

Federal Court



Cour fédérale

**Date: 20180828**

**Docket: IMM-1088-18**

**Citation: 2018 FC 866**

**Ottawa, Ontario, August 28, 2018**

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

**BETWEEN:**

**MEIRONG LIU**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

**I. Introduction**

[1] This is an application for leave and judicial review of a negative decision by an immigration officer at the visa office in Beijing dated March 1, 2018, refusing the Applicant's application for a work permit and multiple entry temporary resident visa (TRV) (collectively, the "Application").

II. Background

[2] The Applicant is a Citizen of China. She was employed as a Comprehensive Support Assistant for a mobile communications company in Suzhou City, China, from August 2003 until May 2017. From May 2017 to January 2018, the Applicant was a student at Success Solutions Career Training School in Shenyang City, China, where she received a diploma as an in-home caregiver. The Applicant worked as a nanny in Suzhou City, China, in January 2018.

[3] On or around January 21, 2018, the Applicant made her TRV application through counsel. The application indicated that her proposed employment was a two year contract as a live-in caregiver at the home of Ms. Sun Liang in Vancouver.

[4] The Application included evidence of the Applicant's educational qualifications. This included proof of her completion (in China) of a bachelor level degree, plus completion of a 6-month certificate program dedicated to training of in-home caregivers, which included successful completion of 300 hours of hands-on training as a kindergarten caregiver, which was completed from June 12 to July 21, 2017.

[5] The Application also provided that the Applicant had in the past complied with Canadian and foreign immigration requirements. The Applicant submitted a copy of the Canadian multiple-entry TRV that had been issued to her for an almost seven-year period. She also included passport stamps showing previous return trips from China to Canada in September 2016 and April 2017.

[6] The Prospective Employer is a single mother with a 10 year old child, who requires the assistance of a caregiver to work between the hours of 7 am and 11 am, and from 3 pm until 7 pm from Monday to Friday. The contract sets out a fairly clear schedule for the caregiver, which would involve her providing before and after school care for the child, plus some additional work during school hours to handle light housekeeping and meal preparation.

[7] The Application included a copy of the Prospective Employer's 2016 Notice of Assessment, which showed Canadian employment income of over \$30,000 Canadian dollars, plus a statement of account from the Prospective Employer's Bank of Montreal account showing that (as at 14 November 2017), the Prospective Employer had a balance of over \$300,000 (CDN).

[8] On December 21, 2017, Service Canada informed the Applicant's prospective employer, Ms. Liang, that Employment and Social Development Canada (ESDC) determined that her Labour Market Impact Assessment (LMIA) application met the requirements of the Temporary Foreign Worker Program.

[9] On or around March 1, 2018, the Officer refused the Applicant's TRV application. The Visa Officer was not satisfied that the offer of employment was genuine due to concerns of the employer's financial ability to pay the Applicant.

[10] The GCMS notes include the following reasons for the refusal of the Application:

PA is requesting a WP with LMIA as an in home caregiver. PA's daughter holds an SP in Canada. I have concerns of employers

[sic] financial ability to pay PA. NOA submitted, showing low income. I note a BMO statement showing large amounts of funds, it is unknown where these funds come from or if they are still available. PA recently entered this employment industry I am not satisfied that this is a genuine employment offer. application refused.

### III. Issues

[11] The issues are:

- A. Did the Visa Officer commit a breach of procedural fairness in concluding that the offer of employment was not genuine?
- B. Did the Visa Officer commit any errors of law?
- C. Was the Visa Officer's decision reasonable?

### IV. Standard of Review

[12] The standard of review applicable to a Visa Officer's refusal of a TRV application is reasonableness.

[13] The applicable standard of review with respect to errors of law and procedural fairness is correctness (*Huang v Canada (Minister of Citizenship and Immigration)*, 2012 FC 145 at para 4).

V. Analysis

A. *Did the Visa Officer commit a breach of procedural fairness in concluding that the offer of employment was not genuine?*

[14] The Applicant argues that the Officer failed to give the Applicant and Prospective Employer an opportunity to respond to concerns about the employer's finances.

[15] The Applicant relies on the Operational Manuals maintained by the Respondent and the five-step process for assessing an applicant's eligibility for a work permit:

- a) Consider whether the activity the Applicant seeks to do in Canada is work;
- b) Determine whether a work permit is required;
- c) Determine if the employer is genuine and eligible to employ foreign nationals;
- d) Consider whether the foreign national is eligible to be issued a work permit; and
- e) Consider whether there are any factors prohibiting work permit issuance.

[16] The first two steps are not at issue.

[17] The only factors in dispute relate to the employer's source of funds and ability to pay the Applicant, and whether the Applicant is eligible to be issued a work permit.

[18] On this last point, the Officer considered the Applicant's apparent "recent entry into the market as an in-home caregiver".

[19] Notwithstanding a pre-existing positive LMIA issued to the Applicant's Prospective Employer, which authorized her offer of employment to the Applicant as an in-home caregiver for a two-year period, the Officer concluded that the job offer was not genuine.

[20] The Respondent argues that the Officer's decision turned on the employer's financial ability to pay the Applicant and not whether the Applicant could perform the job of a live-in caregiver, and that a positive LMIA is not determinative of how visa officers are to exercise their discretion.

[21] While the Respondent is correct in asserting: i) that there is no statutory requirement to grant an interview to respond to the prospective employer's finances; ii) that the duty of fairness owed to visa applicants is on the lower end of the spectrum; and iii) that the Applicant may re-apply for a work permit, nevertheless, the Officer cannot, without a reasonable basis, impugn evidence of financial ability to pay the Applicant's salary given what appears to be clear evidence to the contrary, and give no opportunity, in writing or otherwise, for the Applicant or the prospective employer to address whatever concerns the Officer had on this front, when the result is a refusal on that basis alone. At best, the Officer made adverse inferences on the financial front based on mere speculation. The decision lacks both procedural fairness and is unreasonable (*Morillo de Ocampo v Canada (Minister of Citizenship and Immigration)*, 2014 FC 447 at para 14).

B. *Did the Visa Officer commit any errors of law?*

[22] While I need not decide this issue based on my finding above on procedural fairness and the decision being unreasonable, I do not find the Officer committed an error in law.

C. *Was the Visa Officer's decision reasonable?*

[23] For the reasons set out above with respect to procedural fairness, the Officer's decision is unreasonable.

**JUDGMENT IN IMM-1088-18**

**THIS COURT'S JUDGMENT is that:**

1. The application is allowed;
2. The Officer's decision is set aside, and the matter is referred back to a different officer for reconsideration;
3. There is no question for certification.

“Michael D. Manson”

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Judge



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

**DOCKET:** IMM-1088-18

**STYLE OF CAUSE:** MEIRONG LIU v THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION

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

**DATE OF HEARING:** AUGUST 23, 2018

**JUDGMENT AND REASONS:** MANSON J.

**DATED:** AUGUST 28, 2018

**APPEARANCES:**

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