Federal Court  Cour fédérale

Date: 20171129

Docket: IMM-762-17

Citation: 2017 FC 1078

Ottawa, Ontario, November 29, 2017

PRESENT: The Honourable Mr. Justice Southcott

BETWEEN:

QIUYING WU

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] This is an application for judicial review of a decision made by an Immigration Officer [the Officer] on June 14, 2016, refusing the Applicant's application for permanent residence, and finding her to be inadmissible to Canada for 5 years from the date of the refusal, because she made a material misrepresentation in her application [the Decision].

[2] As explained in greater detail below, this application is dismissed, because the Decision is reasonable, both in its consideration of the materiality of the misrepresentation that resulted in the Applicant's inadmissibility to Canada and in its consideration of the Applicant's request for relief from such inadmissibility on humanitarian and compassionate grounds.

II. Background

[3] The Applicant, Qiuying Wu [Ms. Wu], is a citizen of the People's Republic of China [China], where she regularly resides with her husband and son, Kun Zhang [Mr. Zhang], who is 10 years old. Her adult daughter, Shan Wu, currently resides in Ontario and is a Canadian permanent resident.

[4] Ms. Wu applied for permanent residence in Canada in 2009. In her application, Ms. Wu listed her husband, Shaolin Zhang, and son, Mr. Zhang, as dependents. She included a birth certificate for Mr. Zhang as evidence of their parent-child relationship. However, Citizenship and Immigration Canada [CIC] had doubts about the relationship and the authenticity of the birth certificate. DNA testing was requested in late 2013, the Applicant agreed, and such testing was conducted. As the results would show in March 2014, Ms. Wu and Mr. Zhang are not biologically related.

[5] After the request for DNA testing, Ms. Wu obtained and in February 2014 submitted to CIC an adoption certificate reflecting her adoption of Mr. Zhang. CIC received the results of the DNA testing in March 2014 and issued Ms. Wu a procedural fairness letter, providing her with an opportunity to respond to concerns that she was inadmissible to Canada because she had

provided fraudulent documentation and false information to CIC. Ms. Wu's then counsel provided a written response to the effect that the misrepresentation was innocent, resulting from a misunderstanding which Ms. Wu had corrected by submitting the adoption certificate. This was accompanied by a letter from Ms. Wu, who explained that she had not applied for an adoption certificate prior to receiving CIC's request for a DNA test, because she was concerned that adopted children in China risk being bullied by their peers.

[6] In July 2015, CIC sent Ms. Wu a second procedural fairness letter, because the law had changed such that the period of inadmissibility that she potentially faced for misrepresentation had increased from two years to five years. She retained new counsel, who responded on her behalf in August 2015, acknowledging that she had provided false documentation, apologizing for this error in judgment, and again explaining that the error had been motivated by good intentions to protect her child.

[7] On June 14, 2016, in the Decision that is the subject of this judicial review, the Officer denied Ms. Wu's application, finding her to be inadmissible to Canada for 5 years under s 40(1)(a) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA], because she had misrepresented her relationship to Mr. Zhang. Ms. Wu became aware of the Decision on February 9, 2017, when she tried to enter Canada on a temporary resident visa to visit her daughter and was denied entry.

III. Impugned Decision

[8] The Decision is conveyed in a letter explaining that the Officer determined Ms. Wu to be inadmissible to Canada because she had provided an inauthentic birth certificate indicating that Mr. Zhang was her biological son, which subsequent DNA testing revealed was not true. The Officer stated that Ms. Wu's responses to CIC's procedural fairness letters had been considered but that her explanations did not overcome these concerns. The Officer stated that the misrepresentation could have induced an error in the administration of IRPA, as it could have satisfied an officer that Ms. Wu and Mr. Zhang had a biological parent-child relationship when this is not the case.

[9] Further reasons for the decision are found in CIC's Global Case Management System [GCMS] notes. The Officer observes that Ms. Wu made no effort to indicate that she was not Mr. Zhang's biological mother or that the birth certificate submitted was fraudulent until DNA testing was requested. Only once CIC questioned the relationship did Ms. Wu suggest an adoptive relationship and obtain an adoption certificate. The Officer also notes that Ms. Wu's previous counsel had requested consideration on humanitarian and compassionate [H&C] grounds under s 25 of IRPA. However, after reviewing the circumstances of Ms. Wu and her family, the Officer concluded that there were insufficient H&C grounds to overcome the inadmissibility.

IV. Issue and Standard of Review

[10] The sole issue articulated by the Applicant is whether the Officer committed a material error by incorrectly assessing the totality of the evidence before him or her. She raises arguments surrounding both the Officer's determination of inadmissibility under s 40(1)(a) of IRPA and the Officer's H&C analysis under s 25 of IRPA.

[11] The parties agree, and I concur, that the applicable standard of review is reasonableness.

V. Analysis

[12] At the hearing of this application, Ms. Wu's principal argument surrounding the Officer's decision under s 40(1)(a) of IPRA related to the materiality of the misrepresentation. As expressly provided in s 40(1)(a), inadmissibility arises as a result of misrepresentation of material facts relating to a relevant matter that induces or could induce an error in the administration of IRPA:

Misrepresentations	**Fausses 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	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

administration of this Act;	erreur dans l'application de la présente loi;

[13] Ms. Wu argues that the misrepresentation of her relationship with Mr. Zhang as biological was not material and could not have caused an error in the administration of IRPA, because Mr. Zhang was eligible to be included on her permanent residence application as her adopted son. Regardless of whether he is a biological or adopted child, she submits that he qualifies as a "dependent child" under the definition prescribed by s 2 of the *Immigration and Refugee Protection Regulations*, SOR/2002– 27:

dependent child, in respect of a parent, means a child who	**enfant à charge** L'enfant qui :
(a) has one of the following relationships with the parent, namely,	**a)** d'une part, par rapport à l'un de ses parents :
(i) is the biological child of the parent, if the child has not been adopted by a person other than the spouse or common-law partner of the parent, or	**(i)** soit en est l'enfant biologique et n'a pas été adopté par une personne autre que son époux ou conjoint de fait,
(ii) is the adopted child of the parent; and	**(ii)** soit en est l'enfant adoptif;
[…]	[…]

[14] Ms. Wu relies upon *Guan v Canada (Citizenship and Immigration)*, 2009 FC 274 [*Guan*], which involved circumstances somewhat similar to those in the case at hand. The applicant in *Guan* had claimed in his application for permanent residence that his daughter was his biological

child. When CIC insisted on DNA testing, the applicant admitted that his daughter was adopted. When pressed for proof of the adoption, the applicant admitted that she had never been legally adopted. As a result, CIC found that, because the daughter was not the applicant's biological or adopted child, she did not qualify as a "dependent child" under IRPA and that the applicant was inadmissible to Canada for misrepresentation.

[15] In dismissing the application for judicial review of that decision, the Court held at paragraph 25 that the misrepresentation was material, because the daughter was neither the biological nor adopted child of the parent. If the misrepresentation had not been detected, the child would likely have been granted status in Canada contrary to the provisions of IRPA. Ms. Wu relies on the reference in paragraph 28 to a concession by the respondent in that case that, if it had been established that the daughter was the applicant's legally adopted child, the fact that she was not his biological child would not have been material, as this misrepresentation could not have led to an error in the administration of IRPA.

[16] As argued by the Respondent in the present case, *Guan* is of no assistance to Ms. Wu. Rather, the analysis in *Guan* supports the reasonableness of the Decision because, as in *Guan*, it appears that Mr. Zhang was neither the biological nor the adopted son of Ms. Wu at the relevant time. In the recent decision in *Kazzi v Canada (Citizenship and Immigration)*, 2017 FC 153 [*Kazzi*], Justice Gascon provided at paragraphs 38 to 39 a summary of the general principles arising out of this Court's jurisprudence on s 40(1)(a) of IRPA. This includes the principle that the assessment of whether a misrepresentation could induce an error in the administration of the

IRPA is to be made in reference to the time the false statement was made. In the present case, that time is when the fraudulent birth certificate was submitted to CIC in late 2013.

[17] The adoption certificate which Ms. Wu subsequently obtained and provided to CIC is dated February 17, 2014. The Respondent acknowledged that the English translation of the adoption certificate contained in the Certified Tribunal Record states that "…the adoption is established after the record date" and there is no evidence before the Court whether the "record date" refers to February 17, 2014 or to some other date. As the Respondent points out, Ms. Wu did not swear an affidavit in support of her application for judicial review. However, there is an affidavit sworn by her daughter, Ms. Shan Wu, which refers to her mother as having commenced the official adoption process, so that she could legally be Mr. Zhang's parent, during the time that she was responding to the DNA evidence request. Ms. Shan Wu also refers to her mother as having legally adopted Mr. Zhang in order to fix the error that she had created in her application.

[18] The Court recognizes that Ms. Shan Wu's affidavit was not before the Officer when the Decision was made. Nor can the Court be certain that Ms. Shan Wu's evidence reflects accurately when the adoption became legally effective. However, I refer to that evidence because, if anything, it supports the Respondent's position that Ms. Wu did not legally adopt Mr. Zhang until after CIC identified that the birth certificate was fraudulent. Certainly, as the Respondent points out, the Court has been referred to no evidence to the effect that the adoption was legally effective at the time the misrepresentation was made.

[19] At the hearing of this application, Ms. Wu's counsel argued that a *de facto* adoptive relationship existed at the time the misrepresentation was made and that this was sufficient for Mr. Zhang to qualify as a "dependent child". However, Ms. Wu has offered no jurisprudential support for this proposition, which I find contrary to the language in *Guan*, including the language upon which she relies, that speaks of legal adoption as the circumstances which might have prevented the misrepresentation of a biological relationship from being material in that case.

[20] I therefore find no basis for a conclusion that the Decision was unreasonable in determining that Ms. Wu's misrepresentation related to a material fact which could have induced an error in the administration of IRPA.

[21] Ms. Wu also submits that that, once CIC inquired about Mr. Zhang's birth certificate, she acknowledged and corrected her error. She also explained her motivation for not having identified Mr. Zhang as adopted. She submits that the Officer failed to take this into account in arriving at the decision on her application. In advancing this argument, Ms. Wu also submits that the Officer focused only on the objective of s 40(1)(a), to encourage candour in immigration applications, and not upon other objectives of IRPA, such as family reunification, the successful integration of permanent residents into Canada, and attention to the best interests of children. She argues that the Officer's failure to consider the factors raised in her explanation for the misrepresentation is particularly egregious given that her previous counsel had expressly asked for consideration on H&C grounds.

[22] I find little merit to the submission that the Officer's obligations, in connection with Ms. Wu's explanation for her misrepresentation, extended beyond giving consideration to that explanation before arriving at the Decision. Returning to the summary of principles set out by Justice Gascon at paragraph 38 of *Kazzi*, s 40(1)(a) should receive a broad interpretation in order to promote its underlying purpose, to deter misrepresentation and maintain the integrity of the Canadian immigration process. Any exception to this general rule is narrow and applies only to extraordinary circumstances. The GCMS notes state that the Officer reviewed Ms. Wu's responses to the procedural fairness letters but did not find those responses sufficient to overcome the concerns. The Officer observes in particular that Ms. Wu provided accurate information only once CIC had identified the misrepresentation. While the Decision does not set out a detailed analysis of Ms. Wu's explanation, I find the reasons for the Decision transparent and intelligible. I cannot conclude that it falls outside the range of acceptable outcomes so as to be characterized as unreasonable.

[23] The fact that Ms. Wu's counsel also sought H&C relief does not alter this conclusion. As pointed out by the Respondent, the request for such relief, contained in the letter dated April 24, 2014, by Ms. Wu's earlier legal representative, provides little detail on the grounds on which it is sought. Her representative requests that CIC consider the H&C grounds supporting her application, states that the factors militating in favour of her and her accompanying dependents are compelling, and submits that Ms. Wu's evidence indicates that, in her understanding, there was no misrepresentation.

[24] In connection with the H&C request, the GCMS notes comment that Ms. Wu's lawyer did not identify the H&C grounds referenced in the request which he considered to be compelling. The GCMS notes nevertheless demonstrate consideration of the effects of a possible inadmissibility finding upon Mr. Zhang. The analysis set out in those notes is that Ms. Wu has considerable net worth, that Mr. Zhang has always lived with her and her husband in China, and that the refusal of Ms. Wu's immigration application would have no impact on Mr. Zhang's life. The GCMS notes also refer to Ms. Shan Wu but comment that, even if she and her family are all now residing in Canada, to continue this separation would not have any adverse impact on Mr. Zhang, as Ms. Shan Wu left China for Canada in 2002/2003 and has not been involved in Mr. Zhang's life. The Officer concludes that Mr. Zhang's needs continue to be met in his country of origin, where he has spent his whole life with his adoptive parents, and that there are therefore insufficient H&C grounds to overcome the inadmissibility for misrepresentation.

[25] Ms. Wu notes that her April 18, 2014 letter, which accompanied her counsel's request for H&C consideration, explained her concerns to protect her son from harm or distress that could be caused by his adoption history and her interest in starting a new chapter in of their family's lives in Canada. She argues that the Officer erred in consideration of the best interests of the child by failing to conduct a comparative analysis of Mr. Zhang's situation in China versus what his situation would be in Canada. In the context of the limited information and submissions provided to CIC in support of the request for H&C consideration, I do not find that the Officer was required to conduct such an analysis. I find no basis for a conclusion that the nature or result of the H&C analysis was unreasonable.

[26] I have also considered Ms. Wu's arguments that the GCMS notes demonstrate factual errors in the H&C analysis. She points out that the Officer refers to Mr. Zhang being able to continue to live in China with his family, including his adult sister. Ms. Wu submit that this is an error, as the adult sister, Ms. Shan Wu, resides in Canada, and that it overlooks the fact that Mr. Zhang himself was living in Canada with Ms. Shan Wu under a study permit.

[27] I find little merit to these submissions. The GCMS notes also refer to the fact that Ms. Shan Wu and her family are currently residing in Canada. The Respondent argues that the Officer is merely noting that Ms. Shan Wu would remain entitled to return to China if she wished and the whole family could live together there. Regardless of whether this is the correct interpretation of the notes, I find little turns on this given the conclusion that separation from his sister would have little effect on Mr. Zhang because she left China years before he was born and has not been involved in his life.

[28] With respect to Mr. Zhang's own presence in Canada, the Respondent points out that the study permit issued to Mr. Zhang was issued on June 11, 2016, and expired on April 30, 2017. This document is in the record before the Court only because it was attached to the affidavit of Ms. Shan Wu. It does not appear in the Certified Tribunal Record, and there is no evidence that this document, which predates the Decision by only three days, was before the Officer when the Decision was made. Moreover, the study permit was of limited duration. I cannot conclude that the fact that Mr. Zhang may have spent some time in Canada between 2016 and 2017 undermines the Officer's reasoning that the needs of this 10-year-old boy can continue to be met by residing in his country of origin with his adoptive parents.

[29] In conclusion, I find that the Decision is reasonable and that this application for judicial review must be dismissed. Neither party proposed any question for certification for appeal, and none is stated.

JUDGMENT IN IMM-762-17

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

No question is certified for appeal.

"Richard F. Southcott"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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APPEARANCES:

Ian Sonshine	FOR THE APPLICANT
Christopher Crighton	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Sonshine Law Toronto, Ontario	FOR THE APPLICANT
Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT