Federal Court  Cour fédérale

Date: 20181219

Docket: IMM-1317-18

Citation: 2018 FC 1280

Toronto, Ontario, December 19, 2018

PRESENT: The Honourable Mr. Justice Diner

BETWEEN:

JIANZHONG YU

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] This is the first of two judicial reviews brought by Mr. Yu, both of which negatively impact his bid for permanent residence. In this first judicial review, Mr. Yu challenges the refusal of his criminal rehabilitation application. It will not be granted for the reasons below.

[2] The related application challenges Mr. Yu's permanent residence refusal, and my decision for that related matter may be found at 2018 FC 1281. Given that each of the two related decisions has been issued separately, a certain amount of repetition is unavoidable in the background section of each.

II. Background

[3] Mr. Yu, a Chinese citizen, served as the Vice-President of a Chinese company. He was found to have taken advantage of his position from 1997-1999, collecting bribes in the amount of 1.07 million Yuan from five entities on various occasions. He was convicted of bribery in 1999, sentenced to life in prison, and fined. Mr. Yu's sentence was subsequently reduced in 2001, 2002 and again in 2010. Ultimately, Mr. Yu served his sentence, either in custody or on medical parole, from August 19, 1999 to June 21, 2010.

[4] After serving his sentence, Mr. Yu applied for and obtained a Temporary Resident Visa [TRV] in 2014. He failed to disclose his criminal conviction in that application. Mr. Yu arrived in Canada in March 2015 and married a Canadian citizen some six months later in September 2015.

[5] Mr. Yu submitted an application for permanent residence under the Spouse/Common-Law Partner in Canada class, and included his two daughters as dependants. He again failed to disclose his criminal conviction in this application. Mr. Yu only disclosed the conviction in January 2018 after Immigration, Refugees, and Citizenship Canada [IRCC] learned of his

criminal history, and questioned him about it. Shortly thereafter, he submitted an application for rehabilitation, which was refused, and which is now under review.

III. Decision and Issues Raised

[6] Both parties agree that reasonableness is the standard of review applicable to the criminal rehabilitation decision (*Tejada v Canada (Citizenship and Immigration)*, 2017 FC 933 [*Tejada*] at para 7). Further, a reviewing court must determine whether the decision, viewed as a whole in the context of the record, is reasonable: *Construction Labour Relations v Driver Iron Inc*, 2012 SCC 65; see also *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 [*Newfoundland Nurses*]. The sole issue raised is whether the refusal of Mr. Yu's application for rehabilitation is reasonable.

[7] In the decision, the officer noted that in light of paragraph 36(2)(b) of the *Immigration and Refugee Protection Act*, SC 2001, c 27, Mr. Yu was deemed inadmissible for an offence equivalent to bribery. Despite Mr. Yu's reduction in sentence abroad and expression of remorse, there was insufficient evidence of his activities since conviction to demonstrate that he had taken positive steps to rehabilitate himself. The officer specifically noted Mr. Yu's TRV application included employment information that may have been untruthful, and the fact that Mr. Yu only disclosed his criminal history once advised by the IRCC of their knowledge of his conviction. The officer was unsatisfied with Mr. Yu's explanation regarding his non-disclosure.

IV. Analysis

[8] Mr. Yu challenges the decision's reasonableness, both its substance and the adequacy of its reasons. Specifically, Mr. Yu argues that rehabilitation is forward-looking and the decision-maker is required to consider the likelihood of continuing criminal conduct (*Tejada* at para 9). Mr. Yu submits that the officer (i) failed to provide transparent reasons, as they are very brief; (ii) failed to consider Mr. Yu's evidence of rehabilitation and remorse, namely that Chinese courts reduced his criminal sentence; and (iii) erroneously considered Mr. Yu's misrepresentations as part of the criminal rehabilitation assessment.

[9] Mr. Yu relies on *Aviles v Canada (Minister of Citizenship and Immigration)*, 2005 FC 1369, saying that the officer focused on the misrepresentations to the exclusion of all other positive facets of his conduct, thus failing to consider the totality of the circumstances:

> [18] Then there are individuals such as the applicant who have been convicted or have committed an offence described in paragraphs 36(1)(b) and (c) and (2)(b) and (c), but who are not members of the prescribed class that is deemed to have been rehabilitated. In accordance with paragraph 36(3)(c) of the Act, these offences do not constitute inadmissibility if the individual can satisfy the Minister that they have been rehabilitated. The purpose of this provision is to allow the Minister to take into consideration the unique facts of each particular case and to consider whether the overall situation warrants a finding that the individual has been rehabilitated. The nature of the offence, the circumstances under which it was committed, the length of time which has elapsed and whether there have been previous or subsequent offences would be significant information in the determination. Given that the wording of paragraph 36(3)(c) places the onus on the applicant to satisfy the Minister that she has been rehabilitated, it follows that she must be given the opportunity to discharge that onus by making submissions concerning the particular facts of her case which favour such a finding.
>
> [Emphasis added]

[10] I agree with Mr. Yu that a rehabilitation assessment must be forward-looking and consider whether recidivism will occur. I also agree that the assessment must be broader than simply focusing on the misrepresentations. However, I do not agree with Mr. Yu that the reasons are insufficient. Nor do I agree that the officer failed to weigh the evidence, or most importantly, failed to consider personal circumstances. Rather, after considering the evidence, the officer decided that the positive factors – which s/he acknowledged – could not overcome Mr. Yu's past criminality or the dishonesty of two false declarations.

[11] Any consideration of recidivism necessarily takes into account the nature of the past criminal history, and considers what has happened since that time, and whether there are any indicators that such conduct will recur. For a full discussion of rehabilitation and recidivism, please see the recent decision in *Tahhan v Canada (Citizenship and Immigration),* 2018 FC 1279.

[12] First, with respect to the reasons, it is well established that for administrative decision-makers, particularly where exercising wide discretion, extensive reasons need not be given, and that the inadequacy of the reasons is not a stand-alone ground of judicial review (*Newfoundland Nurses* at para 14). Nor do the reasons have to be perfect. They can be brief if they adequately explain the basis of the decision (*El Rahy v Canada (Citizenship and Immigration),* 2018 FC 1058 at para 18). This was a threshold application, and a highly discretionary administrative decision which was not determinative of permanent residence. Rather, it merely addressed whether, considering all the circumstances, the officer determined that Mr. Yu had rehabilitated himself.

[13] Second, while the officer expressly noted Mr. Yu's reduced sentence and his expressed remorse, the officer observed that Mr. Yu did not provide sufficient evidence of rehabilitation. As the Respondent notes, there is a lack of detail as to what constitutes rehabilitation according to the Chinese courts, or the criteria used for assessing reduced sentences. Indeed, the onus was on Mr. Yu to put his best foot forward and provide a full explanation.

[14] Furthermore, I note that the officer is presumed to have considered all the evidence, subject to contradictory evidence that the officer would be bound to address. Here, I do not find anything contradicted what the officer found, that s/he failed to separately address.

[15] In any event, the jurisprudence establishes that the assessment of possible recidivism is the cornerstone of a rehabilitation assessment (*Lau v Canada (Citizenship and Immigration)*, 2016 FC 1184). Here, the officer effectively determined that despite Mr. Yu's positive progress made in the past, the present circumstances did not satisfy his concerns about recidivism. While I agree with Mr. Yu that certain parts of the decision could have been better written, decisions need not be perfect.

[16] Third, with respect to Mr. Yu's failure to disclose his criminal conviction, when evaluating whether an applicant is likely to commit a criminal offence in Canada in the future, it is reasonable for an officer to draw a negative inference from past disrespect for Canada's immigration laws and the provision of false information to IRCC. Mr. Yu chose, on more than one occasion, both with respect to his temporary and permanent residence applications, to provide misleading information.

[17] Mr. Yu argues that there was nothing intentional in his misrepresentation. Rather, he relied on a police certificate showing no conviction, and therefore thought he was responding accurately to the query in the IRCC form. In other words, he argues a mistaken interpretation of the question being asked, rather than any intention to mislead.

[18] I do not find the officer's conclusion to be unreasonable in this regard, and indeed find it difficult to accept Mr. Yu's explanation provided to the Court. In brief, Mr. Yu obtained a police certificate from China indicating that he had no criminal conviction. He failed to disclose his conviction and imprisonment in both applications. Specifically, the IRCC form asked Mr. Yu as follows:

> Have you, or, if you are the principal applicant, any of your family members listed in your application for permanent residence to Canada, ever … b) been convicted of, or are you currently charged with, on trial for, or party to a crime or offence, or subject of any criminal proceedings in any other country?

[19] It strains credulity that Mr. Yu could misunderstand the question by having answered "no" to whether he had ever been convicted of a crime or an offence, even with the police certificate. But if I were nonetheless to proceed under the assumption that this was an innocent mistake that in isolation could be explained, there remain two other areas in the IRCC forms that did not accurately reflect Mr. Yu's past.

[20] First, Mr. Yu, in listing his employment history, gave details of his past four positions with four different companies since 1985, providing months and dates in each position as required. This employment history covered the period of his imprisonment. Yet, he indicated

uninterrupted unemployment in China from July 1985 to July 2016, when he came to Canada for a vacation. Nothing would indicate that any time was spent in jail or out of regular work.

[21] Second, although not specifically cited by the officer, the IRCC form asks whether the Applicant had ever "been detained, incarcerated or put in jail". Again, Mr. Yu responded "no".

[22] The officer referred to Mr. Yu's dishonesty regarding both of these misrepresentations. *Newfoundland Nurses* allows the reviewing Court to look beyond the reasons to see what animated them, and here I find nothing unreasonable in that regard, given that there was more than one instance of dishonesty. Although it strains credulity, the first inaccurate answer could have simply been an oversight. But the officer's decision is justifiable and intelligible when considering the full context of the decision. After all, fraud and dishonesty underlie the bribery offence which gave rise to the rehabilitation application in the first place.

[23] Mr. Yu's conduct in his IRCC applications, while not as severe, nonetheless speaks to ongoing dishonesty, as found by the officer. In closing, I will point again to *Tejada*, a recent decision of this Court. There, Justice Southcott found that a "willingness to disregard provisions of immigration law are indicative of a lack of respect for the law in general, failure to take responsibility for past criminal activity, and inconsistent with a conclusion of rehabilitation" (at para 20).

[24] Similarly, it was open for this officer, when assessing the likelihood of continuing criminal conduct, to consider Mr. Yu's dishonesty associated with his representations to

Canadian immigration authorities. It was reasonable for the officer to consider Mr. Yu's evidence of a reduced sentence and remorse, but ultimately find that they were outweighed by Mr. Yu's disregard of Canadian immigration law. While the officer's reasons are indeed brief, I am able to understand the rationale for the decision. This does not represent a basis for the Court to intervene.

[25] Ultimately, the outcomes available to the officer are binary – yes or no. Had there been a middle ground, this officer may have found Mr. Yu to have been on his way towards rehabilitation rather than recidivism. Here, however, given the available outcomes, the officer landed on the side that rehabilitation had not yet taken place. That was one possible outcome, given all the circumstances.

V. Conclusion

[26] The officer's decision on rehabilitation was reasonable. It will be upheld.

JUDGMENT in IMM-1317-18

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is dismissed.

2. No questions for certification were argued, and none arise.

3. There is no award as to costs.

"Alan S. Diner"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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