

Federal Court



Cour fédérale

Date: 20211110

Docket: IMM-4735-20

Citation: 2021 FC 1205

St. John's, Newfoundland and Labrador, November 10, 2021

PRESENT: The Honourable Madam Justice Heneghan

BETWEEN:

XINGUO HUANG

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS AND JUDGMENT

[1] Mr. Xinguo Huang (the “Applicant”) seeks judicial review of the decision of an Immigration Officer (the “Officer”), refusing his application for permanent residence from within Canada, on Humanitarian and Compassionate (“H and C”) grounds, pursuant to subsection 25(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c 27 (the “Act”).

[2] The Applicant is a citizen of China. He entered Canada in September 2009 and has remained in the country since then, without status. According to his H and C application submissions, he has been employed in Canada and did not rely on social assistance at any time. However, he did not file income tax returns during his period of residence in Canada.

[3] The Applicant is the father of two children, a 24 year old daughter and a 12 year old son. The son was born in Canada.

[4] The Applicant based his H and C application upon the best interests of his Canadian born child, as well as his establishment in Canada and adverse country conditions, including risk, in China.

[5] The Applicant now argues that the Officer failed to reasonably consider the evidence and submissions relating to his minor Canadian born child and reached two internally inconsistent conclusions about his employment history in Canada.

[6] The Minister of Citizenship and Immigration (the “Respondent”) submits that the decision is reasonable and that there is no basis for judicial intervention.

[7] The decision in question is reviewable on the standard of reasonableness, following the direction of the Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v. Vavilov* (2019), 441 D.L.R. (4th) 1 (S.C.C.).

[8] In considering reasonableness, the Court is to ask if the decision under review “bears the hallmarks of reasonableness – justification, transparency and intelligibility – and whether it is justified in relation to the relevant factual and legal constraints that bear on that decision”; see *Vavilov, supra* at paragraph 99.

[9] I agree with the arguments advanced by the Applicant. In my opinion, the decision does not reflect transparent and justifiable consideration of the Applicant’s establishment in Canada, relative to assessment of the best interests of the minor child.

[10] I also agree that the Officer treated the Applicant’s Canadian employment history in an inconsistent manner. Contrary to the position advanced by the Respondent, the Officer was not dealing with two “facts” about the Applicant’s employment in Canada.

[11] There is only one “fact”, that is, that the Applicant was employed in Canada, albeit without status. That “fact” was apparently discounted for the purpose of assessing his establishment in Canada, and “elevated” for the purpose of assessing hardship, if the Applicant were returned to China.

[12] The Respondent argued that the Officer was addressing the “resourcefulness” shown by the Applicant in finding employment in Canada and suggested that the Officer had that “resourcefulness” in mind when referring to the Applicant’s ability to find employment in China.

[13] With respect, the Officer was required to consider the Applicant's establishment in Canada, not his resourcefulness.

[14] In the result, the application for judicial review will be allowed, the decision of the Officer will be set aside and the matter remitted to a different officer for redetermination. There is no question for certification arising.

JUDGMENT in IMM-4735-20

THIS COURT'S JUDGMENT is that the application for judicial review is allowed, the decision of the Officer is set aside and the matter remitted to a different officer for redetermination. There is no question for certification arising.

“E. Heneghan”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4735-20

STYLE OF CAUSE: XINGUO HUANG v. THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: HELD BY WAY OF VIDEOCONFERENCE
BETWEEN TORONTO, ONTARIO AND ST. JOHN'S,
NEWFOUNDLAND AND LABRADOR

DATE OF HEARING: NOVEMBER 8, 2021

REASONS AND JUDGMENT: HENEGHAN J.

DATED: NOVEMBER 10, 2021

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