Federal Court  Cour fédérale

Date: 20230201

Docket: IMM-2754-22

Citation: 2023 FC 147

Ottawa, Ontario, February 1, 2023

PRESENT: The Honourable Mr. Justice Pentney

BETWEEN:

TING LI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The Applicant, Ting Li, seeks judicial review of a Visa Officer's decision refusing her application for a work permit. The Officer concluded that she had misrepresented her work history, based on differences between her work permit application and her earlier applications for a visitor's visa and an extension of that visa. The Officer had granted her an opportunity to address these concerns, but did not find her explanations convincing.

[2] The Applicant argues that the Officer failed to grapple with her evidence explaining why the forms were different and the evidence confirming her work history. She says that this makes the decision unreasonable because the Officer fails to explain how the new evidence she provided did not satisfy the concerns.

[3] For the reasons that follow, I find that the decision is unreasonable and will therefore be quashed. The application for judicial review will be granted.

I. Background

[4] The Applicant is a citizen of China. Her two children are studying in Canada with student visas granting them status here. The Applicant previously obtained a temporary resident visa (TRV) so that she could spend time with her children, and she applied to extend that visa.

[5] On April 27, 2021, the Applicant received an offer of employment from Fullsun Trading Inc. (Fullsun) in Belleville, Ontario. She was offered the position of Purchasing Manager, because of her prior experience in a similar position in China. The Applicant then applied for a work permit, based on the job offer.

[6] On June 23, 2021, the Applicant received a procedural fairness letter from the Visa Officer, raising concerns about whether her employment history was genuine, and noting the severe consequences for engaging in misrepresentation.

[7] The Applicant submitted her response to the fairness letter on July 5, 2021. She explained the differences between the work history set out in the TRV application versus that contained in her work visa form. The Applicant said her previous representative had made mistakes in filling out the TRV application, but she did not realize that at the time. She continued: "(h)owever, I considered… this work permit more seriously. Therefore, I did not use [a] representative in these applications and truthfully filled out all my information based on my actual experience."

[8] The Applicant addressed two discrepancies in her letter. First, she said that the TRV form should not have listed her as a "Director" for Sichuan Shengjun Investment Co. Ltd. (Sichuan Shengjun), a Chinese company in which she was an investor. She said that she was the company's Legal Representative but never worked for that company as a Director, and she provided a business license and letter from the company that confirmed she was its Legal Representative.

[9] Second, the Applicant explained that she had been working for Chongqing Amote Trading Co., Ltd. (Chongqing AMT) since February 2015. Because the company was small, when she started she worked as both the Purchasing Manager and the Human Resources Manager, but later she worked only as Purchasing Manager. She also attached an "official company statement" confirming this fact – a letter from the General Manager of Chongqing AMT that confirmed the details of her work history. The letter also confirmed the Applicant's statement that she had continued to work for the company remotely while she was in Canada.

[10] In addition, the Applicant provided Social Insurance and personal Income Tax records from 2015 onwards, which she said confirm her employment with Chongqing AMT.

[11] Following receipt of the letter and documents, the Officer rejected the Applicant's work visa application under paragraph 40(1)(a) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*], because she had misrepresented a material fact. The key portions of the Officer's notes in the Global Case Management System (GCMS) explain the reasoning that supported the Officer's conclusion:

> There are clear distinctions between a Purchasing manager and HR Manager or Purchasing manager and director. PA [the Applicant] applies to work as purchasing manager of a trade company and tried to describe herself having background in purchasing. To me, it is clear that PA has not performed the duties of purchasing manager based on the previous documentation provided and current. PA is defending the arguments that is it [*sic*] the fault of the representative who completed her previous applications who made the mistakes. The blame is rejected because the onus is on the PA to provide truthful information… Applicant did not bring new material facts and therefore has failed to allay or address the concerns outlined. On balance of probabilities, I am satisfied based on all available information that the applicant did in fact submit fraudulent documentation/information and or withhold information as part of this application thereby misrepresenting a material fact, and that this act of misrepresentation could have induced an error in the administration of the Act had it gone undetected. Applicant is therefore inadmissible to Canada under section A40 of the Immigration and Refugee Protection Act for a period of five years. Application refused.

[12] The Applicant seeks judicial review of this decision.

II. Issues and Standard of Review

[13] The only issue in this case is whether the decision to refuse the work permit is reasonable.

[14] The standard of review is reasonableness as described in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] (see *Jandu v Canada (Citizenship and Immigration)*, 2022 FC 1787 at para 15). In summary, under the *Vavilov* framework, a reasonable decision is "one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker" (*Vavilov* at para 85). An administrative decision-maker's exercise of public power must be "justified, intelligible and transparent" (*Vavilov* at para 95). The onus is on the Applicant to demonstrate flaws in the decision that are "sufficiently central or significant to render the decision unreasonable" (*Vavilov* at para 100).

III. Analysis

[15] The main focus of the Applicant's argument is that the Officer did not grapple with her explanations for the discrepancies about her work history. She points to a number of statements in the Officer's decision that she says make it unreasonable, in light of the record.

[16] The Applicant summarized the key differences between the documents in the following table:

	TRV Application		Work Permit Application
2018-09 to Present	Director at Sichuan Shengjun Investment Co. Ltd.	**2015-02 to Present**	Purchasing Manger at Chongqing Amote Trading Co. Ltd.
2015-02 to 2018-07	HR Manager at Congqing AMT Trade Co. Ltd.	**2011-05 to 2015-01**	Purchasing Supervisor at Chongqing Hanqi Real Estate Development Co. Ltd.
2009-07 to 2015-02	Unemployed – Maternity Leave		

[17] The Applicant submits that the documentation she provided both from Chongqing AMT and Sichuan Shengjun confirms the roles she actually played in both companies. That information matches the explanation she set out in her letter, and the Applicant submits that the Officer failed to explain why this was not sufficient.

[18] In summary, the Applicant does not deny that there was a mistake in her TRV/visitor extension application forms. However, she argues that her explanation was credible. Moreover, she submits that she has substantiated her more recent work as Purchasing Manager with Chongqing AMT, which qualifies her to take up the position offered to her at Fullsun.

[19] The Applicant points to several statements by the Officer, which she says call into question whether the Officer actually considered her further submissions and supporting documents. First, she notes that the Officer states: “Applicant did not bring new material facts and therefore has failed to allay or address the concerns outlined [in the procedural fairness letter].” This follows the Officer’s statement “To me, it is clear that [the Applicant] has not performed the duties of purchasing manager based on the previous documentation and current.”

[20] In light of the letter from Chongqing AMT stating that the Applicant did in fact work as their purchasing manager, the Applicant submits that the Officer's findings are impossible to understand. If the Officer had reason to doubt the authenticity of the letter from Chongqing AMT, that needed to be explained in detail. However, the Officer failed to do so. The Applicant argues that this makes the decision unreasonable.

[21] In many respects, the Officer's decision reflects a careful and thorough review of the evidence about the Applicant's work history. The Officer conducted an extensive review of the documentation, noting several discrepancies that were never addressed by the Applicant. For example, while the Applicant said in her letter that the Social Insurance and Income Tax information she provided supported her claim to have worked for Chongqing AMT as purchasing manager, the Officer found that the Social Insurance record the Applicant provided proved that Sichuan Shengjun had been contributing to her social insurance account. The information provided by the Applicant did not clarify whether these payments were made by virtue of employment or her role as Legal Representative.

[22] While the Officer's blanket statement that the Applicant "did not bring new material facts" is unfortunate, I am unable to find that this makes the entire decision unreasonable. Reading the decision as a whole, it becomes clear that the Officer is expressing a finding that the information provided by the Applicant was not sufficient to address the questions about her work history.

[23] The Officer also stated that "no official evidence [was] submitted to support [the Applicant's] claim that she ever worked for Chongqing [AMT]." While the Applicant challenges this statement, pointing to the letter from the company, I find that the Officer's reference to "official" evidence relates to information generated by a third party, such as the Social Insurance or Income Tax information she had submitted. This statement follows immediately after the Officer's discussion of the Social Insurance record, which explains the Officer's reference to "official" evidence. None of the Social Insurance or Income Tax records submitted by the Applicant support her claim to have been employed by Chongqing AMT.

[24] However, there is one finding by the Officer that I am unable to reconcile with the evidence or the conclusion. The Officer stated "(t)o me, it is clear that [the Applicant] has not performed the duties of purchasing manager based on the previous documentation and current." Nowhere in the decision does the Officer specifically address the letter from Chongqing AMT that said she had worked as its purchasing manager throughout her tenure there, from February 15, 2015 until July 6, 2021 (the date of the letter).

[25] It may be that the Officer concluded that the letter from Chongqing AMT was fake. I note that later in the GCMS notes the Officer remarks that, "…we can see from the above employment history summary that [the Applicant] seemed to fill out employment history freely as [she] see[s] fit." If, in fact, the Officer's statement that the Applicant had never worked as a purchasing manager was based on a finding that the company letter was fraudulent, this needed to be stated in clear terms and the basis for it had to be explained. This was a crucial finding by the Officer, in light of the basis for the Applicant's work visa. The Officer's finding is directly

contradicted by evidence in the record, and the decision needed to explain why that evidence was not found to be persuasive: *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, 1998 CanLII 8667 (FC) at para 17.

[26] While a decision does not need to be perfect to be reasonable, the expectations rise in proportion to the impact of the decision on the person affected (*Vavilov* at para 133). In this case, the finding of misrepresentation bars the Applicant from applying for status in Canada for five years, which is particularly significant given that her children are studying here. More was required of the Officer in respect to the treatment of the letter from Chongqing AMT. The failure to explain why this evidence was not found to be persuasive is a sufficiently serious flaw to make the decision unreasonable.

[27] For these reasons, the Officer's decision is quashed and the matter is remitted back for reconsideration by a different officer.

[28] There is no question of general importance for certification.

JUDGMENT IN IMM-2754-22

THIS COURT'S JUDGMENT is that

1. The application for judicial review is granted.

2. The matter is remitted back for reconsideration by a different officer.

3. There is no question of general importance for certification.

"William F. Pentney"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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