

Federal Court



Cour fédérale

**Date: 20160603**

**Docket: IMM-4230-15**

**Citation: 2016 FC 621**

**Ottawa, Ontario, June 3, 2016**

**PRESENT: The Honourable Mr. Justice Gleeson**

**BETWEEN:**

**GUAN QI WU**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. Background

A. *Nature of the Application*

[1] This application, brought pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA], seeks to set aside the August 27, 2015 decision of a

Citizenship and Immigration [CIC] Officer [Officer] rejecting the application for a Temporary Resident Permit [TRP] under subsection 24(1) of the IRPA.

[2] The application is denied for the reasons that follow.

## II. Facts

[3] The applicant is a citizen of China who entered Canada in August, 2003 and has remained in Canada on study and work permits.

[4] In January, 2013, the Immigration Division [ID] of the Immigration and Refugee Board of Canada found that pursuant to paragraph 40(1)(a) of the IRPA, the applicant had misrepresented his employment status on his application for permanent residence and the misrepresentation could have induced an error in the administration of the IRPA. An exclusion order was made against him [the ID Decision].

[5] This Court dismissed an application seeking leave for judicial review of the ID Decision in July, 2013.

[6] The applicant married a Canadian citizen in April, 2013 and they filed an in-Canada Spousal Sponsorship Application for Permanent Residence. The applicant received first stage approval for this application in September, 2013 but the application was then refused, as the applicant had been found to be inadmissible to Canada on the ground of misrepresentation.

[7] In March, 2014 the applicant applied for a TRP to remain in Canada with his Canadian spouse and maintain his Canadian businesses. In June, 2014 CIC refused to grant a TRP and the applicant filed an application for judicial review with this Court. That matter was discontinued on consent and the TRP application was returned to CIC for reconsideration. It is the reconsideration decision that is under review in this matter.

### III. Decision Under Review

[8] On August 27, 2015 CIC dismissed the application for a TRP after finding that the applicant had not demonstrated compelling and sufficient reasons to warrant the issuance of a TRP under subsection 24(1) of the IRPA.

[9] In identifying factors for consideration, the Officer notes the applicant's submissions in support of the TRP and identifies credibility as a factor arising out of the applicant having been found to be inadmissible to Canada for misrepresentation. The Officer does not dispute the genuine nature of the relationship with the applicant's spouse and acknowledges that separation would not be ideal. However, the Officer notes that separation of family members from time to time is not unusual, that his wife has family members in Canada and would continue to have the support of her immediate family in her husband's absence.

[10] The Officer also did not dispute that the applicant may play a role in caring for his wife's parents, but finds that he is not the sole caregiver and source of support. The Officer concludes that it would not be unreasonable to believe the wife's parents would receive the care and attention they require if the applicant were absent from Canada. The Officer also considered the

applicant's relationship with his adult step-son concluding that the applicant can continue to communicate with and maintain a relationship with the step-son while outside Canada.

[11] The Officer considered the applicant's establishment in Canada and the submission that he and his wife own and operate a number of businesses. The Officer did not give significant weight to the wife's statement that the businesses will be forced to close should the applicant leave Canada. The Officer notes that while the documentation shows the applicant is a shareholder in the businesses it does not demonstrate his roles and responsibilities. As a result the applicant's role as a business owner was determined not to be a compelling ground warranting his continued presence in Canada.

[12] Finally, the Officer considered the applicant's inadmissibility and, while recognizing that the level of risk he poses is minimal, found he had not demonstrated that his circumstances are compelling and sufficient enough to warrant the issuance of a TRP.

#### IV. Issues and Analysis

[13] The exceptional nature of subsection 24(1) of the IRPA is set out by Justice Michel Shore in *Farhat v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1275 at paras 22-24, 302 FTR 54– where he states:

[22] The objective of section 24 of IRPA is to soften the sometimes harsh consequences of the strict application of IRPA which surfaces in cases where there may be "compelling reasons" to allow a foreign national to enter or remain in Canada despite inadmissibility or non-compliance with IRPA. Basically, the TRPs allow officers to respond to exceptional circumstances while meeting Canada's social, humanitarian, and economic

commitments. (Immigration Manual, c. OP 20, section 2; Exhibit "B" of Affidavit of Alexander Lukie; *Canada (Minister of Manpower and Immigration) v. Hardyal*, [1978] 1 S.C.R. 470 (QL).)

[23] Before a TRP is issued, consideration must be given to the fact that TRPs grant their bearer more privileges than do visitor, student or work permits. Like the foreign nationals from those two categories, a TRP bearer becomes a temporary resident after being examined upon his entry to Canada, but may also be eligible for health or social services and can apply for a work or student permit from Canada. Furthermore, he may obtain, without discretion, permanent resident status if he resides in Canada throughout the validity period and does not become inadmissible on other grounds than those for which the TRP was granted. (Immigration Manual, c. OP 20, section 5.7; Exhibit "B" of Affidavit of Alexander Lukie.)

[24] TRPs should thus be recommended and issued cautiously. Parliament was aware of the exceptional nature of TRPs and has retained a supervisory function in their regard; thus the Minister includes in the annual report to Parliament the number of TRPs granted under s. 24 of IRPA, "categorized according to grounds of inadmissibility, if any." (Immigration Manual, c. OP 20, s. 5.2 (paragraph 2) and 5.22; Exhibit "B" of Affidavit of Alexander Lukie; Subsection 94(2) of IRPA.)

[14] The applicant bears the onus to establish compelling reasons for being allowed to enter or remain in Canada notwithstanding his inadmissibility or non-compliance with the IRPA (*Stordock v Canada (Minister of Citizenship and Immigration)*, 2013 FC 16 at para 9, 425 FTR 35 [*Stordock*]).

A. *Submissions of the Parties*

[15] The applicant submits that he met his onus to provide sufficient evidence to justify a positive TRP decision. The applicant argues that his approximate twelve year length of residence

in Canada, his marriage, his business activity and the Humanitarian and Compassionate [H&C] factors were compelling and warranted close examination and consideration by the Officer.

[16] The applicant argues the reasons for the decision appear as a summary of the applicant's submissions rather than a reflection of real and fresh consideration and assessment of the submissions. The Officer reached its negative conclusions through speculation and there was no evidence to support what the applicant characterizes as unreasonable inferences. The applicant further submits that the Officer failed to analyse the impact or consequences on his step-son if the applicant faced removal to China, and did not adequately address the H&C aspects of the application.

[17] With respect to the Officer's concerns relating to the applicant's involvement in the businesses the applicant notes that the Officer contacted the applicant's immigration consultant in June, 2015. The applicant states in an affidavit sworn in this judicial review that the Officer was seeking more documents in support of the TRP. The applicant argues that if the Officer was unclear as to the applicant's role in the businesses then additional information could have been requested.

[18] Finally the applicant submits a breach of procedural fairness occurred as the Officer noted credibility concerns due to the inadmissibility finding. These concerns were not brought to the attention of the applicant and he was not provided an opportunity to respond.

[19] The respondent submits that pursuant to subsection 24(1) the Officer reasonably determined that the applicant's circumstances did not warrant a TRP. The respondent argues that the applicant has conflated two separate immigration contexts, the TRP context under section 24 of the IRPA and the H&C context under section 25 of the IRPA.

[20] The respondent argues that: (1) the reasons are adequate; (2) the reasons provide rational support for the decision; (3) the applicant had the burden of establishing his case; and (4) the applicant presented no compelling evidence that could justify the issuance of the TRP based upon the applicant's business interests. The respondent argues that the Officer considered the H&C factors identified by the applicant but that the evidence did not establish that the applicant was indispensable as a support to his in-laws. Similarly the Officer did not err in considering the impact of the applicant's removal on his adult step-son.

[21] The applicant further submits that notwithstanding that the Officer noted credibility concerns in a single line of the decision, the Officer's concerns in rendering a decision in this matter arise from the sufficiency of evidence, not credibility. While the Officer contacted the applicant's immigration consultant, providing an opportunity to submit better evidence, this did not trigger an obligation to detail what might be better evidence.

B. *Issues*

[22] The application raises the following issues:

A. What is the standard of review?

- B. Did the Officer breach the duty of procedural fairness in failing to ask the applicant for further clarification or conduct an interview?
- C. Was the decision to refuse to issue a TRP reasonable?

(1) Standard of Review

[23] A decision on a TRP application is highly discretionary and “requires considerable deference from this Court” under the reasonableness standard of review (*Zlydnev v Canada (Minister of Citizenship and Immigration)*, 2015 FC 604 at para 15, 34 Imm LR (4th) 326; *Shabdeen v Canada (Minister of Citizenship and Immigration)*, 2014 FC 303 at para 13, 24 Imm LR (4th) 291).

[24] The correctness standard of review applies to procedural fairness issues (*Canada (Citizenship and Immigration) v Khosa*, [2009] 1 SCR 339 at para 43). The content of the duty of fairness in the context of a TRP application is at the low end of the spectrum. However, where concerns are related to the authenticity or credibility of the evidence provided by the applicant there may be a duty to give the applicant the opportunity to disabuse an officer of such concerns (*Talpur v Canada (Minister of Citizenship and Immigration)*, 2012 FC 25 at paras 20-21, 4 Imm LR (4th) 143 [*Talpur*]).



(2) Was there a breach of procedural fairness?

[25] I am of the view that there was no breach of procedural fairness. The Officer's decision was not based upon concerns with the applicant's credibility, but rather the failure of the applicant to demonstrate that compelling reasons existed.

[26] A review of the reasons reveals that the preliminary identification of "Credibility concerns as the applicant has been found to be inadmissible to Canada for misrepresentation" as a factor for consideration, was not a basis for the underlying decision. This was one factor, among others, that the Officer identified in the process of completing a structured form setting out the reasons for decision.

[27] A review of the Officer's narrative in support of the decision demonstrates that the identified credibility factor was not imported into the analysis or otherwise considered by the Officer in rendering the negative decision. The TRP application was denied after a consideration of the applicant's evidence and identified deficiencies in that evidence. There is no duty to provide an opportunity for the applicant to address an officer's concerns arising out of the sufficiency of the evidence (*Talpur* at paras 21, 24).

[28] Moreover, the Officer did not have an obligation to make further inquiries or specify the types of documents the applicant should provide in discharging his onus under subsection 24(1) of the IRPA. As held by Justice Yves de Montigny in *Talpur* at paragraph 24:

[24] Counsel for the Applicants also submitted that the Visa Officer had the obligation to make other inquiries and take further

steps to establish whether Dr. Talpur had the experience that she claimed. This argument is without merit. The onus is on the applicant to satisfy the visa officer that he or she performed the duties contained in the NOC for the intended occupation. A visa officer is under no duty to seek to clarify a deficient application. As Justice Mosley stated in *Rukmangathan v Canada (Minister of Citizenship and Immigration)*, 2004 FC 284 at para 23, 247 FTR 147, procedural fairness "does not stretch to the point of requiring that a visa officer has an obligation to provide an applicant with a "running score" of the weaknesses in their application".

(3) Was the decision reasonable?

[29] The decision not to grant a TRP because the applicant failed to discharge his onus of demonstrating compelling reasons is a decision that was within the range of possible and acceptable outcomes (*Dunsmuir v New Brunswick*), [2008] 1 SCR 190 at para 47 [*Dunsmuir*]).

[30] The Officer's inferences and findings of fact were reasonably open to the Officer based on the evidence. The applicant's disagreement with the findings is not a basis upon which this Court will interfere with exercise of discretion by the Officer.

[31] Similarly, the applicant's argument that the reasons do not demonstrate sufficient analysis reflects an expectation of longer and more comprehensive reasons. Again this is not, in and of itself, a ground for judicial review (*Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*), [2011] 3 SCR 708 at paras 14, 16, 18). The reasons allow this Court to understand why CIC made its decision and permits the Court to determine whether the conclusion is within the range of acceptable outcomes.

[32] Finally, as the respondent noted, a TRP application differs from an H&C application. An Officer conducting a TRP analysis is not conducting a “full scale” H&C analysis (*Rodgers v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1093 at paras 10-11, 56 Imm LR (3d) 63). Issues of the adult step-son’s age aside, the difference between TRP and H&C applications applies to issues regarding the best interests of the child [BIOC]. In the TRP context the Officer considers the BIOC issue in light of the “compelling reasons” test for issuing a TRP under subsection 24(1) of the IRPA not subsection 25(1) (*Stordock* at para 11; *Nguesso v Canada (Minister of Citizenship and Immigration)*, 2015 FC 880 at paras 97, 122-123). The Officer’s analysis and decision met these requirements and there was no error.

#### V. Conclusion

[33] The decision is justified, transparent and intelligible and falls within a range of possible, acceptable outcomes based on both the facts and the law (*Dunsmuir* at para 47). The parties have not identified a question of general importance for certification.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that** the application is denied. No question is certified.

"Patrick Gleeson"

---

Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-4230-15

**STYLE OF CAUSE:** GUAN QI WU v THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** MAY 5, 2016

**JUDGMENT AND REASONS:** GLEESON J.

**DATED:** JUNE 3, 2016

**APPEARANCES:**

Robert Israel Blanshay FOR THE APPLICANT

Charles J. Jubenville FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Robert Israel Blanshay, FOR THE APPLICANT  
Professional Corporation  
Barristers and Solicitors  
Toronto, Ontario

William F. Pentney FOR THE RESPONDENT  
Deputy Attorney General of  
Canada  
Toronto, Ontario