

Federal Court



Cour fédérale

Date: 20240506

Docket: IMM-5626-21

Citation: 2024 FC 690

St. John's, Newfoundland and Labrador, May 6, 2024

PRESENT: The Honourable Madam Justice Heneghan

BETWEEN:

KIN CHUEN

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS AND JUDGMENT

[1] Mr. Kin Chuen (the “Applicant”) seeks judicial review of the decision made by an officer (the “Officer”) of the Consulate General of Canada and Immigration, Refugee and Citizenship Canada refusing his application for permanent residence on grounds of inadmissibility pursuant to paragraph 37(1)(b) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the “Act”).

[2] The Applicant is a citizen of China. He applied for permanent residence in February 2011. On April 5, 2019, the Officer sent him a “procedural fairness” letter expressing credibility and inadmissibility concerns.

[3] The Applicant’s application was refused on June 22, 2021, on the basis that he is inadmissible to Canada for participation in the illegal cigarette trade and money laundering.

[4] The Applicant now argues that the decision was made in breach of his right to procedural fairness, specifically that the Officer relied on extrinsic documents that were not available to him and for which he was not given the opportunity to make submissions. He further submits that the Officer was required to inform him that his spouse’s conviction in Canada for an offence tied to the tobacco trade would be used against him.

[5] The Applicant also submits that the decision is unreasonable. He contends that the Officer either ignored or unreasonably discounted explanations he gave in response to concerns raised by the Officer.

[6] For his part, the Minister of Citizenship and Immigration (the “Respondent”) argues that there was no breach of procedural fairness and that the decision meets the legal standard of reasonableness.

[7] Issues of procedural fairness are subject to review on the standard of correctness; see the decision in *Canada (Citizenship and Immigration) v. Khosa*, [2009] 1 S.C.R. 339 (S.C.C.).

[8] Following the decision in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, [2019] 4 S.C.R. 653 (S.C.C.), the merits of the decision are reviewable on the standard of reasonableness.

[9] 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 the decision”; see *Vavilov, supra*, at paragraph 99.

[10] Upon considering the materials submitted and the submissions of the parties, I am satisfied that the decision in issue was made in breach of procedural fairness because the Applicant was not sufficiently informed of his case to meet.

[11] The procedural fairness letter put the Applicant on notice that the Officer was concerned by his ties to the tobacco trade. However, the letter lacked specificity. It did not provide him with the opportunity to respond to the allegation that his spouse’s conviction demonstrated his participation in organized crime.

[12] This finding is sufficient to dispose of this matter and it is not necessary for me to address the other arguments raised by the parties.

[13] In the result, the application for judicial review will be allowed, the decision will be set aside and the matter will be remitted for redetermination by another officer. There is no question for certification.

JUDGMENT IN IMM-5626-21

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

"E. Heneghan"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-5626-21

STYLE OF CAUSE: KIN CHUEN v. THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: HELD BY WAY OF VIDEO CONFERENCE

DATE OF HEARING: APRIL 2, 2024

REASONS AND JUDGMENT: HENEGHAN J.

DATED: MAY 6, 2024

APPEARANCES:

Daniel Kingwell FOR THE APPLICANT

Judy Michaely FOR THE RESPONDENT

SOLICITORS OF RECORD:

Mamann, Sandaluk & Kingwell FOR THE APPLICANT
LLP
Immigration Lawyers
Toronto, Ontario

Attorney General of Canada FOR THE RESPONDENT
Toronto, Ontario