Federal Court  Cour fédérale

Date: 20231205

Docket: IMM-11781-22

Citation: 2023 FC 1634

Ottawa, Ontario, December 5, 2023

PRESENT: The Honourable Madam Justice McVeigh

BETWEEN:

BAIYAN WU

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] This is an application for judicial review to set aside the decision of an officer of Citizenship and Immigration Canada (the "Officer"), dated October 19, 2022, in which the Officer found the Applicant was inadmissible to Canada for misrepresentation under section 40(1)(a) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (*"IRPA"*).

[2] This application will be dismissed for the reasons outlined below.

[3] For context, I have detailed the progression of events in this application, including the history of the Applicant's military service. At best, the Applicant provided this information in apathetic dribbles, and only after numerous requests from Immigration, Refugees and Citizenship Canada ("IRCC") over the course of many months.

[4] The Applicant is a citizen of China. In 2019, the Applicant began an application for permanent residency with his spouse, which was sponsored by his daughter-in-law (the "Sponsor"). The Sponsor assisted the Applicant in preparing his application. As part of his application, the Applicant provided several documents and completed form IMM5669 ("Schedule A"). Within the Schedule A form, applicants are asked whether they have served in the armed forces of any country. In response to this question, the Applicant responded "**No.**"

[5] On January 23, 2020, the IRCC requested the Applicant's household register ("Hukou"), along with an updated Schedule A form. Again, the Applicant answered "**No**" to whether he had served in the military. Based on the CTR, the Applicant did not include the Hukou in his original application which is now disputed.

[6] In June 2020, the IRCC requested for a second time the Hukou, along with an updated Schedule A form.

[7] In September 2020, the Applicant provided the Hukou and a new Schedule A form. The Hukou indicated the Applicant had "retired from active service." At this time, the Applicant

answered "**Yes**" to the question of military service. He stated he served in the Chinese People's Liberation Army from 1976 to 1990, and had no military rank during his 14 years of service.

[8] In December 2020, the Applicant was requested to complete form IMM5546 ("Details of Military Service"). In January 2021, the IRCC received the military tables, which stated the Applicant enrolled as a volunteer, his rank was professional sergeant, and his title was cooking squad leader.

[9] In March 2021, the IRCC asked the Applicant for a notarized military booklet and discharge documents. This was received in May 2021. The notarized certificate of retirement claimed the Applicant served in the army, and his rank was Specialist Sergeant of Navy with a position as radio operator.

[10] In June 2021, due to the discrepancy between the notarized military booklet and the Applicant's declaration, a procedural fairness letter ("PFL") was sent. The PFL outlined the IRCC's concern that the Applicant misrepresented his background information by failing to disclose that he was a radio operator during his military service. The PFL provided the Applicant with an opportunity to explain the discrepancies between his application and his military booklet. It also described the consequences of a finding of misrepresentation.

[11] In response to the PFL, the Applicant's Sponsor indicated they "were not trying to hide the truth behind his military history," "it was a miscommunication," and "it was an honest mistake." She provided a notarized copy of the Serviceman Promotion Report, which indicated

the Applicant was enlisted in the army as a radio operator in January 1977. He then transferred to the signal squad in December 1979, and promoted to cooking squad in December 1980.

[12] The parties agree that the standard of review is reasonableness. Moreover, the case law recognizes that a finding of misrepresentation bears greater consequences than a simple visa refusal. Accordingly, this requires the decision-maker's reasons "to reflect the stakes for, and from the perspective of, the affected individual" (*Gill v Canada (Citizenship and Immigration*), 2021 FC 1441 at para 7, citing *Likhi v Canada (Citizenship and Immigration*), 2020 FC 171 at para 27, citing *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 133).

[13] The Applicant argued the Officer erred by failing to explain how the misrepresentation was material. Additionally, the Applicant argued the Officer failed to consider all of the circumstances and explanations given, as the Sponsor indicated the misrepresentation was an innocent mistake. Further, the Applicant argued the Sponser provided the Hukou in his initial application, meaning the relevant evidence was already included. Accordingly, the Officer could have examined the Hukou, as it said he served with the Chinese military.

[14] By way of background, *Wang v Canada (Citizenship and Immigration)*, 2018 FC 368 acknowledges that section 40 is afforded a broad interpretation. The objective of section 40 is "to deter misrepresentation and maintain the integrity of the immigration process" (*Wang* at para 15). Accordingly, the applicant has the onus of ensuring their application is complete and

accurate (*Wang* at para 15). An applicant has a "duty of candour to provide complete, honest and truthful information in every manner when applying for entry into Canada" (*Wang* at para 16).

[15] The innocent misrepresentation (or honest mistake) exception is "narrow and applies only to truly extraordinary circumstances" (*Wang* at para 17). In *Kaur v Canada (Citizenship and Immigration)*, 2023 FC 1454, Chief Justice Crampton noted the exception only applies where "(i) the applicant honestly believed they were not representing a material fact, (ii) the applicant's belief was reasonable, and (iii) knowledge of the misrepresentation was beyond the applicant's control" (Kaur at para 26). Therefore, "it is not sufficient for the applicant to demonstrate that they subjectively believed that they were not misrepresenting a material fact. The applicant must also demonstrate that such belief was objectively reasonable" (*Kaur* at para 26).

[16] I find the Officer reasonably determined the Applicant's error, the non-disclosure of his military service history, constituted a misrepresentation. The Officer also noted the discrepancies in the Applicant's job titles and ranks. The Applicant incorrectly stated he did not serve in the army, despite having 14 years of service. Additionally, in determining whether this error arose from an innocent mistake, the Officer reasonably found this was not the case. The Officer reviewed the Sponsor's explanation, but did not find this answer convincing. The Officer noted, "I am satisfied the forms and instructions provided to clients from the very beginning of the process are clear enough. Therefore, I think it is reasonable to expect that someone who served in the military during 14 years will understand that they need to declare the said 14 years of service with the military when asked "Have you ever served in the armed forces of any country?"

[17] Further, even if the Applicant honestly believed that he was not making a misrepresentation, it was not objectively reasonable. As noted, the Officer found the forms were clear from the start, as they asked a direct question about military service. Given the Applicant had a long history of serving in the military, it was reasonable for the Officer to find the Applicant should have addressed this, particularly as Schedule A was submitted twice with the answer "**No.**"

[18] Moreover, similar to the case in *Wang*, the Applicant had knowledge of the information at issue. It was not beyond his control. The Applicant was aware of his prior military history, including his different roles and ranks. In contrast, in *Jean-Jacques v Canada (Minister of Citizenship and Immigration)*, 2005 FC 104, the applicant did not have any knowledge. Accordingly, based on the case law, the narrow exception does not apply (*Wang* at para 25).

[19] Importantly, the Applicant also did not voluntarily provide this information. Similar to *Wang*, the relevant information was only given after repeated requests from the IRCC. Therefore, the authorities the Applicant relies upon, including *Berlin v Canada (Citizenship and Immigration)*, 2011 FC 1117 and *Koo v Canada (Citizenship and Immigration)*, 2008 FC 931, can be distinguished. In those decisions, the applicants had errors in their applications, but the information was otherwise available to the officers.

[20] Here, the Applicant argues a similar situation has arisen, on the basis that the Hokou was sent with his initial application. However, I find there is no evidence to support this assertion, other than his daughter-in-law's affidavit. I afford this explanation no weight, as it was provided

after the fact and this explanation was not given when the IRCC kept asking for the Hokou. Until the IRCC made multiple requests of the Applicant, this information about his military service history was not available. As the case law recognizes, an applicant cannot take advantage of the fact that information is "caught" by immigration authorities (*Wang* at para 19).

[21] Finally, in terms of whether the misrepresentation was material, I find the Officer's decision on this point was reasonable. A misrepresentation does not need to be "decisive or determinative" to be material (*Wang* at para 18). Rather, "determining whether a misrepresentation is material requires regard for the wording of the provision and its underlying purpose which is to avoid inducing errors in administrating the IRPA" (*Wang* at para 36).

[22] The Applicant argues the Officer did not explain how his misrepresentation affected the administration of the *IRPA*. The Officer's notes acknowledge there was a "staggering" difference between the Applicant's declarations that he "did not serve in the military, served as a volunteer/no rank, served as a cooking squad leader, and served as a specialist sergeant of Navy as a Radio Operator." The Officer further states that, "If we had not been persistent and had not requested many times additional evidence, we would have missed crucial information in link with client's background which would have induce an error in the assessment of the client's admissibility to Canada" [emphasis added].

[23] The case law recognizes that a complete and accurate employment history allows immigration officials to make inquiries about the admissibility of an applicant (see *Song v Canada (Citizenship and Immigration)*, 2019 FC 72 at para 27 citing *AA v Canada (Citizenship*

and Immigration), 2017 FC 1066). Unlike in *Song*, which the Applicant cites, I find the Officer clearly turned his attention to the materiality of the misrepresentation, noting this could have significantly affected an understanding of his background, which in turn would have influenced his admissibility assessment.

[24] Therefore, given the Applicant's military service, history was highly relevant to the admissibility assessment. I find the Officer reasonably explained how the Applicant's misrepresentation could have induced an error in the administration of the *IRPA*.

[25] The Officer's decision is reasonable and the judicial review is dismissed.

JUDGMENT in IMM-11781-22

THIS COURT'S JUDGMENT is that:

1. The application is dismissed.

2. No question is certified.

"Glennys L. McVeigh"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-11781-22
STYLE OF CAUSE:	BAIYAN WU v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	HELD BY VIDEOCONFERENCE
DATE OF HEARING:	NOVEMBER 22, 2023
JUDGMENT AND REASONS:	MCVEIGH J.
DATED:	DECEMBER 5, 2023

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