

Federal Court



Cour fédérale

Date: 20211018

Docket: IMM-4492-21

Citation: 2021 FC 1098

Ottawa, Ontario, October 18, 2021

PRESENT: Madam Justice Walker

BETWEEN:

**SIYU ZHAO, JING WANG AND
BOSCO WANG**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION AND
THE MINISTER OF JUSTICE**

Respondents

ORDER AND REASONS

[1] The Applicants have filed a Motion in writing pursuant to Rule 369 of the *Federal Courts Rules*, requesting the following:

1. an order directing DoJ counsel Brad Gotkin to file a motion consenting to settling this matter by urging this Honourable Court to issue an Order directing granting the applicants permanent residency *nunc pro tunc* to 13 February 2020;

2. an order barring initiation of enforcement action against Siyu Zhao or Bosco Wang on the grounds that they lack immigration status or on the basis of any pre-existing fact;
3. an order authorizing Siyu Zhao to continue to engage in employment in Canada while she waits receipt of her permanent resident card;
4. an order authorizing Bosco Wang to continue attending school in Canada while he awaits receipt of his permanent resident card;
5. an order continuing coverage of Siyu Zhao and Bosco Wang under the Ontario Health Insurance Plan (OHIP) until they receive their permanent resident cards;
6. an order of costs in the amount of no less than \$6,583.50 in favour of the applicants to be paid personally by Brad Gotkin if he opposes this motion-to-settle; and
7. any other order favourable to the applicants the Court should consider just.

[2] In the underlying judicial review application (Application), the Applicants seek judicial review of a decision (Decision) of an Immigration Officer dated June 17, 2021, denying the application for permanent residence of Ms. Siyu Zhao, one of the Applicants. The Officer found that Ms. Zhao is inadmissible for misrepresentation pursuant to paragraphs 40(1)(a) and 42(1)(a) of the *Immigration and Refugee Protection Act (IRPA)*.

[3] The Applicants are self-represented in the Application and in this Motion. In support of the Motion, they rely on the Affidavit of Ms. Zhao, dated September 7, 2021.

[4] A material portion of the Applicants' Motion centres on the process and merits of an application for judicial review filed by Mr. Jing Wang (the JW Application), challenging the February 14, 2020 decision of a visa officer in Beijing, China. The visa officer denied

Mr. Wang's request for a work permit and found that Mr. Wang had made a material misrepresentation and is inadmissible to Canada pursuant to paragraph 40(1)(a) of the *IRPA*.

Mr. Wang's case is the subject matter of Court file IMM-2967-20. In this Order and Reasons, I will refer to the decision contested in IMM-2967-20 as the "JW Decision". The present Application does not pertain to that matter, although the two are related. Allegations regarding the process and the merits of the JW Application are properly made in the course of IMM-2967-20.

[5] In support of this Motion, the Applicants argue that:

1. The Motion is necessary due to the JW Decision, the subject matter of IMM-2967-20, which led to the alleged evisceration of their Ontario Immigration Nominee Program application on the grounds of inadmissibility. The Applicants submit that the JW Decision, and the decision maker in that case, intentionally and unlawfully inflicted harm on them that has been perpetuated by the actions of the Respondents, their counsel and this Court in IMM-2967-20;
2. Both the Decision and the JW Decision are substantively unreasonable. The Applicants focus their written representation in this Motion on arguments seeking to undermine each of the impugned Decisions. The Applicants argue that there is no evidence supporting the findings of misrepresentation in either the Decision or the JW Decision;
3. The actions of the Respondents' counsel from the Department of Justice in this case and in IMM-2967-20 breach their respective obligations as representatives of the Department of Justice and as lawyers and reveal contempt for the law;
4. Specifically, in this case, Department of Justice counsel, Mr. Brad Gotkin, has refused to provide any evidence that supports the finding in the Decision that Ms. Zhao's divorce certificate is fraudulent;
5. Ms. Zhao and the minor Applicant's rights under sections 7 and 12 of the *Canadian Charter of Rights and Freedoms* have been infringed since February 14, 2020 and the Court must promptly end the infringement by granting the relief sought in the Motion and restoring the Applicants to their position as at February 13, 2020; and

6. An award of costs personally against Mr. Gotkin is warranted because he has vigorously opposed their motion to compel disclosure of the evidence in this matter.

[6] I will dismiss the Motion for the following reasons. First, the relief sought by the Applicants in this Motion would circumvent the Court's consideration of the substance of the Applications for judicial review in this case and in IMM-2967-20. That consideration should be based on a complete record and in accordance with the process set forth in the *Federal Courts Act* and the *Federal Courts Citizenship, Immigration and Refugee Protection Rules (FCIRPRs)*. The Applicants have provided no evidentiary, legislative or jurisprudential basis that justifies granting the relief sought in the Motion. All arguments regarding the merits of both Applications are properly the subject matter of a full assessment by the Court in each case in due course.

[7] Second, the Applicants have provided no evidentiary basis for their allegations of misconduct against the Respondents and their counsel. The Applicants' characterization of counsel's actions on behalf of their client is not persuasive and is not reflected in the record. An application for judicial review is adversarial in nature and entitles each party to rely on the legislated and established processes for the determination of their respective rights and to have full opportunity in accordance with those processes to present their opposing positions to the Court.

[8] Third, and in any event, the scope of the relief sought by the Applicants in paragraphs 3, 4 and 5 of the Notice of Motion extends beyond the Court's jurisdiction.

[9] I have carefully considered the Applicants' arguments in chief and in reply in support of the Motion. However, despite the arguments and allegations presented, I find that there is no basis to pre-empt the Court's consideration of this Application in the ordinary course.

ORDER IN IMM-4492-21

THIS COURT ORDERS that:

1. The Applicants' motion is dismissed.
2. No costs are awarded.

"Elizabeth Walker"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4492-21

STYLE OF CAUSE: SIYU ZHAO, JING WANG & BOSCO WANG v THE
MINISTER OF CITIZENSHIP AND IMMIGRATION
AND THE MINISTER OF JUSTICE

**MOTION IN WRITING CONSIDERED AT OTTAWA, ONTARIO PURSUANT TO
RULE 369 OF THE *FEDERAL COURTS RULES***

ORDER AND REASONS: WALKER J.

DATED: OCTOBER 18, 2021

WRITTEN REPRESENTATIONS BY:

Siyu Zhao and Jing Wang

FOR THE APPLICANTS
(ON THEIR OWN BEHALF)

Brad Gotkin

FOR THE RESPONDENTS

SOLICITORS OF RECORD:

Attorney General of Canada
Toronto, Ontario

FOR THE RESPONDENTS