Federal Court of Canada
Trial Division

Section de première instance de
la Cour fédérale du Canada

IMM-2311-97

BETWEEN:

KAI-LAM MUNG

Applicant

- and -

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR ORDER AND ORDER

TEITELBAUM J.:

After reading the affidavit of Lawrence Seng-Tat Wong sworn on June 3, 1997 and filed into the Federal Court Registry on June 4, 1997, I am satisfied that paragraphs 9, 10 other than the words, "The interview took a little more than one hour", 11, 12, 13 and 14 must be struck. In paragraph 15, only the last 3 sentences should be struck.

It is clearly apparent that the allegations in the above mentioned paragraphs are based on hearsay. In paragraphs 9, 10, 11, 12, 13, 14 and 15, the affiant states, "I am informed by the applicant" or "the applicant informed me".

It is apparent that what is contained in the above said paragraphs is not within the personal knowledge of the affiant. Rule 332(1) of the *Federal Court Rules* states:

> Rule 332(1) Affidavits shall be confined to such facts as the witness is able of his own knowledge to prove, except on interlocutory motions on which statements as to his belief with the grounds thereof may be admitted.

Clearly, the above paragraphs of the affidavit of Mr. Wong sworn on June 3, 1997 do not conform to Rule 332(1).

The applicant has filed an application for extension of time within which to file the affidavit of the applicant. As grounds for the said application, the applicant states, in his application, the following:

> 1. The applicant commenced the application for judicial review of the decision of a visa officer within 30 days of the decision of the visa officer.
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> 2. Due to the fact that the applicant is a businessman who resides in China with companies in China and who travelled extensively on business it was difficult to locate the applicant and obtain the necessary affidavit within 30 days of the refusal of the visa officer to grant the applicant permanent residence as an entrepreneur in Canada. The applicant instructed an Ontario solicitor Lawrence Wong to make the application for permanent residence. Due to the difficulty in obtaining the affidavit of the applicant within 30 days, the solicitor Lawrence Wong filed an affidavit in the within action in support of the application for judicial review within 30 days.
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> 3. The applicant's solicitor Lawrence Wong has made arrangements for the applicant to swear an affidavit in support of the application for judicial review which will be filed with the Federal Court on or before July 2, 1997.
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> 4. At all times, the Applicant has intended to pursue Judicial Review of the visa officer's refusal of the applicant's application for permanent residence and in fact the application for judicial review was brought within 30 days but it was difficult to obtain the applicant's affidavit within the 30 days for the reasons stated in the affidavit of Lawrence Wong sworn on June 19, 1997. However the said Lawrence Wong has made all effort to obtain the affidavit of the applicant and it will be available for filing on or before July 2, 1997.
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> 5. The Applicant has an arguable case on the merits of his Application for Judicial Review. This is based on serious breaches of natural justice and procedural fairness as set out in the grounds for judicial review. The Applicant submitted extensive documentation in support of his application for permanent residence as an entrepreneur which indicated that he had a successful track record and that the business proposal submitted indicated that he would provide a *substantial benefit to the Canadian Economy and the Canadian labour market* but the application was rejected by the visa officer as his focus was not on the applicant's proven business acumen but the applicant's knowledge of accounting and financial statements and committed other errors of law. Support for the errors of law and breach of the principles of fairness and *the Immigration Act* is set out in the judicial review application *that was filed within the 30 day time limit.*
>
> 6. No prejudice would be occasioned to the Respondent Minister in the event that the affidavit of the applicant is filed outside the 30 day time limit for filing the judicial review application as the Respondent knows the basis of the said application from the affidavit of the solicitor Lawrence Wong and the affidavit of the applicant will confirm through first hand evidence the matters deposed to in the affidavit of Lawrence Wong.
>
> 7. The arguments advanced by the Respondent for striking out certain parts of the affidavit of the applicant's solicitor and the application for judicial review is based on procedural matters and *does not go to the merits of the application for judicial review taken that it was brought on time and that the factual basis of the application is set out in the affidavit of Lawrence Wong and taken that this motion has been brought dealing with the procedural difficulty in the form of a motion for an extension of time and that a properly sworn affidavit from the applicant* ***will be filed with the Federal Court on or before July 2, 1997.***
>
> (emphasis in original)

The Application for Extension of Time is supported by the affidavit of Lawrence Seng-Tot Wong and confirms the grounds given for the filing of the Application for Extension of Time.

After reading the reply submissions of the respondent, and after reading all the material filed, I am satisfied that the applicant always had an intention to file an application for judicial review. I am satisfied that the respondent does not suffer any prejudice of a serious nature if the application for extension of time is allowed.

It is also in the interest of justice to allow the application for extension of time.

Therefore, I hold that the application to strike of the respondent is allowed in part.

The application for extension of time is allowed. The applicant is permitted to serve and file his own affidavit in support of his application for judicial review within a delay of seven days of today's date.

The delays for the respondent to file reply affidavits is extended by 10 days from the service and filing of the applicant's affidavit.

OTTAWA, ONTARIO

July 16, 1997.

J.F.C.C.

FEDERAL COURT OF CANADA
TRIAL DIVISION

NAMES OF SOLICITORS AND SOLICITORS ON THE RECORD

COURT FILE NO.: IMM-2311-97

STYLE OF CAUSE: KAI-LAM MUNG v.
THE MINISTER OF CITIZENSHIP AND IMMIGRATION

MOTION DEALT WITH IN WRITING WITHOUT THE APPEARANCE OF THE PARTIES

REASONS FOR ORDER OF THE HONOURABLE MR. JUSTICE TEITELBAUM

DATED: July 16, 1997

WRITTEN REPRESENTATIONS BY:

Mr. Raj Napal	FOR THE APPLICANT
Ms. Ann Margaret Oberst	FOR THE RESPONDENT

SOLICITORS ON THE RECORD:

Napal Law Office Mississauga, Ontario	FOR THE APPLICANT
Mr. George Thomson Deputy Attorney General of Canada	FOR THE RESPONDENT