Date: 20080624

Docket: IMM-5236-07

Citation: 2008 FC 798

Ottawa, Ontario, June 24, 2008

PRESENT: The Honourable Mr. Justice Beaudry

BETWEEN:

LIMIN WANG
HE HUANG
YUANXIN HUANG

Applicants

and

THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the Act), of the decision of Immigration Officer J. Carlile, (the Officer) refusing the applicant's application for permanent residence in Canada under the skilled worker category, on the ground that the applicant did not obtain the minimum points required under the *Immigration and Refugee Protection Regulations*, SOR/2002-227 (*Regulations*).

ISSUES

[2] Two issues are raised in the present application:

a) Did the Officer breach a principle of natural justice by relying on extrinsic evidence and not allowing the applicant an opportunity to reply?

b) Was the Officer's decision unreasonable?

[3] For the following reasons, the application for judicial review shall be dismissed.

FACTUAL BACKGROUND

[4] The applicants made an application for permanent residence under the skilled worker category to the Visa Section of the Canadian Embassy in Beijing, China, on December 10, 2003. The applicants are citizens of China, and the principal applicant, Mrs. Limin Wang, was born on November 24, 1966. Her husband, He Huang (the male applicant), and son, Yuanxin Wang, were included in the application as dependents.

[5] The principal applicant's occupation was listed as a Telecommunications Manager. She required a score of 67 points to immigrate to Canada. On October 17, 2006, the application was screened by the Officer, and she was awarded a score of 68 points, including five points for adaptability based on the fact that the male applicant had a brother, Huang Hai, living in Canada. Additional documents were requested including updated proof of the brother's residency in Canada. Documents were received on January 17, 2007.

[6] The processing of the file was delayed due to a concern about the genuine nature of the principal applicant's employment. This concern was resolved, and on June 26, 2007, the Officer made a second request for updated information that the male applicant's brother was residing in Canada. The applicants provided the following documents on July 26, 2007:

a) A copy of the brother's permanent resident card;

b) A copy of the brother's wife's permanent resident card and passport;

c) A copy of the brother's 2007 Notice of Assessment;

d) A copy of the brother's wife's 2007 Notice of Assessment;

e) A copy of the brother's marriage certificate;

f) A copy of land transfer registration (in the brother's wife's name).

DECISION UNDER REVIEW

[7] In his decision, the Officer assessed the applicant at 63 points. The applicant was awarded 10 points for age, 20 points for education, 8 points for official language proficiency, 21 points for experience, 0 points for arranged employment and 4 points for adaptability.

[8] The Officer concluded that the applicant had insufficient points to qualify for immigration to Canada. She noted that no points were awarded for the male applicant's brother, Huang Hai, living in Canada. She determined that the evidence provided by the applicants in support of this allegation was insufficient to establish that the brother resided in Canada at the time of the decision, based on the fact that the majority of the documentation provided related to the brother's wife and not him.

Huang Hai's 2007 Notice of Assessment was the only document which related specifically to him. It indicated that he earned a total of $2,000 in 2006.

[9] The Officer noted that her records indicated that Huang Hai had prolonged absences from Canada in the past. The Notice of Assessment was therefore insufficient evidence to convince her that he was a resident of Canada at the time the decision was made.

ANALYSIS

Standard of Review

[10] The jurisprudence of this Court has recognized that the decision of an immigration officer in the assessment of an application for permanent residence under the federal skilled worked class involves an exercise of discretion and should therefore be afforded considerable deference. In *Choksi v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 555, at paragraph 14, [2007] F.C.J. No. 770, Justice Mactavish determined that "to the extent that such an assessment is carried out in good faith, in accordance with the principles of natural justice, and without relying on irrelevant or extraneous considerations, the decision is reviewable on the standard of patent unreasonableness." (See also *Singh v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 58, [2008] F.C.J. No. 65).

[11] Following the Supreme Court of Canada's decision in *Dunsmuir v. New Brunswick*, 2008 SCC 9, the review of an Officer's assessment of an application for permanent residence should

continue to be subject to deference by the Court, and is reviewable on the standard of reasonableness (*Dunsmuir*, at paragraphs 55, 57, 62, and 64).

[12] For a decision to be reasonable there must be justification, transparency and intelligibility within the decision making process. The decision must fall within a range of possible, acceptable outcomes which are defensible in respect of the facts and the law (*Dunsmuir*, at paragraph 47).

[13] It is trite law that a breach of procedural fairness is reviewable on the standard of correctness.

Did the Officer breach a principle of natural justice by relying on extrinsic evidence and not allowing the applicant an opportunity to reply?

[14] The applicants submit that the Officer relied on extrinsic evidence in the assessment of their claim and breached a principle of natural justice.

[15] The respondent submits that the overriding concern with respect to disclosure is whether the applicants were aware of the information in question. The duty of fairness requires disclosure of information if it is necessary for the person concerned to have a meaningful opportunity to present their case. The respondent cites *Zambrano v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 481, at paragraph 47, [2008] F.C.J. No. 601:

> [47] I believe that it is settled law that the duty of fairness requires disclosure of documents if their disclosure is necessary in order for the person concerned to have a meaningful opportunity to present his or her case fully and fairly to the decision-maker. The overriding concern with respect to disclosure is whether the document is one

> that the individual is aware or deemed to be aware. See, for example, *Chen v. Canada (Minister of Citizenship and Immigration)*, [2002] 4 F.C. 193 (T.D.), and *Asmelash v. Canada (Minister of Citizenship and Immigration)*, [2005] F.C.J. No. 2145 (QL).

[16] The Officer's concerns of whether the male applicant's brother resided in Canada should not have come as a surprise to the applicants. The Officer requested twice (January 17, 2007 and June 26, 2007) proof of this fact, this in itself is sufficient to put them on notice that the issue was a live one. Further, the Officer relied mainly on one document submitted by the applicant (2006 Notice of Assessment) to refuse the application. Even if the officer wrote in his decision "… since all documentation except one relates to your brother's wife, not Huang Hai …", the notes on file demonstrate that the Officer considered the other documents provided by the applicants.

[17] For the foregoing reasons, I find that no breach occurred of the rules of natural justice.

Was the Officer's decision unreasonable because the officer failed to consider whether the brother was in Canada at the relevant time?

[18] The applicants submit that the Officer was required to make a concrete finding that the male applicant's brother was not living in Canada at the time the decision was made. The applicants cite *Kim v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 812, [2007] F.C.J. No. 1068, in support of their position.

[19] It is my opinion that the applicant has failed to demonstrate that the Officer's decision is unreasonable. The Officer's decision is based on the insufficiency of evidence establishing the

brother’s residence in Canada. The burden of adducing sufficient evidence to support the application falls to the applicant.

[20] In the case at bar, the Officer found that the majority of the evidence submitted related to the brother’s wife, and not to his presence in Canada. It was open to the Officer to weigh the evidence as she did and determine that the applicants had not satisfied this burden. It is not the role of the Court to reweigh the evidence and I decline to do so.

[21] The Officer’s decision is intelligible, justified and transparent and falls within the range possible, acceptable outcomes which are defensible in respect of the facts and the law.

[22] The parties did not submit questions for certification and none arise.

JUDGMENT

THIS COURT ORDERS that the application for judicial review be dismissed. No question is certified.

"Michel Beaudry"
Judge

FEDERAL COURT

NAME OF COUNSEL AND SOLICITORS OF RECORD

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APPEARANCES:

Matthew Jeffery	FOR APPLICANT
Negar Hashemi	FOR RESPONDENT

SOLICITORS OF RECORD:

Matthew Jeffery Toronto, Ontario	FOR APPLICANT
John H. Sims, Q.C. Deputy Attorney General of Canada Toronto, Ontario	FOR RESPONDENT