

Federal Court



Cour fédérale

**Date: 20250214**

**Docket: IMM-12704-23**

**Citation: 2025 FC 288**

**Ottawa, Ontario, February 14, 2025**

**PRESENT: The Honourable Madam Justice Kane**

**BETWEEN:**

**WAI KA YIP  
TSUI YEE LO**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] The Applicants, Wai Ka Yip [Mr. Yip] and Tsui Yee Lo [Ms. Lo], seek judicial review of the decision of an officer [the Officer] at Immigration, Refugees and Citizenship Canada [IRCC] dated September 11, 2023, refusing Mr. Yip’s application for an open work permit pursuant to the International Mobility Program (Hong Kong Special Measures Category). The Officer also found that Mr. Yip was inadmissible to Canada in accordance with paragraph 40(1)(a) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the Act] due to his misrepresentation of

material facts in his application for the work permit. In particular, the Officer found that Mr. Yip had presented an educational credential that was not legitimately earned in order to obtain a work permit in Canada. The finding of misrepresentation prohibits admissibility to Canada for a five-year period.

[2] Ms. Lo's spousal open work permit was also refused as it was dependent on Mr. Yip's application.

[3] For the reasons that follow, I find that the Applicants have failed to establish any reviewable errors in the Officer's decision to refuse the work permit and find misrepresentation, or any breach of procedural fairness. The Officer reasonably concluded that Mr. Yip did not establish that he had legitimately obtained the educational credentials he relied on to meet the eligibility criteria for an open work permit and, as confirmed by a designated immigration officer that Mr. Yip had misrepresented a material fact that, if accepted, would have led to an error in the administration of the Act.

## I. Background

[4] On November 6, 2022, Mr. Yip applied for an open work permit under the "Public Policy: Open Work Permits for recent Hong Kong graduates". To be eligible, an applicant must have graduated with one of the prescribed educational credentials within the previous five years (the period was subsequently increased to 10 years).

[5] Mr. Yip relied on his MBA granted by the University of Chichester (UK) in June 2022. He provided an Educational Credential Assessment from World Education Services [WES] indicating that the MBA was the equivalent to a Canadian Master's degree. Mr. Yip also provided an OTHM Level 7 Diploma in Strategic Management and Leadership from Douglas Business School [Douglas], granted in January 2022, which was a prerequisite to obtain the MBA. The Organization for Tourism and Hospitality Management [OTHM] is an international awarding body that provides a range of vocational qualifications in various sectors and provides the UK equivalent of educational credentials.

[6] By letter dated August 22, 2023, Mr. Yip was invited to an interview regarding his application and specifically instructed to submit certain documents by August 29, 2023, including: coursework completed, transcripts and diplomas for the degree at the University of Chichester; coursework completed, transcripts and diplomas for all levels of the OTHM program; "proof of exemptions for studies and/or coursework for the degree from the University of Chichester and all pre-requisite program(s) (e.g. OTHM, Qualifi, etc.) you have completed, if any"; and other documents.

[7] The letter advised Mr. Yip that his failure to submit all requested documents would likely result in the refusal of his application.

## II. The Decision Under Review

[8] The letter dated September 11, 2023, along with notes in the Global Case Management System [GCMS] constitute the reasons for the Decision.

[9] The letter states that the Officer has determined that Mr. Yip's application does not meet the requirements of the Act and the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [the Regulations] and is refused on the following grounds:

- You have been found inadmissible to Canada in accordance with paragraph 40(1)(a) [of the Act] for directly or indirectly misrepresenting or withholding material facts relating to a relevant matter that induces or could induce an error in the administration of the [Act]. In accordance with paragraph A40(2)(a), you will remain inadmissible for a period of five years from the date of this letter or from the date a previous removal order was enforced.
- You are not eligible for an Open work permit for Hong Kong recent graduates as I am not satisfied that you legitimately obtained the credential presented. \*DGC\*

And

I am not satisfied that you meet the requirement of Section 11 of the Act.

[10] Given that Mr. Yip disputes many of the Officer's findings, the detailed notes of the interview with Mr. Yip as recorded in the GCMS are set out in some detail. The GCMS notes are organized under several headings with some repetition of information under the relevant headings followed by a summary of the Officer's findings and overall assessment and the designated immigration officer's findings (i.e., the officer responsible for the determination of misrepresentation).

[11] The GCMS first records an inquiry by Mr. Yip on April 3, 2023, regarding the status of his application and Mr. Yip's concern about an article in the South China Morning Post [SCMP] recounting that groups of Hong Kong nationals had paid consultants or educational agencies for degrees without undertaking the coursework. Mr. Yip wrote to IRCC indicating that he was a

recent MBA graduate and was concerned about the “recent news involving emigration consultancy firms offering postgraduate degrees to Hongkongers without requiring any coursework or attendance at classes”. He added, “[a]s a legitimate graduate of the MBA program at the University of Chichester, I have obtained my degree through legitimate means and should not be penalized for the actions of others who have obtained their degrees through fraudulent means”.

[12] Mr. Yip’s interview was conducted on September 5, 2023. The Officer’s entries into the GCMS are dated September 6, 2023.

[13] At the outset, the Officer explained that the purpose of the interview was to assess Mr. Yip’s application and for him to address concerns regarding the information contained in his application.

[14] The Officer explained that the information in the SCMP article had been confirmed by other applicants who were interviewed. The Officer advised Mr. Yip that he was invited to the interview to assess whether he was eligible for the open work permit, whether there was any concealed representative on his application, and whether he had personally completed the coursework for the OTHM diploma.

[15] The GCMS notes reflect that Mr. Yip acknowledged his awareness of the SCMP article and responded that he had not received any assistance.

[16] The Officer advised Mr. Yip that he was responsible for the accuracy of the information provided. The Officer noted that Mr. Yip submitted proof of being conferred an MBA from the University of Chichester in June 2022 and proof of completion of the prerequisite diploma, the OTHM Level 7 diploma in Strategic Management and Leadership, via online distance learning in the UK in January 2022.

[17] The GCMS notes capture the interview, including the Officer's questions and Mr. Yip's responses regarding how he obtained his MBA from Chichester University and the diploma from OTHM and his knowledge of his studies. The Officer posed several questions to Mr. Yip about the MBA program, his reliance on Douglas as an education agent, whether Mr. Yip researched the relationship between Douglas and the University of Chichester, and whether Douglas helped him to obtain the Educational Credential Assessment from WES.

[18] The Officer questioned whether Mr. Yip had completed the required courses, noting that Mr. Yip had only completed two units of coursework equivalent to 40 credits, and that he failed to provide official evidence of exemptions for the remaining 80 credits. Mr. Yip stated that he had not obtained any assistance to obtain his credentials and that he did all the work, and although the quality of his work was not good, he met the course requirements.

[19] The Officer further probed Mr. Yip about his claimed exemptions for coursework for the OTHM diploma and the lack of proof of exemptions for several courses. The Officer noted that Mr. Yip did not establish that he obtained exemptions for 80 required credits. Mr. Yip responded

that he could not account for how Douglas (the education agent) managed the program. Mr. Yip asserted that he simply did what Douglas told him to do and did not ask questions.

[20] The Officer emphasized the requirements for the OTHM diploma as set out on the OTHM's official website—a 12-month online course with six subjects that must be completed, four of which are compulsory. The Officer asked Mr. Yip if he had applied for the Recognition of Prior Learning [RPL] from the OTHM or if he applied for exemptions. He responded, "I would assume by *[sic]* backgrounds could fulfill the course exemption. I did not ask if I needed to obtain the course exemption".

[21] The Officer reiterated that official evidence for exemptions is required and that it did not appear reasonable that two-thirds of the required courses would be exempt.

[22] The Officer again asked if Mr. Yip had any official proof to confirm he met the requirements for course exemptions for 80 credits. He responded that he provided all the documents he had and there was no other proof to confirm his exemptions.

[23] The Officer also noted that Mr. Yip had submitted two resumes: one at the time of his application and the other in advance of the interview. The Officer noted that the resume, submitted with the application dated August 31, 2021, declared that Mr. Yip had received his MBA, even though he did not start the OTHM prerequisite program until September 2021. Mr. Yip responded that he may have mixed up his resumes. However, the Officer noted that the

resume submitted in advance of the interview also included the credential for the MBA before it was obtained. The Officer found Mr. Yip's explanation unreasonable.

[24] With respect to the Officer's concerns about Mr. Yip's copying of large amounts of information into his assignments without any analysis, and without proper references or with inaccessible references, Mr. Yip could not explain why the references could not be found and stated that he had found them at the time.

[25] The Officer posed several questions to Mr. Yip regarding the knowledge he gained from his OTHM diploma, including about his research methodology and the survey and questionnaire he claimed to have conducted, but that had not been provided.

[26] The Officer raised concerns about the legitimacy of Mr. Yip's studies in the OTHM program because Mr. Yip failed to demonstrate basic knowledge in response to the Officer's questions. The Officer stated, "I am concerned that you did not do these [*sic*] coursework yourself, didn't you". Mr. Yip responded that he did the coursework himself, but over two years ago, and that the quality of the program may not be top tier, and the quality of his work was "not too good". He stated that he did the studies, met the course requirements and the WES accepted his MBA.

[27] The Officer explained that their concern was not about the quality of the program, but about the legitimacy of Mr. Yip's credentials.



[28] The Officer voiced their concern that Mr. Yip had misrepresented his application, specifically about how he had obtained the WES reports for the OTHM Level 7 diploma and the MBA from the University of Chichester. The Officer noted that transcripts must be complete and show, among other things, the subjects taken and grades received.

[29] Mr. Yip disputed that he provided untruthful information, again indicating that he would not question the education agents. Mr. Yip added, “I believed I have met all the requirements especially I have done my bachelor degree and have accumulated work experience, I am sure I could get some exemptions from these programs”.

[30] Mr. Yip provided some concluding explanations, stating that the “arrangements” were done by Douglas and that Mr. Yip did not challenge the program administration. He added “I don’t know if I am a victim because I met the Douglas. I did my research but I did not challenge the program administration. I believed Douglas is the authorized party to apply for the course. I did not follow closely with the course quality. [...] I did not doubt the quality of the program as Douglas appears a pure education agent to offer programs in UK”.

[31] The summary in the GCMS notes indicates that over the course of the interview the Officer reiterated their concerns that Mr. Yip had misrepresented his credentials as having been legitimately obtained. The concerns arose from two factors: first, Mr. Yip stated that he had only completed 2 units “as Douglas told him he got course exemption”, however, Mr. Yip could not provide reliable proof of an exemption for 4 remaining units of coursework, which are equivalent to 80 credits (120 credits are required for the OTHM diploma); and, second, Mr. Yip’s responses

failed to demonstrate adequate knowledge of his studies in the OTHM program. The Officer noted, as examples, that Mr. Yip could not explain how his report was structured, the research methodology employed, the sample size for the survey, the absence of analysis or the large portions of information in his assignments that were copied from other sources.

[32] At the conclusion of the interview, the Officer advised Mr. Yip that his responses were noted but that concerns remained that Mr. Yip's credentials were not legitimately obtained. The Officer noted that if the Officer had not questioned Mr. Yip, the Officer would not have known of the discrepancies. The Officer reiterated that there were concerns about inconsistencies and untruthful information presented in Mr. Yip's proof of studies and stated that this misrepresentation could have induced errors and could have prevented the Officer from making an accurate and informed decision about Mr. Yip's eligibility for the open work permit to Canada.

[33] The Officer also explained that "[t]he determination of your misrepresentation will be done by the designated immigration officer. We must consider all evidence on your application before rendering the inadmissibility decision". The Officer explained that they would consider all the information presented and the interview responses and "would refuse his application for open work permit".

[34] The Officer then referred the application to a designated immigration officer for review regarding the determination of misrepresentation.

[35] The designated immigration officer's notes indicate that "[d]uring the interview the applicant was unable to reasonably demonstrate how they were able to obtain exemptions in their OTHM course, as the transcripts are void of any exemptions". The designated immigration officer notes that Mr. Yip stated that he simply followed instructions from the education agent and did not do any due diligence such as "follow closely with course quality". He was also unable to explain why significant amounts of information were copied without references. The designated immigration officer stated that an applicant is responsible for ensuring that all the information in their application is accurate and in conclusion, states, "[b]ased on a balance of probabilities, I am satisfied that the Applicant presented an education credential which was not legitimately earned in order to obtain a work permit in 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 the [Act]."

### III. The Standard of Review

[36] The standard of review of a decision refusing a temporary resident permit, whether for a visitors visa or a work permit, and of a finding of inadmissibility pursuant to paragraph 40(1)(a), which is a factual determination, is reasonableness (*Bains v Canada (Citizenship and Immigration)*, 2020 FC 57 at para 49; *Mehmi v Canada (Citizenship and Immigration)*, 2021 FC 1012 at para 20; *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16–17 [*Vavilov*]).

[37] A reasonable decision is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision-maker

(*Vavilov* at paras 85, 102, 105–07). A decision should not be set aside unless it contains “sufficiently serious shortcomings ... such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency” (*Vavilov* at para 100).

[38] Where issues of procedural fairness are raised, the Court must determine whether the procedure followed by the decision-maker is fair having regard to all of the circumstances. The Court must ask “with a sharp focus on the nature of the substantive rights involved and the consequences for an individual, whether a fair and just process was followed” (*Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54 [*CPR*]). The key question is “whether the applicant knew the case to meet and had a full and fair chance to respond” (*CPR* at para 56).

[39] Based on the application of the factors set out in *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 at para 21, 174 DLR (4th) 193 [*Baker*], the jurisprudence has established that the duty of procedural fairness owed to an applicant for a work permit is at the low end of the spectrum (*Kaur v Canada (Citizenship and Immigration)*, 2017 FC 782 at para 19; *Sulce v Canada (Citizenship and Immigration)*, 2015 FC 1132 at para 10). However, where there is a resulting finding of misrepresentation pursuant to section 40 of the Act, the jurisprudence has established that, given the consequences of a such a finding (i.e., a five-year ban on re-applying), the duty owed is somewhat elevated and is more than the minimum duty owed (see for example, *Chahal v Canada (Citizenship and Immigration)*, 2022 FC 725 at paras 21–22); *Samra v Canada (Citizenship and Immigration)*, 2024 FC 1649 at para 18).

IV. Relevant Statutory Provisions

[40] Subsection 11(1) notes requirements for a foreign national to be issued a visa and subsection 16(1) of the Act sets out the duty to be truthful:

<p><b>11 (1)</b> A foreign national must, before entering Canada, apply to an officer for a visa or for any other document required by the regulations. The visa or document may be issued if, following an examination, the officer is satisfied that the foreign national is not inadmissible and meets the requirements of this Act.</p>	<p><b>11 (1)</b> L'étranger doit, préalablement à son entrée au Canada, demander à l'agent les visa et autres documents requis par règlement. L'agent peut les délivrer sur preuve, à la suite d'un contrôle, que l'étranger n'est pas interdit de territoire et se conforme à la présente loi.</p>
[...]	[...]
<p><b>16 (1)</b> A person who makes an application must answer truthfully all questions put to them for the purpose of the examination and must produce a visa and all relevant evidence and documents that the officer reasonably requires.</p>	<p><b>16 (1)</b> L'auteur d'une demande au titre de la présente loi doit répondre véridiquement aux questions qui lui sont posées lors du contrôle, donner les renseignements et tous éléments de preuve pertinents et présenter les visa et documents requis.</p>

[41] Paragraph 40(1)(a) sets out the criteria for a finding of inadmissibility based on misrepresentation:

<p><b>40 (1)</b> A permanent resident or a foreign national is inadmissible for misrepresentation</p>	<p><b>40 (1)</b> Emportent interdiction de territoire pour fausses déclarations les faits suivants :</p>
<p><b>(a)</b> for directly or indirectly misrepresenting or</p>	<p><b>a)</b> directement ou indirectement, faire une</p>

withholding material facts relating to a relevant matter that induces or could induce an error in the administration of this Act;

présentation erronée sur un fait important quant à un objet pertinent, ou une réticence sur ce fait, ce qui entraîne ou risque d'entraîner une erreur dans l'application de la présente loi;

V. The Applicants' Submissions

[42] Mr. Yip argues that the Officer's finding that he was not eligible for the work permit is unreasonable. Mr. Yip also argues that the Officer's finding of misrepresentation is not reasonable as it is not supported by clear and convincing evidence. Alternatively, he argues that the Officer erred by not considering and applying the innocent misrepresentation exception.

[43] Mr. Yip also argues that the Officer breached the duty of procedural fairness owed to him.

A. *No compelling reasons for a finding of misrepresentation*

[44] Mr. Yip notes that at the time of his application for a work permit, foreign nationals were permitted to apply if, within the preceding five years, they had graduated with a foreign diploma, certificate or credential that is the equivalent of a Canadian degree.

[45] Mr. Yip submits that he met the eligibility requirements for the work permit because he obtained a degree from the University of Chichester in accordance with the requirements of that program. He further submits that he had no reason to question the education agent, the OTHM diploma or MBA degree that was granted to him.

[46] Mr. Yip argues that there is no clear and compelling evidence that he did not do the coursework and without such evidence, the misrepresentation finding is not reasonable. Mr. Yip points to his OTHM diploma and MBA as confirmation that he completed the program and to the WES report to support that his credentials were genuine. Mr. Yip notes that his transcripts show that he passed the course and met the learning objectives.

[47] Mr. Yip submits that the Officer based the finding of misrepresentation on mere suspicion because the University of Chichester was named in the SCMP article. Mr. Yip submits that the Officer's line of questioning was not related to the stated purpose of the interview which arose from the SCMP article regarding the use of a concealed representative and completion of coursework. He argues that these issues were not the basis for the Officer's finding of misrepresentation. He also argues that the Officer's questions were unrelated to an assessment of the genuineness of his educational credentials.

[48] Mr. Yip disputes that he did not answer the Officer's questions about his coursework or that he did not provide adequate knowledge of his studies. Mr. Yip submits that his responses about his coursework showed that he "at least engaged" with the courses he was required to complete and that he demonstrated "at least rudimentary knowledge" of his coursework.

[49] Mr. Yip argues that the Officer's concerns were based only on whether he had obtained exemptions, and is not a basis for concluding that he obtained his degree illegitimately. Mr. Yip notes that he obtained a pass mark for all required courses. Mr. Yip further submits that even if his scholarship is of poor quality, this is not relevant to whether his credentials are genuine.

[50] With respect to the exemptions, Mr. Yip argues that the Officer's letter told him to bring proof of exemptions "if any" and he did not have "any" proof. He also submits that his past education and work experience supported his view that exemptions were implied.

[51] With respect to the dates on his resume, Mr. Yip maintains that he mixed up the resumes, as he explained to the Officer, noting that one resume shows his work experience after the date of his MBA.

[52] Mr. Yip argues that the Officer's concern about copying is an arbitrary basis to find misrepresentation. He argues that the Officer's questions about copying amount to an allegation of plagiarism, which is beyond the Officer's expertise.

[53] Mr. Yip submits that the jurisprudence relied on by the Respondent (*Kwong v Canada (Citizenship and Immigration)*, 2024 FC 1727 [*Kwong*]; *Lam v Canada (Citizenship and Immigration)*, 2024 FC 1138 [*Lam*]; and *Tsang v Canada (Citizenship and Immigration)*, 2024 FC 1941 [*Tsang*]) on the issue of misrepresentation can be distinguished as in these other cases, there was much more support for the misrepresentation finding than in Mr. Yip's circumstances.

B. *The Officer failed to consider Mr. Yip's innocent misrepresentation*

[54] Mr. Yip disputes that he misrepresented any material facts, but alternatively argues that, if there were any misrepresentation, this was done without his knowledge and constitutes an innocent mistake. Mr. Yip acknowledges that he may have been naïve but submits that based on



his responses and explanations at the interview, the Officer erred by not considering that any misrepresentation was innocent.

[55] Mr. Yip again notes that his transcripts and other documents were genuine, even if they do not show course exemptions. He submits that he could not control the contents of his transcripts. He also submits that he relied on the education agent and believed that he only had to complete two courses for the OTHM. He also submits that he honestly believed he would be granted exemptions. Mr. Yip adds that the MBA was granted, and he honestly believed his credentials were legitimate.

*C. The Officer breached procedural fairness*

[56] Mr. Yip argues that the Officer breached procedural fairness by failing to set out all concerns regarding his credentials in a procedural fairness letter sent to him in advance of the interview and by failing to provide him with a meaningful opportunity to respond. Mr. Yip argues that the letter requesting documents and inviting him to the interview did not alert him to concerns about his credentials, coursework and exemptions, and the Officer did not raise any concerns about misrepresentation until late in the interview. Mr. Yip submits that the Officer had made up his mind to refuse the application, without offering Mr. Yip an opportunity to respond.

[57] Mr. Yip further argues that the Officer relied on extrinsic evidence—in particular the SCMP article, the Officer’s reference to other applicants having confirmed the content of the SCMP article, and also the OTHM RPL regarding exemptions. He submits that the Officer suspected misrepresentation based on the SCMP article and the “confirmation” provided by other

applicants. Mr. Yip submits that he could not respond to information provided by other applicants that was not disclosed to him.

[58] Mr. Yip also argues that the Officer's questioning was antagonistic and put him on the defensive. He submits that he could not provide reasonable explanations on the spot and should have had time to respond to the Officer's concerns or submit other documents.

#### VI. The Respondent's Submissions

[59] The Respondent submits that the decision is reasonable, the innocent misrepresentation exception is not applicable and there was no breach of procedural fairness.

##### A. *The Refusal and finding of misrepresentation are reasonable*

[60] The Respondent submits that the Officer provided detailed intelligible and justified reasons for refusing the work permit and had sufficient evidence to find misrepresentation.

[61] The Respondent notes that the Officer's letter directed Mr. Yip to bring specific documents and that his failure to do so could result in the refusal of his work permit. Mr. Yip failed to provide documents he was required to provide, including proof of exemptions from coursework. The refusal of the work permit could be justified on this fact alone. The Respondent adds that Mr. Yip acknowledged that he did not have proof of exemptions, and he never indicated that he could provide such proof.

[62] The Respondent submits that the Officer did not question the genuineness of the diplomas or transcripts from the two institutions. The Officer's concern focussed on whether Mr. Yip legitimately obtained the diplomas.

[63] The Respondent notes that the Officer raised many concerns regarding Mr. Yip's educational credentials and that Mr. Yip's responses were not reasonable. Among other concerns, the Officer noted: the absence of proof for either completion or exemption of four units of coursework, worth 80 credits, in his OTHM program; large scale copying of coursework; Mr. Yip's resume stating that he had already obtained the MBA from the University of Chichester before commencing his OTHM program; and, Mr. Yip's inability to demonstrate basic knowledge of his studies.

[64] The Respondent disputes that the Officer exceeded their role, noting that an officer has the authority to assess the legitimacy of an applicant's educational credentials, including whether exemptions were provided (*Kwong* at para 26).

[65] The Respondent submits that the misrepresentation finding was not based on concerns about plagiarism, but on the authenticity of the coursework, unlike *Chung v Canada (Citizenship and Immigration)*, 2024 FC 1218, relied on by Mr. Yip. The Officer expressed concerns about Mr. Yip's failure to explain the lack of analysis in the coursework, as well as copying from other sources.

[66] The Respondent also notes that Mr. Yip was unable to demonstrate sufficient knowledge of key concepts from his MBA program, including his report's structure, research methodology, and survey sampling. The Officer found that Mr. Yip's explanation—that this was due to the passage of time and the poor quality of his work—was not reasonable.

[67] The Respondent submits that the Officer acknowledged the WES report for what it was; the WES report does not provide evidence that Mr. Yip completed the coursework, only that if Mr. Yip's diploma had been legitimately obtained, it would be equivalent to a Canadian credential.

[68] With respect to the conclusion of the reviewing officer, the Respondent submits that based on the interview notes, there were several reasons to find that Mr. Yip had not legitimately earned the educational credentials he identified and relied on in his application for the work permit and to conclude that Mr. Yip had misrepresented a material fact.

B. *The Officer did not breach procedural fairness*

[69] The Respondent submits that there was no breach of procedural fairness; there was no requirement for the Officer to provide a procedural fairness letter in advance of the interview. The notice of the interview adequately communicated the purpose of the interview. In addition, the Officer's concerns were fully explained to Mr. Yip at the outset of the interview and Mr. Yip had a full opportunity to respond. Moreover, Mr. Yip was under a duty to provide complete and truthful information.

[70] As additional concerns arose and were noted by the Officer, Mr. Yip had the opportunity to respond in the course of the interview.

[71] The Respondent disputes that the Officer relied on extrinsic evidence; all the information relied on was publicly available.

C. *The innocent misrepresentation exception does not apply*

[72] The Respondent notes that an applicant for a work permit or other visa is responsible for misrepresentations made directly or through others, such as immigration consultants or education agents (*Singh v Canada (Citizenship and Immigration)*, 2023 FC 747 at para 28).

[73] The Respondent submits that the Officer was not required to consider the innocent mistake exception because the Officer did not accept that Mr. Yip's conduct was genuinely innocent. Mr. Yip was told to provide proof of course exemptions, and this information was within his control, as was other information to support whether he legitimately obtained his credentials. The Officer's reasons convey that the Officer did not accept that Mr. Yip was "a victim".

[74] The Respondent adds that Mr. Yip has not demonstrated that he honestly and reasonably believed that he had legitimately completed his coursework and that he was not withholding material information or that this information was beyond his control.

VII. The Decision is Reasonable

A. *The Officer's refusal of the work permit is reasonable*

[75] The Officer conducted a thorough interview, reviewed the documents provided, noted the documents that were not provided and reasonably concluded that Mr. Yip did not meet the requirements for the issuance of the open work permit. The letter and the GCMS notes clearly convey the key concerns regarding how the credentials were earned, Mr. Yip's responses, and the Officer's cumulative assessment, which led to the decision to refuse the permit and to find that Mr. Yip had misrepresented a material fact.

[76] Mr. Yip did not provide the documents requested—in particular “proof of exemptions for studies and/or coursework for the degree from the University of Chichester and all prerequisite programs (e.g. OTHM, Qualifi, etc.) you have completed, if any”. The Officer's refusal to issue the work permit could be justified on this basis alone.

[77] Mr. Yip's suggestion that he was not required to provide proof of exemptions because the request was to provide proof “if any” and he did not have such proof is based on an unreasonable interpretation of the request. The request clearly asks for proof of exemptions and/or coursework for the degree from the University of Chichester and the same for prerequisite programs “if any”. The term “if any” refers to whether there were any prerequisite programs. In Mr. Yip's case, the OTHM program was a prerequisite and he was required to provide proof of exemptions and/or coursework for the OTHM diploma. Mr. Yip did not provide proof of exemptions as requested and at the conclusion of the interview he stated that he had no further information to provide.

Mr. Yip did not ask for additional time to gather proof of any exemptions from the OTHM program or the University of Chichester.

[78] Mr. Yip's proposed interpretation is also inconsistent with his other submissions that he was not required to do more than two courses, that he did what Douglas instructed and did not ask questions and that he assumed his background and experience could have resulted in exemptions.

[79] As the Officer noted, it was not reasonable to be exempt from two-thirds of the required courses or units.

[80] The Officer explained at the outset of the interview that the purpose was to assess whether he was eligible for the open work permit, whether there was a concealed representative and whether he had personally completed the coursework for the OTHM diploma. Contrary to Mr. Yip's argument that the Officer's questions were not related to the stated purpose of the interview, the Officer specifically stated that Mr. Yip's eligibility and completion of the coursework would be assessed. The Officer's questions were directly related to the purpose of the interview.

[81] As noted in *Lam* at paras 20-21:

[20] I could foresee a situation in which a visa officer could veer into an unreasonable line of questioning. This would occur, for example, if an officer's questions bore no connection to the purpose of the inquiry, or where the questions could not yield any reliable indication as to the genuineness of an individual's educational background. Contrary to the Applicant's submissions,

however, this is not what occurred at his interview. The Visa Officer was not impermissibly “testing” the Applicant as to his studies, but asked appropriate questions to assess the credibility of the Applicant’s implicit assertion that he had genuinely obtained the necessary educational credentials.

[21] Taken to its logical conclusion, the Applicant is essentially arguing that Visa Officers must take educational credentials at face value, and cannot make reasonable inquiries of Applicants into the authenticity of their claimed program of study. This proposition finds no support in either statute or jurisprudence.

[82] As in *Lam*, the Officer was not veering into questions that were unrelated to determining the genuineness of Mr. Yip’s credentials.

[83] In *Kwong*, the officer found that the applicant could not explain how he obtained a 120-credit exemption as the applicant had not provided any transcript, diploma or document to show how he acquired the exemption (*Kwong* at para 16). In *Kwong*, allegations of plagiarism were also at issue, however, Justice Southcott found that the applicant’s inability to explain how he obtained the 120 credits was the principal concern and a “determinative finding” and that the overall decision was reasonable (*Kwong* at para 27).

[84] The Officer did not exceed their role by assessing all the relevant information and responses to determine if Mr. Yip was eligible for the open work permit.

[85] In *Lam*, Justice Grant also noted at para 18:

[18] Where an educational credential forms an important component in an immigration application, it follows that officers are empowered – indeed, they are required – to assess all material facts related to that credential, including whether it was legitimately obtained.



[86] In *Kwong* at para 26, Justice Southcott took the same position, adding, “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”.

[87] In the present case, the Officer’s questions and overall assessment of Mr. Yip’s credentials were reasonable. The Officer did not stray into areas beyond the Officer’s role or expertise.

[88] The Officer was not required to assume that the OTHM RPL policy would have resulted in exemptions for Mr. Yip. The Officer asked Mr. Yip about the RPL, and he responded that he did not ask if he needed to obtain the course exemptions. Mr. Yip had the onus to ensure that his credentials were legitimately obtained. Although he may have depended on the education agent to advance his application, he remained responsible for providing a complete and truthful application. As noted in the jurisprudence, an applicant bears the onus of ensuring the accuracy and completeness of information they provide and “they cannot deflect responsibility by simply claiming innocence or blaming third parties” (*Tsang* at para 26).

[89] Contrary to Mr. Yip’s suggestion, the Officer had no obligation to make inquiries of the University of Chichester or OTHM regarding Mr. Yip’s completion of the required coursework or why they conferred the credentials.

B. *The finding of misrepresentation is reasonable*

[90] In *Tsang*, Justice Zinn reiterated the criteria for a finding of misrepresentation, noting at paras 23-24:

[23] Case law confirms that inadmissibility under paragraph 40(1)(a) requires two elements: (1) a misrepresentation; and (2) the misrepresentation must be material, capable of inducing an error in the administration of the Act: *Gill v Canada (Citizenship and Immigration)*, 2021 FC 1441, at para 14; *Ragada v Canada (Citizenship and Immigration)*, 2021 FC 639, at para 18; *Malik v Canada (Citizenship and Immigration)*, 2021 FC 1004, at para 11.

[24] Establishing misrepresentation does not require any evidence of *mens rea*, premeditation, or intent: *Punia v. Canada (Citizenship and Immigration)*, 2017 FC 184 at para 51; *Maan v. Canada (Citizenship and Immigration)*, 2020 FC 118 at paras 24-25. Even innocent omissions of material information may constitute misrepresentation leading to inadmissibility: *Baro v Canada (Citizenship and Immigration)*, 2007 FC 1299 at para 15; *Gobordhun v Canada (Minister of Citizenship and Immigration)*, 2013 FC 971 at para 28.

[91] Mr. Yip points to *Vargas Villanueva v Canada (Citizenship and Immigration)*, 2023 FC 66 at para 17, where Justice Grammond explained that a finding of misrepresentation requires clear and convincing evidence and that “[a] mere suspicion, or even reasonable grounds to believe, are not sufficient”. Mr. Yip argues that there is no clear and compelling evidence, but rather the Officer’s suspicion based on the SCMP article.

[92] The requirement for clear and convincing evidence of misrepresentation must be considered along with the many other well-established principles regarding a finding of misrepresentation.

[93] In *Tsang*, Justice Zinn reiterated the purpose of the misrepresentation finding and the consequences and the governing principles at para 26:

[26] Other general principles and legal context surrounding paragraph 40(1)(a) have been comprehensively surveyed by Justice Little in *Singh v. Canada (Citizenship and Immigration)*, 2023 FC 747 [*Singh*] at para 28. The core principles are distilled as follows:

- 1) Section 40 receives broad interpretation to safeguard the integrity of the Canadian immigration system through deterring misrepresentation and ensuring complete, truthful disclosure;
- 2) The overarching duty of candour under subsection 16(1) of the *Act* requires complete, honest disclosure when seeking entry to Canada, and the duty guides interpretation of section 40;
- 3) Applicants bear the onus of ensuring accuracy and completeness of the information they provide, and they cannot deflect responsibility by simply claiming innocence or blaming third parties;
- 4) Paragraph 40(1)(a) expressly captures both erroneous statements and material omissions;
- 5) Paragraph 40(1)(a) applies to misrepresentations whether deliberate, negligent, intentional, or unintentional;
- 6) Applicants are responsible for paragraph 40(1)(a) misrepresentations made directly by them or indirectly through others, including immigration consultants or agents; and
- 7) Responsibility stemming from paragraph 40(1)(a) attaches even to misrepresentations made without the applicant's knowledge, including those by third parties.

[94] The principles summarized in *Singh* and reiterated in *Tsang* are not new and have been stated in many cases; for example, Justice Strickland summarized the principles in *Goburdhun v*

*Canada (Citizenship and Immigration)*, 2013 FC 971 at para 28 [*Goburdhun*] and again in *Wang v Canada (Citizenship and Immigration)*, 2018 FC 368 at paras 15–16.

[95] Mr. Yip's argument that the Officer based the misrepresentation finding on suspicion due to the article in the SCMP is not borne out by the record. As noted above, the GCMS notes reflect the questions posed to Mr. Yip and his answers. The interview responses provide ample support for the Court to find that the misrepresentation finding, confirmed by the designated immigration officer, is reasonable. Mr. Yip's lack of proof of exemptions; failure to explain if he inquired about why he would be exempt from two-thirds of his courses; inability to describe his research; inability to account for copying of information without references; and the confused explanation about two resumes, both of which suggested that he had completed the MBA before the program began, cumulatively provide more than sufficient evidence for the Officer to reasonably conclude that Mr. Yip had misrepresented material facts in his application.

[96] As noted in *Tsang* at para 26, applicants have a duty of candour, must provide a true and complete application, and are responsible for direct or indirect misrepresentations, and even unintentional omissions of material information may constitute misrepresentation leading to inadmissibility.

C. *The Officer did not err by not considering the innocent misrepresentation exception*

[97] In *Tsang*, Justice Zinn explained the criteria to find an innocent misrepresentation or innocent mistake at para 25:

[25] This strict statutory regime does recognize a narrow exception for innocent mistake. To qualify for it, an applicant must prove “both an honest and reasonable belief that they were not withholding material information”: *Kaur v. Canada (Citizenship and Immigration)*, 2024 FC 416 at para 11; *Ram v Canada (Citizenship and Immigration)*, 2022 FC 795 at para 19. This exception only applies in exceptional circumstances: *Singh v. Canada (Citizenship and Immigration)*, 2024 FC 1369 at 19; *Patel v Canada (Citizenship and Immigration)*, 2017 FC 401, at para 25; *Paashazadeh v. Canada (Citizenship and Immigration)*, 2015 FC 327 at para 20.

[98] In *Gill v Canada (Citizenship and Immigration)*, 2021 FC 1441 at paras 18–19, Justice McHaffie also canvassed the jurisprudence, noting that it is not enough to have a subjective belief that the information provided was genuine; the belief must also be objectively reasonable on the facts. An additional requirement identified in some of the jurisprudence is that knowledge of the misrepresentation must be beyond the control of the applicant (*Goburdhun* at paras 28, 31).

[99] Mr. Yip suggests that he made an innocent mistake; he submits that he was not responsible for providing misleading information because he simply followed the guidance of the education agent and the online program as offered. He submits that his credentials were genuine and that he completed the coursework required as advised by the education agent and, although his academic work was not good, he fulfilled the requirements of the program. However, he acknowledged to the Officer that he did not have proof of exemptions for two-thirds of the courses he was required to complete. He suggested that he could have obtained exemptions, or thought he could based on his experience, but there was no evidence of exemptions. Nor did he indicate that he could request proof of exemptions from the OTHM program or the University of Chichester.

[100] There is no objective basis for Mr. Yip's asserted belief that he completed all required coursework, had exemptions, or legitimately obtained the OTHM as the prerequisite for his MBA. Mr. Yip did not meet the clear requirement to provide proof of exemptions, and it was not beyond his control to inquire how he obtained his degree without completing the required courses. Mr. Yip acknowledges that he may have been naïve, but in the Court's view, Mr. Yip's conduct is far beyond being naïve; he obtained two credentials in a shorter period of time than normal, without completing two-thirds of the required courses, without sufficient knowledge of what he studied, by copying material into assignments, by not providing any analysis of his research or explaining his methodology and by referring to surveys and questionnaires that were not provided. Mr. Yip was not uneducated; he had a Bachelor of Arts and would have been aware of the requirements to obtain that degree and other degrees. Mr. Yip was aware of his efforts—or lack of effort—to obtain the OTHM diploma and the MBA and what he did or did not do to be awarded those credentials. The onus was on Mr. Yip to ensure that the credentials he sought, and subsequently relied on to obtain a work permit in Canada, were legitimately obtained. He failed to meet that onus.

D. *There was no breach of procedural fairness*

[101] As noted, Mr. Yip argues that the Officer breached procedural fairness including by not setting out all the concerns in a letter in advance of the interview, not providing a meaningful opportunity for him to respond to the concerns raised during the interview, and by relying on extrinsic evidence. Mr. Yip also submits that the Officer made up his mind to refuse the work permit before the end of the interview.

[102] Mr. Yip overlooks that the letter inviting him to the interview clearly instructed him to provide specific documents, the failure of which “will likely result in the refusal of your application...”.

[103] The Officer described the purpose of the interview at the outset, which was to assess whether Mr. Yip was eligible for the work permit, which included whether there was any concealed representative on his application, and whether he had personally completed the coursework for the OTHM diploma.

[104] The Officer specifically noted concerns about Mr. Yip’s credentials earned between September 2021 and June 2022—which is the period in which Mr. Yip obtained the OTHM diploma followed by the completion of the MBA. The Officer also noted that the information in the SCMP article had been confirmed by other applicants.

[105] In *Kwong*, the interview invitation explicitly requested documents to verify the applicant’s educational credentials, such as coursework, transcripts, payment records, and bank statements, and warned that failure to provide these could lead to application refusal. In *Kwong* at para 35, Justice Southcott found “... 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”.

[106] As noted, the duty of procedural fairness owed in the context of a work permit application is at the lower end of the spectrum. The key question is “whether the applicant knew

the case to meet and had a full and fair chance to respond” (*CPR* at para 56). There is generally no obligation on an officer to notify an applicant of the deficiencies in their application or their supporting documents or to provide an applicant with an opportunity to address any concerns about incomplete or insufficient supporting documents (*Hamza v Canada (Minister of Citizenship and Immigration)*, 2013 FC 264 at paras 21-24). However, where an officer’s concerns arise from credibility or the veracity or authenticity of the documents, an opportunity to respond may be required (*Hassani v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1283 at para 24).

[107] Mr. Yip knew the case he had to meet; he had to support his application for the open work permit and provide all the required documents and to answer truthfully to all questions.

[108] The Officer did not question the authenticity of the transcripts or the credentials, but rather Mr. Yip’s description of how he obtained the credentials given the lack of proof of exemptions for required courses and other issues that arose from Mr. Yip’s responses to the Officer’s questions. The Officer provided Mr. Yip with the opportunity to address the concerns at the interview. The interview was itself an added layer of procedural fairness.

[109] The duty of procedural fairness owed in the context of a work permit application—even where it leads to a finding of misrepresentation—does not require that all potential concerns be disclosed before the interview. The interview provides an opportunity to address the concerns including additional concerns that arise as the interview unfolds (*Kwong* at paras 34–37; *Tsang* at para 32). The Officer alerted Mr. Yip to their concerns, including regarding the lack of proof of



exemptions and completion of coursework repeatedly, and provided Mr. Yip with the opportunity to respond, explain and clarify. Although Mr. Yip submits that he should have had an opportunity to make further submissions post interview, he did not request to do so; instead, he stated that he had no further information to provide. In *Tsang* at para 33, Justice Zinn noted that the opportunity to provide post interview submissions went beyond the requirements of the duty of procedural fairness owed in the circumstances.

[110] The Officer alerted Mr. Yip to the Officer's concerns about the OTHM diploma at the beginning of the interview. Mr. Yip was fully aware of the SCMP article and of the Officer's comment that the information in it had been confirmed by other applicants. Mr. Yip should have reasonably expected close scrutiny of his application. Mr. Yip's own responses to the Officer's questions about his coursework, lack of proof of exemptions, dates on his resume, inability to account for lack of knowledge about the survey or questionnaire he claimed to have used for his MBA report, copying of information and low level of knowledge of his studies led to additional concerns. However, the Officer provided Mr. Yip with the opportunity to explain or clarify.

[111] Contrary to Mr. Yip's submissions, the Officer did not rely on extrinsic evidence. The SCMP article was well-known to Mr. Yip as he contacted IRCC, as noted in the GCMS, asserting that, unlike others mentioned in the article, he had obtained his MBA legitimately. The Officer was not required to identify other applicants who confirmed the information in the article. Moreover, the Officer did not refuse the work permit or make the finding of misrepresentation because of the SCMP article, but rather because Mr. Yip did not demonstrate that he had obtained his educational credentials by doing the work or receiving exemptions.

[112] The Officer did not rely on any information related to the RPL, nor was this extrinsic evidence as it is publicly available and related to the OTHM prerequisite program. The Officer simply asked Mr. Yip if he had applied to OTHM for the RPL, and Mr. Yip responded that he did not ask whether he needed to obtain course exemptions.

[113] Mr. Yip's allegation that the Officer predetermined the refusal of the work permit is not supported by the record. The GCMS include an entry under the heading "Conclusion" that states, "I have explained to the applicant that I would take into consideration of all (*sic*) information presented and our discussions at the interview and would refuse his application for open work permit [*sic*] I might also refer to my supervisor for review of his misrepresentation. The applicant should be able to get the result within a week in his MyCIC Account for updates". However, as noted above, the GCMS notes are repetitious and similar information is included under various headings. The GCMS notes, read holistically, do not suggest that the Officer predetermined the outcome or even that the Officer refused the work permit outright at the conclusion of the interview. The GCMS notes reflect that the Officer noted that Mr. Yip's responses would be considered and, with respect to the issue of misrepresentation, a designated immigration officer would review the application and make this determination.

[114] However, even if the Officer communicated the decision to refuse the work permit at the conclusion of the interview, this does not suggest predetermination of the outcome of Mr. Yip's application but rather a determination based on the Officer's review of Mr. Yip's application and his responses provided during the interview.

VIII. Conclusion

[115] In conclusion, the Court finds that the decision to refuse the work permit and make a finding of misrepresentation is reasonable. The Officer's reasons as set out in the letter and GCMS notes reflect that the overall assessment is based on a rational chain of analysis and is justified by the facts and the law.

[116] The Court also finds that there was no breach of procedural fairness.

[117] The Court acknowledges that a finding of misrepresentation has harsh consequences; however, these consequences are justified by the need to safeguard the integrity of the immigration system and to deter misrepresentation, as repeatedly emphasized in the jurisprudence.

**JUDGMENT in file IMM-12704-23**

**THIS COURT'S JUDGMENT is that:**

1. The Application for Judicial Review is dismissed.
2. There is no question for certification.

"Catherine M. Kane"

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Judge

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

**DOCKET:** IMM-12704-23

**STYLE OF CAUSE:** WAI KA YIP, TSUI YEE LO v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** VANCOUVER, BRITISH COLUMBIA

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**JUDGMENT AND REASONS:** KANE J.

**DATED:** FEBRUARY 14, 2025

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