

Date: 20071107

Docket: IMM-1852-07

Citation: 2007 FC 1157

Vancouver, British Columbia, November 7, 2007

PRESENT: The Honourable Madam Justice Layden-Stevenson

BETWEEN:

HAILIAN YU

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR ORDER AND ORDER

[1] Ms. Yu's application for a permanent residence visa under the Skilled Worker category was refused. The visa officer concluded that Ms. Yu had not demonstrated that she had at least one year of full-time work experience during the last ten years as required by the legislation. Ms. Yu contends that the visa officer failed to consider relevant evidence and wrongly concluded that she had not been truthful about her employment history and her activities in Canada.

[2] Despite the articulate submissions of the respondent's counsel, I find that the visa officer considered irrelevant evidence and failed to consider relevant evidence. Consequently, the application for judicial review will be allowed.

[3] I agree with the respondent on a number of fronts, specifically: the onus was on Ms. Yu to satisfy the visa officer of her work experience; it was for Ms Yu to request an interpreter if she was unable to respond to the questions in English; Ms. Yu's attendance at the University of British Columbia (UBC) Sauder School of Business (Sauder) in Vancouver was relevant to the extent of her employer's association, if any, with Sauder; and the visa officer was entitled to prefer what emanated from Ms. Yu at the interview over the contents of the employers' reference letters.

[4] That said, the CAIPS notes reveal that at least half of Ms. Yu's interview was devoted to questions relating to Ms. Yu's attendance at Sauder, a matter that was largely immaterial to her visa application. The documents from UBC and Sauder, the legitimacy of which were not at issue, clearly establish Ms. Yu's attendance at the school. More importantly, Ms. Yu was not relying upon her attendance at Sauder to support her application.

[5] Ms. Yu did not suggest that she worked in Canada nor did she attempt to obtain points, or any other benefit, from her attendance at Sauder. Yet, the visa officer focussed extensively on Ms. Yu's presence at the school and on the description of her as a "visiting scholar". The visa officer took exception to the accuracy of the description. Notably, the same terminology ("visiting scholar") is contained in the various UBC and Sauder documents that describe the

program (tribunal record at pp. 9, 11, 12) and in the Canada Immigration and Citizenship (CIC) visitor visa (tribunal record at pp. 35, 36).

[6] More significantly, the characterization of “visiting scholar” ultimately resulted in a finding that Ms. Yu had not been “honest about her activities in Canada”. In my view, this conclusion, in the face of the documentation, was patently unreasonable. Moreover, it was made in relation to a factor that was not material to the application and may well have factored into the visa officer’s ultimate conclusion that Ms. Yu had not been honest in relation to her employment activities.

[7] Second, the visa officer failed to consider one of the employment references provided by Ms. Yu at the interview. The stated purpose of the interview was to ascertain the extent of Ms. Yu’s work experience in China. She was informed that further information was required. In response, and in addition to the documentation submitted with her application, she produced a reference letter from Oxford-Combridge International Group in Beijing (Oxford-Combridge) detailing her duties and salary as an employee (for one year during the relevant period). There is no reference to this document in the visa officer’s CAIPS notes. Further, the visa officer, at paragraph 8 of her responding affidavit, specifically delineates the employment experiences that she considered in assessing Ms. Yu’s work experience in China. Oxford-Combridge is not mentioned.

[8] The existence of the presumption that a decision-maker has considered all of the evidence in the record before rendering a decision is not disputed by either party. It is also common ground that every piece of evidence need not be referenced in a decision. However, the presumption is a

rebuttable one and the need to specifically refer to evidence increases concomitantly with the probative value or relevance of the evidence to the issue to be determined. Here, there is evidence in the tribunal record that specifically refers to employment for a period of one year. It is not mentioned in the CAIPS notes and the visa officer, in listing the documents relied upon, makes no reference to it. While it was open to the visa officer to reject the document, or to assign it little weight, to ignore it was not an option. From the record, that appears to have been the case. In my view, the visa officer's failure to acknowledge and consider the Oxford-Combridge document was patently unreasonable.

[9] It may well be that Ms. Yu will not be able to satisfy the legislative requirements that demand one year of full-time work experience during the last ten years. However, she is entitled to have her employment experience properly assessed. Her tenure at Sauder is not material to that assessment.

[10] For the foregoing reasons, the application for judicial review will be allowed. Counsel did not suggest a question for certification and none arises.

ORDER

THIS COURT ORDERS that the application for judicial review is allowed and the matter is remitted for determination by a different visa officer.

"Carolyn Layden-Stevenson"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-1852-07

STYLE OF CAUSE: HAILIAN YU v. MCI

PLACE OF HEARING: Vancouver, BC

DATE OF HEARING: November 6, 2007

**REASONS FOR ORDER:
AND ORDER** LAYDEN-STEVENSON J.

DATED: November 7, 2007

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