included a notion of mobility and a connecting factor.

[36] Finally, the Minister submits that Ms. Jiang's situation cannot be likened to that of a permanent resident being assigned to a position outside Canada and that if the panel's interpretation were to be upheld, subsection 61(3) of the Regulations, which exists for the express purpose of clarifying the application of subparagraph 28(2)(*a*)(iii) of the Act, would serve no purpose and would be rendered meaningless.

[37] In her defence, Ms. Jiang submitted that subparagraph 28(2)(*a*)(iii) of the Act provides for a certain amount of flexibility to recognize the contributions of permanent residents working outside Canada and thus allows them to retain their status as permanent residents. Moreover, the ENF 23 Enforcement manual from November 25, 2005, at page 8, point No. 20, states that an official, when applying section 61, must take into account the fact that an individual may be employed by an eligible organization by way of a contract or an assignment abroad.

[38] Ms. Jiang submits that Investissement Québec hired her because she was the best candidate. In her view, it would be unreasonable for her to be penalized for her knowledge of the country and local language. Ms. Jiang argues that the Minister's position is extremely narrow and limited, as it fails to take into account all of the circumstances.

[39] Ms. Jiang further submits that she is contributing to the economic development of Canada and Quebec and that, in the course of her employment, she is attracting major investment from China. She submits that she never sought to work for Investissement Québec to retain her status while remaining outside Canada. She claims that she acted in good faith, since her intention had always been to return to Canada. In fact, Ms. Jiang expressed her wish to work for Investissement Québec in Montréal to become manager of the China desk. However, she stated that she would not get this opportunity for promotion if she lost her permanent resident status.

[40] This matter arises in the context of a judicial review and not an appeal. The role of the Court is to determine whether the panel's decision is reasonable. The Court notes that in matters that are reviewable on a standard of reasonableness, the Court cannot substitute its own appreciation of the appropriate solution for that of the panel, but must instead determine whether it falls within the "range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir*, above, at para. 47). That said, and in spite of the deference owed to the panel, the Court is of the view that the panel's decision is unreasonable for the following reasons.

[41] Section 28 of the Act sets out the residency obligations applicable to each five-year period. Subparagraph 28(2)(*a*)(iii) allows a permanent resident to work outside Canada on a full-time basis for a Canadian business or for the federal public administration or the public service of a province and to be assigned to a position outside Canada without losing their permanent resident status.

[42] Subsection 61(1) of the Regulations sets out what a Canadian business is. Subsection 61(2) excludes any business that serves primarily to allow a permanent resident to comply with their

residency obligation while residing outside Canada. More importantly for the case in issue, subsection 61(3) specifically refers to subparagraph 28(2)(*a*)(iii) and offers a more precise definition of what working outside Canada means in relation to a permanent resident. On reading subsection 61(3) of the Regulations, which describes the concept of working outside Canada, the Court notes that the permanent resident must be employed but that Parliament added the concept of an assignment, which is absent from subparagraph 28(2)(*a*)(iii) of the Act.

[43] In keeping with the expression "Parliament does not speak in vain", it must be assumed that Parliament does not legislate in vain either. The Court notes that one of the purposes of the Act is to promote the integration of permanent residents. In return, this integration involves obligations on the part of permanent residents (s. 2 of the Act), specifically the obligation to comply with the residency obligation of being present in Canada for at least 730 days during a five-year period (ss. 28(2) of the Act). A permanent resident must also comply with any conditions imposed under the Regulations (ss. 27(2) of the Act).

[44] In *Upper Lakes Group Inc. v. Canada (National Transportation Agency) (CA)*, [1995] 3 FC 395, [1995] F.C.J. No. 672, the Federal Court of Appeal stated that "… [t]he language used in the statute being construed must be given its ordinary meaning having regard to context …". It has been well-established since *Rizzo & Rizzo Shoes Ltd (Re)*, 1998 1 SCR 27 that the method of interpretation favoured by the Supreme Court of Canada is the following: "namely, the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament."

[45] In addressing the question at the heart of the matter, the panel determined that the word "assigned", within the meaning of subsection 61(3) of the Regulations, could only be interpreted in the ordinary and grammatical meaning of "appointed, designated or intended for". In fact, in making its determination, the panel looked up the definition of the word "assigned" in several dictionaries in order to find its ordinary and grammatical meaning. Thus, the panel also consulted the Grand dictionnaire terminologique du Québec, the *Larousse*, the *Oxford Dictionaries on Line* and, more particularly, the *Juridictionnaire* of the Government of Canada's Translation Bureau.

[46] However, the definitions from the *Larousse en ligne* for "assignment" imply a movement from one position to another. It is also defined as [TRANSLATION] "Destination, application of something to a specific purpose". The panel focused on the *Juridictionnaire* definition of the word "assignment" as it relates to labour law:

> "In the area of labour law, and specifically in relation to employment contracts and human resource management, an ***assignment*** denotes *employees* who are appointed, designated, allocated to or intended for a *position*, *job*, *service* or *role*. […]
>
> The ***assignment*** places the employee in a location, *institution*, station or *area* and covers a particular *period*."
>
> [Emphasis added.]

[47] This definition directly contradicts the panel's determination as to the meaning of the word "assigned" in subsection 61(3) of the Regulations. In short, the panel did not attribute a specific meaning to the word "assigned" in subsection 61(3) and did not explain the reasons why it rejected any particular meaning despite the fact that the *Juridictionnaire* definition contradicted the meaning the panel had inferred from the word "assigned". The panel had an obligation to analyze and explain

the reasons why it disregarded evidence that directly contradicted its finding. By failing to do so the panel committed an error.

[48] Moreover, the memorandum establishes a distinction between advisors (section 3) and locally recruited professional employees (attachés) (section 4). There is a clear distinction between these two categories of employees. While section 3 of the memorandum uses the word "assigned" for advisors, section 4 of the memorandum, which deals with locally recruited professional employees, does not refer to this term. The evidence in the record clearly shows that the competition that Ms. Jiang entered was exclusively for local employees and not for advisors (Notice of Competition Selection Process No.: 2006-LES-DSB-QUE-023, Open to: Chinese Nationals residing in Beijing, and Locally Engaged Chinese Staff (LES-DSB) working at the Embassy – (Certified Tribunal Record p. 99)). Ms. Jiang was therefore hired as a local employee – where the concept of assignment is absent from the definition – and not as an advisor. Madame Jiang also acknowledged that she did not consider herself as having been "assigned abroad" (Certified Tribunal Record at p. 324-25). The panel also committed an error by failing to analyze this aspect of the record that contradicted its findings.

[49] Furthermore, the record contains no evidence to support the theory that there was a connecting factor between Ms. Jiang and Investissement Québec, despite the fact that Ms. Jiang had been hired locally. More precisely, Ms. Jiang's immediate superior, Mr. Louis P. Granger, testified that an assignment abroad corresponds to [TRANSLATION] "an employee of Investissement Québec assigned to a position for a particular period". This does not correspond to Ms. Jiang's situation or to the situation of individuals who apply for positions open to local employees (Certified Tribunal

Record at pp. 351-52). On this point, the record contains no documentary evidence pointing to a firm commitment on the part of the employer to reintegrate Ms. Jiang, within a specified timeframe, to a position at Investissement Québec in Montréal following a temporary stay in China (Certified Tribunal Record at p. 356). On the contrary, Mr. Granger indicated that in order to do so, he would have had to open another competition (Certified Tribunal Record at p. 361).

[50] In this instance and in light of the evidence, the Court is of the opinion that it was unreasonable for the panel to apply the modern dictionary meaning to the concept of an assignment added to subsection 61(3) of the Regulations without supporting this finding by means of an analysis of the evidence in the record.

[51] In a similar case (*Kroupa v. Canada (Minister of Citizenship and Immigration)*, [2003] IADD no. 536), the Immigration and Refugee Board's Immigration Appeal Division determined that there was no evidence that the appellant, who had worked at the Cascade Canada company and who had lost his permanent resident status because he had gone to work for the Cascade Corporation in the United States, had been assigned on a full-time basis, as a term of the contract, to Cascade Corporation.

[52] In this case, it is difficult to argue that Ms. Jiang met the "assignment" criterion set out in the Regulations. The word assignment in the context of permanent resident status interpreted in light of the Act and Regulations necessarily implies a connecting factor to the employer located in Canada. The word "assigned" in subsection 61(3) of the Regulations means that an individual who is assigned to a position outside Canada on a temporary basis and who maintains a connection to a

Canadian business or to the public service of Canada or of a province, may therefore return to Canada. The memorandum's definitions of advisors and locally recruited professional employees (attachés) are convincing in this regard. The ENF 23 also refers to "assignment" and to "duration of the assignment" (Respondent's record, respondent's memorandum at pp. 9-10).

[53] The clarification added by Parliament to subsection 61(3) of the Regulations creates an equilibrium between the obligation imposed on the permanent resident to accumulate the required number of days under the Act while recognizing that there may be opportunities for permanent residents to work abroad.

[54] Consequently, the Court is of the opinion that, in light of the evidence in the record, the panel's finding that permanent residents holding full-time positions outside Canada with an eligible Canadian company can accumulate days that would enable them to comply with the residency obligation set out in section 28 of the Act, is unreasonable.

[55] The Court is sympathetic to Ms. Jiang's situation. In fact, Ms. Jiang is a highly qualified person. Her contribution is without a doubt an asset to Canadian society in general and to Quebec society in particular. It is not within the purview of this Court to grant special relief under the current Act in order to proceed with an assessment of the genuine connections between Ms. Jiang and Canada and the fact that she enriches and strengthens the social and cultural fabric of Canadian society in addition to being a benefit to the Canadian economy, which in itself reflects the purpose of the Act (ss. 3(2)). On this aspect, the Court will only note that the evidence in no way shows that Ms. Jiang sought to circumvent the purpose of the Act.

[56] The Court is therefore of the opinion that Ms. Jiang's particular circumstances – which were pointed out by the panel in its decision – lend themselves to an application for humanitarian and compassionate relief.

[57] However, for the above-mentioned reasons, the Court finds that the panel's decision regarding subparagraph 28(2)(*a*)(iii) of the Act and subsection 61(3) of the Regulations is unreasonable. The application for judicial review will therefore be allowed.

JUDGMENT

THE COURT ADJUDGES that

1- The present application for judicial review is allowed.

2- The matter be referred back to the Immigration Appeal Division of the Immigration and Refugee Board for re-determination before a differently constituted panel.

3- No question is certified.

"Richard Boivin"

Judge

Certified true translation

Sebastian Desbarats, Translator

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-4451-10
STYLE OF CAUSE:	MCI v. HAIQING JIANG
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