

Federal Court



Cour fédérale

Date: 20130312

Docket: IMM-4073-12

Citation: 2013 FC 230

Ottawa, Ontario, March 12, 2013

PRESENT: The Honourable Mr. Justice O'Reilly

BETWEEN:

QING QIANG YUAN

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Overview

[1] Mr Qing Qiang Yuan applied for permanent residence in Canada based on his experience as a chef in China. However, a visa officer in Beijing concluded that Mr Yuan had misrepresented his restaurant experience and found that he was, therefore, inadmissible to Canada according to s 40(1)(a) of the *Immigration and Refugee Protection Act*, SC 2001, c 27, [IRPA] (see Annex).

[2] Mr Yuan argues that the officer treated him unfairly by summarily dismissing the evidence he had provided in support of his application. In turn, this caused the officer to arrive at an unreasonable conclusion that was out of keeping with the evidence. He asks me to quash the officer's decision and order another officer to reconsider his application.

[3] I agree that the officer's decision should be overturned. While Mr Yuan was given a fair opportunity to address the officer's concerns, the officer's treatment of the evidence Mr Yuan provided was unreasonable. I must, therefore, allow this application for judicial review.

[4] The sole issue is whether the officer unreasonably concluded that Mr Yuan had misrepresented his work history.

II. The Officer's Decision

[5] In his application, Mr Yuan stated that he was a chef at the Globelink Hotel restaurant in Guangzhou. The officer attempted to verify that information. Visa officers visited the restaurant and found it to be closed. They visited another restaurant in the hotel and were told that Mr Yuan had not eaten there in a while and was not in the kitchen.

[6] The officers telephoned Mr Yuan, who stated that he had left the Globelink restaurant in June 2010 when the restaurant closed. He moved on to a restaurant called Shi Yin Shi Shi, where he was an apprentice in the BBQ section. Originally he stated he was not paid, and then admitted he was paid 1000 RMB per month.

[7] The officers visited the Shi Yin Shi Shi restaurant. Three workers there did not know Mr Yuan, but a fourth, the head of the BBQ section, stated that Mr Yuan worked there but was absent either because a family member was visiting or because he had a personal matter to deal with in Beijing. The officers found no documentary evidence indicating that Mr Yuan worked there; his name was not on the duty roster.

[8] Based on these circumstances, the visa officer reviewing Mr Yuan's application sent him a letter expressing a concern that he had misrepresented his experience as a chef.

[9] Mr Yuan responded to the officer's letter. He explained that he had failed to keep his application up to date. The Globelink restaurant closed in June 2010. The restaurant the officers had visited at the hotel was actually an employee canteen. In addition, since he was considered a temporary worker at Shi Yin Shi Shi, his name did not appear on the employee duty roster. Further, the employees to whom the officers spoke worked in the section where BBQ cuts were executed, whereas he worked on another floor where the roasting was done. That is why those employees did not know him.

[10] Mr Yuan also supplied a number of documents to support his version of events, including an employment certificate and termination agreement from the Globelink restaurant, his cook qualification certificate, an employment certificate from the Shi Yin Shi Shi restaurant, pay stubs, attendance forms, social insurance data, testimonials from his supervisor and two co-workers, and photographs of him in the workplace.

[11] The officer found that this evidence did not alleviate concerns about the truthfulness of Mr Yuan's representations about his employment history. The officer found Mr Yuan's explanations self-serving and not credible. For example, during the site visit, his co-workers at Shi Yin Shi Shi did not state that some BBQ workers were on another floor or express any uncertainty about their ability to confirm whether Mr Yuan worked there. The officer found that Mr Yuan's explanation that he was a temporary worker at the time of the visit (yet had been made permanent shortly thereafter) was also self-serving.

[12] The officer also found that the documentation Mr Yuan had supplied was unreliable. The officer noted that false documents are readily available in China. Their contents could not be verified by contacting the authors of the documents since Mr Yuan had probably alerted them to the fact that they might be contacted by Canadian officials. Similarly, Mr Yuan's references could not be considered reliable because they had been identified after the officer's concerns had been brought to Mr Yuan's attention.

[13] Accordingly, the officer recommended that Mr Yuan's application for permanent residence be refused for misrepresentation. The officer's supervisor adopted the officer's recommendation and informed Mr Yuan of this result by letter.

III. Was the Officer's treatment of the evidence unreasonable?

[14] The officer gave Mr Yuan a fair opportunity to address concerns about his employment history. However, the officer's treatment of Mr Yuan's response was unreasonable.

[15] While the site visits yielded some contradictory evidence, they also generated independent evidence confirming that Mr Yuan had once worked at the Globelink restaurant and currently worked at the Shi Yin Shi Shi restaurant. In my view, the officer had an obligation to consider the corroborative evidence, including Mr Yuan's explanations about his work history and the documentary evidence confirming his employment record. These documents included government records and could have alleviated all of the officer's concerns. The officer's refusal to consider them or to confirm their contents was based on an assumption that Mr Yuan had obtained false documents by orchestrating, on short notice, an elaborate fraud involving co-workers, supervisors, employers, human resources personnel, and government functionaries.

[16] In my view, the officer's treatment of this evidence was not reasonable. In turn, the officer's conclusion that Mr Yuan had misrepresented his work history in his application was also unreasonable.

IV. Conclusion and Disposition

[17] There was a valid basis for concern about Mr Yuan's work history. He was given a fair chance to address that concern and did so with extensive evidence supporting his application. Rejecting that evidence summarily based on an assumption that it was likely fraudulent was unreasonable, as was the ultimate conclusion that Mr Yuan had misrepresented his work experience.

Therefore, I must allow this application for judicial review and order another officer to reconsider Mr Yuan's application. Neither party proposed a question of general importance for me to certify, and none is stated.

JUDGMENT

THIS COURT’S JUDGMENT is that:

1. The application for judicial review is allowed and the matter is referred back to another officer for reconsideration;
2. No question of general importance is stated.

“James W. O’Reilly”

Judge

Annex

*Immigration and Refugee Protection Act, SC
2001, c 27*

*Loi sur l'immigration et la protection des
réfugiés, LC 2001, ch 27*

Misrepresentation

Faussees déclarations

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;

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4073-12
STYLE OF CAUSE: QING QIANG YUAN
v
MCI

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: February 19, 2013

**REASONS FOR JUDGMENT
AND JUDGMENT:** O'REILLY J.

DATED: March 12, 2013

APPEARANCES:

Michael Korman

FOR THE APPLICANT

Teresa Ramnarine

FOR THE RESPONDENT

SOLICITORS OF RECORD:

Otis & Korman
Barristers and Solicitors
Toronto, Ontario

FOR THE APPLICANT

William F. Pentney
Deputy Attorney General
Toronto, Ontario

FOR THE RESPONDENT