

Federal Court



Cour fédérale

Date: 20100217

Docket: IMM-3857-09

Citation: 2010 FC 162

Toronto, Ontario, February 17, 2010

PRESENT: The Honourable Mr. Justice Zinn

BETWEEN:

NI, ANLING

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 visa officer rejecting the applicant's application to immigrate to Canada as a member of the Provincial Nominee Class. The officer determined that the applicant had misrepresented himself and was therefore inadmissible.

[2] Despite the able submissions made by counsel on behalf of the applicant, this application for judicial review is denied.

BACKGROUND

[3] Anling Ni is a citizen of China. On May 30, 2008, he applied to immigrate to Canada as a member of the Provincial Nominee Class.

[4] On January 23, 2009, Mr. Ni received correspondence from the officer informing him that his application had been reviewed, but that there were reasonable grounds to believe that he had failed to answer truthfully on his application. Specifically, the officer was concerned with the authenticity of the income tax certificate provided by Mr. Ni.

[5] The officer advised Mr. Ni that he contacted the local tax office which had purportedly issued the income tax certificate. It informed him that both the stamp and the letterhead that appeared on the tax certificate were not authentic. The officer's note on this reads as follows:

Contacted the Branch at 021-65079263. Ms. Wu answered the phone. She requested to send a fax to them to the same telephone number. Called Ms. Wu again after sending a fax to them. Ms. Wu confirmed that the tax certificate was not issued by them. She further informed that their stamp of the branch is not in that way and their letterhead of the certificate letter is not in that way either. So the certificate should be counterfeit. [Emphasis added]

[6] The officer wrote to Mr. Ni on January 23, 2009, informing him that "I have grounds to believe that you have submitted a fraudulent individual income tax certificate as proof of your income from 2004 to 2008." He provided the applicant with an opportunity to respond and make representations within 30 days.

[7] The company that was acting as the applicant's immigration consultant responded under cover of February 23, 2009, submitting the following:

- a. An Investigation Certificate issued by the National Tax Bureau of Hongkou Branch of Shanghai City;
- b. A Tax Certificate issued by National Tax Bureau of Hongkou Branch of Shanghai City; and
- c. A Declaration made by Mr. Ni.

[8] The Investigation Certificate stated that the local tax office was not qualified to issue the tax certificate in question to foreign countries, but stated that the original tax certificate "was truly issued by our No. 11 tax branch office." The Tax Certificate was effectively a reissue of information provided in the original suspect tax certificate. In his declaration, Mr. Ni states that he was given a regular tax certificate because he did not inform the office that the certificate was for foreign purposes. Mr. Ni states that he later learned that tax certificates for foreign purposes must be issued by a more senior tax office. Mr. Ni also states that he learned, from speaking with the local tax office, that his original tax certificate was deemed not authentic because the stamp became obscured in the faxing process. Mr. Ni further states that the letterhead on the original certificate was put there at his request, on the advice of his immigration consultant.

[9] On May 17, 2009, the officer wrote Mr. Ni informing him that he was not satisfied with his response, and that his application was rejected. The officer determined that the applicant was

inadmissible under s. 40(1)(a) of the *Immigration and Refugee Protection Act*, R.S.C. 2001, c. 27

because he submitted a fraudulent tax certificate as proof of his legally accumulated income.

Section 40(1)(a) provides as follows:

40. (1) A permanent resident or a foreign national is inadmissible for misrepresentation	40. (1) Emportent interdiction de territoire pour fausses déclarations les faits suivants :
(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;	a) directement ou indirectement, faire une présentation erronée sur un fait important quant à un objet pertinent, ou une réticence sur ce fait, ce qui entraîne ou risque d'entraîner une erreur dans l'application de la présente loi;

[10] The officer in his letter outlined the same concern with respect to the income tax certificate as had been previously stated and continued: “You were given an opportunity to address these concerns but your reply did not alleviate my concerns.”

[11] The officer's reasons for rejecting the applicant's explanations are not contained in the May 17, 2009 letter; these reasons can be found in the officer's notes. The officer found that it was not credible that the local tax office would state that the certificate was not issued by them solely on the basis that the stamp appeared distorted. The officer also found that it was not credible that the local tax office would put a letterhead on the certificate at the request of the applicant. The officer also stated that it was not clear why the applicant asked the local tax office to issue the certificate instead

of going directly to the higher office, as he later did. The officer concluded that the applicant's "response is not credible and appears self-serving."

ISSUE

[12] The applicant submitted one issue to the Court: Did the Visa Officer err in determining that the applicant was inadmissible under paragraph 40(1)(a) of the Act because the applicant submitted a fraudulent individual income tax certificate as proof of his legally accumulated income from 2004 to 2008?

ANALYSIS

[13] Both parties agree that the standard of review is reasonableness.

[14] The applicant submits that he gave a full and complete answer to the officer's concerns and submits that the officer's credibility finding was capricious in that it ignored or inadequately addressed the investigation certificate provided by the national tax office as well as the re-issued tax certificate. The applicant further submits that the officer erred by stating that the tax certificate was provided as proof of the applicant's income. In his memorandum the applicant also submits that the officer erred by noting that the stamps on the investigation certificate and the re-issued certificate were the same as the original certificate when in fact they were different. This was not pursued in oral argument. The applicant is correct in this observation; however, it was not material to the officer's decision and therefore does not amount to a reviewable error.

[15] The applicant submits that a high degree of fairness is owed when making misrepresentation findings: *Menon v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 1273. He submits that the officer did not provide sufficient fairness to him.

[16] The applicant also submits that his case is analogous to *Guo v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 626, where judicial review was granted by this Court.

[17] I do not accept the submission that the officer erred in stating that the tax certificate was provided as proof of the applicant's income. The applicant's employment status and the fact that he had paid taxes were relevant to the legitimacy of his income, which in turn was relevant to his admissibility under the Provincial Nominee Class. In his notes the officer writes: "This misrepresentation was made so that the applicant could demonstrate that his income from 2004 to 2008 was accumulated by legal means and thus he could appear to have met the requirements for obtaining a permanent resident visa as a provincial nominee." I agree. The certificate was provided not to support the amount of income made in those years but to support his position that the income was generated legitimately, a requirement of the Canadian authorities, and thus it was provided as proof of the applicant's income.

[18] I agree with the applicant that a high degree of fairness is required in misrepresentation determinations. This is why the officer sent the applicant a procedural fairness letter expressly raising his concerns and permitting the applicant to file a response. This is what fairness required in the circumstances and the officer met that burden. It does not require that the officer blindly accept

the response to the fairness letter without question. The officer is required to assess whether the response satisfies and alleviates his concerns. That decision is reviewed, as stated, on the reasonableness standard.

[19] The officer determined that the applicant had submitted a non-authentic tax certificate in support of his application, and he was not satisfied with the clarification provided by the applicant. Specifically, the officer says that his initial concerns are not addressed because:

1. He found it not credible that the local tax office would inform him that the original certificate was not issued by it “only because the stamp appeared distorted”, as the applicant said;
2. He found it was not credible that the local tax office would put a letterhead on the certificate only because the applicant asked it to do so; and
3. It was not clear why the applicant would go to the local tax office initially to obtain the certificate rather than the higher level officer as he did when he received the fairness letter.

[20] I find the first two findings on credibility or implausibility are reasonable based on the material before the officer. The documents did not address the plausibility of the local tax office rejecting the original tax certificate on the basis of how the office's stamp appeared in the fax transmission from the officer, nor did they explain the plausibility of the local tax office putting a false letterhead on the original tax certificate at the request of the applicant.

[21] These findings undoubtedly weighed in the officer's assessment of the third point above. The applicant explained that he did not know he needed to go to a higher authority to obtain a tax certificate for foreign immigration purposes. Given his earlier findings, the officer found the response to be "not credible and self-serving." That finding was reasonably open to him based on the record.

[22] This case is distinguishable from *Guo*. In *Guo*, Justice Harrington held that "there was simply no evidentiary record to allow the immigration officer to disbelieve the applicant, and consequently he granted the application for judicial review. In this case, there was an evidentiary record upon which the officer could disbelieve the applicant. The question is not whether this Court would reach the same decision if faced with the same evidence, but whether the officer's decision was reasonable.

[23] Faced with an applicant who, at best, provided an improper, if not fraudulent tax certificate in support of his application, it was open to the officer to weight the supplementary documentation accordingly. The officer provided a transparent and intelligible justification of why he doubted the applicant's response to his January 23, 2009 letter. The officer's credibility determination clearly fell within the range of possible outcomes which were defensible in respect of the facts and law of this case. It cannot be said that the officer's credibility determination was unreasonable.

[24] For these reasons this application is dismissed.

[25] Neither party proposed a question for certification and in my view there is none.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that:

1. This application for judicial review is denied; and
2. No question is certified.

"Russel W. Zinn"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3857-09

STYLE OF CAUSE: NI, ANLING v. THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: Toronto, Ontario

DATES OF HEARING: February 16, 2010

**REASONS FOR JUDGMENT
AND JUDGMENT:** ZINN J.

DATED: February 17, 2010

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