Federal Court  Cour fédérale

Date: 20190118

Docket: IMM-4699-17

Citation: 2019 FC 72

Ottawa, Ontario, January 18, 2019

PRESENT: The Honourable Mr. Justice Norris

BETWEEN:

YU SONG AND JIANXIN WANG

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. OVERVIEW

[1] The applicants, Yu Song and Jianxin Wang, are citizens of China. In June 2016, they applied for permanent residence in Canada under the Prince Edward Island Provincial Nominee Program (Business Impact Category). Mr. Song was the principal applicant. Ms. Wang was included as a dependent spouse.

[2] Their application was refused by an immigration officer on September 15, 2017, because the officer concluded that they had misrepresented or withheld material information regarding Ms. Wang's work history. In particular, the name of the Mechanical and Electrical Institute in Xi'an, China where she had worked from 1993 to 1997 was stated incorrectly in their application. Before the decision was made, the applicants had been told in a procedural fairness letter that this could be an issue. In response to this letter, the applicants acknowledged the error and offered an explanation. The officer did not find their explanation credible or sufficient to overcome the concerns raised by the discrepancy between the correct name of the Institute and the name they had given. The officer therefore found the applicants to be inadmissible for misrepresenting or withholding a material fact within the meaning of section 40(1)(a) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*]. (The pertinent statutory provisions are set out in the Annex to these reasons.)

[3] The applicants now apply for judicial review of this decision under section 72(1) of the *IRPA*.

[4] For the reasons that follow, I am allowing the application and ordering that the matter be reconsidered by a different immigration officer.

II. BACKGROUND

[5] The background necessary to understand this matter is straightforward.

[6] Ms. Wang holds a Bachelor's degree in Electronic Instruments and Measurement Technology from Xi'an Shiyou University (1993), a Master's degree in Communication and Information System from Lanzhou Jiaotong University (2000) and a Ph.D. in Communication and Information System from Shanghai Jiaotong University (2004).

[7] Among the documents she was required to complete in support of the application for permanent residence was Canadian immigration form IMM5669. This form calls for an applicant to provide comprehensive personal background information including date of birth, education, employment history, prior residential addresses, criminal history (if any), and so on. By signing the completed form, an applicant declares that the information he or she has given "is truthful, complete and correct."

[8] Ms. Wang signed her IMM5669 on February 28, 2017. Among many other things, she stated on the form that between August 1993 and May 1997 she was employed as an Assistant Engineer at the Xi'an Qinghua Mechanical and Electrical Institute in the city of Xi'an, China. It is evident from other information on the form that she began this employment immediately upon completing her undergraduate studies at Xi'an Shiyou University. In the list of her residential addresses, Ms. Wang stated that from September 1989 until August 1993 she resided at Xi'an Shiyou University in the City of Xi'an, in the Province of Shanxi. Then, in September 1993, she moved to the staff dormitory of Xi'an Qinghua Mechanical and Electrical Institute in the City of Xi'an, in the Province of Shanxi, where she remained until August 1997.

[9] By letter dated April 27, 2017, an immigration officer with the Canadian Consulate in Hong Kong advised Mr. Song of the following:

> You submitted your dependent wife's completed and signed Schedule A forms to this office in support of your immigration application. Your dependent wife indicated on her Schedule forms submitted that she worked for Xi'an Qinghua Mechanical and Electrical Institute from August 1993 to May 1997 as an Assistant Engineer. However, her personal profile on the Xiamen University's website available in the public domain indicates that she worked for the Military Arsenal Industry No. 203 Research Institute as an Assistant Engineer. I, therefore, have concerns that you and your dependent spouse provided untruthful employment/background information concerning your dependent wife to this office in support of your immigration application. I also have concerns that you and your dependent wife provided the same untruthful information to the Province of Prince Edward Island in order to secure a provincial nomination certificate from their office.

While not stated explicitly, there is no issue that the concern related to where Ms. Wang worked between August 1993 and May 1997. No concerns about any other information provided about Ms. Wang's employment history were raised in the procedural fairness letter or at any other point.

[10] After bringing to Mr. Song's attention the duty to be truthful set out in section 16(1) of the *IRPA* and the potential consequences under section 40 of the *IRPA* of misrepresenting or withholding material facts, the letter invited him to respond to the information set out in therein.

[11] By letter dated May 10, 2017, the representative who was assisting the applicants with their application for permanent residence responded to the procedural fairness letter with the following information. First, Ms. Wang had erred when she stated that the name of the Institute

was the Xi'an Qinghua Mechanical and Electrical Institute. As Ms. Wang herself explained in an accompanying letter, in fact, the name of the Institute is the Shaanxi Qinghua Mechanical and Electrical Institute. She had been in a rush and had mistakenly used the name of the city where the Institute is located (Xi'an) when the Institute is actually named after the province in which it is located (Shaanxi). Second, this Institute is also known as No. 203 Research Institute of China Ordnance Industries. As Ms. Wang also explained in her letter, the latter is the Institute's "internal" name. Shaanxi Qinghua Mechanical and Electrical Institute is its "external" name. The two names identify the same facility. Ms. Wang provided additional documentation verifying this fact.

[12] Following receipt of this response to the procedural fairness letter (PFL), another immigration officer reviewed the application to determine whether it should be refused because material facts had been misrepresented or withheld.

[13] By letter dated September 15, 2017, the applicants were informed that their application for permanent residence was refused due to misrepresentation. The letter stated in material part as follows:

> On November 16, 2016, your application for permanent residence to Canada was received in our office. You misrepresented or withheld the following facts:
>
> - WANG Jianxin was employed by Shaanxi Qinghua Mechanical and Electrical Institute 1993-7.
>
> I reached this determination because you did not declare this relevant information regarding WANG Jianxin's personal history on the application forms. Your response to our office's PFL confirms the above facts regarding WANG Jianxin's personal history. I have reviewed your explanation and response to our office's PFL letter and do not find it credible or sufficient to

> overcome the concerns. You are both responsible for the truthfulness and completeness of all information on the application forms.
>
> On the balance of probabilities, I am satisfied you directly or indirectly misrepresented or withheld material information, relevant to the processing of this immigration application. The misrepresentation or withholding of this/these material fact(s) could have induced errors in the administration of the Act as you could have been issued immigrant visas without having provided truthful and complete information to enable us to properly assess your Admissibility.

[14] The officer's Global Case Management System [GCMS] notes shed some additional light on the officer's assessment of the information before him or her. The officer accepted that the Institute had both an external and an internal name and was not concerned that Ms. Wang had not mentioned the internal name. What concerned the officer was that she had not given either the internal name or the correct external name. That is to say, in the officer's view, the misrepresentation was that Ms. Wang had named her employer as the Xi'an Qinghua Mechanical and Electrical Institute but there is no such thing. By doing so, she had "concealed the employer's true name." Putting the same point the other way around, the notes indicate that the officer accepted that Ms. Wang had been employed by the Shaanxi Qinghua Mechanical and Electrical Institute between 1993 and 1997 but she had failed to declare this fact on her application. Further, as the letter also states, the notes indicate that the officer found that the explanation the applicants provided for this omission was not credible "or sufficient to overcome the concerns." Finally, the notes state the officer's finding that the information that was misrepresented or withheld was material "because it is relevant to the admissibility of the [*sic*] WANG Jianxin on this application." The notes continue: "This misrepresentation could have induced in an [*sic*] error in the administration of the Act and the issuance of immigrant visas to

applicants without all the information necessary to make the Admissibility assessment." No further explanation is given.

III. STANDARD OF REVIEW

[15] There is no dispute that an immigration officer's decision refusing an application such as this on the basis that material facts had been misrepresented or withheld is reviewed on a reasonableness standard (*Wang v Canada (Citizenship and Immigration)*, 2018 FC 368 at para 12) [*Wang*]).

[16] Reasonableness review "is concerned with the reasonableness of the substantive outcome of the decision, and with the process of articulating that outcome" (*Canada (Attorney General) v Igloo Vikski Inc*, 2016 SCC 38 at para 18). The reviewing court examines the decision for "the existence of justification, transparency and intelligibility within the decision-making process" and determines "whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47). These criteria are met if "the reasons allow the reviewing court to understand why the tribunal made its decision and permit it to determine whether the conclusion is within the range of acceptable outcomes" (*Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para 16). That is to say, the reviewing court must look at both the reasons and the outcome (*Delta Airlines Inc v Lukács*, 2018 SCC 2 at para 27 [*Delta Airlines*]).

[17] As stated in *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 at para 43, the duty to give reasons is informed by the importance of the interests affected by the decision. A finding of misrepresentation under section 40 of the *IRPA* results not only in the rejection of the application in question (here, an application for permanent residence) but also the determination that the applicant is inadmissible to Canada for five years. Such a finding should not be made lightly (*Nwali v Canada (Citizenship and Immigration)*, 2018 FC 907 at para 14 [*Nwali*]).

[18] It is settled law that an officer's GCMS notes form part of his or her reasons for the decision and must be considered by a reviewing court (*Wang* at para 9). Even though the reasons given may be brief and must be read in the context of the entire record, they must be sufficient to explain the result to the parties and to a reviewing court (cf. *VIA Rail Canada Inc v National Transportation Agency*, [2001] 2 FC 25 at paras 17-22 (FCA)). A reviewing court may intervene if the reasons fail this test or the result reached does not fall within the range of possible, acceptable outcomes that are defensible in respect of the facts and the law.

IV. ISSUES

[19] This application raises the following issues:

a) Is the officer's conclusion that Ms. Wang misrepresented the name of her employer between 1993 and 1997 reasonable?

b) Is the officer's conclusion that this was a material fact reasonable?

V. ANALYSIS

[20] As I will explain, in my view the officer's conclusion that Ms. Wang misrepresented the name of her employer between 1993 and 1997 is reasonable but the conclusion that the employer's name is a material fact is unreasonable. Before addressing these issues, however, it is necessary to deal briefly with the admissibility of parts of the affidavit Ms. Wang submitted in connection with this application for judicial review.

A. *The Admissibility of Paragraphs 7 and 8 of Ms. Wang's Affidavit*

[21] On December 1, 2017, Ms. Wang swore an affidavit in support of the present application for judicial review. The affidavit sets out the history of this matter and draws together the material upon which the applicants were relying in seeking leave for judicial review. Quite properly and helpfully, the affidavit summarized information found elsewhere in the record which was before the decision-maker. However, the affidavit also provides additional information concerning the name of the Institute in question (see, in particular, paragraphs 7 and 8 of the affidavit and the exhibits referred to therein). This information was not before the immigration officer. The respondent objects to the admissibility of this evidence on this application for judicial review.

[22] The general rule is that the evidentiary record on an application for judicial review of an administrative decision is restricted to the record that was before the decision-maker (*Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22 at par 19 [*Access Copyright*]; *Bernard v Canada (Revenue Agency)*,

2015 FCA 263 at para 13 [*Bernard*]). The rationale for this rule is grounded in the respective roles of the administrative decision-maker and the reviewing court (*Access Copyright* at paras 17-18; *Bernard* at paras 17-18). The decision-maker decides the case on its merits. The reviewing court can only review the overall legality of what the decision-maker has done. This general rule admits of exceptions (as stated in *Access Copyright* at para 20 and *Bernard* at paras 19-28) but none apply here. As a result, I have determined that the contents of paragraphs 7 and 8 of Ms. Wang's affidavit sworn on December 1, 2017 (including the related exhibits) are inadmissible on this application. Accordingly, they will play no part in my decision on the merits.

B. *Is the officer's conclusion that Ms. Wang misrepresented the name of her employer between 1993 and 1997 reasonable?*

[23] The applicants submit that the officer's conclusion that Ms. Wang misrepresented her employer between 1993 and 1997 is unreasonable. They accept that they were under a duty of candour requiring them to provide truthful, complete and accurate information in their application for permanent residence (cf. *Baro v Canada (Citizenship and Immigration)*, 2007 FC 1299 at para 15 [*Baro*]; see also section 16(1) of the *IRPA*). They do not dispute that the information they provided initially was incorrect. They contend, however, that Ms. Wang's mistake was made innocently in her haste to complete the application and, as such, does not constitute a misrepresentation within the meaning of section 40(1)(a) of the *IRPA*. I do not agree.

[24] The jurisprudence is clear that section 40 of the *IRPA* is to be given a broad interpretation (*Khan v Canada (Citizenship and Immigration)*, 2008 FC 512 at para 25). This is grounded in the important role the provision plays in helping to ensure the integrity of the administration of Canadian immigration law and policy (*Oloumi v Canada (Citizenship and Immigration)*, 2012 FC 428 at para 23 [*Oloumi*]). In my view, the officer reasonably concluded that the original error with respect to the name of Ms. Wang's employer between 1993 and 1997 constituted a misrepresentation within the meaning of this provision. I agree with the applicants that the officer's statement in the GCMS notes that Ms. Wang had "concealed" her employer's true name, to the extent that this imputes an act of wilful non-disclosure to her, is not supported by the record. There is no reason to think that Ms. Wang deliberately provided the incorrect name. However, this is not necessary for the inclusion of incorrect information to constitute a misrepresentation (*Khedri v Canada (Citizenship and Immigration)*, 2012 FC 1397 at para 21). Even an innocent mistake can constitute misrepresentation under section 40(1)(a) of the *IRPA* (*Baro* at para 15).

[25] An exception arises where an applicant can show that he or she honestly and reasonably believed that they were not misstating or withholding material information (*Baro* at para 15) but this exception has been construed narrowly (*Goudarzi v Canada (Citizenship and Immigration)*, 2012 FC 425 at paras 36-37; *Wang* at paras 21-22; *Nwali* at para 18). The record is clear that Ms. Wang honestly believed at the time that she was submitting accurate information about her employment history, including that the Institute where she worked between 1993 and 1997 was named after the city where it was located, not the province. The record is equally clear, however, that if she had not been in such a rush and had thought about this detail a little more

carefully, she likely would not have made the mistake she did. While I have some difficulty understanding why the officer did not find Ms. Wang's explanation for her mistake to be credible, the officer's conclusion that the explanation was not sufficient to establish that the error was not a misrepresentation is reasonable.

[26] In my view, the real issue is whether the fact that was misrepresented – the name of Ms. Wang's employer – is a material one. I turn to this now.

C. *Is the officer's conclusion that this was a material fact reasonable?*

[27] It is indisputable that an applicant's employment history can be relevant to whether he or she should be granted permanent residence. Depending on the type of application, it can have a direct bearing on whether the applicant has the necessary qualifications. The complete and accurate statement of an applicant's employment history also facilitates inquiries by immigration officials into his or her admissibility (see, for example, *AA v Canada (Citizenship and Immigration)*, 2017 FC 1066). More broadly, inventing or omitting details in one's employment history can raise concerns about whether an applicant has misrepresented or withheld material facts about his or her past. A misrepresentation does not need to be decisive or determinative to an application to be material; it only needs to be "important enough to affect the process" (*Oloumi* at para 36).

[28] There is no issue that Ms. Wang worked as an assistant engineer between August 1993 and May 1997. Nor is there any issue that this employment was with a Mechanical and Electrical Institute located in the City of Xi'an, which is in the Province of Shanxi (or Shaanxi).

These facts are all stated accurately in Ms. Wang's application. The crux of the matter is whether, in misstating the name of the Institute where she worked during this period, Ms. Wang misrepresented or withheld a material fact.

[29] To repeat for ease of reference, in the letter of September 15, 2017, the officer gave the following reasons for finding that the name of the employer was material:

> On the balance of probabilities, I am satisfied you directly or indirectly misrepresented or withheld material information, relevant to the processing of this immigration application. The misrepresentation or withholding of this/these material fact(s) could have induced errors in the administration of the Act as you could have been issued immigrant visas without having provided truthful and complete information to enable us to properly assess your Admissibility.

The officer's GCMS notes (set out above in para 14) essentially reiterate the same reasons.

[30] In my view, the officer's reasons fall well short of what is required to explain the result to the parties and to a reviewing court. The first sentence and the first part of the second sentence quoted above, which simply track the language of section 40(1)(a) of the *IRPA*, offer no insight whatsoever into the officer's reasoning. They merely state his or her conclusion. The second part of the second sentence adds nothing to our understanding. Saying that the applicants could have been granted immigrant visas without having provided truthful and complete information to enable the proper assessment of their admissibility simply begs the question of whether the misstated fact was material or not. We know that the employer's name was stated incorrectly. What we do not know, and what the officer does not explain, is why, in the specific circumstances of this case, the employer's name was "important enough to affect the process."

In particular, the officer does not explain how the incorrect employer's name could have induced errors in the administration of the Act notwithstanding that all the other information in the application concerning this job was accurate and complete. It is not for a reviewing court to speculate as to what the decision-maker might have been thinking (*Komolafe v Canada (Citizenship and Immigration)*, 2013 FC 431 at para 11, cited with approval in *Delta Airlines* at para 28). In the absence of any explanation for the critical finding of materiality, the officer's decision lacks transparency and intelligibility.

[31] As my colleague Justice Grammond discussed recently, while there may be nothing wrong *per se* with administrative decision-makers using boilerplate language when giving their reasons, it is important that "the reasons be intelligible and that they describe a reasonable path to the decision that was made" (*Boukhanfra v Canada (Citizenship and Immigration)*, 2019 FC 4 at para 9). In my view, the officer's determination that Ms. Wang's misrepresentation related to a material fact fails this test and, as a result, is unreasonable.

VI. CONCLUSION

[32] For these reasons, the decision dated September 15, 2017, is set aside and the matter is remitted for reconsideration by a different immigration officer.

[33] The parties did not suggest any serious questions of general importance for certification under section 74(d) of the *IRPA*. I agree that none arise.

JUDGMENT IN IMM-4699-17

THIS COURT'S JUDGMENT is that

1. The application for judicial review is allowed.
2. The decision dated September 15, 2017, is set aside and the matter is remitted for reconsideration by a different immigration officer.
3. No question is certified.

"John Norris"
Judge

ANNEX

Obligation — answer truthfully	**Obligation du demandeur**
16 (1) A person who makes an application must answer truthfully all questions put to them for the purpose of the examination and must produce a visa and all relevant evidence and documents that the officer reasonably requires.	16 (1) L'auteur d'une demande au titre de la présente loi doit répondre véridiquement aux questions qui lui sont posées lors du contrôle, donner les renseignements et tous éléments de preuve pertinents et présenter les visa et documents requis.
…	…
Misrepresentation	**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 administration of this Act;	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 erreur dans l'application de la présente loi;
…	…
Application	**Application**
(2) The following provisions govern subsection (1):	(2) Les dispositions suivantes s'appliquent au paragraphe (1) :
(a) the permanent resident or the foreign national continues to be inadmissible for misrepresentation for a period of five years following, in the case of a determination outside Canada, a final determination of inadmissibility under subsection (1) or, in the case of a determination in Canada, the date the removal order is enforced; and	a) l'interdiction de territoire court pour les cinq ans suivant la décision la constatant en dernier ressort, si le résident permanent ou l'étranger n'est pas au pays, ou suivant l'exécution de la mesure de renvoi;

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-4699-17
STYLE OF CAUSE:	YU SONG AND JIANXIN WANG v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	MATTER HEARD BY VIDEOCONFERENCE BETWEEN FREDERICTON, NEW BRUNSWICK AND HALIFAX, NOVA SCOTIA
DATE OF HEARING:	SEPTEMBER 13, 2018
JUDGMENT AND REASONS:	NORRIS J.
DATED:	JANUARY 18, 2019

APPEARANCES:

Roderick (Rory) H. Rogers, Q.C.	FOR THE APPLICANTS
Patricia MacPhee	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Stewart McKelvey Halifax, Nova Scotia	FOR THE APPLICANTS
Attorney General of Canada Halifax, Nova Scotia	FOR THE RESPONDENT