Federal Court  Cour fédérale

**Date: 20210922**

**Docket: IMM-881-21**

**Citation: 2021 FC 980**

**Ottawa, Ontario, September 22, 2021**

**PRESENT: Mr. Justice Pentney**

**BETWEEN:**

**BO WANG**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION**

**Respondent**

## JUDGMENT AND REASONS

[1] Bo Wang (the Applicant) seeks judicial review of the Immigration, Refugees and Citizenship Canada (IRCC) decision of February 3, 2021, refusing her application for permanent residence under the Canadian Experience Class under the Express Entry System.

[2] The Applicant says that the IRCC Officer (Officer) erred by adopting an unduly narrow definition of wages in determining whether her position as a Visiting Lecturer at the University of British Columbia (UBC) constituted qualifying Canadian work experience. She argues that the decision is unreasonable because the Officer did not explain their reasons for adopting that

narrow interpretation. The Applicant argues that the scholarship she received through the Canada-China Scholars' Exchange Program (Exchange Program) should have been found to constitute wages.

[3] I disagree. As explained in the reasons that follow, I find that the Officer's decision is reasonable and there is no basis to disturb it.

## I. Background

[4] In September 2020, the Applicant, a citizen of China, submitted a permanent residence application as a member of the Canadian Experience Class under the Express Entry System. Her application listed her appointment as a Visiting Lecturer at UBC from January 8, 2019, to December 31, 2020, as her qualifying Canadian work experience.

[5] The Applicant submitted a number of documents with her application, including a letter from UBC that confirmed she was a Visiting Lecturer in the School of Kinesiology at UBC from January 8 2019, to December 31, 2020. She also provided an earlier letter from UBC that set out the actual offer of the position and outlined the nature of her responsibilities and the terms of her appointment in more detail (the Letter of Offer). However, both of these letters also state that she did not receive a salary or benefits from UBC. Instead, they describe her as a self-funded researcher.

[6] In addition, the Applicant provided a letter from the Canadian Bureau for International Education (the institution that administers the Exchange Program), stating that she received a scholarship valued at $26,400 in the 2018-2019 academic year, and indicating that she completed

12 months of research at UBC (the Exchange Program Letter). She also provided a T4A Income Tax form showing the grant money, as well as her 2019 Notice of Assessment from the Canada Revenue Agency.

[7] By letter dated February 3, 2021 (the Decision Letter), the reviewing Officer refused the application on the basis that the Applicant did not have sufficient points. The Officer's notes in the Global Case Management System (GCMS) indicate that although the Applicant declared that she had more than one year of qualifying work experience as a Visiting Lecturer, the letter of employment from UBC stated that she was a "self-funded researcher" and this raised a question of whether this qualified as "work" under the Program.

[8] The Officer's refusal was based on the determination that the Applicant's Canadian work experience at UBC did not meet the definition of work under subsection 73(2) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [*Regulations*], nor did it fit within the requirements of paragraph 19(4)(d) of the Ministerial Instructions respecting the Express Entry System – August 31, 2020 to October 19, 2020 (Ministerial Instructions). The Officer concluded:

> Upon review of all information available I am not satisfied on the balance of probabilities that you were remunerated by wages or commission during your declared employment with University of British Columbia. I am therefore not satisfied that your experience with UBC can be considered qualifying Canadian work experience pursuant to MI3 Item 19(4)(d) and pursuant to section R73(2) of the Regulations.…

[9] The Applicant seeks judicial review of this decision.

## II. Issues and Standard of Review

[10] The issue in this case is whether the Officer's decision was reasonable.

[11] The standard of review is that of reasonableness as prescribed in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16-23 [*Vavilov*]. None of the exceptions set out in that decision apply here, and thus reasonableness is the standard of review.

[12] In summary, reasonableness review under the *Vavilov* framework requires a reviewing court "to review the reasons given by the administrative decision maker and determine whether the decision is based on an internally coherent chain of reasoning and is justified in light of the relevant legal and factual constraints" (*Canada Post Corp v Canadian Union of Postal Workers*, 2019 SCC 67 at para 2 [*Canada Post*]). The burden is on the Applicant to satisfy the Court "that any shortcomings or flaws relied on… are sufficiently central or significant to render the decision unreasonable" (*Vavilov* at para 100, cited with approval in *Canada Post* at para 33).

## III. Analysis

[13] The Applicant submits that the decision is unreasonable because the Officer does not explain why they adopted a narrow interpretation of "wages or commission", which excluded the scholarship she received from the Exchange Program. Indeed, the Applicant says that the Officer never explained the precise definition relied on in reaching the decision.

[14] According to the Applicant, *Vavilov* required the Officer to consider applicable policy and program guidance, as well as case law from this Court on the meaning of the term "wages or

commission". The Applicant cites several sources that point toward a wide interpretation of this concept. These include: (i) the Regulatory Impact Assessment Statement (RIAS) that accompanied the regulatory change that introduced the Canadian Experience Class, (ii) the broad approach to the term adopted by this Court in *Dinh v Canada (Citizenship and Immigration)*, 2003 FC 1371 at paras 5-6 [*Dinh*], and (iii) the IRCC Guidelines on "Temporary Foreign Worker and International Mobility Programs: What is work?" (Guidelines).

[15] First, the Applicant notes that the relevant RIAS did not refer to a specific definition of "wages or commission" but rather made clear that qualifying work had to be paid. It did not limit what types of payments were acceptable.

[16] Second, the Applicant argues that this Court stated in *Dinh* that the definition of work in the *Regulations* (referring to the section 2 definition) "clearly includes most activities for which compensation is provided" (*Dinh* at para 6). The Applicant says that *Dinh* also stands for the proposition that no distinction should be drawn between full-time work, for which a regular salary is paid, and part-time work, which is compensated in some other form.

[17] Third, the Applicant points to the Guidelines, which state:

> Wages or Commission
>
> This includes salary or wages paid by an employer to an employee, remuneration or commission received for fulfilling a service contract, or any other situation where a foreign national receives payment for performing a service.

[18] The Applicant submits that she received the $26,400 Exchange Program scholarship as payment for her performing the duties of Visiting Lecturer at UBC, and that this constitutes

receiving payment for performing a service. Therefore, she meets the concept of wages set out in the RIAS, the *Dinh* decision, and the Guidelines. The Applicant argues that the Officer's failure to discuss any of these sources makes the decision unreasonable in light of *Vavilov*.

[19] According to the Applicant, instead of discussing those sources, the Officer unreasonably adopted a narrower interpretation and essentially found that because she did not receive a salary or benefits directly from UBC, she did not receive wages or a commission. The Applicant says this is an error that is sufficiently central to make the decision unreasonable.

[20] I am not persuaded.

[21] The starting point is to recall that this is a judicial review of a decision that was based on the Officer's interpretation of the governing legislation and the specific Ministerial Instructions that apply to this situation.

[22] *Vavilov* outlines the correct approach to conducting judicial review on a reasonableness standard. A reviewing judge is not to undertake a *de novo* interpretation of the provision and then measure the officer's decision against that (*Vavilov* at para 116; *Canada (Citizenship and Immigration) v Mason*, 2021 FCA 156 at para 20 [*Mason*]). Instead, the proper approach is to engage in a preliminary review of the provision to gain an understanding of the range of interpretive options open to the officer. Once that is done, the task is to review the officer's decision in light of the administrative context and the record, to assess whether the officer's interpretation of the provision is reasonable (*Mason* at paras 16-19).

[23] The starting point, therefore, is the legislative framework. The relevant provision is the definition of “work” in subsection 73(2) of the *Regulations*, which states: “[d]espite the definition *work* in section 2, for the purposes of this Division, ‘work’ means any activity for which wages are paid or commission is earned”.

[24] The parties agree that this is a narrower definition than that set out in section 2 of the *Regulations*, which provides: “‘work’ means an activity for which wages are paid or commission is earned, or that is in direct competition with the activities of Canadian citizens or permanent residents in the Canadian labour market”. The definition of the term “work” in the administration of the immigration system applies in several different contexts, and the wider, more broadly applicable definition reflects that reality.

[25] Other than this distinction, the text of the legislation does not signal a particular meaning for the term “wages”.

[26] The next step is to consider, in a very preliminary way, the context and purpose of the provision.

[27] The purpose of the Canadian Experience Class of the Express Entry System is to facilitate the granting of permanent residence for a certain group of individuals, namely, “a class of persons who may become permanent residents on the basis of their ability to become economically established in Canada, [based on] their experience in Canada…” (*Regulations* subsection 87.1(1)). Applicants under the Canadian Experience Class demonstrate their ability to

become economically established in Canada, in part, by providing proof that they have acquired at least one year of full-time work experience in Canada (*Regulations* paragraph 87.1(2)(a)).

[28] Evidence of at least one year of full-time work is one of the key attributes of members of the class. Work experience that does not meet these requirements would not demonstrate an applicant's ability to become economically established in Canada. Nor would work experience that was unpaid. This explains why the narrower definition of "work" provided in subsection 73(2) of the *Regulations* ("an activity for which wages are paid or commission is earned"), applies in reference to the Canadian Experience Class.

[29] I agree with the Respondent that this purpose also points towards a narrower definition of the concept of wages. The program seeks to identify applicants who have received a salary for their work, and who are therefore expected to continue to be able to support themselves after they are approved for permanent residence. Applying a wider definition would not necessarily help determine whether the individual's work experience would likely translate into future success in the Canadian job market.

[30] Turning next to the relevant policy guidance, the Ministerial Instructions that were in effect at the time of the Officer's decision stated at subsection 19(4) that "[f]or the purpose of this section, Canadian work experience is work experience that… (d) is remunerated by the payment of wages or a commission". Neither the *Regulations* nor the Ministerial Instructions provide a definition of the term "wages". In view of the fact that the Ministerial Instructions specifically apply to applications under the Canadian Experience Class, whereas the Guidelines

referred to by the Applicant apply to a wider range of circumstances, it was not unreasonable for the Officer to rely on the Ministerial Instructions.

[31] These were the provisions cited by the Officer in the decision. The Applicant says that the Officer adopted an unduly narrow interpretation, which equated wages with salary and benefits paid directly by an employer. Instead, according to the Applicant, the Officer should have been guided by the RIAS, the case law, and the Guidelines, which all provide a wider definition of the concept of wages.

[32] There are several problems with the Applicant's argument on this point. First, even if the Officer had adopted a wider view, the record does not support the contention that the Applicant received the scholarship because she was performing a service for UBC. The letters before the Officer do confirm that both things happened, *i.e.*, that she worked as a Visiting Lecturer and that she received the Exchange Program scholarship. However, they do not demonstrate any connection between the two.

[33] The UBC offer of a position was contingent on the Applicant funding her own way; the Letter of Offer does not make any reference to the funding from the Exchange Program. Similarly, the Exchange Program Letter refers to the Applicant having "completed twelve months of research at the University of British Columbia" but then goes on to describe the purpose and nature of the Exchange Program:

> Funded by the Department of Foreign Affairs, Trade and Development Canada (DFATD) in partnership with the China Scholarship Council, The Canada-China Scholars' Exchange Program is an official exchange program between the Government of Canada and the Government of the People's Republic of China.

> Canada offers awards to full-time, permanent teaching or research staff, master's or doctoral graduates so that upon their return home they can make a distinctive contribution to life in China and to mutual understanding between Canada and China.

[34] The Applicant argues that the Officer's conclusion that she had not received "wages" was not explicitly based on the lack of connection or the purpose of the Exchange Program, and so this cannot be invoked now to sustain the decision. Further, she submits that the Officer should be taken to have been familiar with how the Exchange Program operates, and the requirements it imposes on host educational institutions to provide regular updates on the recipient's activities during the period they receive the scholarship. The Applicant notes that the Respondent's website contains several references to the Exchange Program and therefore the Officer must be presumed to be aware of how it operates.

[35] I agree with the Applicant that the Officer's decision, which comprises the Decision Letter and the GCMS Notes, does not contain an elaborate discussion of why the Exchange Program scholarship did not fall within the definition of wages for the purposes of her application. That is not, however, a basis to overturn the Officer's decision. Under the *Vavilov* framework, reasons must be assessed in light of the record that was before the decision-maker and with due sensitivity to the administrative setting in which they were given (*Vavilov* at paras 91-98). This can include "the evidence before the decision maker, the submissions of the parties, publicly available policies or guidelines that informed the decision-maker's work, and past decisions of the relevant administrative body" (*Vavilov* at para 94). Obviously, this can also include any binding judicial precedents on the specific issue before the decision-maker (*Vavilov* at para 112).

[36] In my view, the Applicant's submissions invite me to undertake the type of analysis counselled against in *Vavilov* and *Mason*.

[37] The Applicant has put forward another possible interpretation of the term "wages", and asks me to overturn the Officer's decision because it did not consider this other approach. That is not how to conduct reasonableness review. The Applicant has not demonstrated that the Officer was not alive to the importance of the text, context, and purpose when interpreting the provision. I am not persuaded that the Officer's approach to interpreting the relevant provision and applying that to the facts of this case fell short in the manner described by the Applicant.

[38] I note, finally, that the Applicant's proposed interpretation of the term "wages" is not itself grounded in the text, context, or purpose of the specific provision, nor the specific facts of this case.

[39] Returning to the Officer's decision, there is no dispute that the Officer was required to apply the regulatory provisions that address the Canadian Experience Class, including the definition of "work" in subsection 73(2) of the *Regulations*. There is also no dispute that this definition is narrower than the one found elsewhere in the legislation. The question is whether the Officer's interpretation was reasonable, and this in turn requires an assessment of the types of considerations that the Officer applied, based on a review of the reasons in light of the record.

[40] The following extract from the Decision Letter sets out the line of analysis followed by the Officer:

> I have reviewed all information available and upon review, I am not satisfied that your experience with University of British

> Columbia meets the definition of work under Section R73(2) of the Regulations nor the definition of qualifying Canadian work experience pursuant to MI3 Item 19(4)(d) of the Ministerial Instructions.
>
> I note that you provided a letter of employment (LOE) dated September 14, 2020 from University of British Columbia which indicates that during the period of January 8, 2019 to December 31, 2020 you received no salary nor benefits from UBC. Instead, you are a self-funded researcher and received grant from Canada-China Scholars' Exchange Program.
>
> The ministerial instructions in force at time of application indicate that Canadian work experience is work experience that is remunerated by the payment of wages or commission. I acknowledge that you were authorized to acquire experience via a work permit issued under LMIA exemption C22; however, such does not guarantee that you will be awarded work experience points for this employment.

[41] The most salient points from this can be summarized in the following way:

(i) The Officer reviewed all of the information – there is no dispute that the Officer considered the application and supporting documentation;

(ii) The Officer correctly noted that the UBC letters indicate that the Applicant "received no salary nor benefits from UBC";

(iii) The Officer then states: "Instead, you are a self-funded researcher and received a grant from [the Exchange Program]". This is also accurate;

(iv) The Officer referred to the Ministerial Instructions, which indicate that Canadian work experience is work experience that is remunerated by the payment of wages or commission. This is a verbatim quote from the guidance document;

(v) The Officer then referred to the fact that the Applicant had been authorized "to acquire experience via a work permit" but found that this "does not guarantee that [the Applicant

would] be awarded work experience points for this employment." No issue has been raised regarding these statements.

[42] Based on this line of analysis, the Officer concluded, "…I am not satisfied on a balance of probabilities that you were remunerated by wages or commission during your declared employment with [UBC]", and that therefore the Applicant's experience at UBC could not be considered "qualifying Canadian work experience" pursuant to subsection 73(2) of the *Regulations* and the Ministerial Instructions.

[43] The record supports the Officer's decision. The GCMS Notes show that the Applicant's file was flagged for further review because, although her work experience seemed to otherwise meet the criteria for the program, it was unclear whether she had been remunerated for the work. The notes for this review reflect the reasoning set out in the Decision Letter. They both show that the Officer was focused on the right question (did the Exchange Program scholarship count as "wages" in exchange for her work at UBC, for the purposes of the Canadian Experience Class under the Express Entry System?), and that the Officer considered the information the Applicant had provided.

[44] The foregoing summary indicates that the Officer's reasoning and decision were based on an interpretation of the concept of wages that linked it to salary or benefits paid in exchange for services provided to an employer. The Applicant had listed UBC as her employer and she had pointed to her appointment as Visiting Lecturer as her relevant work experience. The Officer, therefore, did not err in considering whether the evidence showed that the Exchange Program scholarship was paid in exchange for the Applicant's services provided to UBC. Instead, based

on the wording of the Exchange Program Letter, the Officer drew the conclusion that it had been provided so that the Applicant could gain an experience of Canada – an experience she was meant to bring back to China as one means of strengthening relations between the two countries. This is a reasonable interpretation based on the record before the Officer, and it does not support the Applicant's claim that the scholarship was somehow tied to the services she performed for UBC.

[45] The Officer's interpretation of the term "wages" in subsection 73(2) of the *Regulations* reflects the text of the provision and its context. In this regard, it is appropriate to note that the overall purpose of the Canadian Experience Class is to provide an "express entry" route for applicants in Canada who have demonstrated that they can establish themselves here financially, and one of the key factors in that is showing that they have previously succeeded in the Canadian job market. The Officer's approach is consistent with the text, context, and purpose of the provision.

[46] This interpretation was also based on relevant policy guidance that applied directly to the case (as opposed to more general guidance that would apply to other types of situations). I also find that the Officer did not fail to apply any relevant binding jurisprudence that addressed the specific issue. The *Dinh* case is not a persuasive authority on the interpretation of the term "wages" for the purposes of the Canadian Experience Class, and it was therefore not binding on the Officer.

[47] A review of the Decision Letter in light of the record confirms that the Officer did not mistakenly fail to review a key document provided by the Applicant. However, the Applicant

provided new documents on the application for judicial review, which were not in the record before the Officer. This gives rise to two issues.

[48] First, judicial review is generally conducted on the basis of the record before the decision-maker, and so it is not evident why these documents should be considered (*Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22 at paras 17-20). Because these documents were not submitted with the application, the Officer cannot be criticized for failing to considering them. Second, having reviewed the newly submitted documents, I am not persuaded that their consideration would be sufficient to make the Officer's decision unreasonable. This is true even if the Officer is presumed to be aware of the general terms of the Exchange Program. The further documents do not establish a connection between the Visiting Lecturer appointment and the scholarship.

[49] I find that none of the letters the Applicant submitted in support of her application state that the scholarship was to compensate her for her "services" to UBC. If anything, the letter about the Exchange Program seems to suggest the opposite, namely that the scholarship was to allow the Applicant to gain an experience of Canada, that she would then bring back to China. Absent any evidence in the record establishing that the scholarship was intended to compensate the Applicant for her services to UBC, the Officer had no reasonable basis to draw that conclusion. On the contrary, the Letter shows that the purpose of the scholarship (to gain experience to bring back to China) is directly opposite to the purpose of the legislation permitting qualifying members of the Canadian Experience Class to obtain permanent residence under the Express Entry System (to show a likelihood of successful economic integration based

on recent paid work experience in Canada). This supports the Officer's determination that the scholarship was not "wages" for the purpose of the relevant legislative provisions.

[50] In effect, the Officer reasonably determined that none of the documents before them established a sufficient link between the Applicant's appointment as a Visiting Lecturer at UBC and the Exchange Program scholarship for that appointment to qualify as "work" under the relevant provisions. Neither do the documents the Applicant seeks to introduce at judicial review. That is the core of the problem for the Applicant: she did not receive the UBC appointment because she had received the scholarship, and she did not receive the scholarship because she had received the particular appointment at UBC. It is also worth noting here that the relevant time frames do not entirely overlap: the Exchange Program scholarship was for the 2018-2019 academic year (*i.e.*, July 2018 – June 2019), while the UBC appointment ran from January 8, 2019 to December 31, 2020.

[51] Based on this, I find that the Officer's interpretation of the term "wages" under subsection 73(2) of the *Regulations* was reasonable; the Officer's interpretation took into account the text, context, and purpose of the provision and considered the specific policy guidance document that applies here. Further, the Officer's interpretation reflects the record submitted by the Applicant. Although the reasons for the decision do not set out an elaborate analysis on this point, the Officer's line of reasoning is clear. In this case, in reviewing the reasons in light of the record, it is easy to "connect the dots on the page [because] the lines, and the direction they were headed, may readily be drawn" (*Komolafe v Canada (Citizenship and Immigration)*, 2013 FC 431 at para 11, cited with approval in *Vavilov* at para 97).

## IV. Conclusion

[52] For all of these reasons, I find the Officer's decision to be reasonable.

[53] Although the Applicant has offered another possible interpretation of the term "wages" in subsection 73(2) of the *Regulations*, that in itself is not sufficient to establish that the Officer's approach was unreasonable. Having examined the decision in light of the record, I find that the Officer interpreted the key terms in light of the text, context, and purpose of the provision. The approach taken in the decision is a reasonable one in light of the purpose of the program. It is also consistent with the record that the Applicant provided to the Officer.

[54] In light of this, there is no basis to disturb the Officer's decision.

[55] The application for judicial review is dismissed. There is no question of general importance for certification.

**JUDGMENT in IMM-881-21**

**THIS COURT'S JUDGMENT is that:**

1. The application for judicial review is dismissed.

2. There is no question of general importance for certification.

"William F. Pentney"
Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

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| **DOCKET:** | IMM-881-21 |
| **STYLE OF CAUSE:** | BO WANG v THE MINISTER OF CITIZENSHIP AND IMMIGRATION |
| **PLACE OF HEARING:** | HEARD BY VIDEOCONFERENCE |
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| **JUDGMENT AND REASONS:** | PENTNEY J. |
| **DATED:** | SEPTEMBER 22, 2021 |

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| Ms. Erica Louie (DOJ) | FOR THE RESPONDENT |

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