

**Date: 20080403**

**Docket: IMM-2434-07**

**Citation: 2008 FC 430**

**Toronto, Ontario, April 3, 2008**

**PRESENT: The Honourable Mr. Justice Campbell**

**BETWEEN:**

**LANG ZHENG AND YIOU LI**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION**

**Respondent**

**REASONS FOR ORDER AND ORDER**

[1] The present Application concerns a Visa Officer's rejection of an application for landing by a skilled worker from China. On the Visa Officer's assessment, the Applicant was only awarded 65 of a required 67 points.

[2] The Visa Officer's entry in the CAIPS system identifies a stark conflict in the evidence the Applicant tendered in obvious error; the standard application form was completed to say that the Applicant attended Kunming University at the same time she completed high school there, which,

of course, is impossible. Because of the conflict, and the fact that the Applicant failed to file a diploma to prove her attendance at the University, the Applicant's application was rejected.

[3] Counsel for the Applicant argues that it was unfair of the Visa Officer not to give the Applicant an opportunity to clarify the situation at hand. However, Counsel for the Respondent argues that the Visa Officer is under no obligation to request clarification and, because the onus rests with the Applicant to produce evidence in support of her application, the judicial review should be dismissed.

[4] In making the argument for dismissal, Counsel for the Respondent relies on Justice Rothstein's decision in *Lam v. Canada (Minister of Citizenship and Immigration)*, (1998), 152 F.T.R. 316 (*Lam*) to support the no-obligation argument. However, *Lam* at paragraph 4 states an important proviso with respect to the exercise of discretion:

A visa officer may inquire further if he or she considers a further enquiry is warranted. Obviously, a visa officer cannot be wilfully blind in assessing an application and must act in good faith. However, there is no general obligation on a visa officer to make further inquiries when an application is ambiguous. The onus is on an applicant to file a clear application together with such supporting documentation as he or she considers advisable. The onus does not shift to the visa officer and there is no entitlement to a personal interview if the application is ambiguous or supporting material is not included.

[Emphasis added]

In my opinion, it is remarkably unfair for the Visa Officer not to have asked for clarification of the obvious error which drove the rejection of the Applicant's application.

[5] As a result, I find the decision under review is made in reviewable error.

**ORDER**

Accordingly, I set aside the Visa Officer's decision and refer the matter back to a different visa officer for re-determination.

There is no question to certify.

\_\_\_\_\_  
"Douglas R. Campbell"  
Judge

**FEDERAL COURT**

**NAME OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** IMM-2434-07

**STYLE OF CAUSE:** LANG ZHENG AND YIOU LI v. THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** APRIL 1, 2008

**REASONS FOR ORDER  
AND ORDER BY:** CAMPBELL J.

**DATED:** APRIL 3, 2008

**APPEARANCES:**

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