

Date: 20071115

Docket: IMM-5555-06

Citation: 2007 FC 1188

Toronto, Ontario, November 15, 2007

PRESENT: The Honourable Madam Justice Heneghan

BETWEEN:

**YUNKANG WANG
YUYU WANG**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR ORDER AND ORDER

[1] Mr. Yunkang Wang (the “Principal Applicant”) and Mrs. Yuyu Wang (the “Second Applicant”) seek judicial review of the decision of Visa Officer Clark Thomas acting as a delegate of the Minister of Citizenship and Immigration (the “Respondent”). In his decision, dated July 8, 2000, the Visa Officer rejected the application for permanent residence submitted by the Principal Applicant on the grounds that his wife had been convicted of an offence in Japan and was inadmissible pursuant to paragraph 36(2)(c) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.

[2] The Principal Applicant submitted an application for permanent resident visas for himself, his wife and dependent children in July 2005. He sought entry into Canada as a member of the “investor” class. In the course of reviewing the application the Visa Officer became aware that the Second Applicant had been convicted in Japan of an offence. By letter dated March 17, 2006, the Visa Officer sought information about the circumstances of the offence.

[3] By letter dated May 2, 2006, counsel for the Applicants responded and provided the following:

OFFENSE AGAINST PUBLIC OFFICE ELECTION ACT

It happened in the afternoon of April 21, 2003 in Ashiya City. There was a city mayor election during this period. There were promotion cars passing through the streets, speaker announcements and telephone calls to each household for the election. I was disturbed by all these activities that made me very stressful, nervous and unable to have a nap in the afternoon. Therefore, I went to the electoral office nearby my house to complain. In the said office, I had a language commotion with a man. He then pushed me to the door and touched my breast. With this sudden action, I unconsciously retaliated by hit [sic] him with an umbrella that I had with me. Then, he called the police and sued me with “Offence against Public Office Election Act”. Originally, it was faulted by both parties and because of the election law periods, I was prosecuted for intruding the electoral activities.

[4] The Second Applicant was not asked to provide any submissions relative to the criminal offence; she was asked only to provide all documents, including court documents, and a “written detailed account of events leading up to the criminal charge/s”.

[5] The CAIPS notes contain the following entry for July 12, 2006:

Upon reviewing the submission it was found that the spouse has a criminal conviction in Japan.

...

THE CLIENT'S SPOUSE YUYU HAS BEEN CONVICTED OF AN OFFENCE THAT IF COMMITTED IN CANADA WOULD BE AN OFFENCE DESCRIBED IN 265 OF THE C.C.C. SHE IS INADMISSIBLE PURSUANT TO SECTION 36(2) OF IRPA. SHE WILL NOT BE ELIGIBLE FOR REHAB UNTIL AT LEAST MAY 2009

[6] The refusal letter, dated July 28, 2006, provides the following explanation for the rejection of the Principal Applicant's application for a permanent resident visa:

Paragraph 36(2)(c) renders inadmissible a foreign national on grounds of criminality for committing an act outside Canada that is an offence in the place were [sic] it was committed and that, if committed in Canada, would constitute an indictable offence under an Act of Parliament.

Your spouse, Yuyu Wang, committed in Japan on April 21, 2003 an offence, namely Assault. This act constitutes an offence under the

laws of the place where it occurred. If committed in Canada, this would constitute an offence under article 265 of the Criminal Code of Canada punishable by way of indictment.

[7] In my opinion, this application should be allowed on the grounds that the Visa Officer failed to apply the legal test of equivalency in assessing the act committed by the Second Applicant, for the purpose of making an inadmissibility finding. Pursuant to subsection 36(2) of the Act, the Visa Officer should have conducted an equivalency analysis in order to show that the Second Applicant had committed an act that “if committed in Canada, would constitute an indictable offence under an Act of Parliament”, as set out in the language of paragraph 36(2)(c) of the Act.

[8] In *Hill v. Canada (Minister of Employment and Immigration)* (1987), 73 N.R. 315 (F.C.A.), the Federal Court of Appeal set forth the following tests for determining the equivalency of offences:

... It seems to me that because of the presence of the words “would constitute an offence ... in Canada”, the equivalency can be determined in three ways: - first, by a comparison of the precise wording in each statute both through documents and, if available, through the evidence of an expert or experts in the foreign law and determining therefrom the essential ingredients of the respective offences. Two, by examining the evidence adduced before the adjudicator, both oral and documentary, to ascertain whether or not that evidence was sufficient to establish that the essential ingredients of the offence in Canada had been proven in the foreign proceedings, whether precisely described in the initiating documents or in the statutory provisions in the same words or not. Third, by a combination of one and two.

[9] There is nothing in the record to show that the Visa Officer conducted such an analysis. In my opinion, the reference in paragraph 36(2)(c) to an “offence” invites application of the equivalency analysis.

[10] The Visa Officer here committed a reviewable error and the application will be allowed. The matter is remitted to a different officer for redetermination. There is no question for certification arising.

ORDER

This application for judicial review is allowed, the decision of the Visa Officer is quashed and the matter is remitted to another officer for redetermination. There is no question for certification arising.

“E. Heneghan”

Judge

FEDERAL COURT

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: IMM-5555-06

STYLE OF CAUSE: YUNKANG WANG
YUYU WANG
Applicants
and
THE MINISTER OF CITIZENSHIP
AND IMMIGRATION
Respondent

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: November 9, 2007

**REASONS FOR ORDER AND
ORDER:** HENEGHAN J.

DATED: November 15, 2007

APPEARANCES:

D. CLIFFORD LUYT FOR THE APPLICANT

JAMIE TODD FOR THE RESPONDENT

SOLICITORS OF RECORD:

D. CLIFFORD LUYT FOR THE APPLICANT
Barrister & Solicitor
Toronto, Ontario

JOHN H. SIMS, Q.C. FOR THE RESPONDENT
Deputy Attorney General of Canada