Federal Court  Cour fédérale

Date: 20250226

Docket: IMM-9212-23

Citation: 2025 FC 370

Ottawa, Ontario, February 26, 2025

PRESENT: The Honourable Madam Justice Strickland

BETWEEN:

HIU SHAN SUSANNA LUI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The Applicant, Hui Shan Susanna Lui, seeks judicial review of the decision of a visa officer rejecting her application for an open work permit under the Hong Kong Special Measures Category on the basis that she was inadmissible for misrepresentation under paragraph 40(1)(a) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*].

Background

[2] The Applicant is a citizen of Hong Kong. On January 23, 2023, she submitted an application for an open work permit under the Hong Kong Special Measures Category. A requirement of that program was that she have a postgraduate educational certificate. The Applicant submitted a Certificate of Achievement, Qualifi Level 5 Diploma in Business Management, issued by Qualifi Ltd [Qualifi].

[3] On June 14, 2023, the Applicant received a request from Immigration, Refugees and Citizenship Canada [IRCC] to provide supplementary documents related to her education credentials and to attend an interview on June 28, 2023. During that interview, an officer stated their concern that the Applicant had either used a ghostwriter or plagiarized the essay she had submitted to obtain her Qualifi education credential and, therefore, that she had engaged in misrepresentation. The officer showed the Applicant evidence that the essay was copied in numerous places from online open sources without citation. The Applicant stated that she knew what plagiarism was and that she had not been instructed by Qualifi with respect to citation sources and had also understood, during her undergraduate studies, that citation of website sources was impermissible.

[4] An officer designated under s. 40 of the *IRPA* reviewed the application and found that the Applicant was inadmissible under that provision for misrepresentation. The Applicant was advised of this determination by letter dated June 30, 2023. That refusal is the subject of this judicial review.

Relevant Legislation

[5] The relevant provision of s. 40(1) of the *IRPA* states:

> Misrepresentation
>
> 40. (1) A permanent resident or a foreign national is inadmissible for misrepresentation
>
> (a) 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 this Act;

Decision Under Review

[6] By letter dated June 30, 2023, IRCC advised the Applicant that her work permit application under the International Mobility Program was refused. The grounds for the refusal were that the Applicant had been found inadmissible to Canada in accordance with paragraph 40(1)(a) of the *IRPA* 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 *IRPA*. Further, that IRCC was not satisfied that the Applicant had met s. 11(1) of the *IRPA*. Specifically, that she was not inadmissible.

[7] The Global Case Management System [GCMS] notes also form part of the reasons for the decision. The June 29, 2023, entry in the GCMS notes states:

> I have reviewed the application.
>
> Applicant is seeking an open work permit under the Hong Kong Special Measures public policy.
>
> Open source news and information gleaned from other interviews point towards applicants who have earned credentials from this

provider did so by employing ghost writers, either via a hidden representative or themselves, such that the credential would be obtained illegitimately without their own work. An interview was convoked in which the applicant was asked to bring their coursework, proof of exemption (if any), and invoices.

The applicant attended the interview on 28Jun23. Over the course of the interview, I had concerns that the applicant has misrepresented in their application. Specifically, that they have earned the diploma from QUALIFI via non-legitimate ways while presenting it in this application as if they had. I have based this concern on the following:

The applicant was assessed only on a single 3,500 word essay produced within 3 weeks of enrollment. This assignment when reviewed had multiple instances of plagiarism. From a word-count perspective, the words copied word for word without citation were approximately 449, a significant percentage of the entire assignment. The applicant confirmed that she understood what plagiarism was, yet denied when asked multiple times that she done so. Based on this, I am concerned that the applicant either did not complete the coursework herself such that she was unaware of the plagiarism or that she presented her credential as if she obtained it legitimately. There were also concerns with the proof of exemption, inconsistencies based on the screenshot.

These concerns were expressed to the applicant. In response, the applicant denied the use of ghostwriters and that she had knowingly plagiarized. She stated she believed that she was forbidden from using websites as references based on instructions she had received while studying at the University of Hong Kong and was never given a referencing guideline by QUALIFI/Chestnut. I have considered her statements, but do not find them reasonable. I note that applicant confirmed that she understood what plagiarism is and appeared to have no issue pulling information from other online sources with citation. Additionally, the amount of information in multiple sections copied without citation is well over what a reasonable assessment would assume as accidental plagiarism. I have also noted her statement about judgement of plagiarism should be left to QUALIFI; however, I do not think it would be reasonable for her to have been able to pass and obtain her degree, if QUALIFI was aware, considering that this was the only assessment for her diploma.

> For the submitted screenshots regarding the exemption. I have reviewed the email submitted by the applicant after interview, and I my concerns on this point have been allayed on balance.
>
> Weighing the factors noted above, my concerns that the applicant misrepresented has not been allayed. The applicant's misrepresentation, by presenting the credential as if she obtained it legitimately and not via plagiarism, may have resulted in an error in the administration of IRPA, specifically, the assessment of her eligibility.
>
> Forwarding application to designated officer for A40 determination.

[8] The GCMS entry also includes the notes of the officer's interview with the Applicant.

[9] The officer's findings were then reviewed and determined by an officer who was designated to make misrepresentation determinations. The GCMS notes of that officer, dated June 30, 2023, state:

> Application reviewed.
>
> Applicant presented a level 5 Qualifi diploma and a WES ECA indicating that this is equivalent to a 2 year diploma in Canada. The applicant was convoked to interview due to concerns with their educational credential.
>
> 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, the applicant submitted a diploma certification for which they did not do the coursework. The applicant was shown evidence that the coursework was copied word for word from online open sources without citation. She stated that she believed she was forbidden to cite websites for her coursework based on instructions she received when she studied at HKU, and that she was never given a referencing guideline from Qualifi and her consultant, Chestnut. Based on the significant portion of her work that was copied without citation, this would be reasonably considered plagiarism. Applicant's statement that the plagiarism finding should be left to Qualifi is not reasonable, as it

> would be reasonably assumed the credential would not have been given had Qualifi been aware of this.
>
> 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 an coursework which they did not write and an educational credential for a diploma program which was not legitimately obtained/earned 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.

Issues and Standard of Review

[10] The issues in the matter can be framed as follows:

i. Was the decision procedurally fair?

ii. Was the decision reasonable?

[11] The parties submit and I agree that the standard of review for issues of procedural fairness is correctness (see *Mission Institution v Khela*, 2014 SCC 24 at para 79; *Canadian Association of Refugee Lawyers v Canada (Immigration, Refugees and Citizenship)*, 2020 FCA 196 at para 35). Functionally, this requires the Court's analysis to focus on whether the procedure followed was fair, having regard to all the circumstances (*Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54).

[12] I also agree with the parties that the standard of review for the decision on its merits is reasonableness. Reasonableness review asks this court to: "develop an understanding of the decision maker's reasoning process in order to determine whether the decision as a whole is

reasonable. To make this determination, the reviewing court asks whether the decision bears the hallmarks of reasonableness — justification, transparency and intelligibility — and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision" (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 99).

Preliminary Observation

[13] The decision under review in this case is that of the designated officer as communicated by the refusal letter. However, the Applicant's procedural fairness arguments pertain to the actions of the officer who interviewed her and made the assessment that was reviewed by the designated officer. In their respective submissions, the parties do not make distinctions between the two. Accordingly, these reasons refer to the officers collectively, as the Officer.

The Officer's Decision was Procedurally Fair

Applicant's position

[14] The Applicant submits that she was denied the opportunity to fully present her case as a result of the Officer's failure to notify her of their specific concerns prior to her interview and by failing to inform her that she could make further submissions after the conclusion of the interview. Further, that if the Officer was going to rely on extrinsic evidence, they had an obligation to provide the Applicant with that evidence (citing *Chawla v Canada (Citizenship and Immigration)*, 2014 FC 434). Without it, the Applicant did not have the opportunity to dispute or distinguish that evidence from her circumstances.

Respondent's position

[15] The Respondent submits that the Applicant's arguments ignore the fact that the Officer first convoked the interview to understand whether the Applicant understood what plagiarism is, and only then, proceeded to explain the concerns he had. In *Kwong v Canada (Citizenship and Immigration)*, 2024 FC 1727 [*Kwong*], this Court held that a similar interview in a similar situation was procedurally fair as the Applicant had an opportunity to address the Officer's concerns (*Kwong*, at paras 31–38). Further, the Officer did not rely on extrinsic evidence in arriving at their decision. Rather, the Officer advised the Applicant as to why they were concerned with the legitimacy of the completion of the Applicant's coursework. The Respondent also submits that at no time did the Applicant suggest that she wanted to add anything further, to provide additional evidence or explanation, or that she could provide anything further. Even before this Court, the Applicant only suggests providing evidence that speaks to the genuineness of her diploma, which is not at issue.

Analysis

[16] When appearing before me, and after making oral submissions, counsel for the Applicant indicated that they would withdraw their natural justice argument. However, given the oral and written submissions, I requested that counsel for the Respondent address the procedural fairness arguments in their oral submissions and I will address this issue in these reasons as it appears to be a recurring one in the context of open work permits under the Hong Kong Special Measures Category.

[17] As the Respondent submits, the level of procedural fairness owed in visa applications is low. However, given the consequences of a finding of misrepresentation under paragraph 40(1)(a) of the *IRPA*, being a five-year prohibition in reapplying, the jurisprudence of this Court indicates that the duty owed is somewhat elevated (see, for example, *Yip v Canada (Citizenship and Immigration)*, 2025 FC 288 at paras 39 and 106 [*Yip*]; *Damangir v Canada (Citizenship and Immigration)*, 2024 FC 599 at para 23; *Samra v Canada (Citizenship and Immigration)*, 2024 FC 1649 at para 18; *Likhi v Canada (Citizenship and Immigration)*, 2020 FC 171 at paras 26–27; *Tsang v Canada (Citizenship and Immigration)*, 2024 FC 1941 at para 30 [*Tsang*]).

[18] With respect to the Applicant's view that the interview convocation letter did not provide her with adequate advance notice of the Officer's concerns, she relies upon *Yaman v Canada (Citizenship and Immigration)*, 2021 FC 584, which concerned the judicial review of a refusal of an application for permanent residence under the Quebec investor class. However, *Kwong*, *Tsang* and *Yip* are more recent and factually similar cases.

[19] In *Kwong*, the applicant argued that he was denied procedural fairness because the true purpose of the interview with a visa officer was to investigate the legitimacy of his educational credentials and he was not advised of this purpose in advance of the interview (*Kwong*, at para 31). The respondent noted that the interview request advised the applicant that he was required to submit certain documents in advance of the interview, including all work completed, transcripts and diplomas, proof of exemptions for studies and coursework for all qualifications, proof of his

registration for all qualifications, invoices for enrolment and payment of receipts for all programs, and proof of payment for all tuition fees (para 32). Justice Southcott held that:

> [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.

[20] This reasoning was followed in *Tsang.* There, the interview convocation letter explicitly requested documentation to verify the legitimacy of the Applicant's educational credentials, including coursework, transcripts, payment receipts, and bank statements. It further warned that failure to provide the requested documents could result in the refusal of the application. While the applicant argued that the notice should have specifically identified concerns, including about academic dishonesty, Justice Grant, citing *Kwong*, held that "procedural fairness does not require all concerns to be disclosed before the interview, provided that the interview itself serves as a vehicle for raising and addressing additional issues". In *Tsang*, the interviewing officer raised specific concerns, including academic dishonesty, during the interview and allowed the applicant to respond in real time. Justice Grant held that this combination of the interview notice and the interview itself "ensured that the Applicant was aware of the case to meet and had the opportunity to meet it" (*Tsang*, at para 32; see also *Yip*, at para 109).

[21] In the matter before me, the interview convocation letter advised the Applicant that, in order to continue processing her application for temporary residence, she was required to attend an interview. The letter further stated that the Applicant must submit the identified documents including “all coursework completed, transcripts and diplomas” for the level 4 and level 5 diploma program; any proof of exemptions for coursework; invoice(s) for enrollment in the diploma programs; and proof of payment for tuition fees by financial institutions (receipt, statement or other records). It also advised that failure to submit the requested documents would likely result in the refusal of the application because the Applicant would have failed to produce relevant evidence and documents reasonably required by an officer pursuant to s. 16(1) of the *IRPA*.

[22] The content of the interview convocation letter in this matter is very similar to that in *Kwong* and *Tsang*. Further, the Officer clearly advised the Applicant, over the course of the interview, about their specific concerns surrounding potential misrepresentation. The Officer asked the Applicant if she knew what plagiarism was, and asked her if she had plagiarized her coursework. When the Applicant initially denied engaging in plagiarism, the Officer asked if she was sure, and then advised that the main reason for the interview was that, based on information from open sources (news) and information gathered from interviews of other applicants, it had come to light that other applicants with this credential had hired ghostwriters and, therefore, would not have gained their diplomas legitimately. The Officer stated that from this, and what had been discussed at the interview, they were concerned that the Applicant had misrepresented with respect to the plagiarism concern. The Officer then took the Applicant through examples

comparing her essay wording to uncited sources with the exact same wording and provided the Applicant with an opportunity to address these concerns.

[23] Given this, and in light of *Kwong, Tswang* and *Yip*, I am not persuaded that the Officer was required to expressly reference their concern about academic dishonesty (ghostwriting or plagiarism) in the interview convocation letter or, in any event, that the failure to do so deprived the Applicant of an opportunity to know the case she had to meet and to address it. Indeed, the Applicant did offer an explanation, being that Qualifi did not provide her with the resources to show her how to reference websites. And, when confronted with the fact that there was a complete absence of the relevant website references, and therefore that this was not an issue of improper style of citation, she claimed that she had misunderstood because in her undergraduate degree (13 years before) she was told she could not site websites, only books or magazines. In these circumstances, the Applicant knew the case to be met and was afforded an opportunity to address it.

[24] However, the Applicant also asserts that she was denied procedural fairness because the Officer gave no indication that she could provide further submissions. I note that in *Tsang*, the applicant was permitted to make post-interview submissions. However, the Court in that case also found that a post-interview opportunity to make submissions exceeded the procedural safeguards that were upheld in *Kwong* where the applicant's response was limited to the interview (*Tsang*, at para 33; see also *Yip*, at para 109).

[25] Here, the Applicant states in her affidavit filed in support of the application for judicial review that, if she had been given an opportunity after the interview, she could have provided information from Qualifi confirming the authenticity of her credentials and the standards they apply in their evaluations. However, the authenticity of her diploma was not at issue. What was at issue was whether the Applicant legitimately obtained the diploma. As to the "standards", I will address this in the context of the reasonableness of the decision. However, and in any event, there is no evidence that the Applicant requested that the Officer allow her to make such a submission. The Applicant's rights to procedural fairness were not breached in this respect.

[26] The Applicant also asserts that she was denied procedural fairness because the Officer relied on undisclosed extrinsic evidence. As indicated above, during the interview the Officer stated that "[b]ased on information from open source, news I mean, information gathered from interviews of other applicants, applicants who have studied a degree, this credential, hired ghostwriters either via agents or themselves such that the coursework is not completed by the applicant. These applicants would not gain a diploma legitimately. From this and what we discussed today, I am concerned that you appear to have misrepresented. You said that did not plagiarize your work, I do not believe that you are telling me the truth. Let me show you what I found …".

[27] In my view, while news articles and the applications of others may have given rise to a general concern about whether diplomas of this sort were legitimately obtained, the very clear basis of the Officer's concern in this case was plagiarism, which the Officer explored with the Applicant. As the determinative concern was not ghostwriting, which appears to have been the

subject of the Officer's reference, I am not persuaded that the Officer relied on extrinsic evidence in making this determination (see *Yip*, at para 111). In sum, the Officer did not err in failing to provide the referenced news articles to the Applicant.

The Officer's Decision was Reasonable

Applicant's position

[28] The Applicant submits that the Officer did not verify the authenticity of her education credential with Qualifi and that there was no evidence to suggest that Qualifi had determined that the credential was not authentic. Rather, the Officer believed that the Applicant had plagiarized her essay in order to obtain the diploma. However, the Officer lacked the authority to "go behind the credential." Education credentials in immigration matters must be verified and, in this case, the credential was verified by World Education Services [WES], one of the approved institutions. Further, the Officer had no reasonable basis to determine that Qualifi was unaware of the lack of citations. The Applicant submits that Qualifi issued the diploma, that it "was the arbitrator of the validity of her submission" and, that it found no plagiarism. The Officer lacked jurisdiction to go behind the diploma and find that Qualifi would have found the paper to be unacceptable.

[29] The Applicant also submits that, in effect, the Officer found that she misrepresented to the college with respect to the plagiarism and that this also constituted a misrepresentation to IRCC. However, officers cannot make misrepresentation findings based on a misrepresentation made to a third party (citing *Wang v Canada (Citizenship and Immigration)*, 2020 FC 262

[*Wang*]). And, similar to *Wang*, here the Officer had no evidence that the Applicant's education credentials have been invalidated by the college. Further, s. 40(1) of the *IRPA* does not support that there can be misrepresentation with respect to that provision arising from misrepresentation to the college.

[30] Additionally, the Officer does not cite the open news sources to which they refer, and relies on anecdotal evidence regarding interviews with past applicants in arriving at their conclusion that the Applicant plagiarized her work. The Officer provides no basis for assessing the reliability of the information obtained from other interviews and to allow the Court to assess whether it provides a reasonable basis for their finding and, in any event, the Officer should have conducted an individualized assessment of the Applicant's case rather than relying on this generalization.

[31] The Applicant also submits that the Officer's conclusion that a "significant percentage of the entire assignment" was plagiarized is unreasonable, as the words found to have been plagiarized consisted of "barely more than 10 percent of the Applicant's essay". This was a vague threshold used by the Officer.

Respondent's position

[32] The Respondent submits that the Applicant knowingly submitted plagiarized material to obtain a diploma and qualify for a work permit and, as such, the Officer's decision was reasonable. The Applicant's assertion that misrepresentation under paragraph 40(1)(a) must be made to the Respondent directly is at odds with the language of the provision, which also

contemplates indirect misrepresentation. Here, the Applicant indirectly misrepresented to IRCC when she submitted a diploma obtained based on plagiarized material. That is, she misrepresented her work to Qualifi to obtain the diploma, and then misrepresented to IRCC when she submitted that diploma — which was not legitimately obtained — in her work permit application. Contrary to the Applicant's submissions, an officer can look behind a diploma and make findings based on misrepresentation related to how the diploma was obtained (citing *Lam v Canada (Citizenship and Immigration)*, 2024 FC 1138 [*Lam*]; and *Kwong*). The Officer did not need any special expertise to make the findings they made.

[33] The Respondent also submits that the Officer was not concerned with whether the diploma itself was a fraudulent document, but rather whether the diploma had been obtained through illegitimate means for the purpose of getting a work permit. The fact that the educational institution may have been fooled by the Applicant does not prevent the Officer from probing the manner in which an authentic diploma was obtained. Further, WES certificates simply assess educational equivalency and are not evidence that the Applicant legitimately completed required coursework.

Analysis

[34] I have previously summarized the legal backdrop to paragraph 40(1)(a) of the *IRPA* in *Malik v Canada (Citizenship and Immigration)*, 2021 FC 1004 [*Malik*] as follows:

> [15] I have previously summarized the general principles concerning misrepresentation in *Goburdhun v Canada (Citizenship and Immigration)*, 2013 FC 971 at para 28. For the purposes of this application they include that s 40 is to be given a broad interpretation in order to promote its underlying purpose (*Khan v*

Canada (Citizenship and Immigration), 2008 FC 512 at para 25 ("*Khan*")), its objective being to deter misrepresentation and maintain the integrity of the immigration process. To accomplish this, the onus is placed on the applicant to ensure the completeness and accuracy of their application (*Oloumi v Canada (Citizenship and Immigration)*, 2012 FC 428 at para 23 ("*Oloumi*"); *Jiang* at para 35; *Wang v Canada (Minister of Citizenship and Immigration)*, 2005 FC 1059 at paras 55-56 ("*Wang*")).

[16] In this regard an applicant has a duty of candour to provide complete, honest and truthful information in every manner when applying for entry into Canada (*Bodine v Canada (Citizenship and Immigration)*, 2008 FC 848 at paras 41-42 ("*Bodine*"); *Baro v Canada (Citizenship and Immigration)*, 2007 FC 1299 at para 15 ("*Baro*"); *Haque v Canada (Citizenship and Immigration)*, 2011 FC 315 at para 11 ("*Haque*")). Section 40 is intentionally broadly worded and applied and encompasses even misrepresentations made by another party, including an immigration consultant, without the knowledge of the applicant (*Jiang* at para 35; *Wang* at paras 55-56).

[17] The exception to s 40 is narrow and applies only to truly extraordinary circumstances where an applicant honestly and reasonably believed that they were not misrepresenting a material fact and knowledge of the misrepresentation was beyond the applicant's control (*Masoud v Canada (Citizenship and Immigration)*, 2012 FC 422 at paras 33-37 ("*Masoud*"); *Goudarzi v Canada (Citizenship and Immigration)*, 2012 FC 425 at para 40 ("*Goudarzi*")). That is, the applicant was subjectively unaware that he or she was withholding information (*Medel v Canada (Minister of Employment and Immigration)*, [1990] 2 FC 345 (FCA) ("*Medel*"); *Canada (Citizenship and Immigration) v Singh Sidhu*, 2018 FC 306 at para 55 ("*Singh Sidhu*")).

[18] In determining whether a misrepresentation is material, regard must be had for the wording of the provision and its underlying purpose (*Oloumi* at para 22). It is necessary, in each case, to look at the surrounding circumstances to decide whether the withholding of information constitutes a misrepresentation (*Baro* at para 17; *Bodine* at paras 41-42; *Singh Sidhu* at paras 59-61). Further, a misrepresentation need not be decisive or determinative. It is material if it is important enough to affect the process (*Oloumi* at para 25).

[19] Nor can an applicant take advantage of the fact that the misrepresentation is caught by the immigration authorities before

> the final assessment of the application. The materiality analysis is not limited to a particular point in time in the processing of the application (*Haque* at paras 12, 17; *Khan* at paras 25, 27, 29; *Shahin v Canada (Citizenship and Immigration)*, 2012 FC 423 at para 29 ("*Shahin*")).

[35] Further, two factors must be present for a finding of inadmissibility under s. 40(1). There must be a misrepresentation by the applicant and the misrepresentation must be material in that it could have induced an error in the administration of the *IRPA* (*Malik*, at para 11, citing *Bellido v Canada (Minister of Citizenship and Immigration)*, 2005 FC 452 at para 27; see also *Singh v Canada (citizenship and Immigration)*, 2023 FC 747 at paras 25–29; *Tsang* at paras 23–26).

[36] With respect to the Officer's authority to assess whether education credentials are legitimately obtained, the Applicant's core argument is that she did not make any misrepresentations to IRCC because her Qualifi diploma was valid and the Officer never doubted the authenticity and veracity of that document. Therefore, the Officer overreached by finding that, due to plagiarism, the Applicant's education credentials were not legitimately obtained. The Applicant relies heavily on *Wang* to support her arguments and takes support from the fact that the more recent jurisprudence does not cite *Wang*.

[37] I do not agree with the Applicant. In *Lam*, the applicant similarly had his work permit application rejected following a visa officer's finding that he did not legitimately obtain his educational credentials. The officer in that case noted many concerns with the applicant's answers provided during an interview, including concerns of plagiarism. Justice Grant found that the applicant's submissions boiled down to one main proposition, "which is that the Visa Officer exceeded their jurisdiction by evaluating the *bona fides* of his diplomas, when the Officer had

neither the expertise, nor the authority to do so" and that the officer erred in "going behind" the credential (at para 14). However, that the applicant had not provided any authority in support of that argument. Further, that the "core function of an officer's role is to determine whether applicants legitimately meet the requirements of the *IRPA* and are not inadmissible" (at para 15, citing *IRPA*, s. 11(1)). Justice Grant did not agree that it is outside an officer's jurisdiction under s. 40 of the *IRPA* to assess whether an applicant legitimately obtained a diploma upon which they are relying in support of a work permit application "particularly when there is some evidence of a pattern of questionable activity related to diplomas." He also pointed to the considerable breadth of paragraph 40(1)(a) and held that "[w]here 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" (paras 16–18, citing *Malik*, among others).

[38] Justice Grant acknowledged the applicant's submission that an officer does not have the knowledge or expertise to assess whether a degree was granted legitimately. He held that while this may be true in some instances, in the case before him the applicant's argument distorted the nature of the inquiry pursued by the visa officer. And, while he could foresee a situation in which a visa officer could veer into an unreasonable line of questioning, 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, that had not occurred at the 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. As to the applicant's argument that, essentially, 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, Justice Grant held that this has no basis in either statute or jurisprudence.

[39] Similarly, in *Kwong*, the applicant applied for a work permit under the *Public Policy: Open work permits for recent Hong Kong graduates*. The applicant stated that he received a master's degree in business administration from a university. To obtain the requisite number of credits, the applicant participated in a program that allowed them to obtain 120 of their 180 credits through a diploma obtained from a second institute outside of the university. After an interview was conducted, the visa officer in that case found the applicant to have misrepresented material facts related to their application. Specifically, the applicant was unable to provide his diploma, transcript or proof of course exemption. The visa officer found, given these insufficient documents, that it was unclear how the applicant obtained the outside institute qualifications. This added to the officer's concerns regarding whether the applicant's qualifications were legitimately obtained. Justice Southcott held 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" (at para 26). Justice Southcott ultimately upheld the visa officer's reasoning, finding that it supported 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 […] constituted a misrepresentation" (para 29).

[40] *Lam* was issued the same week as *Chung v Canada (Citizenship and Immigration)*, 2024 FC 1218. In *Chung*, during an interview, the applicant admitted that he copied or rewrote material for some of the course work undertaken to obtain a master's degree leading the officer to conclude that the applicant plagiarized this coursework to earn that degree. Justice McDonald found that the officer used this finding as a basis to attack the integrity of the master's program without making any finding regarding the reliability of the degree itself or the university, and that it was not reasonable for the officer to jump to the conclusion that "based upon the Applicant's answers to questions about 'some' of his coursework" that the master's degree awarded to him was done so on false pretenses. She added that "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" (at para 14, citing *Adom v Canada (Citizenship and Immigration)*, 2019 FC 26 at para 17).

[41] In *Kwong*, Justice Southcott addressed *Lam* and *Chung*, holding that:

> [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.

[42] In light of the regulatory regime and the jurisprudence (namely *Lam*, *Kwong* and *Yip*), I am not persuaded that the Officer in the present case was acting beyond the scope of their authority when they inquired into the Applicant's plagiarism to determine whether the Applicant legitimately obtained her Qualifi diploma. The Qualifi diploma formed an important component of the Applicant's application — it was required in order to be eligible for the Hong Kong Special Measures Category for open work permits — and the plagiarized essay was the only work the Applicant produced to obtain the diploma. Therefore, it was reasonable for the Officer to assess the material facts related to that credential, including whether it was legitimately obtained. This accords with the broad interpretation that is afforded to s. 40(1) of the *IRPA*. Unlike *Chung*, the Officer here did not take answers out of context nor was some course work of an entire program at issue leading to questioning a degree in whole. Qualifi required the Applicant to submit only one essay in order to grant the diploma that she needed to qualify for the requested work permit and the alleged plagiarism related to that very essay.

[43] In my view, the Officer's inquiry into plagiarism in these circumstances was not an overstep, nor an instance in which a visa officer "strayed into analyses that they did not have the expertise to perform" (*Kwong*, at para 26). Detecting and explicitly demonstrating to the

Applicant significant plagiarism in the only work product submitted to obtain an education qualification is not an exercise that requires particular expertise, nor is it an overstep. As held in *Tsang*, this "requires no special expertise in plagiarism or academic dishonesty, for they are plainly apparent upon common sense scrutiny" (at para 41).

[44] I would add that it is apparent from the jurisprudence that it has become known to IRCC that there is a pattern of questionable activity relating to the issuing of certain diplomas, such as the one relied upon by the Applicant. When appearing before me, the Applicant asserted that if it is now a known concern that there are, essentially, "puppy mill" diploma issuing entities, then this is a regulatory or policy problem. It does not give an officer the jurisdiction to "look behind" the diploma. And, in particular, considerations of plagiarism are a step too far because different institutions may have different standards on what comprises plagiarism and officers have no expertise in that regard.

[45] First, as I have indicated above, I do not agree that it is not the role of a visa officer to assess whether an applicant legitimately obtained a diploma upon which they are relying in support of a work permit application – especially in circumstances such as these (*Lam*, at para 16). Second, the Officer found that it was not reasonable to think that, had Qualifi been aware of the plagiarism in the only work product submitted by the Applicant to obtain the diploma, that it would have issued same. In my view, in these circumstances, this finding is reasonable. While I appreciate the Applicant's argument that different institutions may have different "standards" with respect to what constitutes plagiarism, I have to think that when a significant amount of work is taken word for word from unattributed sources that, by any standard, this would

constitute plagiarism. Moreover, it is significant to keep in mind that the Applicant does not deny that the portions of her essay put to her by the Officer were plagiarized. Rather, she attributes blame to Qualifi for not informing her of the requirements for citations or her understanding that citations are not necessary when the work at issue is sourced from a website. In short, I do not agree with the Applicant that there can only be a finding of plagiarism if it is made by the entity, in this case Quanifi, who issued the diploma.

[46] Along the same line, the Applicant also submits that the Officer erred in concluding that she plagiarized a significant percentage of her assignment, when they concluded that 449 words (of the 3500-word assignment), were word for word without citation as this amounts to "barely more than 10 percent of the Applicant's essay". Further, that the Officer used that finding to support their reasoning that the amount of information in multiple sections copied without citation is well over what a reasonable assessment would assume as accidental plagiarism. I disagree. The Officer's reasons clearly explain that 449 words, uninterrupted by the Applicant's own language (i.e. "word for word"), constituted plagiarized material, and that plagiarism additionally existed in "multiple sections". It was entirely reasonable for the Officer to conclude that this amounted to plagiarism that was more than "accidental". And, as stated above, in my view, the Officer was within their authority when making this type of evaluation.

[47] Nor is this case comparable to *Wang*, which is relied upon by the Applicant for the proposition that visa officers cannot make misrepresentation findings based on misrepresentations made to third parties. In *Wang*, an applicant had engaged an education consultant to assist them in applying to Canadian post-secondary schools, and had sent the

consultant their verifiable high school transcript. For reasons unknown, the consultant appeared to send a false high school transcript to a university. This discrepancy did not come to light until the applicant applied for a study permit visa extension and restoration of status, at which time he submitted to IRCC his verifiable high school transcript. The visa officer found the applicant to have engaged in misrepresentation because they found key discrepancies between the applicant's submitted high school transcript (which was truthful and valid), and the high school transcript submitted to the university (which was false).

[48] On judicial review, Justice Mosely found that while the facts of the case left many questions unanswered, what was clear was "that the documents submitted to the IRCC did not include the false transcript. No one, therefore, made a misrepresentation directly or indirectly to the IRCC on behalf of the Applicant that induced or could induce an error in the administration of the Act" (at para 17).

[49] In my view, *Wang* is distinguishable on its facts. Nor do I agree with the Applicant that *Wang* stands for the proposition that visa officers cannot make misrepresentation findings based on misrepresentations made to third parties. *Wang* does not make that finding. Further, the statutory language of paragraph 40(1)(a) expressly applies to both direct and indirect misrepresentation and the Court's jurisprudence clearly establishes that the provision is to be given a broad interpretation to promote the underlying objectives of deterring misrepresentation and maintaining the integrity of the immigration process (*Wang v Canada (Citizenship and Immigration)*, 2018 FC 368 at para 15). Here, the plagiarism was a misrepresentation to Qualifi that the Applicant submitted her own work in support of the diploma that she sought. The

Applicant does not assert that she made an innocent misrepresentation. Further, she was aware that she obtained the diploma based on the plagiarism. Therefore, she indirectly misrepresented to IRCC that she had legitimately obtained the education credential presented in support of her application.

Conclusion

[50] The Officer did not breach procedural fairness by failing to expressly reference their concern about academic dishonesty in the interview convocation letter, or otherwise. At the interview, the Applicant was informed of the concern. She knew the case to be met and was afforded an opportunity to do so. Further, the Officer reasonably found that the Applicant did not establish that she legitimately obtained the educational credential she relied upon to meet the eligibility criteria for an open work permit and, that she had misrepresented a material fact that, if accepted, would have led to an error in the administration of the *IRPA*.

JUDGMENT IN IMM-9212-23

THIS COURT'S JUDGMENT is that

1. The application for judicial review is dismissed;

2. There shall be no order as to costs; and

3. No question of general importance for certification was proposed or arises.

"Cecily Y. Strickland"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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DATED:	FEBRUARY 26, 2025

APPEARANCES:

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