Federal Court  Cour fédérale

Date: 20190621

Docket: IMM-4706-18

Citation: 2019 FC 849

Ottawa, Ontario, June 21, 2019

PRESENT: THE CHIEF JUSTICE

BETWEEN:

XIN LIU

Applicant

and

THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] Ms. Liu made a material misrepresentation on an application for permanent residence under the Canadian Experience Class [CEC Application]. However, that application was rejected for other reasons. So, Ms. Liu made a second, successful, application for permanent residence under the Spouse or Common-law Partner in Canada Class [Spousal Application].

[2] In granting the Spousal Application, the immigration officer responsible for conducting the assessment focused on the genuineness of Ms. Liu's relationship with her spouse and the other requirements set forth in s. 124 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [the Regulations]. That officer does not appear to have considered the misrepresentation that Ms. Liu had made on her CEC Application, which the Canada Border Services Agency [CBSA] had by that time discovered, brought to the attention of the Department of Citizenship and Immigration, and commenced to investigate.

[3] Nevertheless, two other officers who were involved in the processing of the file did consider a similar misrepresentation. The first, who was involved in reviewing the Spousal Application at an earlier stage, simply made a "general" observation to the effect that there were reasonable grounds to believe that the company Ms. Liu had identified as her employer in that application was not a real company. The second appears to have been responsible for issuing a work permit to Ms. Liu after her Spousal Application was initially approved. That officer made a "general" notation stating that while Ms. Liu had falsified a portion of her employment history on her work permit application, her Spousal Application was being "initially" approved based on the fact that her relationship with her spouse was genuine. The officer added: "[t]herefore, the client has not committed misrepresentation."

[4] More than three years later, a ministerial delegate [MD] referred a report [Report] that had been prepared pursuant to s. 44(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the Act] for an admissibility hearing. The Report concluded that Ms. Liu is inadmissible to Canada based on the fact that she directly or indirectly misrepresented or withheld material facts

relating to a relevant matter that induced or could have induced an error in the administration of the Act, as contemplated by s. 40(1)(a) of the Act.

[5] Ms. Liu maintains that the MD's decision should be set aside for the following three reasons:

i. The MD was barred by one or more of the doctrines of collateral attack, *res judicata* (issue estoppel) and abuse of process from referring her to an inadmissibility hearing based on her prior misrepresentation.

ii. Her false work history, which she has acknowledged, was not capable of inducing an error in the administration of the Act, because her CEC Application was rejected on other grounds.

iii. Her misrepresentation was not "serious," as contemplated by the test set forth in *Ribic v Canada (Minister of Employment and Immigration)* (1986), [1985] IABD No 4 (Imm App Bd).

[6] I disagree. For the reasons set forth below. This application will be dismissed.

II. **Background**

[7] After studying in Canada from 2004-2009 and then working in Canada for a period of time, Ms. Liu submitted her CEC Application in early 2012. On that application, she indicated

that she had worked in Canada for “NCK Electric Inc.” [NCK] as a Human Resources Generalist for a period of time in 2010 and 2011.

[8] Ms. Liu’s CEC Application was rejected in August 2012 on the basis that she did not meet the language eligibility requirements.

[9] Approximately one month later, Ms. Liu married her husband, Billy Wite-Keenn Chau, a Canadian Citizen.

[10] A short while later, the CBSA executed search warrants at properties that it suspected were involved in a large-scale immigration fraud scheme. This scheme was orchestrated by a Canadian citizen, Mr. Xun “Sunny” Wang, and involved a number of companies that he controlled, including New Can Consultants (Canada) Ltd. [New Can].

[11] During their search of the premises in question, CBSA officers found documents containing Ms. Liu’s name, including her CEC Application, letters confirming her employment with NCK, pay stubs from NCK, T4 slips and a contract between her and New Can.

[12] In January 2013, Ms. Liu filed her Spousal Application. In that application, she once again indicated that she had worked for NCK as a Human Resources Generalist for a specified period of time in 2010 and 2011.

[13] In September 2013, Ms. Liu filed an application for a work permit extension.

[14] In May 2014, an immigration officer found the relationship between Ms. Liu and Mr. Chau to be genuine. Based on that finding, Ms. Liu passed the first stage of her Spousal Application and was granted an open work permit.

[15] Following the standard security and criminal background checks, and a review of Ms. Liu's medical admissibility, she passed the second stage of the Spousal Application and became a landed Permanent Resident on August 16, 2014.

[16] On October 15, 2014, Mr. Wang was charged with various offences relating to immigration and tax fraud. He eventually pled guilty to some of the charges and received a seven year jail sentence and a $900,000 fine.

III. **The Decision Under Review**

[17] The MD's referral under subsection 44(2) of the Act simply consisted of two single page documents. The first was a form stating that the MD had reviewed the Report and was referring it to the Immigration Division for an admissibility hearing to determine whether Ms. Liu is a person described in paragraph 40(1)(a) of the Act. The second document was a short summary of the factors that were considered in making the Report, together with statements that the MD (i) concurred with the officer's recommendation to refer Ms. Liu to an admissibility hearing, and (ii) found the Report to be well-founded, as contemplated by s. 44(2) of the Act.

[18] One of the factors identified by the MD in the latter document was "[t]he seriousness, sophistication and reasons for the misrepresentation."

[19] It appears to be common ground between the parties that the decision under review in this application [Decision] includes the findings made in the Report.

[20] Among other things, the Report stated that following the search and seizure involving Mr. Wang and his companies (New Can and Wellong International Investments Ltd.), it was revealed that NCK had been established "solely for the purpose of creating an illusion of employment for their clients in order to meet residency obligations or in this case to meet qualification standards for the [CEC Application]."

[21] The Report further noted that Ms. Liu had been "an active participant in the misrepresentation on the […] CEC Application as the submissions indicate her employment history was false." The Report also stated that Ms. Liu had "entered into an agreement with Sunny WANG's company to falsify employment in order to meet the application standard." In this regard, it does not appear to be disputed that, pursuant to Ms. Liu's agreement with New Can, she transferred funds to that company or to Mr. Wang, and then received a false "salary" and fraudulent "pay slips" which identified purported income tax and other deductions.

[22] Based on the foregoing, the author of the Report concluded on a balance of probabilities that Ms. Liu had "directly or indirectly misrepresented herself on [the CEC Application] by failing to declare accurate and or truthful employment history." (Emphasis added.) The Report added: "[i]n doing so she prevented an Officer from making a proper determination as to whether she met the requirements of the CEC program pursuant to Regulation 87.1(2) of the Immigration

and Refugee Protection Regulations." As a consequence, the Report stated: "therefore she induced or could have induced an error in the administration of the [Act] and Regulations."

[23] In addition to the foregoing, the Report noted that Ms. Liu had also misrepresented her employment with NCK on her Spousal Sponsorship application. In this regard, the Report stated: "[h]owever, as this was a sponsorship AFL the application was not assessed based on her previous employment but based on whether her relationship is genuine."

[24] Towards the end of the Report, certain humanitarian and compassionate grounds [H&C] submissions made by Ms. Liu were addressed. Nevertheless, the Report concluded that those considerations did not outweigh the seriousness of her misrepresentation, including the fact that after her CEC application had been refused, "Ms Liu continued to list a shell company as her employer on her AFL Sponsorship application."

IV. **Relevant Legislation**

[25] For the purposes of this application, the relevant legislation consists of the provisions in paragraph 40(1)(a) and subsections 44(1) and 44(2) of the Act. Those provisions state as follows:

Inadmissibility	**Interdictions de territoire**
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	a) directement ou indirectement, faire une présentation erronée sur un fait important quant à un objet pertinent, ou une réticence sur ce

could induce an error in the administration of this Act;	fait, ce qui entraîne ou risque d'entraîner une erreur dans l'application de la présente loi;
[…]	[…]
Report on Inadmissibility	**Constat de l'interdiction de territoire**
Preparation of report	*Rapport d'interdiction de territoire*
44 (1) An officer who is of the opinion that a permanent resident or a foreign national who is in Canada is inadmissible may prepare a report setting out the relevant facts, which report shall be transmitted to the Minister.	44 (1) S'il estime que le résident permanent ou l'étranger qui se trouve au Canada est interdit de territoire, l'agent peut établir un rapport circonstancié, qu'il transmet au ministre.
Referral or removal order	*Suivi*
(2) If the Minister is of the opinion that the report is well-founded, the Minister may refer the report to the Immigration Division for an admissibility hearing, except in the case of a permanent resident who is inadmissible solely on the grounds that they have failed to comply with the residency obligation under section 28 and except, in the circumstances prescribed by the regulations, in the case of a foreign national. In those cases, the Minister may make a removal order.	(2) S'il estime le rapport bien fondé, le ministre peut déférer l'affaire à la Section de l'immigration pour enquête, sauf s'il s'agit d'un résident permanent interdit de territoire pour le seul motif qu'il n'a pas respecté l'obligation de résidence ou, dans les circonstances visées par les règlements, d'un étranger; il peut alors prendre une mesure de renvoi.

V. **Issues**

[26] In my view, the three issues raised by the Applicant should be reformulated as follows:

i. Do any of the doctrines of collateral attack, res judicata and abuse of process preclude the MD from referring Ms. Liu to an admissibility hearing?

ii. Was it unreasonable for the MD to conclude that Ms. Liu's misrepresentation was capable of inducing an error in the administration of the Act?

iii. Was it unreasonable for the MD to conclude that Ms. Liu's misrepresentation was "serious," as contemplated by the Ribic test?

VI. **Standard of Review**

[27] The questions that have been raised under the rubric of the first issue are generally reviewable on a correctness standard: *Kanyamibwa v Canada (Public Safety and Emergency Preparedness)*, 2010 FC 66, at para 58, citing *Toronto (City) v Canadian Union of Public Employees (CUPE)*, Local 79, 2003 SCC 63, at para 15.

[28] However, in this proceeding, there is no prior decision on these questions to be reviewed, because they do not appear to have been raised before either the MD or the author of the Report. In this context, this Court's function is to determine whether the circumstances are such that one or more of the doctrines of collateral attack, *res judicata* (issue estoppel) and abuse of process preclude(s) the MD from referring Ms. Liu to an admissibility hearing.

[29] The second issue involves both a question of statutory interpretation and a question of mixed fact and law. Questions of statutory interpretation of a decision-maker's "home statute"

are presumed to be reviewable on a standard of reasonableness, unless that presumption is rebutted: *Canada (Canadian Human Rights Commission) v Canada (Attorney General)*, 2018 SCC 31, at paras 27-28. Neither party to the present proceeding has suggested that this presumption is or ought to be rebutted, and it is not apparent to me why the presumption should not apply.

[30] The question of mixed fact and law that is raised by the second issue set forth above is also reviewable on a standard of reasonableness: *Dunsmuir v New Brunswick*, 2008 SCC 9, at paras 51-53 [*Dunsmuir*]; *Kazzi v Canada (Citizenship and Immigration)*, 2017 FC 153, at para 17 [*Kazzi*].

[31] The third issue raised by Ms. Liu, concerning the MD's finding with respect to the "seriousness" of her misrepresentation, pertains to the exercise of the MD's discretion under s. 44(2) to refer her for an admissibility hearing. Such exercises of discretion are reviewable on a standard of reasonableness and attract significant deference: *McAlpin v Canada (Public Safety and Emergency Preparedness)*, 2018 FC 422, at paras 51 and 53.

[32] In assessing whether a decision is reasonable, the focus of the Court is generally upon whether the decision is appropriately intelligible, transparent and justified. In this regard, the Court's task will be to assess whether it is able to understand why the decision was made and to ascertain whether the decision falls "within a range of possible, acceptable outcomes which are defensible in respect of the facts and the law": *Dunsmuir*, above, at para 47; *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, at para

16. A decision that is "rationally supported" will generally fall within this range: *Halifax (Regional Municipality) v Nova Scotia (Human Rights Commission)*, 2012 SCC 10, at para 47.

VII. **Assessment**

A. *Do any of the doctrines of collateral attack,* res judicata *and abuse of process preclude the MD from referring Ms. Liu to an admissibility hearing?*

(1) Collateral attack

[33] Ms. Liu submits that the Decision constitutes a collateral attack on the prior decision to grant her Spousal Application, despite the fact that her past misrepresentation with respect to her work history was known.

[34] In support of her position, Ms. Liu notes that documentation published by Immigration, Refugees and Citizenship Canada [IRCC] makes it clear that, after applicants are found to be members of the family class, they are assessed for admissibility, including on grounds of misrepresentation: IRCC, "Admissibility and final decision on applications in family class", Program Delivery Instructions (Ottawa: available online, modified January 2, 2019); IRCC, "Processing family class applications: Admissibility", Program Delivery Instructions (Ottawa: available online, modified January 2, 2019; relevant excerpts from the Program Delivery Instructions are included in the appendix to this decision.

[35] Accordingly, Ms. Liu maintains that the Minister ought to have taken the position that she was inadmissible either at the time her Spousal Application was being processed, or in a

subsequent application to this Court for judicial review of the decision to grant the Spousal Application. For greater certainty, Ms. Liu submits that even if her prior work history could be said to have not been relevant for the purposes of her Spousal Application, the Minister or a representative of IRCC could have taken the position that she was inadmissible to Canada as a result of her misrepresentation in connection with her CEC Application.

[36] By failing to avail himself of these avenues to directly attack the issuance of her Spousal Application, Ms. Liu asserts that the Minister was precluded from indirectly attacking the issuance of that application by way of the Decision to refer her for an admissibility hearing.

[37] I disagree.

[38] A concise summary of the doctrine of collateral attack was provided in *Garland v Consumers' Gas Co*, 2004 SCC 25, at para 71:

> The doctrine of collateral attack prevents a party from undermining previous orders issued by a court or administrative tribunal (see *Toronto (City) v. C.U.P.E., Local 79*, [2003] 3 S.C.R. 77, 2003 SCC 63 (CanLII); D. J. Lange, *The Doctrine of Res Judicata in Canada* (2000), at pp. 369 70). Generally, it is invoked where the party is attempting to challenge the validity of a binding order in the wrong forum, in the sense that the validity of the order comes into question in separate proceedings when that party has not used the direct attack procedures that were open to it (i.e., appeal or judicial review).

[39] When Ms. Liu's Spousal Application was initially approved on May 1, 2014, the CBSA's investigation into her fraudulent scheme with Mr. Wang and his affiliated companies was still in progress. That investigation was also still in progress when Ms. Liu became a landed Permanent

Resident on August 16, 2014, and when the period for seeking judicial review of that decision expired approximately 30 days later.

[40] On October 15, 2014, Mr. Wang was arrested and charged with several offences. The following day, a second search warrant was obtained by the CBSA and evidence of additional offences was found. That evidence led to the filing of further charges in March 2015. In May 2015, the CBSA then obtained a Production Order that led to additional evidence. Ultimately, in July 2015, Mr. Wang entered guilty pleas in respect of several of the offences with which he had been charged.

[41] Given that the foregoing chronology of events, the MD was not barred by the doctrine of collateral attack from referring Ms. Liu to an admissibility hearing pursuant to s. 44(2) of the Act. In brief, the CBSA's investigation into the fraudulent scheme in which Ms. Liu participated was still ongoing at the times she maintains the CBSA ought to have directly challenged the decision to grant her Spousal Application. As a result, none of the Minister, his delegate or the CBSA was obliged to take the actions that Ms. Liu states ought to have been taken, either at the time her Spousal Application was being assessed, or immediately following the approval of that application.

[42] I will simply observe in passing that Ms. Liu did not provide any authority to support her position that the Minister or his delegate was obliged to take the position that she is inadmissible to Canada, at the earliest opportunity.

(2) *Res judicata*

[43] Ms. Liu submits that the doctrine of *res judicata*, specifically as it relates to issue estoppel, precludes the MD from referring her to an admissibility hearing for two reasons. First, she maintains that an explicit decision was made that she had "not committed misrepresentation." Second, she asserts that when her Spousal Application was granted, she was implicitly found to be not inadmissible to Canada.

[44] I disagree.

[45] There are three preconditions to the operation of the doctrine of issue estoppel:

i. The same issue must have been previously decided;

ii. The prior decision that is said to create the estoppel must have been final; and

iii. The parties (or their representatives) to the prior decision must be the same as the parties to the proceedings in which the doctrine of issue estoppel is being raised.

Danyluk v Ainsworth Technologies, 2001 SCC 44, at para 25.

[46] In my view, Ms. Liu has not met the first of the above-mentioned conditions. This is because the issue of Ms. Liu's inadmissibility for misrepresenting her prior work history on her CEC Application was not decided, either explicitly or implicitly, at the time that her Spousal Application was granted.

[47] There is no evidence that the individual(s) who initially approved and then finally granted Ms. Liu's Spousal Application considered the fact that she had misrepresented her employment history on her CEC Application. Indeed, there is also nothing in the certified tribunal record [CTR] to indicate that such individual(s) considered the fact that she had made a similar representation in support of her Spousal Application.

[48] The Global Case Management System [GCMS] computer notes upon which Ms. Liu relies in support of this submission were made by two other persons. As noted at paragraph 3 above, the first of those persons simply observed that Ms. Liu had indicated on her application that she worked for NCK and that there were reasonable grounds to believe that NCK was not a real company. Those notes, which are reproduced at page 25 of the CTR, appear to have been made in relation to the Spousal Application. The notes were characterized as being "general," rather than as being in relation to Ms. Liu's "eligibility," they were made by someone other than the decision-maker, and there is no indication whatsoever that any final decision had been made with respect to Ms. Liu's misrepresentation.

[49] Turning to the second set of GCMS notes upon which Ms. Liu relies, they appear to have been made by a person who was responsible for issuing a work permit to Ms. Liu after her Spousal Application was initially approved. Those notes state as follows:

> Client was referred because she may have hired a ghost consultant for immigration purposes. CBSA states that one of the client's previous employers, NCK Electronics Inc., does not exist. The client's initial PR application was under the Canada experience class which was refused 29AUG2012 whereas her second PR application is under family class. The client and her spouse were interviewed by IPU and found, on the balance of probabilities, to be in a genuine relationship. Consequently, while the client has

> falsified a portion of her employment history on the current WP application, the basis of her initial approval of PR is based on her spousal relationship that is found to be genuine. Therefore, the client has not committed misrepresentation.
>
> (Emphasis added.)

[50] It is readily apparent from the foregoing passage that its author simply considered that Ms. Liu had not committed misrepresentation for the purposes of her work permit extension application. This may be explainable by the fact that the author's focus under paragraph 207(b) of the Regulations, was upon whether Ms. Liu was a member of the spouse or common-law partner in Canada class set out in Division 2 Part 7 of the Act. In any event, that individual certainly did not reach, in the passage quoted above, any explicit or implicit conclusion with respect to whether Ms. Liu had committed misrepresentation in connection with her CEC Application. Put differently, there was no explicit or implicit decision reached with respect to Ms. Liu's misrepresentation in connection with the application that was the subject of the MD's decision, namely, the CEC Application.

[51] Considering the foregoing, I am satisfied that no decision had previously been taken with respect to whether Ms. Liu was inadmissible to Canada on the ground that she misrepresented her employment history in her CEC Application.

[52] For greater certainty, in the absence of any indication anywhere in the CTR that anyone even considered whether Ms. Liu might be inadmissible to Canada for having falsified her employment history in her CEC Application, I decline to find that an implicit decision on this issue was made when her Spousal Application and work permit application were granted. On the

contrary, it is clear from the record that the only decision that was made at that time was that she had not engaged in misrepresentation for the purposes of the work permit application.

[53] My conclusion in this regard is reinforced by the fact that the CBSA's investigation into the fraudulent scheme in which Ms. Liu participated appears to have been ongoing at the time Ms. Liu's Spousal Application and work permit application were approved.

[54] Ms. Liu submits that she is entitled to rely on the finality of the decision to grant her Spousal Application, and that it is unfair for the Minister to now seek to have her declared inadmissible based on an issue that was addressed in 2014. I disagree. As discussed above, the issue of whether Ms. Liu engaged in misrepresentation in connection with her CEC Application was not the subject of any decision, explicit or implicit, in 2014. Moreover, to permit her to now avoid the consequences of engaging in that misrepresentation would be unfair to others who provide truthful and accurate information in support of their applications for permanent residence, as well as to those who are declared inadmissible on grounds of misrepresentation. Indeed, such action would undermine the integrity of Canada's immigration system, and thereby undermine one of the underlying objectives of paragraph 40(1)(a): *Canada (Minister of Citizenship and Immigration) v Sidhu*, 2018 FC 306, at para 33.

(3) Abuse of process

[55] Ms. Liu essentially recycles the submissions set forth above to argue that the MD has engaged in an abuse of process by referring her to an admissibility hearing. In brief, she maintains that disrupting a landed immigrant's established life in Canada by revisiting a potential

misrepresentation that was once excused is an abuse of process. She adds that allowing the Decision to stand would "violate such principles as judicial economy, consistency, finality, and the integrity of the administration of justice."

[56] I disagree. For the reasons that I have explained, Ms. Liu was never excused for misrepresenting her work history in her CEC Application. Accordingly, no issue of consistency or finality arises. In addition, since Ms. Liu does not appear to have previously turned to this or any other court in connection with her CEC Application, no issue of judicial economy arises. Moreover, the integrity of the administration of justice would be undermined by permitting someone who engaged in an active and sophisticated scheme to misrepresent her employment history to escape the consequence of such dishonesty, simply because she managed to find another way to obtain permanent resident status in Canada.

B. *Was it unreasonable for the MD to conclude that Ms. Liu's misrepresentation was capable of inducing an error in the administration of the Act?*

[57] Ms. Liu submits that even if her falsified work history could be said to be "material" and in relation to a "relevant matter," as contemplated by paragraph 40(1)(a) of the Act (see paragraph 25 above), it could not "induce an error in the administration of the Act" as required by that provision.

[58] In particular, Ms. Liu submits that her misrepresentation could not have induced an error in the administration of the Act because her CEC Application was rejected on the ground that she

failed to meet the language requirements for that application. Given that failure, she maintains that her misrepresentation did not and could not have any impact on the application.

[59] I disagree.

[60] In support of her position, Ms. Liu relies on *Murugan v Canada (Citizenship and Immigration)*, 2015 FC 547 [*Murugan*]. There, the applicant made a misrepresentation that could not possibly have induced an error in the administration of the Act, because it had no bearing whatsoever on the application in question. In other words, the misrepresentation had no actual or potential relevance to the visa officer's consideration of the application in question. Accordingly, Justice Simpson found that the misrepresentation could not have caused the officer to reach an erroneous decision and therefore could not have induced an error in the administration of the Act.

[61] In my view, the facts in *Murugan*, above, are distinguishable from those in the present proceeding because Ms. Liu's representation had the potential to induce an error in the administration of the Act at the time the misrepresentation was made: *Innocentes v Canada (Citizenship and Immigration)*, 2015 FC 1187, at para 16; *Kazzi*, above, at paras 36-38. At that time, Ms. Liu did not know that her language skills did not meet the requirements for the CEC Application. Accordingly, it was possible, at that point in time, that her misrepresentation with respect to her prior work history might induce an error in the administration of the Act, as contemplated by paragraph 40(1)(a). That error would have manifested itself in the form of the granting of the CEC Application, on the ground that she met the various preconditions to the

granting of that application, including those relating to her prior work history. Indeed, this appears to be precisely what Ms. Liu had hoped would occur, and explains why she paid Mr. Wang to assist her in misrepresenting her work history.

[62] Given the foregoing, the fact that Ms. Liu's CEC Application ultimately was rejected on other grounds, having nothing to do with her misrepresentation, is not relevant to an assessment of whether that misrepresentation had the potential, at the time it was made, to induce an error in the administration of the Act. Stated differently, Ms. Liu cannot escape the consequences of her misrepresentation simply because her deception did not succeed in assisting her to obtain a favourable result on her CEC application: *Kazzi*, above, at paras 39-40. Such attempts to cheat this country's immigration system cannot be overlooked simply because they did not in fact induce an error in the administration of the Act. The plain and ordinary of the word "could" in paragraph 40(1)(a) contemplates the full range of errors in the enforcement of the Act that were possible at the time a misrepresentation or a withholding of material facts relating to a relevant matter was made.

[63] I am therefore satisfied that it was not unreasonable for the MD to conclude that the requirements of paragraph 40(1)(a) had been met. That is to say, it was not unreasonable for the MD to reject Ms. Liu's contention that her misrepresentation could not have induced an error in the administration of the Act because her CEC Application failed, and was bound to fail, because she did not meet the language requirements for that application.

[64] As stated in the Decision, in the absence of Ms. Liu's misrepresentation, "it is likely that the [CEC Application] would have been refused on both the language and employment factors" (emphasis added), rather than solely on the language grounds. In my view, the Decision was appropriately justified, transparent and intelligible. It also fell "within a range of possible, acceptable outcomes which are defensible in respect of the facts and the law": *Dunsmuir*, above.

C. *Was it unreasonable for the MD to conclude that Ms. Liu's misrepresentation was "serious," as required by the* Ribic *test?*

[65] Ms. Liu once again recycles some of the arguments that she advanced in support of her position on the issues discussed above, to advance her position on this issue.

[66] In brief, she states that her misrepresentation cannot reasonably be characterized as being "serious" for the purposes of the *Ribic* test for two reasons. First, she reiterates that her work history could not have impacted the outcome of her CEC application, because that application was rejected on other grounds. Second, she states that the misrepresentation was found to not constitute a misrepresentation for the purposes of her Spousal Application. She maintains that "[t]his means the misrepresentation is not serious for the purposes of the *Ribic* test."

[67] In addition, Ms. Liu asserts that the "seriousness" of a misrepresentation must be assessed by reference to each of the three elements in paragraph 40(1)(a), namely, the materiality of the misrepresentation, its relevance to the decision to be made, and its impact on that decision. More specifically, she maintains that the seriousness of a misrepresentation must be assessed in terms of the extent of materiality, relevance and impact.

[68] I disagree.

[69] The *Ribic* factors were developed in the context of the Immigration Appeal Division's assessment of whether sufficient H&C considerations exist to warrant special relief, in light of all of the circumstances of the case: *Ribic v Canada (Minister of Employment and Immigration)*, [1985] IABD No 4 (QL). The factors to be assessed are the following:

i. The seriousness of the offence(s) that led to the deportation order.

ii. The possibility of rehabilitation.

iii. The length of time spent in Canada, and the degree to which the appellant is established in this country;

iv. The appellant's family in Canada and the dislocation to that family that the deportation of the appellant would cause.

v. The family and community support available to the appellant.

vi. The degree of hardship that would because to the appellant by his return to his country of nationality.

Chieu v Canada (Minister of Citizenship and Immigration), 2002 SCC 3, at paras 41 and 90.

[70] By comparison, the discretion of a ministerial delegate under subsection 44(2) of the Act is very limited: *Sharma v Canada (Public Safety and Emergency Preparedness)*, 2016 FCA 319, at para 24.

[71] In the context of the exercise of the discretion of the Minister or his delegate to refer a person to an admissibility hearing pursuant to subsection 44(2) of the Act, a variation of the *Ribic* factors appears to be employed, to reflect the specific nature of that provision. In this regard, one of those factors is "the seriousness, sophistication and reasons for the misrepresentation."

[72] In the Decision, it was concluded that "Ms. LIU be referred to an Admissibility Hearing as the H&C factors do not outweigh the seriousness of the misrepresentation committed on her initial AFL CEC application. After the application had been refused Ms. LIU continued to list a shell company as her employer on her AFL Sponsorship application."

[73] In my view, that conclusion was not unreasonable. It was appropriately justified, transparent and intelligible. In brief, at the time it was made, Ms. Liu's misrepresentation had the very real potential to induce an error in the administration of the Act. She also played an active part in the fraudulent and deceptive scheme in which she participated with Mr. Wang, to induce that error, and thereby undermine the integrity of the Act. In addition, that scheme appears to have been very sophisticated, specifically to increase the chances that the scheme would succeed. Moreover, Ms. Liu's misrepresentation was repeated in her Spousal Application.

[74] Considering the foregoing, I have no hesitation whatsoever in concluding that conclusion reached by the MD, as set forth in paragraph 72 above fell within a range of possible, acceptable outcomes which are defensible in respect of the facts and the law.

[75] I will simply add in passing that Ms. Liu has also not provided any authority for her position that the seriousness of a misrepresentation must be assessed by reference to the extent of the materiality, relevance and actual impact of a misrepresentation. For the reasons that I have already provided, it is not necessary to establish that a misrepresentation had any actual impact on the administration of the Act. It is sufficient for the Minister or his delegate to reasonably conclude that a misrepresentation could have induced an error in the administration of the Act, as of the time the misrepresentation was made.

VIII. **Conclusion**

[76] For the reasons set forth above, this application is dismissed.

[77] At the conclusion of the hearing in this proceeding, counsel to Ms. Liu proposed three questions for certification. The first related to whether the MD could revisit a misrepresentation that was made before the granting of permanent resident status on other grounds. Counsel suggested that this question could be reformulated in terms of whether the granting of Ms. Liu's Spousal Application, and the fact that she was not found to be inadmissible for misrepresentation, constituted a final decision with respect to her past misrepresentation of her employment history with NCK. The second question asked whether the duty of candour operates

within the strict parameters of s. 40(1)(a). The third asked for an identification of the factors to be considered in assessing the seriousness of a misrepresentation under the *Ribic* test.

[78] Pursuant to paragraph 74(d) of the Act, a question for certification must be "a serious question of general importance." This has been interpreted to mean a question that "is dispositive of the appeal, transcends the interests of the parties and raises an issue of broad significance or general importance." In addition, the question cannot be in the nature of a reference or turn on the unique facts of a case*: Lunyamila v Canada (Public Safety and Emergency Preparedness)*, 2018 FCA 22, at para 46.

[79] In my view, none of the questions proposed on behalf of Ms. Liu meets these requirements. In brief, the two formulations of the first question appear to turn on the unique facts in this case. Counsel did not refer to any other case in which this particular issue had ever been encountered in the past. As such, it cannot be said to rise to the level of being a serious question of general importance. With respect to the second and third questions, they are in the nature of a reference.

[80] Accordingly, no question will be certified.

JUDGMENT in IMM-4706-18

THIS COURT'S JUDGMENT is that:

1. This application is dismissed.

2. No question will be certified pursuant to paragraph 74(d) of the IRPA.

"Paul S. Crampton"
Chief Justice

APPENDIX 1 – Excerpts from Program Delivery Instructions

Admissibility and final decisions on applications in family class

Assess admissibility

After applicants are found to be members of the class they must be assessed for admissibility.

Making a final decision

Reconfirm eligibility

At visa issuance, officers must still be satisfied that applicants and their family members [R1(3)], whether accompanying or not, are admissible and otherwise meet all of the family class requirements of A11(1) as follows: […]

Processing family class applications: Admissibility

An officer must make a decision on all sponsorship applications as to whether the person being sponsored is a member of the family class. After determining that an applicant is a member of the family class or the spouse or common-law partner in Canada class, the processing office conducts medical, criminal and security examinations to determine if the applicant and all family members, whether seeking permanent residence or not, are admissible. For information about determining admissibility, including for misrepresentation, see also ENF 2/OP 18. […]

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-4706-18
STYLE OF CAUSE:	XIN LIU v THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS
PLACE OF HEARING:	VANCOUVER, BRITISH-COLUMBIA
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APPEARANCES:

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