Date: 20081006

Docket: IMM-5387-07

Citation: 2008 FC 1129

OTTAWA, Ontario, October 6, 2008

PRESENT: The Honourable Louis S. Tannenbaum

BETWEEN:

Jie JIN

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review of a decision of a Designated Immigration Officer, (the "immigration officer"), dated October 17, 2007 that Jie Jin (the "applicant") did not qualify for a permanent resident visa as an investor because he failed to demonstrate that his personal net worth was derived from legal and legitimate sources, contrary to subsection 16(1) of the *Immigration and Refugee Protection Act, (*the "*Act*"*)*, S.C. 2001, c. 27.

[2] The question at issue is whether or not the immigration officer erred in fact or in law in determining that the applicant did not qualify for permanent residence status in Canada as an investor in the Province of Quebec.

[3] The applicant was born in China in 1975. He is a businessman who graduated in Economics and Trade from Shenzhen University in July 1993. He is married and has one child.

[4] In 1999, the applicant and his mother invested in a textile company called Changzhou Xinqu Xiongtian Textile Co. Ltd., in China on the basis of an 80% to 20% split of shares. He is the Director of the Board and General Manager.

[5] On December 5, 2005, he applied for a "Certificat de Sélection du Québec" ("CSQ") to resettle with his family as an investor in the Province of Quebec. The Quebec immigration authorities considered the application and issued a CSQ under the Investor category on September 19, 2006.

[6] On November 13, 2006, the applicant and his family applied for permanent residence in Canada. The application was assigned to the immigration officer on August 17, 2007.

[7] In a fairness letter dated September 17, 2007, the immigration officer wrote to the applicant asking him to respond to the following concerns:

> This is to advise you of my serious concern that you do not appear to qualify for admission to Canada as an investor. I note that you had stated on your application that you have been the Director of Board and General Manager of Changzhou Xinqu Xiongtian Textile Co. Ltd. Since 1999 and that you own 80% of the shares. Yet, you did not submit any proof for ownership such as a capital verification report. In your application, I note that you submitted a capital verification report for a Changzhou Xinqu Nuoya Electronic Co. Ltd., which was not mentioned anywhere on your application. In addition, I also note that the letters you submitted which were

> purportedly issued by your company were printed on stationery from Xiongtian Industry. Hence, I have concern that you have provided untruthful information on your application and misrepresented your personal net worth and accumulation of funds.

[8] The applicant complied on October 10, 2007, by providing a duly notarized taxation registration alteration list, as well as a notarized business registration alteration record confirming the 2002 change of name of the company from Changzhou Xinqu Nuoya Electronic Co. Ltd. to Changzhou Xinqu Xiongtian Textile Co. Ltd. With respect to the company stationery, the applicant explained that the words Xiongtian Industry means "Xiong Tian Shi Ye," a commonly used designation of the National Trade Mark Office, in China, where "Shi Ye" means that the company is a productive and powerful firm. The company's stationery is also printed with these four words at the top; as per the usual practice in China. The applicant stated that they were faxing the Trade Mark paper to the immigration officer for reference, with the original to follow.

[9] On October 17, 2007, the immigration officer reviewed the explanation and additional information submitted by the applicant and found that the applicant did not explain why the letters Xiongtian Textile would be printed on Xiongtian Industry stationery. As such, the applicant failed to disabuse the immigration officer's concern that he appeared to have misrepresented his personal net worth and accumulation of funds. Consequently, the immigration officer refused the application for permanent resident status by letter dated October 17, 2007. It is this decision that forms the basis of the present application for judicial review.

[10] The immigration officer based her refusal on the provisions of subsection 16(1) of the *Act*, which provides as follows:

Obligation — answer truthfully 16. (1) 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.	Obligation du demandeur 16. (1) 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.

[11] For the reasons that follow, the immigration officer erred in law by failing to respect the rules of natural justice or the duty of procedural fairness. Consequently, the application for judicial review will be allowed.

[12] It is well established that a pragmatic and functional analysis is not required where the issue before the Court is denial of natural justice or breach of fairness. The judicial review of an administrative decision and the evaluation of procedural fairness are different exercises. In *Canadian Union of Public Employees (C.U.P.E.) v. Ontario (Minister of Labour)*, [2003] 1 S.C.R. at para. 102, the Supreme Court of Canada stated that "The content of procedural fairness goes to the manner in which the Minister went about making his decision, whereas the standard of review is applied to the end product of his deliberations".

[13] Accordingly, when considering an allegation of a denial of natural justice, a court need not engage in an assessment of the appropriate standard of review. Rather, the court is required to evaluate whether the rules of procedural fairness have been adhered to. The court does this by assessing the specific circumstances giving rise to the allegation and by determining what procedures and safeguards were required in those circumstances in order to comply with the duty to act fairly. If the court finds that the conduct of the decision-maker has breached natural justice or procedural fairness, no deference is owed and the court will set aside the decision of the tribunal; *C.U.P.E. v. Ontario (Minister of Labour)*, [2003] 1 S.C.R. 539; *Ren v. Canada (Minister of Citizenship and Immigration*, 2006 FC 766; *Sketchley v. Canada (Attorney General)*, [2005] F.C.J. No. 2056 (QL) at paras. 52 and 53; *Hoque v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 772 at para. 11; *Fontenelle v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 1432; *Public Service Alliance of Canada v. Canada (Attorney General)*, 2005 FC 401.

[14] Applying these principles of law to the facts of the case at bar, I am not satisfied that applicant was accorded procedural fairness. Mr. Jin was never made aware of the immigration officer's concerns that he had misrepresented or lied about the sources of his wealth given that there is no reference to this concern in the immigration officer's letter of September 17, 2007. It follows therefore, that the applicant was never given the opportunity to provide an answer to those concerns prior to the immigration officer making her decision to deny his application for permanent resident status on the grounds that he had not answered all questions put to him truthfully, as required by subsection 16(1) of the *Act*.

[15] Under the circumstances the appropriate course to follow is to set aside the impugned decision and to refer the matter back to a different Designated Immigration Officer for reconsideration and redetermination, pursuant to section 18.1 of the *Federal Court Act*.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that the application for judicial review of the immigration officer's decision of October 17, 2007 is allowed and the matter is referred back to a different Designated Immigration Officer for redetermination on the basis of the above reasons.

"Louis S. Tannenbaum"
Deputy Judge

FEDERAL COURT

SOLICITORS OF RECORD

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