

Federal Court



Cour fédérale

Date: 20240731

Docket: IMM-1291-23

Citation: 2024 FC 1218

Ottawa, Ontario, July 31, 2024

PRESENT: Madam Justice McDonald

BETWEEN:

CHI HONG CHUNG

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The Applicant is a citizen of Hong Kong who applied for a work permit under the international mobility program. The Visa Officer denied the work permit finding that the Applicant's master's degree was not legitimately obtained and that he was inadmissible to

Canada for a misrepresentation under paragraph 40(1)(a) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

[2] This judicial review is granted as I have found the Officer's conclusion that the Applicant's university degree was not obtained legitimately is unreasonable. The misrepresentation finding is also unreasonable.

I. Background

[3] The Applicant is a 48-year-old who earned a master's degree in business administration (MBA) from the University of Sunderland in Hong Kong in December 2021. In 2020, he completed a diploma in Strategic Management and Leadership at the same university.

[4] On August 1, 2022, he applied for an open work permit under the Hong Kong Special Measures and was interviewed by the Officer on December 7, 2022. On December 9, 2022, the Officer concluded that the Applicant was not eligible for a work permit on the grounds that he misrepresented his MBA credentials. Specifically, the Officer concluded that his MBA degree was earned on false pretensions because he plagiarized coursework to obtain the degree.

[5] The substantive part of the Officer's reasons are contained in the Global Case Management System (GCMS) notes where the Officer makes reference to the Applicant's body language and his lack of ability to speak English. The Officer also refers to an article that appeared in the South China Morning Post about students paying to have coursework completed.

Although the Officer records that the Applicant stated that he did not pay anyone to do his work, he determined that the Applicant had copied work from classmates. The Officer concluded:

Upon review of all the information provided in the application and at interview, I am not satisfied that the degree presented was legitimately obtained by the applicant. The applicant admitted that assignments for their pre-requisite degree and the thesis for their MBA were plagiarised from other papers. The applicant admitted that the data and statistics they used in their thesis were fake and that they did not write their own ideas or material, rather all of the material was copied. The applicant indicated that they do not feel comfortable seeking promotions or higher management positions based on their education as they do not actually know any of the material. Based on the information provided, I am not satisfied that the applicant meets the eligibility criteria for an Open Work Permit under the Hong Kong Special Measures. Eligibility Failed.

II. Issues and standard of review

[6] The Applicant argues that the decision is not reasonable as the Officer overstepped his role when he concluded that the Applicant had not legitimately obtained his university degree. The Applicant also raises procedural fairness arguments; however, as I have concluded that the Officer's decision is unreasonable, it is not necessary to address the procedural fairness arguments.

[7] On a reasonableness review, the Court evaluates if the decision is transparent, intelligible and justified (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov] paras 12-13 and 15). A reasonable decision is one that is based on an internally coherent and a rational chain of analysis and is justified in relation to the facts and law that constrain the decision maker (*Vavilov*, paras 85, 99, 101, 105-106 and 194).

[8] For a decision to be reasonable, a reviewing court “must be able to trace the decision maker’s reasoning without encountering any fatal flaws in its overarching logic, and it must be satisfied that “there is [a] line of analysis within the given reasons that could reasonably lead the tribunal from the evidence before it to the conclusion at which it arrived” ...” (*Vavilov*, para 102). On the other hand, “where reasons are provided but they fail to provide a transparent and intelligible justification [. . .], the decision will be unreasonable” (*Vavilov*, para 136).

III. Analysis

A. *Is the finding that the university degree was not legitimately obtained reasonable?*

[9] The Applicant argues that there is no evidence that his master’s degree was not legitimately obtained, and there is no evidence that the University of Sunderland who conferred his degree has withdrawn the degree.

[10] A review of the GCMS notes reveal that the Officer engaged in detailed questioning of the Applicant around the details of some of the coursework undertaken to obtain his master’s degree. The Applicant’s answers indicate that he “copied” and “rewrote” material, and that research was undertaken by other people. The GCMS notes state:

Throughout the interview the applicant was engaged and leaned forward to listen and respond to questions. However, when questioned about the content of his paper or whether or not he wrote it, the applicant would immediately lean far back in his chair and look to the ceiling, pausing to contemplate a response. Throughout the interview the applicant spoke in simple English, with broken sentences and often incorrect grammar. I noted that the level of English used throughout the applicant’s submitted assignments and thesis differed significantly.

The applicant was made aware of an article that was published in the South China Morning Post which indicates that clients are paying to have coursework completed in order to obtain an MBA which could be used to obtain an Open Work Permit under the Special measures.

[11] In response to the Officer's suggestion that the degree was obtained fraudulently, the GCMS notes reflect the following response from the Applicant:

"Mhmm... yes, well this program, they say you have to write the assignment only, it doesn't say you actually have to collect the data. The assignments for the pre-requisite were done by me. I have heard that other people have hired gunman, but I just need to copy from other people and rewrite again. I did not hire a gunman. You can say that you don't agree. Just like you say the interviews are fake, its not a real case. But the program is not to do the interviews, or give evidence of how you get the stats, you only need to provide a result. So I researched from many people and rewrote myself. If I hired someone, it wouldn't have taken me so long.

I used my friends copy, and i rewrote it many times. That's what you think, what i can say is i can copy. I can copy from someone else. That's why when you ask me if I want to apply to other management positions after I complete the MBA, no i don't want to because I don't know the material, I only copied it..."

[12] Based upon the Applicant's answers to questions posed by the Officer, the Officer concluded that the Applicant plagiarized his coursework to earn an MBA degree. The Officer was concerned with the Applicant's answers to questions on how he completed assignments and the sources used for his thesis. In response to some questions, the Applicant does refer to "copying" and "rewriting"; however, without an appreciation of the broader context of the program including the course requirements and expectations, the Officer may have taken the Applicant's answers out of context. Furthermore, as noted by the Officer, the Applicant's

understanding of the Officer's questions may have also been a factor as the Officer notes "the Applicant spoke in simple English, with broken sentences and often incorrect grammar."

[13] The Officer uses the Applicant's answers to questions as a basis to attack the integrity of his MBA degree without making any finding regarding the reliability of the degree itself or the university. For example, the Officer makes no comments or findings on the following:

- The status of the University of Sunderland as a legitimate university in Hong Kong.
- The fact that the University of Sunderland offers programs that confer MBA degrees.
- That the Applicant was enrolled in an MBA program at the University of Sunderland.
- That the Applicant was granted an MBA degree from the University of Sunderland.

[14] Without some consideration of the above factors and without a full understanding of the MBA program in which the Applicant was enrolled, it was not reasonable or rational for the Officer to jump to the conclusion that based upon the Applicant's answers to questions about "some" of his coursework, the MBA degree awarded to the Applicant was done so on false pretenses. Frankly, it would not be within the expertise of an Officer to question the legitimacy of the coursework undertaken to obtain an MBA degree. In doing so, the Officer is essentially taking a foray into the role of a university administrator (*Adom v Canada (Citizenship and Immigration)*, 2019 FC 26, para 17).

[15] I accept that the Officer had credibility concerns with the answers provided by the Applicant. Credibility concerns aside, however, there is no evidence to support the serious allegation made by the Officer, namely, that the Applicant's MBA degree was obtained under false pretenses. The Officer does not refer to any evidence that the Applicant's university is known to issue "illegitimate" degrees or that his MBA degree itself is not authentic. The Certified Tribunal Record does not indicate that the Officer made any inquiries to the University of Sunderland on the allegations made against the Applicant.

[16] Based upon his finding that the Applicant's MBA was not legitimately obtained, the Officer then concludes that the Applicant has committed a misrepresentation making him inadmissible to Canada for 5 years. This finding has serious consequences to the Applicant.

[17] The Respondent argues that the misrepresentation finding is reasonable and points to several cases in support. However these cases are factually distinct from this case. *Sikder v Canada (Citizenship and Immigration)* 2024 FC 362 concerned the failure to disclose a medical condition, *Singh v Canada (Public Safety and Emergency Preparedness)*, 2023 FC 12 was the failure to disclose an arrest warrant, and, in *Wang v Canada (Citizenship and Immigration)*, 2023 FC 62 there was a failure to disclose a previously revoked United States visa. In this case, it was not a failure to disclose information by the Applicant that led the Officer to make a misrepresentation finding. Rather, it was the Officer's own conclusion, that the Applicant obtained his MBA under false pretenses, that led to the misrepresentation finding. As I have concluded that the Officer's finding on the "legitimacy" of the MBA does not withstand scrutiny and is unreasonable; thus, the misrepresentation finding is likewise unreasonable.

[18] In sum, the Officer's decision does exhibit a rational line of analysis that can be justified based on the evidence (*Vavilov* para 101). As *Vavilov* states, "a decision will be unreasonable if the reasons for it, read holistically, fail to reveal a rational chain of analysis or if they reveal that the decision was based on an irrational chain of analysis" (para 103). Further, a decision will be unreasonable "where the conclusion reached cannot follow from the analysis undertaken" or "if the reasons read in conjunction with the record do not make it possible to understand the decision maker's reasoning on a critical point" (*ibid.*). All these characterizations apply to the Officer's decision in this case.

IV. Conclusion

[19] The Officer's refusal of the Applicant's study permit application and finding the Applicant inadmissible due to a misrepresentation are unreasonable. The decision will be set aside and remitted for reconsideration by a different decision- maker.

[20] The parties did not propose any question for certification, and none arise.

JUDGMENT IN IMM-1291-23

THIS COURT'S JUDGMENT is that:

1. This judicial review is granted and the matter is returned to a different visa officer for redetermination.
2. There is no question for certification.

"Ann Marie McDonald"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

: IMM-1291-23

STYLE OF CAUSE: CHUNG V THE MINISTER OF CITIZENSHIP AND IMMIGRATION

HEARING HELD BY VIDEOCONFERENCE AT: OTTAWA, ONTARIO

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JUDGMENT AND REASONS: MCDONALD J.

DATED: JULY 31, 2024

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