Federal Court of Canada
Trial Division

Section de première instance de
la Cour fédérale du Canada

IMM-591-95

97 226 017

B E T W E E N:

SUK HAN LING

Applicant

- and -

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR ORDER

ROTHSTEIN, J.:

This is a judicial review of a decision of an immigration officer refusing the application of the applicant, a member of the live-in caregivers in Canada class for permanent residence The reason for refusal was the 1976 Hong Kong conviction of the applicant's dependant husband for assault occasioning actual bodily harm which rendered the husband inadmissible to Canada by virtue of subparagraph 19 (1)(c 1)(i) of the *Immigration Act* By reason of paragraph 11 3(b) of the *Immigration Regulations* and subsection 6(8) of the *Immigration Act*, the applicant was rendered ineligible for permanent resident status by reason of her husband's inadmissibility under paragraph 19 (1)(c 1)(i) of the Act[1]

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[1] Act 19 (1)No person shall be granted admission who is a member of any of the following classes

(c 1) persons who there are reasonable grounds to believe

In my decision in Court File No IMM-2783-95, *Lui v The Minister of Citizenship and Immigration*, I found that the adjudicator in that case did not err in concluding that the applicant's dependant husband was inadmissible under subparagraph 19(1)(c 1)(i) That disposes of the main challenge to the immigration officer's decision in this case

The remaining arguments are these First, it is submitted that the immigration officer denied the applicant procedural fairness by not giving her an opportunity to deal with the criminal inadmissibility of her husband However, the correspondence in evidence indicates that the applicant's husband was given the opportunity to "provide full particulars of your case" There is no indication of a denial of procedural fairness on the evidence in this case

Second, it is said that the immigration officer had the obligation to consider the issue of rehabilitation which is an exception to inadmissibility under paragraph 19(1)(c 1)(i) of the *Immigration Act* Essentially, the applicant says that the immigration officer should have suspended consideration of the application for permanent residence and referred the matter of the husband's criminal conviction to the Governor in Council to enable the Governor in Council

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(i) have been convicted outside Canada of an offence that if committed in Canada, would constitute an offence that may be punishable under any Act of Parliament by a maximum term of imprisonment of ten years or more or
(ii)

except persons who have satisfied the Governor in Council that they have rehabilitated themselves and that at least five years have elapsed since the expiration of any sentence imposed for the offence or since the commission of the act or omission, as the case may be,

Regulations 11 3 A member of live-in caregivers in Canada class and the member's dependants, if any, are subject to the following landing requirements

(b) the member must not be and no dependant of the member is, a person described in section 19 of the Act as determined by an immigration officer pursuant to subsection 6(8) of the Act

Subsection 6 (8) of the *Immigration Act* provides

Act 6 (8) Where an immigrant is of a prescribed class of immigrants for which the regulations specify that the immigrant and any or all dependants are to be assessed, the immigrant and all dependants may be granted landing if it is established to the satisfaction of an immigration officer that the immigrant and the dependants who are to be assessed meet collectively

(a) the selection standards established by the regulation for the purpose of determining whether or not and the degree to which the immigrant and all dependants will be able to become successfully established in Canada as determined in accordance with the regulations or
(b) the landing requirements prescribed by regulations made under paragraph 114(1)(e)

(emphasis added)

to become satisfied that the husband had rehabilitated himself, thereby rendering him admissible to Canada The applicant relies on *Turingan v Canada (Minister of Employment and Immigration)* (1993), 4 Imm L R (2d) 113 which instructs immigration officers to work with and assist participants in the live-in caregivers in Canada class to achieve permanent resident status

In the case at bar, the applicant, with the assistance of an immigration consultant, made an application for permanent residence In the course of processing the application, her dependant husband's conviction in Hong Kong was disclosed and followed up Over the period from September 1993 when the application was filed, until April 1995 when it was dismissed, it was open to the applicant or her husband to take steps to satisfy the Governor in Council that he had rehabilitated himself I think it would impose on an immigration officer a requirement not envisaged by the *Immigration Act* or *Regulations* to hold an application for permanent resident status in abeyance and take steps to assist an applicant or her dependant to satisfy the Governor in Council of rehabilitation of the dependant The onus is on the applicant to prove his or her application and to adduce all relevant evidence that may assist in doing so, see *Hajariwala v M E I*, [1988] 2 F C 79 While, obviously immigration officers should be cooperative, especially with respect to the live-in caregivers in Canada class, the responsibility and duty of the immigration officer is that prescribed by the legislation

The judicial review is dismissed

"Marshall E Rothstein"

Judge

Ottawa, Ontario
July 29, 1997

FEDERAL COURT OF CANADA

Court No IMM-591-95

Between

SUK HAN LING

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- and -

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FEDERAL COURT OF CANADA
TRIAL DIVISION

NAMES OF SOLICITORS AND SOLICITORS ON THE RECORD

COURT FILE NO	IMM-591-95
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REASONS FOR ORDER OF	The Honourable Mr Justice Rothstein
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APPEARANCES

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