Date: 20071206

Docket: IMM-4263-07

Citation: 2007 FC 1280

Ottawa, Ontario, December 6, 2007

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

HERICK GAY

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

INTRODUCTION

[1] A Visa Officer's failure to consider and include the Chinese properties in her calculation of the applicant's assets constitutes a reviewable error. It is not a breach of procedural fairness; it is a failure to consider evidence. If material to the result, the decision must be set aside. (As reflected upon by Carolyn Layden-Stevenson of the Federal Court in *Zheng v. Canada (Minister of Citizenship and Immigration)*, 2002 FCT 1115, [2002] F.C.J. No. 1478 (QL), para. 15.)

JUDICIAL PROCEDURE

[2] The Applicant seeks a judicial review of the decision of a Designated Immigration Officer of the Canadian Embassy in Port-au-Prince, Haiti, refusing the Applicant's application for permanent residence to Canada made pursuant to subsection 11(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c.27 (IRPA).

FACTS

[3] The Applicant, Mr. Herick Gay, is a citizen of Haiti, presently living in Port-au-Prince. Accountant by profession, he applied on May 10, 2005, for permanent residence under the skilled worker category at the Canadian Embassy in Port au-Prince, Haiti. (Applicant's Record, Affidavit of Herick Gay, Tab 3, p. 8.)

[4] On July 11, 2005, Mr. Gay forwarded proof of his financial situation to the Canadian Embassy in Haiti, claiming US $19,592.10 as his available financial resources. (Applicant's Record, Affidavit of Herick Gay.)

[5] A letter from the Canadian Embassy in Haiti, dated March 22, 2006, was sent to the Applicant requesting that he provide evidence of the availability of his financial resources in the amount of CDN $10,168.00, for the purpose of establishment in Canada for his file to be finalized. (Affidavit of Edwige Guirand, paras. 5-6; CAIPS (Computer Assisted Immigration Processing System) notes March 14, 2006.)

[6] On April 10, 2006, Mr. Gay, by means of a personal representative, forwarded to the Canadian Embassy in Haiti a certified copy of a property deed, showing his title to the land, a statement of his net assets and new bank statements. The financial evidence provided at this time had a total value of approximately CDN $22,000.00. (Affidavit of Edwige Guirand, paras. 6-8, Exhibit “B”, “C”, “D” and “E”; Applicant’s Record, Affidavit of Herick Gay, para. 6, Exhibit “C” and “D”.)

[7] On June 5, 2006, Mr. Gay received the decision of the Designated Immigration Officer of the Canadian Embassy in Port-au-Prince, Haiti, refusing Mr. Gay’s application for permanent residence to Canada pursuant to paragraph 76(1)(*b*) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 (Regulations). (Affidavit of Edwige Guirand, para. 9.)

[8] On June 5, 2006, Mr. Gay, assisted by his representative, Mr. Tim Morson, asked the Canadian Embassy’s Immigration Director in Port-au-Prince, Haiti, to re-open the file and to have it re-examined by a second Immigration Officer. It was believed that an error had been made in respect of the documents which clearly demonstrated that Mr. Gay had the sufficient funds to be considered a Federal Skilled Worker as per paragraph 76(1)(*b*) of the Regulations. (Applicant’s Record, Affidavit of Herick Gay, para 10, Exhibit “F”.)

[9] On June 7, 2006, the Canadian Embassy’s Immigration Director confirmed that the file had been properly determined and that no errors had been made. (Applicant’s Record, Affidavit of Herick Gay, para. 11, Exhibit “G”.)

[10] On June 19, 2006, Mr. Gay's representative, sent a letter to the Director-General, Case Management Branch of Citizenship and Immigration Canada, requesting that the file be re-opened for the purpose of re-examination by a second Immigration Officer as it was believed that an error in fact and in law had been made. (Applicant's Record, Affidavit of Herick Gay, para. 19, Exhibit "H".)

[11] On July 6, 2006, the Case Management Branch of Citizenship and Immigration Canada confirmed that the Officer's decision was correct and final and invited Mr. Gay to seek leave for judicial review if he believed that there was an error in fact and in law.

[12] Mr. Gay argued that the Officer erred in failing to take into consideration all of the relevant evidence which he presented to rebut the presumption of inadmissibility to Canada. Mr. Gay specified that the Officer made no reference to his evidence in the decision.

[13] The Respondent argued that Mr. Gay raised no arguable case:

- the Officer considered the Applicant's financial documentation (CAIPS notes);
- the Officer informed the Applicant of the concerns regarding his settlement funds (i.e. that he would have to provide proof that the required funds were available);
- the Officer reasonably decided not to consider the Applicant's land assets in the calculation of his settlement funds, as the Applicant did not establish that this property amounted to funds that were available, transferable and unencumbered by debts or other obligations – as required by subsection 76(1) of the Regulations.

DECISION UNDER REVIEW

[14] The Visa Officer concluded that Mr. Gay was inadmissible to Canada as he did not have the transferable and available unencumbered funds required pursuant to subsection 76(1) of the Regulations.

[15] The Officer determined that Mr. Gay disposed of CDN $7,501.30; and, therefore, did not meet the CDN $10,168.00 required for a person to establish himself in Canada.

LEGISLATION AND POLICY GUIDELINES

[16] Subsection 11(1) of the IRPA reads as follows:

Application before entering Canada	**Visa et documents**
11. (1) A foreign national must, before entering Canada, apply to an officer for a visa or for any other document required by the regulations. The visa or document shall be issued if, following an examination, the officer is satisfied that the foreign national is not inadmissible and meets the requirements of this Act.	**11.** (1) L'étranger doit, préalablement à son entrée au Canada, demander à l'agent les visa et autres documents requis par règlement, lesquels sont délivrés sur preuve, à la suite d'un contrôle, qu'il n'est pas interdit de territoire et se conforme à la présente loi

[17] The relevant provisions of the Regulations read as follows:

Applications	**Demandes**
10. (1) Subject to paragraphs 28(*b*) to (*d*), an application under these	**10.** (1) Sous réserve des alinéas 28*b*) à *d*), toute demande au titre du présent

Regulations shall	règlement :
	[...]
(*c*) include all information and documents required by these Regulations, as well as any other evidence required by the Act;	*c*) comporte les renseignements et documents exigés par le présent règlement et est accompagnée des autres pièces justificatives exigées par la Loi;
…	[...]
Federal Skilled Worker Class	**Travailleurs qualifiés (fédéral)**
76. (1) For the purpose of determining whether a skilled worker, as a member of the federal skilled worker class, will be able to become economically established in Canada, they must be assessed on the basis of the following criteria:	**76.** (1) Les critères ci-après indiquent que le travailleur qualifié peut réussir son établissement économique au Canada à titre de membre de la catégorie des travailleurs qualifiés (fédéral) :
…	[...]
(*b*) the skilled worker must	*b*) le travailleur qualifié :
(i) have in the form of transferable and available funds, unencumbered by debts or other obligations, an amount equal to half the minimum necessary income applicable in respect of the group of persons consisting of the skilled worker and their family members, or	(i) soit dispose de fonds transférables — non grevés de dettes ou d'autres obligations financières — d'un montant égal à la moitié du revenu vital minimum qui lui permettrait de subvenir à ses propres besoins et à ceux des membres de sa famille,

[18] Justice Elizabeth Heneghan of the Federal Court determined in *Hernandez v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 1398, [2004] F.C.J. No. 1698 (QL):

> [16] Section 8.2 of the OP6 Manual is also relevant as it provides that the requirement to provide "all information and documents" as stipulated by section 10(1)(c), must be carried out before an officer will undertake any substantive consideration of an application. In the event that an application does not meet this requirement, the officer is to advise the applicant that no further processing shall be completed until all supporting documents have been submitted.

ISSUE

[19] Did the Designated Visa Officer err in fact or law by making a decision on the face of the record based on inferences which were unreasonable? (This issue requires examination of bank statements and title to property.)

STANDARD OF REVIEW

[20] With respect to the discretionary decision of a Visa Officer, the appropriate standard of review is reasonableness *simpliciter*. Where statutory discretion has been exercised in good faith and, where required, in accordance with the principles of natural justice, and where reliance has not been placed upon considerations irrelevant or extraneous to the statutory purpose, the courts should not interfere. (*Yin v. Canada (Minister of Citizenship and Immigration)*, [2001] F.C.J. No. 985 (T.D.) (QL), *Maple Lodge Farms Ltd. v. Canada*, [1982] 2 S.C.R. 2.)

ANALYSIS

[21] The Officer erred by failing to refer to all the documentation submitted by Mr. Gay pertaining to his financial situation. Mr. Gay submitted bank statements and evidence of property

ownership equivalent to a combined value of approximately CDN $22,000.00. Mr. Gay also notified the Canadian Embassy, by way of letter, dated April 10, 2006, and signed by his representative, of his intention to sell his property once his application had been accepted in principle. (Applicant's Record, Affidavit of Herick Gay. Tab 6, para. 6, Exhibit "C" and "D"; see Summary of Applicant's Financial Situation annexed hereto as Annex "A".)

[22] There is no indication that the Officer considered the property deed, nor the letter of April 10, 2006. Justice Jean-Eudes Dubé of the Federal Court noted in *Ioda v. Canada (Minister of Employment and Immigration)*, [1993] F.C.J. No. 605 (QL), that a failure to demonstrate documentary evidence in reaching a decision is an error on the part of the Tribunal:

> [16] As to the documentary evidence, in the instant case there is simply no way of knowing whether the tribunal had due regard to that evidence in reaching its decision. The reasons do not show that it considered any of the voluminous documentary evidence submitted concerning conditions in Latvia and their effect on persons in Ioda's "particular social group" as a result of her mixed marriage.
>
> …
>
> [18] A fortiori, in my view, the second level tribunal is also in error in failing to consider documentary evidence which might further substantiate the claims of credible claimants. In the circumstances it is impossible for the court to be satisfied that the tribunal considered the evidence properly before it.

[23] The Officer, in her Affidavit, states at paragraph 3: "a printout of the notes taken by me while assessing the Applicant's file is attached to this affidavit as Exhibit 'A'. These CAIPS notes, along with my decision letter, comprise my reasons for decision in this matter". Mr. Gay, however, states that he did not receive a copy of the CAIPS notes, which, together with the decision letter,

comprise the reasons for the Officer's decision; and, therefore, Mr. Gay clearly did not receive all, or the integral reasons for the decision.

[24] The Respondent states, at paragraphs 14 and 15 of his Memorandum of Argument, that Mr. Gay was sent a "fairness letter", dated March 22, 2006, in which he was informed that the information he had provided with respect to his settlement funds was "insufficient". The word "insufficient" is nowhere in the letter of March 22, 2006. The letter simply states that in order to continue processing the application, additional documentation is required and then lists the documents requested, among them, proof of financial capacity for settlement in Canada. (Applicant's Record, Affidavit of Herick Gay, Letter of March 22, 2006, Exhibit 'B'; Applicant's Reply Memorandum of Argument, para. 8.)

[25] The Respondent states at paragraph 17 of his Memorandum of Argument that he "considered all of the Applicant's financial documentation, but reasonably decided not to take the Applicant's estimated value for his land into account in this calculation, because he did not establish that this asset was available, transferable and unencumbered by debts or other obligations…"

[26] Nowhere in the CAIPS Notes, prior to March 22, 2006, did the Officer formulate any concerns about Mr. Gay's ability to satisfy the financial criteria. These concerns appeared for the first time on April 13, 2006, wherein the Officer notes: "requérant ne rencontre pas les exigences financières pour son immigration au Canada", and further notes: "nous ne pouvons pas comptabiliser les 2 terrains dont requérant est propriétaire". Stating that the value of the two pieces

of land could not be calculated, the Officer did not provide Mr. Gay with the opportunity to provide more complete information in order to address the concerns.

[27] Despite Mr. Gay's letter, dated July 11, 2005, in which he provided a summary of his financial situation for which he evaluated one piece of land to be worth US $14,000.00, the Officer only raised her inability to calculate the value of both pieces of land for the first time on April 13, 2006. (Reference is made to Annex "A" of this decision.)

[28] Since the Officer only formulated her concerns about Mr. Gay's ability to meet the financial capacity criteria, the day that the application was refused, it is clear and unambiguous that she never conveyed her concerns to Mr. Gay in this regard; therefore, Mr. Gay was never afforded an opportunity to respond to this issue.

[29] Even if the Officer had refused to accept all documents supporting Mr. Gay's financial situation, the Officer should have at least referred to the existence of the property deed, bank statements and the letter of April 10, 2006, and, stated the reasons for refusing to consider these documents in their entirety. (*Shaker v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 185, [2006] F.C.J. No. 201 (QL).)

[30] Justice Michel Beaudry of the Federal Court states in *Shaker*, above, that when the outcome of a decision is based on a particular piece of evidence, the Officer should explain why a particular finding was made:

> [38] I agree with the applicant on this issue. In her assessment under the criteria of the Act and Regulations, the Officer does not offer any explanation as to why the applicant was awarded no points under the "Experience" and "Arranged Employment" headings.
>
> [39] Since this failure to obtain any points under these headings played a considerable, if not fatal part in the dismissal of the applicant's visa application, some explanation for this finding would have been in order.
>
> [40] Furthermore, while test results may have been preferable to establish the applicant's level of proficiency in English, the six manuscript pages submitted by the applicant should have enabled the Officer to measure his proficiency against the standards set out in the Canada Language Benchmark.

[31] Therefore, in ignoring Mr. Gay's filed documentary evidence, the Officer erred in failing to consider the totality of the evidence before her. (*Ioda*, above; *Shaker*, above; Applicant's Record, Affidavit of Herick Gay, Tab 3, para. 6.)

[32] Justice Dolores Hansen of the Federal Court has specified in *Alimard v. Canada (Minister of Citizenship and Immigration)*, [2000] F.C.J. No. 1223 (QL), that if an Officer is not satisfied with the evidence submitted and that it is determined to be incomplete, then, an opportunity must be given to the Applicant to provide further evidence:

> [15] In situations such as this, the jurisprudence is clear that where a visa officer has an impression of deficiency in the proof being offered, fairness requires that the visa officer give the applicant some opportunity to disabuse the visa officer of that impression (*Muliadi v. Canada (Minister of Citizenship and Immigration)* [1986] 2 F.C. 205).
>
> [16] As the visa officer's finding that the applicant lacked sufficient funds was a key factor in her assessment of his ability to successfully establish a business in Canada, the applicant should have been given the opportunity to address her concerns. He may have been able to provide her with evidence as to the bona fides of the valuation or a new valuation.

> [17] The respondent argued that it was the failure of the applicant to submit valuations for all of his properties which resulted in the visa officer being unable to make a proper assessment of the applicant's financial ability. As was explained in *Muliadi*, supra, this does not "relieve the visa officer of the duty to act fairly".

[33] Justice Eleanor R. Dawson of the Federal Court opined in *Negriy v. Canada (Minister of Citizenship and Immigration)*, [2000] F.C.J. No. 710 (QL), that a Visa Officer's obligation is to obtain further clarifications if doubt is expressed in regard to the authenticity of evidence that has been provided:

> [23] Once information was received to the effect that the applicant's education was as she had initially stated it to be, and once that information was accepted and incorporated into the assessment, on receipt of a letter apparently under seal from the Sanatorium Arcadia purporting to confirm the applicant's employment, it was not in my view reasonable for the visa officer to reject the applicant's application as she did.
>
> [24] […] further inquiries should have been directed as to the authenticity of the letter under seal from the Sanatorium Arcadia before it was rejected.

[34] Justice Layden-Stevenson of the Federal Court determined in *Zheng*, above, at paragraph 15, that a Visa Officer's "failure to consider [and include the Chinese properties in her calculation of the applicant's assets] constitutes [a] reviewable error. It is not a breach of procedural fairness; it is a failure to consider evidence. If material to the result, the decision must be set aside".

[35] In a letter, dated May 25, 2006, which communicated the decision, refusing Mr. Gay's application for permanent residence to Canada, the Officer was silent on the evidence that supported the Applicant's claim (i.e.: the certified copy of a property deed, showing the Applicant's title to the land, a statement of the Applicant's net assets; and new bank statements which were received by the Canadian Embassy on March 22, 2006). It is unclear whether the Officer even considered the

supporting evidence. Justice John Maxwell Evans of the Federal Court held in *Cepeda-Gutierrez v. Canada (Minister of Citizenship and Immigration)*, [1998] F.C.J. No. 1425 (QL):

> [15] The Court may infer that the administrative agency under review made the erroneous finding of fact "without regard to the evidence" from the agency's failure to mention in its reasons some evidence before it that was relevant to the finding, and pointed to a different conclusion from that reached by the agency. Just as a court will only defer to an agency's interpretation of its constituent statute if it provides reasons for its conclusion, so a court will be reluctant to defer to an agency's factual determinations in the absence of express findings, and an analysis of the evidence that shows how the agency reached its result.
>
> [16] On the other hand, the reasons given by administrative agencies are not to be read hypercritically by a court (*Medina v. Canada (Minister of Employment and Immigration*) (1990), 12 Imm. L.R. (2d) 33 (F.C.A.)), nor are agencies required to refer to every piece of evidence that they received that is contrary to their finding, and to explain how they dealt with it (see, for example, *Hassan v. Canada (Minister of Employment and Immigration)* (1992), 147 N.R. 317 (F.C.A.). That would be far too onerous a burden to impose upon administrative decision-makers who may be struggling with a heavy case-load and inadequate resources. A statement by the agency in its reasons for decision that, in making its findings, it considered all the evidence before it, will often suffice to assure the parties, and a reviewing court, that the agency directed itself to the totality of the evidence when making its findings of fact.
>
> [17] However, the more important the evidence that is not mentioned specifically and analyzed in the agency's reasons, the more willing a court may be to infer from the silence that the agency made an erroneous finding of fact "without regard to the evidence": *Bains v. Canada (Minister of Employment and Immigration)* (1993), 63 F.T.R. 312 (F.C.T.D.). In other words, the agency's burden of explanation increases with the relevance of the evidence in question to the disputed facts. Thus, a blanket statement that the agency has considered all the evidence will not suffice when the evidence omitted from any discussion in the reasons appears squarely to contradict the agency's finding of fact. Moreover, when the agency refers in some detail to evidence supporting its finding, but is silent on evidence pointing to the opposite conclusion, it may be easier to infer that the agency overlooked the contradictory evidence when making its finding of fact.

[36] Moreover, Mr. Gay submits that the Officer failed to comply with the recommendations stated in Section 8.2 of the OP6 Manual, which state that the Officer “will advise the Applicant of

the Officer's specific settlement funds concerns and give the Applicant the opportunity to address this problem". If the Applicant is unable to demonstrate sufficient available funds to meet the requirements, "the officer will refuse the application" (Applicant's Record, Tab 7, Section 8.2 of the OP6 Manual); however, the Federal Court and the Federal Court of Appeal have made it clear that guidelines and policy statements like the OP6 Manual do not have the force of law and are not enforceable by members of the public. (*Ramoutar v. Canada (Minister of Employment and Immigration)*, [1993] F.C.J. No. 547 (QL); *Vidal v. Canada (Minister of Employment and Immigration)*, [1991] F.C.J. No. 63 (QL).)

[37] With regard to the weight given to the use of guidelines and policy statements in order to determine if the Officer has made a reviewable error, Justice Barry L. Strayer of the Federal Court notes in *Vidal*, above:

> I would observe in passing that it must follow as a corollary of the reasoning of Jerome A.C.J. in *Yhap* that an applicant cannot complain if an immigration officer fails or refuses to follow the Minister's guidelines. Nor can he complain if an immigration officer applies any factor in lieu of those in the guidelines as long as this is done in good faith and the factor is not wholly irrelevant to any conceivable view of humanitarian and compassionate considerations. Further, it is for the officer to decide if he is convinced of the truth of an applicant's assertions, unless perhaps he makes findings of fact which are clearly without regard to any material before him. It is not for the Court to sit in appeal on his findings of fact or his weighing of the various factors.
>
> …
>
> I am satisfied that these guidelines adequately convey to immigration officers that, particularly in respect of humanitarian and compassionate considerations, the guidelines are not to be regarded as exhaustive and definitive. It is emphasized and reemphasized that officers are expected to use their best judgment. I believe they amount to "general policy" or "rough rules of thumb" which Jerome A.C.J. recognized as permissible in the *Yhap* case. I would go farther than Jerome A.C.J.

> and say that such guidelines are not only permissible but highly desirable in the circumstances.

[38] The Respondent argued, however, that the Officer acted fairly and consistently with the OP6 Manual in this case – because she sent the Applicant a "fairness letter", dated March 22, 2006, which informed the Applicant that he would have to provide proof of the availability of his settlement funds before his dossier could be finalized; therefore, the Applicant was informed that the information he had provided in his application with respect to his settlement funds was insufficient. (Applicant's Record, p. 13, Tab 3, Exhibit B; Affidavit of Herick Gay, paras. 4-6.)

[39] Nevertheless, the Officer should have informed Mr. Gay of concern with regard to the documents provided in support of his financial capacity to become economically established in Canada. The Officer should, thus, have afforded him an opportunity to respond to concerns relating to a material aspect of the application.

[40] The Officer did not set out her findings of fact in respect of the evidence upon which those findings were based. As the Officer did not specify her reasons in that regard, the reasons failed to reflect on the main relevant factors regarding Mr. Gay's application for permanent residence. (*VIA Rail Canada Inc. v. Lemonde*, [2000] F.C.J. No. 1685 (QL).)

[41] Justice Claire L'Heureux-Dubé of the Supreme Court of Canada addressed the importance of setting out reasons in *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817:

> [39] Reasons, it has been argued, foster better decision making by ensuring that issues and reasoning are well articulated and, therefore, more carefully thought out. The process of writing reasons for decision by itself may be a guarantee of a better decision. Reasons also allow parties to see that the applicable issues have been carefully considered, and are invaluable if a decision is to be appealed, questioned, or considered on judicial review: R. A. Macdonald and D. Lametti, "Reasons for Decision in Administrative Law" (1990), 3 C.J.A.L.P. 123, at p. 146; *Williams v. Canada (Minister of Citizenship and Immigration)*, [1997] 2 F.C. 646 (C.A.), at para. 38. Those affected may be more likely to feel they were treated fairly and appropriately if reasons are given: de Smith, Woolf, & Jowell, Judicial Review of Administrative Action (5th ed. 1995), at pp. 459-60. I agree that these are significant benefits of written reasons.

[42] Justice J. Edgar Sexton of the Federal Court of Appeal noted in *VIA Rail*, above:

> [22] The obligation to provide adequate reasons is not satisfied by merely reciting the submissions and evidence of the parties and stating a conclusion. Rather, the decision maker must set out its findings of fact and the principal evidence upon which those findings were based. The reasons must address the major points in issue. The reasoning process followed by the decision maker must be set out and must reflect consideration of the main relevant factors.

[43] In her letter, dated March 22, 2006, the Officer was silent on the evidence that supported the Mr. Gay's claim. Mr. Gay effectively met the required amount of CDN $10,168.00 in financial resources for establishment in Canada. Her failure to mention important pieces of evidence resulted in her having made an erroneous finding of fact "without regard to the evidence" before her (i.e. the certified copy of a property deed showing the Applicant's title to the land, a statement of the Applicant's net assets and new bank statements).

[44] Based on the foregoing, the application for judicial review is granted and the Applicant's file is referred for redetermination to another Officer.

JUDGMENT

THIS COURT ORDERS that the application for judicial review be granted and the Applicant's file be referred for redetermination to another Officer.

"Michel M.J. Shore"
Judge

ANNEX A

SUMMARY OF APPLICANT'S FINANCIAL SITUATION			
TYPE OF ACCOUNT	**FOREIGN CURRENCY**	**US FUNDS**	**STATEMENT**
US savings account		2,688.61	Unibank – July 4, 2005
Savings account HTG	HTG 47,227.57 / 33.65 HTG 47,227.57 / 36.14 (11/20/07)	1,403.49 1,306.55	Banque Nationale de Crédit June 29, 2005
Savings account		1,196.27	Unibank – March 28, 2006
Savings account	HTG 233,153.91 / 33.65 HTG 233,153.91 / 36.14 (11/20/07)	6,928.79 6,451.41	Banque Nationale de Crédit March 31, 2006
Toyota Corolla		1,500.00	As per letter dated July 11, 2005
Property Deed		14,000.00 as per letter of July 11, 2005	Property Deed No. F-3 096975
Property Deed		no value available	Property Deed No. H1 073435
TOTAL $US		**27,717.16**	

Should the figures be scrutinized even by the most modest of estimates, subsequent to face-value computation, they would still amount to more than US $10,000.00; thus, even if the face-values of the automobile and the property (Terrain 3 carreaux ¼) in question were left out, the amount still exceeds the necessary figure for the purposes of immigration, as specified.

Justice Carolyn Layden-Stevenson of the Federal Court reflected in *Zheng v. Canada (Minister of Citizenship and Immigration)*, 2002 FCT 1115, [2002] F.C.J. No. 1478, at para 15 (QL) that a Visa Officer's failure to consider and include the Chinese properties in her calculation of the applicant's assets constitutes a reviewable error. It is not a breach of procedural fairness; it is a failure to consider evidence. If material to the result, the decision must be set aside.

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-4263-06
STYLE OF CAUSE:	HERICK GAY v. THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	Toronto, Ontario
DATE OF HEARING:	November 28, 2007
REASONS FOR JUDGMENT AND JUDGMENT:	SHORE J.
DATED:	December 6, 2007

APPEARANCES:

Mr. Max Chaudhary	FOR THE APPLICANT
Ms. Deborah Drukarsh	FOR THE RESPONDENT

SOLICITORS OF RECORD:

MAX CHAUDHARY Toronto, Ontario	FOR THE APPLICANT
JOHN H. SIMS, Q.C. Deputy Attorney General of Canada	FOR THE RESPONDENT