

Federal Court



Cour fédérale

**Date: 20170303**

**Docket: IMM-2496-16**

**Citation: 2017 FC 260**

**Ottawa, Ontario, March 3, 2017**

**PRESENT: The Honourable Madam Justice Heneghan**

**BETWEEN:**

**YANG CAO**

**Applicant**

**and**

**THE MINISTER OF PUBLIC SAFETY AND  
EMERGENCY PREPAREDNESS**

**Respondent**

**JUDGMENT AND REASONS**

[1] Mr. Yang Cao (the “Applicant”) seeks judicial review of the decision of a Member of the Immigration and Refugee Board, Immigration Division (the “Immigration Division”) to issue an exclusion order pursuant to paragraph 40(1)(a) and subsection 45(d) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the “Act”).

[2] The Applicant is a citizen of the Hong Kong Special Administrative Region who is present in Canada as the holder of a work permit. He had received a permanent resident card in 2006 and that card was due to expire on March 30, 2011. In 2009, he sought advice from consultants in Canada about renewal of his permanent resident card. He surrendered his permanent resident card to an immigration officer at the airport when returning to Canada on July 20, 2013.

[3] The Applicant signed a form for renewal of his permanent resident card in blank and left it with the immigration consultants to be completed and submitted on his behalf. Unknown to him, the immigration consultants provided incorrect information about his place of employment, his address and the dates of his entry into and departure from Canada, among other things. The misinformation came to the attention of the agents and employees of the Canadian Border Services Agency (the "CBSA") and on December 18, 2015 the Applicant was reported to the Minister of Citizenship and Immigration in accordance with subsection 44(1) of the Act. Ultimately, a hearing was held before the Immigration Division.

[4] In its decision, the Immigration Division said that it did not accept the explanations of the Applicant for his choice to provide a signed blank form to the consultants, to be submitted to the Canadian authorities on his behalf.

[5] The Applicant argues that his right to procedural fairness was breached because the Immigration Division improperly admitted unsworn opinion evidence relating to an analysis of frauds committed by immigration consultants. He also pleads a breach of procedural fairness

arising from the admission of improperly translated Chinese language documents that were allegedly admitted in contravention of Rule 25 of the *Immigration Division Rules*, SOR/2002-229 (the “Immigration Division Rules”) and in the absence of any explanation for their admission.

[6] The Applicant further submits that he reasonably signed the documents in blank and is entitled to the benefit of the exception for relief against misrepresentation as discussed in the decision of *Medel v. Canada (Minister of Employment and Immigration)*, [1990] 2 F.C. 345 (F.C.A.). He argues that he actively took steps to avoid a misrepresentation and reasonably did not expect the consultant to file false information.

[7] Finally, the Applicant argues that he had a legitimate expectation, based on assurances of an immigration officer at the airport, that issues relating to his permanent residence would be resolved if he voluntarily gave up his existing permanent resident card.

[8] The Minister of Public Safety and Emergency Preparedness (the “Respondent”) submits that no reviewable error arises from the Immigration Division’s reliance upon the documents presented in the Chinese language. The Applicant had knowledge of these documents and suffered no prejudice.

[9] Further, the Respondent argues that the Applicant accepted the risks of signing a blank form. Ultimately, that form contained misrepresentations and the Applicant did not qualify for the narrow exception of submitting false information, believing it was true.

[10] The Respondent submits that no representations were made to the Applicant about his future entry into Canada, if he surrendered his permanent resident card. He argues that the Applicant has not shown that the assurances given were unambiguous.

[11] The procedural fairness issue raised by the Applicant is reviewable on the standard of correctness; see the decision in *Canada (Citizenship and Immigration) v. Khosa*, [2009] 1 S.C.R. 339 at paragraph 43. The issue of legitimate expectation is another aspect of procedural fairness and is likewise reviewable on the standard of correctness.

[12] The overall merits of the decision are reviewable on the standard of reasonableness; see the decision in *Eberhardt v. Canada (Minister of Public Safety and Emergency Preparedness)* (2013), 441 F.T.R. 170 at paragraph 18.

[13] On the basis of the record that was before the Immigration Division, including the oral evidence of the Applicant and his wife, I find nothing to support the argument of an alleged breach of procedural fairness arising from the Immigration Division's consideration of the documents in the Chinese language.

[14] The Applicant understands the Chinese language. He was aware of the contents of the documents and suffered no prejudice from their consideration by the Immigration Division.

[15] The doctrine of legitimate expectations relates to procedure, not to the particular result of an administrative process; see the decision in *Baker v. Canada (Minister of Citizenship and*

*Immigration*), [1999] 2 S.C.R. 817 at paragraph 26. In any event, I agree with the arguments of the Respondent that the Applicant failed to show that unambiguous promises were made to him by an Immigration Officer at the Vancouver International Airport or that he was induced to voluntarily surrender his permanent resident card.

[16] Finally, I turn to the Immigration Division's finding that the Applicant had made a misrepresentation with respect to the contents of his permanent resident application. Subsection 11(1) of the Act provides as follows:

A foreign national must, before entering Canada, apply to an officer for a visa or for any other document required by the regulations. The visa or document may be issued if, following an examination, the officer is satisfied that the foreign national is not inadmissible and meets the requirements of this Act.	L'étranger doit, préalablement à son entrée au Canada, demander à l'agent les visa et autres documents requis par règlement. L'agent peut les délivrer sur preuve, à la suite d'un contrôle, que l'étranger n'est pas interdit de territoire et se conforme à la présente loi.
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[17] The Applicant bore the burden of presenting evidence to support the renewal of his permanent resident status. This means he was required to submit correct information. He did not do so.

[18] I have considered the material before the Immigration Division, as well as the oral and written submissions of the parties to this application for judicial review. I am satisfied that the Applicant has failed to show any reviewable error by the Immigration Division and the application for judicial review is dismissed, no question for certification arises.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that** the application for judicial review is dismissed.

There is no question for certification arising.

"E. Heneghan"

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Judge

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

**DOCKET:** IMM-2496-16

**STYLE OF CAUSE:** YANG CAO v. MPSEP

**PLACE OF HEARING:** VANCOUVER, BRITISH COLUMBIA

**DATE OF HEARING:** DECEMBER 14, 2016

**JUDGMENT AND REASONS:** HENEGHAN J.

**DATED:** MARCH 3, 2017

**APPEARANCES:**

Peter A Chapman

FOR THE APPLICANT

Brett Nash

FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Chen & Leung  
Barristers & Solicitors  
Vancouver, British Columbia

FOR THE APPLICANT

William F. Pentney, Q.C.  
Deputy Attorney General of  
Canada

FOR THE RESPONDENT