

Date: 20071029

Docket: IMM-4506-06

Citation: 2007 FC 2006

Toronto, Ontario, October 29, 2007

PRESENT: The Honourable Mr. Justice O'Reilly

BETWEEN:

HUI YUE

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] Mr. Hui Yue applied for permanent residence in Canada as an investor. In 2006, his application was considered and rejected by a visa officer at the Canadian Consulate General in Hong Kong. The officer was not satisfied that Mr. Yue had provided sufficient evidence of the source of his net worth.

[2] Mr. Yue argues that the officer treated him unfairly by failing to give him a chance to address the officer's concerns, and by implying that he had somehow been involved in criminal activity. He asks me to order a fresh evaluation of his application by another officer. I agree that Mr. Yue was treated unfairly and must, therefore, allow this application for judicial review.

I. Issue

[3] Did the officer treat Mr Yue unfairly, either by failing to give him an opportunity to respond to her concerns or by implying that he might be inadmissible to Canada on grounds of criminality?

II. Analysis

[4] In her letter dismissing Mr. Yue's application, the officer correctly noted that the burden fell on Mr. Yue to provide sufficient documentation to show the history of the funds and assets he was relying on to meet the applicable net worth requirement. She also made it clear that she was not satisfied that Mr. Yue had discharged that burden. She gave two main reasons for her decision. First, she found it odd that the funds used to acquire sole ownership of Mr. Yue's principal business were cited in an accountant's report under the heading "Inventory". Second, the officer was concerned that there were share transfers between Mr. Yue and his former business partner about the same time as the two of them separately made applications for permanent residence in Canada. It was difficult for her to determine who owned what; some of the same assets were relied on in both applications.

[5] Based on those concerns, the officer concluded that she was not satisfied that Mr. Yue had "legally obtained" his funds and assets, or that he met the requirements of section 36 of the

Immigration and Refugee Protection Act, S.C. 2001, c. 27 (see Annex). Section 36 makes persons who have committed crimes ineligible for admission to Canada.

[6] With respect to the first of the officer's concerns, it is clear that she raised the issues of the accountant's report with Mr. Yue at his interview and he answered the officer's question, albeit in a manner she found to be unsatisfactory. No issue arises from this aspect of the officer's decision.

[7] However, in relation to the second of the officer's concerns, the officer appears to have raised an issue that was not brought to Mr. Yue's attention, and relied on materials about which Mr. Yue had no knowledge. From the officer's notes and her affidavit, it is clear that she asked Mr. Yue about his former business partner and told Mr. Yue that he had also applied for permanent residence. The notes also make clear that Mr. Yue said he had no contact with or information about his former partner. Yet, the officer based her decision, in part, on information that was contained in that person's application. Further, the officer went on to suggest that Mr. Yue might be inadmissible to Canada on grounds of criminality.

[8] In my view, the officer treated Mr. Yue unfairly. The officer had a duty to permit Mr. Yue to respond to information of which he was unaware, especially where the officer relied on that information to arrive at a seriously adverse conclusion: *Cornea v. Canada (Minister of Citizenship and Immigration)*, 2003 FC 972; *Ahmed v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 1111. I also note that the letter sent by the officer in this case was similar in its terms to the letter Justice Edmond Blanchard found to contain a patently unreasonable conclusion in *Zhong v. Canada*

(Minister of Citizenship and Immigration), 2004 FC 1636, at para. 20. As Justice Blanchard made clear, it is one thing to find that a person has failed to provide sufficient evidence to succeed on an application for permanent residence and quite another to suggest that the person may have acquired his or her funds by unlawful means (at para. 24).

[9] Accordingly, I must order a reconsideration of Mr. Yue's application by a different officer. Neither party proposed a question of general importance for me to certify, and none is stated.

JUDGMENT

THIS COURT ORDERS IS that

1. 1. The application for judicial review is allowed and the applicant's application shall be reconsidered by a different officer;

2. No question of general importance is stated.

“James W. O’Reilly”

Judge

Annex

Immigration and Refugee Protection Act, S.C. 2001, c. 27

Loi sur l'immigration et la protection des réfugiés, L.C. 2001, ch. C-27

Serious criminality

Grande criminalité

36. (1) A permanent resident or a foreign national is inadmissible on grounds of serious criminality for

36. (1) Emportent interdiction de territoire pour grande criminalité les faits suivants :

(a) having been convicted in Canada of an offence under an Act of Parliament punishable by a maximum term of imprisonment of at least 10 years, or of an offence under an Act of Parliament for which a term of imprisonment of more than six months has been imposed;

a) être déclaré coupable au Canada d'une infraction à une loi fédérale punissable d'un emprisonnement maximal d'au moins dix ans ou d'une infraction à une loi fédérale pour laquelle un emprisonnement de plus de six mois est infligé;

(b) having been convicted of an offence outside Canada that, if committed in Canada, would constitute an offence under an Act of Parliament punishable by a maximum term of imprisonment of at least 10 years; or

b) être déclaré coupable, à l'extérieur du Canada, d'une infraction qui, commise au Canada, constituerait une infraction à une loi fédérale punissable d'un emprisonnement maximal d'au moins dix ans;

(c) committing an act outside Canada that is an offence in the place where it was committed and that, if committed in Canada, would constitute an offence under an Act of Parliament punishable by a maximum term of imprisonment of at least 10 years.

c) commettre, à l'extérieur du Canada, une infraction qui, commise au Canada, constituerait une infraction à une loi fédérale punissable d'un emprisonnement maximal d'au moins dix ans.

Criminality

Criminalité

(2) A foreign national is inadmissible on grounds of criminality for

(2) Emportent, sauf pour le résident permanent, interdiction de territoire pour criminalité les faits suivants :

(a) having been convicted in Canada of an offence under an Act of Parliament punishable by way of indictment, or of two offences under any Act of Parliament not arising out of a single occurrence;

a) être déclaré coupable au Canada d'une infraction à une loi fédérale punissable par mise en accusation ou de deux infractions à toute loi fédérale qui ne découlent pas des mêmes faits;

(b) having been convicted outside Canada

b) être déclaré coupable, à l'extérieur du Canada, d'une infraction qui, commise au Canada, constituerait une infraction à une loi fédérale punissable par mise en

of an offence that, if committed in Canada, would constitute an indictable offence under an Act of Parliament, or of two offences not arising out of a single occurrence that, if committed in Canada, would constitute offences under an Act of Parliament;

(c) committing an act outside Canada that is an offence in the place where it was committed and that, if committed in Canada, would constitute an indictable offence under an Act of Parliament; or

(d) committing, on entering Canada, an offence under an Act of Parliament prescribed by regulations.

Application

(3) The following provisions govern subsections (1) and (2):

(a) an offence that may be prosecuted either summarily or by way of indictment is deemed to be an indictable offence, even if it has been prosecuted summarily;

(b) inadmissibility under subsections (1) and (2) may not be based on a conviction in respect of which a pardon has been granted and has not ceased to have effect or been revoked under the *Criminal Records Act*, or in respect of which there has been a final determination of an acquittal;

(c) the matters referred to in paragraphs (1)(b) and (c) and (2)(b) and (c) do not constitute inadmissibility in respect of a permanent resident or foreign national who, after the prescribed period, satisfies the Minister that they have been rehabilitated or who is a member of a prescribed class that is deemed to have been rehabilitated;

(d) a determination of whether a permanent

accusation ou de deux infractions qui ne découlent pas des mêmes faits et qui, commises au Canada, constitueraient des infractions à des lois fédérales;

c) commettre, à l'extérieur du Canada, une infraction qui, commise au Canada, constituerait une infraction à une loi fédérale punissable par mise en accusation;

d) commettre, à son entrée au Canada, une infraction qui constitue une infraction à une loi fédérale précisée par règlement.

Application

(3) Les dispositions suivantes régissent l'application des paragraphes (1) et (2) :

a) l'infraction punissable par mise en accusation ou par procédure sommaire est assimilée à l'infraction punissable par mise en accusation, indépendamment du mode de poursuite effectivement retenu;

b) la déclaration de culpabilité n'emporte pas interdiction de territoire en cas de verdict d'acquiescement rendu en dernier ressort ou de réhabilitation — sauf cas de révocation ou de nullité — au titre de la *Loi sur le casier judiciaire*;

c) les faits visés aux alinéas (1)b) ou c) et (2)b) ou c) n'emportent pas interdiction de territoire pour le résident permanent ou l'étranger qui, à l'expiration du délai réglementaire, convainc le ministre de sa réadaptation ou qui appartient à une catégorie réglementaire de personnes présumées réadaptées;

d) la preuve du fait visé à l'alinéa (1)c) est, s'agissant du résident permanent, fondée sur la prépondérance des probabilités;

e) l'interdiction de territoire ne peut être

resident has committed an act described in paragraph (1)(c) must be based on a balance of probabilities; and

(e) inadmissibility under subsections (1) and (2) may not be based on an offence designated as a contravention under the *Contraventions Act* or an offence under the *Young Offenders Act*.

fondée sur une infraction qualifiée de contravention en vertu de la *Loi sur les contraventions* ni sur une infraction à la *Loi sur les jeunes contrevenants*.

FEDERAL COURT

NAME OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: IMM-4506-06

STYLE OF CAUSE: HUI YUE v. MCI

PLACE OF HEARING: Toronto, ON.

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**REASONS FOR JUDGMENT
AND JUDGMENT:** O'Reilly J.

DATED: October 29, 2007

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