Federal Court Cour fédérale

Date: 20240815

Docket: IMM-6411-23

Citation: 2024 FC 1272

Ottawa, Ontario, August 15, 2024

PRESENT: Madam Justice Gagné

BETWEEN:

HONG WANG

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Mr. Hong Wang challenges the decision of a visa officer who found him inadmissible to Canada for misrepresentation in his application for permanent residence. The Applicant and his wife withheld the fact that one of their children was neither their biological child nor their adopted child. Rather, the Applicant's second child BW was born through illegal surrogacy.

II. Facts

[2] In June 2017, the Applicant made an application for permanent residency under the Québec selected investor class program.

[3] In August 2022, the Applicant advised the visa officer that his family status had changed and declared BW, a second biological child born in August 2021. He submitted an Additional Family Information Form, signed by him and his wife, listing the BW as a dependant.

[4] In September 2022, the visa officer requested that the Applicant, his wife and the two children complete a DNA test to confirm the biological links.

[5] In October 2022, the Applicant responded to the officer's letter that he was not agreeable to a DNA test for personal reasons and considered the documentary evidence already submitted to be sufficient to establish that they were the biological parents to BW.

[6] Shortly thereafter, the visa officer sent a procedural fairness letter requesting additional documentation to establish the declared relationship between the Applicant, his wife and BW.

[7] In December 2022, the Applicant responded to the procedural fairness letter and advised the visa officer that BW was not his biological son and that he was born through surrogacy procedure performed in China.

[8] In February 2023, the visa officer sent a second procedural fairness letter outlining his concerns that the Applicant and his spouse engaged in misrepresentation relating to BW.

[9] In March 2023, the Applicant responded, provided more details surrounding BW's birth and advised the officer that they did not mean to conceal information regarding the true nature of their relationship with the child.

[10] The Applicant's application for permanent residency was refused due to the Applicant and his spouse misrepresenting or withholding material facts related to the parent-child relationship to BW. The officer did not engage in an analysis for an exemption on humanitarian and compassionate grounds, namely the best interest of BW, as the Applicant advised the officer that after consideration the Applicant and his spouse have decided not to include BW in their application at this point, hoping to be able to obtain the missing documents to submit a new application for BW later.

III. Issues and Standard of Review

[11] The only issue raised by this application is whether the visa officer erred in finding that the Applicant had misrepresented or concealed a material fact.

[12] It is uncontested that the applicable standard of review is that of reasonableness (*Canada (Minister of Citizenship and Immigration v Vavilov*, 2019 SCC 65).

IV. Analysis

[13] Misrepresentation under paragraph 40(1)(a) of the *Immigration and Refugee Protection Act*, SC 2001, c 27, renders an applicant inadmissible for either directly or indirectly misrepresenting or withholding a material fact relating to a relevant matter that induces or could induce an error in the administration of this Act.

[14] The objective of this provision is to deter misrepresentation and maintain the integrity of the immigration process. The onus is placed on the applicant to ensure the completeness and accuracy of his or her application (*Afzal v Canada (Citizenship and Immigration)*, 2012 FC 426, at para 24).

[15] A misrepresentation is material if it is important enough to affect the process. It does not need to be decisive, determinative or central to the Application; it does not have to induce an error, it is sufficient that it could have done so (*Goburdhun v Canada (Citizenship and Immigration)*, 2013 FC 971, at para 37; *Oloumi v Canada (Citizenship and Immigration)*, 2012 FC 428, at para 25).

[16] In support of his request to add BW as a dependant child, the Applicant filed a Medical Certificate of Birth issued by the People's Hospital of Baoan District Shenzhen City, indicating the Applicant's wife (age 54) and the Applicant (age 56), as the biological parents of the child. The age of the parents and the location of the birth triggered some suspicion on the part of the visa officer.

[17] In my view, misrepresenting the nature of the relationship with a dependant child and providing documents that do not adequately reflect that relationship is material to an application for permanent residency. If the information had been relied upon without question, BW may have been granted a visa although he was not eligible or qualified under the program.

[18] The Applicant argues that he did not introduce BW as his biological child but simply as his second child. That might be true, but by not bringing forward the fact that BW was born through surrogacy, he withheld material facts. Further, when asked for the first time to undergo DNA testing, the Applicant forwarded a false birth certificate in which him and his wife are named father and mother and stated that this was sufficient and that he would not subject himself to a DNA test for personal reasons.

[19] Finally, I agree with the Respondent that the visa officer was under no obligation to undergo a humanitarian and compassionate review since the Applicant had decided to withdraw BW from their application and to “temporarily” leave him behind.

V. Conclusion

[20] The Applicant has not convinced me that the visa officer erred in his assessment of the evidence before him, nor that his finding of misrepresentation is unreasonable. This application for judicial review is therefore dismissed.

[21] The parties proposed no question of general importance for certification and no such question arises from the facts of this case.

JUDGMENT in IMM-6411-23

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed;

2. No question of general importance is certified.

"Jocelyne Gagné"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-6411-23
STYLE OF CAUSE:	HONG WANG v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
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