Federal Court  Cour fédérale

Date: 20171030

Docket: IMM-1602-17

Citation: 2017 FC 968

Ottawa, Ontario, October 30, 2017

PRESENT: The Honourable Mr. Justice Gleeson

BETWEEN:

YANG LIU

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The applicant, Mr. Yang Liu, is a citizen of the People's Republic of China. He came to Canada in 2013 to study. In July 2015 he was issued a post-graduate work permit and in August 2015 he obtained employment as an assistant restaurant manager. On October 31, 2016, he applied for permanent residence in Canada as a member of the Canadian Experience Class [CEC].

[2] Mr. Liu's application was denied. Discrepancies relating to Mr. Liu's hours of work arose in the course of a telephone interview where Mr. Liu described his work schedule. These discrepancies led the Officer to conclude that Mr. Liu had failed to acquire at least one year of full time work experience or the equivalent in part time experience prior to submitting his application. In denying the application the Officer preferred Mr. Liu's oral evidence relating to his work schedule over other evidence including pay stubs and T4 slips for 2015 and 2016 generated by his employer's chartered accountant.

[3] Mr. Liu submits the decision was unreasonable. I agree. Mr. Liu also submits that elements of the process were procedurally unfair. In light of my conclusion that the decision is unreasonable I need not address the fairness submissions. The application is granted for the reasons that follow.

II. Style of Cause

[4] The originating application named the Minister of Immigration, Refugees and Citizenship Canada as the respondent. Subsequent submissions identify the respondent as the Minister of Citizenship and Immigration, however, the Court file does not reflect an amendment to the style of cause. In oral submissions the parties agreed that the correct respondent in this matter is the Minister of Citizenship and Immigration (*Federal Courts Citizenship, Immigration and Refugee Protection Rules*, SOR/93-22, s 5(2) and *Immigration and Refugee Protection Act*, SC 2001, c 27, s 4(1)). Accordingly, the style of cause is amended. The Minister of Citizenship and Immigration replaces the Minister of Immigration, Refugees and Citizenship as respondent. (Rule 76, *Federal Courts Rules*, SOR/98-106).

III. Standard of Review

[5] An officer's determination of an application under the Canadian Experience Class involves findings of fact and law and is to be reviewed against a standard of reasonableness (*Arachchige v Canada (Citizenship and Immigration)*, 2012 FC 1068 at para 8). Reasonable decisions follow a justifiable, transparent and intelligible decision-making process and fall within a range of possible, acceptable outcomes defensible in respect of the facts and law (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47).

IV. Analysis

[6] Mr. Liu's application for permanent residence under the CEC program included a letter of employment [LOE] stating that he had worked as an assistant restaurant manager since August 31, 2015, that his employment was ongoing and that his annual income was $23,400 based on a 30 hour work week. The respondent's Global Case Management System [GCMS] notes indicate that the authenticity of the applicant's work experience as a restaurant manager was to be investigated as it was unrelated to his prior work experience as a language instructor.

[7] Mr. Liu's employer was contacted during that investigation. His employer confirmed the contents of the LOE, and that Mr. Liu worked 30 hours per week in split shifts (11:00 am to 2:00 pm and 6:00 pm to 9:00 pm) 5 days a week. Mr. Liu was also contacted. In the course of the phone interview he reaffirmed he worked 30 hours per week with one day and possibly two days off per week. He then described his shifts, confirming that there was a lunch shift and a dinner shift but stating he would normally only work both shifts one day per week, Sunday. This

information was inconsistent with the claimed 30 hour work week and resulted in the issuance of a procedural fairness letter [PFL]. The PFL noted the discrepancy between Mr. Liu's phone interview responses and the information otherwise provided by Mr. Liu and his employer.

[8] In his response to the PFL Mr. Liu indicated that there was a miscommunication on his part and that he had failed to explain his situation clearly. He then set out his work schedule indicating a 30 hour work week and he included documents from the employer's accountant that included a T4 payroll record, T4 slips for 2015 and 2016 and paystubs covering the September 2015 to December 2016 period. The payroll documentation indicated a 30 hour work week at $15 per hour with the exception of a two week period in February 2016 where no payment was made.

[9] In considering the response to the PFL, the Officer found that the details of Mr. Liu's work schedule were not consistent with the information provided by his employer or his prior telephone response. The Officer further found that Mr. Liu's annual salary of $23,400 as set out in the LOE was inconsistent with the annual wage reflected in the payroll documentation. More specifically, the GCMS notes state the following:

> PFL response includes letter from company accountant with breakdown of wages as well as paystubs. The PFL response also includes T4s for 2015 and 2016 as well as paystubs for the entire period of employment. I note that PA did not provide any Notice of Assessments which would confirm PAs employment income as reported to CRA. I note that the paystubs provided are not dated. As well, I note that the paystubs lack elements of professionalism and include a spelling error in PAs title. I give the paystubs and letter from accountant less weight than the information provided by PA and his employer during the telephone interviews.

[10] The respondent argues that the Officer was entitled to assign less weight to the accountant's documentation and this is not a basis upon which the Court should conclude the decision was unreasonable. The respondent submits that the jurisprudence supports the Officer's reliance on spelling errors to discount the weight to be assigned the documents and to prefer the spontaneous answers provided by phone over documentation provided in response to the PFL. The respondent further submits that the Officer did not misapprehend the evidence in finding a discrepancy between the annual income as stated in the letter of employment and the income reflected in the payroll documentation.

[11] I take no issue with the general principles reflected in the respondent's position but am of the view that those principles are of minimal application when applied to the facts in this case.

[12] The respondent relies on *Jadallah v Canada (Citizenship and Immigration)* 2016 FC 1240 [*Jadallah*] to argue that errors on the face of a document might well be grounds to conclude that the document is not genuine or deserves to be given little weight. In that case however the Court was considering identity documents and specifically a birth certificate that "contained numerous spelling errors…[and]… was substantially different from that of the Applicant's sister which contained no such errors" (*Jadallah* at para 9). In this case the Officer relies on a misspelling of Mr. Liu's job title as "Assistant Manager" on the pay stubs to support the conclusion that less weight is to be attributed to the payroll documentation. The misspelling of a job title in a computer generated form where one might reasonably conclude the title was entered once is different in both degree and import from the circumstances reflected in *Jadallah*.

[13] Similarly the Officer notes the absence of a date on each of the payroll stubs to support the view that the documentary evidence deserves less weight. But each pay stub identifies the relevant pay period by date and also contains a handwritten note indicating how payment was made (by cash or cheque) and in some cases the date of payment and in others the cheque number.

[14] The respondent relies on *Bhatti v Canada (Citizenship and Immigration)*, 2017 FC 186 [*Bhatti*] in support of the view that the Officer was entitled to give more weight to spontaneous answers provided in a telephone interview than responses provided to a PFL. In *Bhatti* however there was a finding that a fraudulent letter had been submitted and that prior third party statements were changed in response to the PFL. In this case the documents provided in response to the PFL were discounted because of the Officer's concerns about the pay stubs lacking dates, lacking undefined "elements of professionalism" and containing a spelling error. While the Officer's findings may imply a concern with the genuine nature of the payroll documents, no such finding is made. It is also notable that the documents in question include T4 slips which are consistent with the employer's and Mr. Liu's evidence relating to weekly working hours.

[15] I am also satisfied that the Officer misapprehended the evidence in finding that the annual salary as reflected in the LOE was inconsistent with that contained in the payroll documentation. As Mr. Liu's counsel pointed out in both her written and oral submissions, Mr. Liu was not paid for a two week period in February 2016. This two week period fully explains the discrepancy between his annualized rate of pay based on a 30 hour week as set out in the LOE and the actual pay received in 2016.

[16] The Officer's decision in this case is one that attracts a high degree of discretion and is owed significant deference. However, neither discretion nor deference insulates a decision from the elements of transparency and intelligibility. The Officer's conclusion that the payroll documents confirming the evidence of the employer and Mr. Liu deserved less weight than the spontaneous answers provided by Mr. Liu in a telephone interview lacks transparency and intelligibility when one examines the record. I therefore conclude the decision is not reasonable.

[17] The parties have not identified a question of general importance, and none arises.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The application is granted and the matter returned for redetermination by a different decision-maker;

2. The style of cause is amended, removing the Minister of Immigration, Refugees and Citizenship as Respondent, and naming the Minister of Citizenship and Immigration as Respondent; and

3. No question is certified.

"Patrick Gleeson"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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