Federal Court  Cour fédérale

Date: 20240430

Docket: IMM-6093-23

Citation: 2024 FC 671

Ottawa, Ontario, April 30, 2024

PRESENT: THE CHIEF JUSTICE

BETWEEN:

ZHI MING FANG

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

(Delivered orally)

I. Introduction

[1] This Application raises two issues relating to a Senior Immigration Officer's rejection of Mr. Fang's request for permanent resident status in Canada on humanitarian and compassionate ("**H&C**") grounds. That request was made pursuant to subsection 25(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [***IRPA***].

[2] The first issue raised is whether the Officer erred by considering extrinsic evidence, without providing Mr. Fang with an opportunity to respond to that evidence. The evidence in question was not included in the materials provided by Mr. Fang in support of his request under section 25. In reviewing this issue, the Court's task is to determine whether the procedure was fair having regard to all of the circumstances.

[3] The second issue raised is whether the Officer misapprehended or selectively treated certain evidence. It is common ground that this issue is reviewable on a standard of reasonableness.

[4] In reviewing the reasonableness of the Officer's decision (the "**Decision**"), the Court's overall focus will be upon whether it is appropriately justified, transparent and intelligible. In other words, the Court will consider whether it is able to understand the basis upon which the Decision was made and then determine whether it falls within a range of possible, acceptable outcomes that are defensible in respect of the facts and the law.

II. Issue #1—Did the Officer Err by Considering Extrinsic Evidence?

[5] Mr. Fang submits that the Officer considered five documents that were not included or referred to in his H&C application, without providing him with an opportunity to respond. Mr. Fang takes particular issue with two of those documents, which were behind a paywall, and therefore unavailable for public viewing.

[6] The first of those documents is a 2011 article entitled *Caught between two worlds: mainland Chinese return migration, hukou considerations and the citizenship dilemma*. Only an abstract of that document is publicly available. The Officer cited that article after making the following observation:

> It is noted that [a residence identity document] is required to apply for a *hukou*. It is further noted that when a person departed China prior to 2004 who left China for more than a year [they] had to relinquish their *hukou* status and reinstate it only upon their physical return. *This regulation was later abolished, thus allowing Chinese citizens living overseas to remain abroad for a longer without losing their hukou status.* This is further complicated for those who obtain citizenship of another country. [Emphasis added.]

[7] Mr. Fang maintains that he could not have been expected to have been aware of, let alone have access to, this publication. He adds that the Officer appears to have inferred that because he remains a Chinese citizen, he would not face the types of *hukou* reinstatement difficulties experienced by those who return to China after becoming citizens of another country.

[8] The consideration of extrinsic evidence does not always give rise to procedural fairness concerns where the person in question is not provided with an opportunity to respond. Under one line of this Court's jurisprudence, procedural fairness concerns would not arise unless the evidence is "novel and significant," in the sense that it could not have been reasonably anticipated and affected the disposition of the case. Under a second line of the Court's jurisprudence, the Court has adopted a more contextual approach that includes a consideration of the decision and the possible impact of the evidence on the decision: *Harripersaud v Canada (Citizenship and Immigration)*, 2022 FC 1368, at paras 50-63.

[9] Under either approach, the Officer did not err by considering the 2011 article without providing Mr. Fang with an opportunity to respond.

[10] This is because the critical information contained in the passage reproduced at paragraph 6 above was available in the national documentation package ("**NDP**"). Specifically, one of the documents in the NDP states: "As long as one still holds Chinese citizenship, s/he can easily reactivate the *hukou* in the original place after returning." (See the quote spanning pages 224 and 225 of the CTR.) Accordingly, Mr. Fang ought to have been well aware of this information when he stated that his *hukou* had long since disappeared and/or expired, and that he would thereby encounter significant hardship upon his return to China.

[11] Although the information referenced by the Officer in the passage quoted above was significant in the context of the Decision as a whole, there was nothing "novel" about it, because it was publicly available in the NDP.

[12] This was also important context for the purposes of the contextual approach.

[13] Accordingly, under either the "novel and significant" approach, or the "contextual" approach, the Officer did not err in considering the 2011 document discussed above.

[14] I will now briefly turn to the four other allegedly "extrinsic" documents identified by the Applicant.

[15] In a nutshell, they simply consisted of either (i) statements of the law, which were publicly available, or (ii) reported information that was not material to the Decision. Although one of those documents was behind a paywall, it simply included excerpts of a more fulsome document that was publicly available.

[16] Once again, under either the "novel and significant" approach, or the "contextual" approach, the Officer did not err in considering those four documents.

III. Issue #2—Did the Officer misapprehend or selectively treat certain evidence?

[17] Mr. Fang submits that, when addressing the availability of geriatric health care in China, the Officer relied on a single sentence of a document without taking account of information provided in the immediately preceding paragraph of that document. That sentence consisted of a summary assertion of the availability of certain kinds of geriatric care to vulnerable elderly persons. The information immediately preceding that sentence addressed a number of weaknesses that continue to persist in relation to geriatric care. The identified weaknesses pertained to chronic care management, long-term care and the severe shortage of nursing homes.

[18] In my view, the Officer's failure to refer to the information describing those weaknesses did not render the Decision unreasonable. This is because there was nothing relating to those particular matters in Mr. Fang's request for an H&C exemption under s. 25 of the IRPA. In this regard, I note that Mr. Fang's request simply noted that he was approaching his 60th year, that he looks and acts older than his biological age, and that he suffers from a chronic cough and a frozen shoulder. This was consistent with the information provided in a letter by his niece, who

then generally observed that, if he were removed to China without anyone to support him, it would be difficult for him to access medical care and find employment, due to his health conditions.

[19] Considering that Mr. Fang's request under s. 25 of the IRPA did not include any information regarding his need for chronic care management, long-term care or a nursing home, the Officer's failure to refer to information regarding those matters was not unreasonable. The Officer's treatment of the availability of geriatric health care in China was appropriately justified, transparent and intelligible. It also fell within a range of possible, acceptable outcomes that are defensible in respect of the facts and the law.

IV. Conclusion

[20] Having regard to all of the foregoing, this Application is dismissed.

[21] I agree with the parties that no serious question of general importance arises for certification under the facts and legal issues that were presented in this application.

JUDGMENT in IMM-6093-23

THIS COURT'S JUDGMENT is that:

1. This Application is dismissed.
2. There is no serious question of general importance for certification under paragraph 74(d) of the IRPA.

"Paul S. Crampton"
Chief Justice

FEDERAL COURT

SOLICITORS OF RECORD

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