

Federal Court



Cour fédérale

Date: 20241030

Docket: IMM-12792-23

Citation: 2024 FC 1727

Ottawa, Ontario, October 30, 2024

PRESENT: The Honourable Mr. Justice Southcott

BETWEEN:

MAN TIT ANDY KWONG

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] This is an application for judicial review of a decision by an overseas visa officer [the Visa Officer] dated August 9, 2023 [the Decision] refusing the Applicant's application for an open work permit in Canada [the Application], because: (a) the Visa Officer was not satisfied the Applicant legitimately obtained the degree submitted in support of the Application; and (b) the

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

[2] As explained in further detail below, this application is dismissed, because the Decision is reasonable and was reached in a procedurally fair manner.

II. Background

[3] The Applicant is a citizen of China (Hong Kong Special Administrative Region). On November 13, 2022, he submitted the Application for a work permit under the *Public Policy: Open work permits for recent Hong Kong graduates*. Persons applying under that policy are required to have obtained certain education credentials within a specified time period prior to their application.

[4] In the Application, the Applicant stated he received a Master's degree in Business Administration from Anglia Ruskin University [ARU], being the equivalent of a Canadian Master's degree, in September 2022.

[5] The Applicant obtained his ARU degree through a "top-up" program offered by ARU at the Douglas Business School [DBS] in Hong Kong. The program is structured such that 60 of the 180 credits constituting the degree can be earned through ARU coursework and the remaining 120 credits earned through a Postgraduate Diploma in Business Administration obtained from the Institute of Business Administration, Hong Kong [IBA].

[6] By letter dated July 25, 2023 [the Interview Request], Immigration, Refugees and Citizenship Canada [IRCC] required the Applicant, as part of processing the Application, to attend an interview on August 8, 2023 in Hong Kong [the Interview]. IRCC further requested that the Applicant submit supporting documentation prior to the Interview, including coursework completed, transcripts, and diplomas, as well as proof of exemptions for studies and coursework for all qualifications, from both ARU and IBA, and to bring physical copies to the Interview.

[7] The Applicant submitted, among other documents, his diploma and transcript from the City University of Hong Kong (Bachelor's degree in Manufacturing Engineering), diploma and transcript from the Chinese University of Hong Kong (Master of Science in Systems Engineering & Engineering Management), offer of admission to the ARU program dated January 11, 2022, emails from ARU, a tuition invoice from DBS and corresponding receipt, and the Applicant's project report for the ARU portion of the program [the Project Report].

[8] The Interview took place on August 8, 2023, following which the Visa Officer and an officer designated the authority to make misrepresentation findings resulting in inadmissibility under IRPA [the Designated Officer] made the findings that resulted in the Decision under review in this application.

III. Decision under Review

[9] In the Decision, conveyed to the Applicant by letter dated August 9, 2023, the Visa Officer refused the Applicant because: (a) the Visa Officer was not satisfied that the Applicant legitimately obtained the ARU degree; and (b) the Applicant was found by the Designated

Officer to be inadmissible under paragraph 40(1)(a) of IRPA for misrepresentation. As a result, the Applicant remains inadmissible to Canada under paragraph 40(2)(a) of IRPA for five years from the date of the Decision.

[10] The reasons of the Visa Officer and the Designated Officer, as captured in the corresponding Global Case Management Systems [GCMS] notes, are both relevant to the Court's review of the Decision.

[11] The GCMS notes of the Visa Officer, prior to referral to the Designated Officer, read as follows:

Reviewed. Applicant is seeking an Open Work Permit under Hong Kong Special Measures. PA submitted MBA from Anglia Ruskin University, with the ARU MBA as the qualification to meet program requirements. Applicant was convoked to interview. Per convocation letter, PA was asked to submit all coursework completed, transcripts and diplomas for the Institute of Business Administration postgraduate diploma (IBA), as well as proof of exemptions for studies and coursework for all qualifications from IBA and ARU, if any. PA was asked to submit the documents prior to interview as well as bring a copy to interview. At interview, PA was asked several times at interview but was unable to provide IBA diploma, transcript, or proof of course exemption, despite stating that he very clearly understood the convocation letter. PA was only able to refer to a document issued by ARU stating he has credits from prior learning/experiential learning from his IBA qualification. I find the lack of any documentation to support that PA had actually been granted any course exemptions/credit transfers in order to obtain the IBA qualification, despite our clear request, to be concerning. Given the lack of exemption documents, it is unclear how PA obtained his IBA qualification with no coursework. I note that the IBA qualification is the source of 120 of the 180 credits for PA's ARU MBA, the ARU MBA being the degree which qualifies him for the HKSMOWP. Furthermore, the lack of any diploma or transcript, despite being requested, further adds to concerns regarding PA's IBA qualification and by extension, his ARU MBA, and whether these qualifications were

legitimately obtained. PA was also asked how his IBA qualification was issued on 2022/01/07, prior to his offer of admission dated 2022/01/11 and him paying the school on 2022/01/11. I find PA's explanation does not reasonable address my question. PA was asked about a number of inconsistencies between the body of his ARU paper and the references section. PA was unable to provide responses to address my concerns. PA was also shown an open source article from the South China Morning Post regarding applicants who paid others to complete the coursework for them so that the applicant could fulfill the education eligibility requirement for the HKSMOWP. PA was informed of my concern that the degree he presented was not legitimately obtained due to the above concerns. PA's response were unable to allay my concerns. Having considered the concerns raised, it appears that PA had misrepresented material facts relating to a relevant matter that induces or could induce an error in the administration of the Act. Eligibility failed. Referred to delegated authority for review of misrepresentation per A40.

[12] The Visa Officer's GCMS notes also include a record of the Interview.

[13] The GCMS notes of the Designated Officer read as follows:

Application reviewed. Applicant presented an MBA obtained from ARU in the UK, and a WES ECA stating that this is equivalent to a master's degree in Canada. Applicant was interviewed given procedural fairness to the officer's concerns regarding the legitimacy of the educational credential presented. During the interview, the applicant was did not provide the requested documentation – transcripts, certificates, coursework – from the IBA pre-requisite program to demonstrate that he had legitimately completed the required pre-requisite coursework for the ARU MBA. He was unable to demonstrate how he obtained the qualification, which provides 120 out of the 180 required credits for ARU's MBA program. He was also unable to reasonably explain how he was able to receive the IBA qualification 4 days before paying the fees for the program. He was also unable to explain inconsistencies noted in his ARU MBA paper and the references section. I note the applicant is responsible for ensuring all of the information on their application is accurate and correct. Based on the information on file, I am satisfied, on balance, that the applicant submitted education credentials for which they were not legitimately obtained/earned. I am an officer designated under

the Act to make a determination under A40. Based on a balance of probabilities, I am satisfied that the applicant presented education credentials which were not legitimately earned and obtained by the applicant themselves, in order to obtain a work permit to Canada. As such, I am satisfied that the applicant has misrepresented a material fact that, if accepted, would have led to an error in the administration of IRPA. Therefore, the applicant is found inadmissible under A40 for misrepresentation and remains inadmissible for a period of five years.

IV. Issues

[14] The Applicant raises the following issues for the Court's determination:

- A. Was the Decision reasonable?

- B. Was the Applicant denied procedural fairness?

[15] As is implicit in the above articulation of the first issue, it is subject to the standard of reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16-17). The second issue is subject to the correctness standard of review (*Canadian Association of Refugee Lawyers v Canada (Immigration, Refugees and Citizenship)*, 2020 FCA 196 at para 35, leave to appeal to SCC refused, 39522 (15 August 2021)). Put otherwise, the Court is required to assess whether the procedure followed was fair having regard to all of the circumstances (*Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54).

V. Analysis

A. *Was the Decision reasonable?*

[16] In challenging the reasonableness of the conclusions of the Visa Officer and the Designated Officer [together, the Officers], that the Applicant failed to demonstrate how he obtained the 120 credits afforded by IBA, the Applicant submits that he received a 120 credit exemption from IBA based on the combination of his Master's degree from the Chinese University of Hong Kong and his working experience. He argues that the Officers have not intelligibly explained how he could have been expected to know how IBA conducted the analysis that resulted in him receiving 120 credits.

[17] The Applicant further argues that, contrary to the Officers' conclusions, the Applicant did furnish the transcripts that support the 120 credits received from IBA. He references the transcripts from the Chinese University of Hong Kong and the City University of Hong Kong.

[18] I find these arguments mutually inconsistent, as the Applicant submits, on the one hand, that he could not have been expected to know the basis for his receipt of the 120 credits from IBA and, on the other hand, that those credits were based on his credentials or coursework from the Chinese University of Hong Kong and the City University of Hong Kong. More significantly, I interpret the Officers' reasoning as based on the Applicant's failure to provide any documentation from IBA that would identify the basis for the 120 credits. That reasoning is intelligible and withstands reasonableness review.

[19] The Applicant also challenges the reasonableness of the Officers' conclusion that the Applicant was unable to reasonably explain how he was able to receive the IBA qualification before paying the fees for the program. The Applicant argues that this reasoning is backwards, and that it makes sense that fees would be paid after receiving the qualification. I disagree. As I read the GCMS notes, and in particular the record of the Visa Officer's questioning of the Applicant, the concern was the Applicant's inability to explain how he received the credential from IBA before he paid IBA. I find that concern to be intelligible and rational and to withstand reasonableness review.

[20] Finally, the Applicant challenges the reasonableness of the conclusion that he was unable to explain inconsistencies between the Project Report he prepared for the ARU degree and its references section. The Applicant refers to the Visa Officer's concern that an Internet link in the references was not operating and argues that the operability of Internet links may simply change over time.

[21] While I take that point, the concerns raised by the Visa Officer at the Interview related not just to the broken link but also, for instance, to the fact that one of the references was written in the Filipino language. In relation to this concern, the Applicant notes that he told the Visa Officer he cannot remember all the sources in his work but that this is one of many sources relied on for a particular aspect of the paper. I do not find this comment responsive to the Visa Officer's concern. However, before leaving this particular area of argument, I wish to address the parties' submissions on recent Federal Court jurisprudence that could bear thereon.

[22] At the hearing of this application, the Applicant alerted the Court to the recent decision in *Chung v Canada (Citizenship and Immigration)*, 2024 FC 1218 [*Chung*], in which Justice Ann Marie McDonald granted an application for judicial review of a decision denying a work permit, and finding the applicant inadmissible for misrepresentation, on the basis that his Master's degree was not legitimately obtained. In finding that the officer's decision did not exhibit a rational line of analysis, Justice McDonald reasoned as follows (at para 13-15):

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.

[23] The Applicant submits that *Chung* is instructive because, as in that case, the Officers in the matter at hand did not make any findings regarding the reliability of the educational institutions involved in the Application but rather assumed the role of a university administrator in questioning the Applicant's credentials, without possessing the expertise to do so.

[24] In contrast, the Respondent relies on another recent decision in *Lam v Canada (Citizenship and Immigration)*, 2024 FC 1138 [*Lam*], in which Justice Angus G. Grant dismissed an application for judicial review of a decision rejecting an application for an open work permit, and finding the applicant inadmissible to Canada for misrepresentation, based on the conclusion that the applicant had not demonstrated that he had legitimately obtained his claimed educational credential. The Court rejected the applicant's argument, that the visa officer did not have the expertise or the authority to evaluate the legitimacy of his educational credential, finding that, where an educational credential forms an important component of an immigration application, officers are empowered and indeed required to assess all material facts related to that credential, including whether it was legitimately obtained (at paras 14-18).

[25] I do not find the general principles expressed in these two authorities to be necessarily inconsistent. As I read *Chung*, Justice McDonald was concerned that the officer did not have sufficient context and expertise to conclude that the applicant plagiarized his coursework and therefore obtained his degree under false pretenses. This concern is consistent with Justice

Grant's comment in *Lam* that it could be impermissible for an officer to "test" an applicant as to his studies. However, Justice Grant contrasts an unreasonable line of questioning of that nature with the asking of appropriate questions to test the credibility of an applicant's implicit assertion that they have genuinely obtained the necessary educational credentials (*Lam* at para 20).

[26] I agree with Justice Grant that visa officers must have the authority to assess whether an applicant has legitimately obtained a particular educational credential, although it may fall to the Court to assess on the facts of a particular case whether the officer has performed that assessment in a reasonable manner, without straying into analyses that the officer does not have the expertise to perform.

[27] In the case at hand, I am not convinced that the Visa Officer's concern about the Applicant's paper relying upon a foreign language resource necessarily requires a level of academic expertise that places it outside the Visa Officer's purview. However, even if this particular analysis were to be characterized as the sort of assessment that is within the purview of a university administrator, and therefore closer to the problematic area identified by Justice McDonald in *Chung*, I agree with the Respondent's submission that the Officers' principal concern in this matter was with the Applicant's inability to demonstrate the basis on which he obtained the 120 credits from IBA. In my view, that area of concern and the Officers' resulting analyses are entirely within their purview and represent a determinative finding, such that the Decision overall withstands reasonableness review.

[28] Finally, I have considered the Applicant's argument, emphasized in oral reply submissions, that the misrepresentation finding (as opposed to the finding that the Applicant had not established his eligibility for the requested work permit) is not supported by the reasoning in the Decision. The Applicant refers the Court to the principle that evidence of misrepresentation must be compelling (e.g., *Somal v Canada (Citizenship and Immigration)*, 2021 FC 630 at para 10).

[29] While I accept the principle upon which the Applicant relies, I am not convinced that it assists him in challenging the reasonableness of the Decision. In my view, the Decision's reasoning, as canvassed above, supports the conclusion not only that the Applicant had failed to establish his eligibility for the work permit but also that his implicit assertion that he had genuinely obtained the necessary educational credentials (as described at paragraph 20 of *Lam*) constituted a misrepresentation.

[30] In conclusion on this ground of review, I find that the Decision is reasonable.

B. *Was the Applicant denied procedural fairness?*

[31] The Applicant argues that he was denied procedural fairness, because the true purpose of the Interview was to investigate the legitimacy of his educational credentials and he was not advised of this purpose in advance of the Interview.

[32] The Respondent notes that the Interview Request advised the Applicant that he was required to submit electronically in advance of the Interview copies (and bring physical copies to

the Interview) of all course work completed, transcripts and diplomas for both the ARU degree and the IBA postgraduate diploma; proof of exemptions for studies and coursework for all qualifications from IBA and ARU; proof of his registration for all qualifications from IBA and ARU; invoices for enrolment and payment receipts for all programs; and proof of payment for all tuition fees. The Interview Request further informed the Applicant that his failure to provide all requested documents would likely result in the refusal of his application.

[33] The Respondent further observes (based on the Visa Officer's GCMS notes) that the Visa Officer informed the Applicant at the Interview of the Visa Officer's concerns. At the outset of the Interview, the Visa Officer explained that the purpose of the Interview was to assess the Application and to address questions and concerns with respect to the information therein. The Officer also advised the Applicant that misrepresenting or withholding a material fact could result in both the refusal of the Application and the Applicant being inadmissible to Canada for five years. Over the course of the Interview, the Visa Officer identified particular concerns with whether the Applicant had legitimately obtained his educational credentials and afforded the Applicant opportunities to respond.

[34] I appreciate that the Interview Request itself did not expressly advise the Applicant that the Visa Officer had concerns as to the legitimacy of his educational credentials. However, it clearly advised the Applicant of the categories of documentation he was expected to bring to the Interview. Moreover, the Visa Officer clearly advised the Applicant over the course of the Interview as to the particular concerns that the Visa Officer wished to have addressed and afforded the Applicant opportunities to do so. Then, at the conclusion of the Interview, the Visa

Officer again gave the Applicant an opportunity to respond to the concerns that had been identified in the Interview. However, the GCMS notes indicate that the Applicant furnished no response.

[35] As such, I find no basis to conclude that the absence of an express reference in the Interview Request to the Visa Officer's concerns deprived the Applicant of an opportunity to know the case he had to meet or to address that case.

[36] The Applicant also notes that, in the course of the Interview, the Visa Officer showed him a copy of a South China Morning Post newspaper article, published on January 8, 2022, that reported on circumstances in which applicants had paid others to complete coursework for them so that they could obtain a degree and apply for work permits in Canada. The Applicant argues that he was deprived of procedural fairness because he was unaware of that article prior to the Interview.

[37] I find no merit to this argument. As explained above, the Interview afforded the Applicant an opportunity to respond to the Visa Officer's concerns with the Application, including concerns that were derived from the newspaper article.

[38] In conclusion, I find that the Applicant was afforded requisite procedural fairness and therefore reject this ground of judicial review.

VI. Conclusion

[39] As I have found that the Decision is reasonable and was reached in a procedurally fair manner, this application for judicial review will be dismissed. Neither party proposed any question for certification for appeal, and none is stated.

JUDGMENT IN IMM-12792-23

THIS COURT'S JUDGMENT is that:

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

"Richard F. Southcott"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-12792-23

STYLE OF CAUSE: MAN TIT ANDY KWONG v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: VANCOUVER, BRITISH COLUMBIA

DATE OF HEARING: OCTOBER 23, 2024

JUDGMENT AND REASONS: SOUTHCOTT J.

DATED: OCTOBER 30, 2024

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