

Date: 20071207

Docket: IMM-151-07

Citation: 2007 FC 1287

Ottawa, Ontario, December 7, 2007

PRESENT: The Honourable Mr. Justice Phelan

BETWEEN:

SHUO YANG

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. INTRODUCTION

[1] The Applicant is a 22-year old singer who was accepted into a one-year diploma program at the Toronto School of Music. His visa application was denied. He has brought this judicial review of the Visa Officer's decision.

II. BACKGROUND

[2] The Visa Officer's decision contained two components put in issue in this judicial review.

Firstly, the Visa Officer found the Applicant's Study Plan to be unusual because the Applicant intended to be a "pop star" but was pursuing a diploma program in voice and composition.

Secondly, the Visa Officer was concerned that the Applicant's financial information was outdated and incomplete and that evidence of deposits was unreliable because they can be withdrawn at any time.

[3] In terms of financial information, the evidence of certificates of deposit used to secure future expenses were photocopies of expired documents. There was no evidence of the mother's income, although she was an accountant at a university. The father's monthly Canadian equivalent income of \$714.00 per month is in comparison to the Applicant's tuition and expenses which were \$10,000.00 each for one year (approximately \$1,666.66 per month).

[4] The Visa Officer concluded that the Applicant would not be a *bona fide* temporary resident here to study and would not leave Canada at the end of his authorized stay. This conclusion was made in the context of *Immigration and Refugee Protection Regulations* 216 and 220 which govern the issuance of student visas.

216. (1) Subject to subsections (2) and (3), an officer shall issue a study permit to a foreign national if, following an examination, it is established that the foreign national

216. (1) Sous réserve des paragraphes (2) et (3), l'agent délivre un permis d'études à l'étranger si, à l'issue d'un contrôle, les éléments suivants sont établis :

(a) applied for it in accordance with this Part;

a) l'étranger a demandé un permis d'études conformément à la présente partie;

(b) will leave Canada by the end of the period authorized for their stay under Division 2 of Part 9;

b) il quittera le Canada à la fin de la période de séjour qui lui est applicable au titre de la section 2 de la partie 9;

(c) meets the requirements of this Part; and

c) il remplit les exigences prévues à la présente partie;

(d) meets the requirements of section 30;

d) il satisfait aux exigences prévues à l'article 30.

(e) [Repealed, SOR/2004-167, s. 59]

e) [Abrogé, DORS/2004-167, art. 59]

(2) Paragraph (1)(b) does not apply to persons described in section 206 and paragraphs 207(c) and (d).

(2) L'alinéa (1)b) ne s'applique pas aux personnes visées à l'article 206 et aux alinéas 207c) et d).

(3) An officer shall not issue a study permit to a foreign national who intends to study in the Province of Quebec — other than under a federal assistance program for developing countries — and does not hold a Certificat d'acceptation du Québec, if the laws of that Province require that the foreign national hold a Certificat d'acceptation du Québec.

(3) Le permis d'études ne peut être délivré à l'étranger qui cherche à étudier dans la province de Québec — autrement que dans le cadre d'un programme fédéral d'aide aux pays en voie de développement — et qui ne détient pas le certificat d'acceptation exigé par la législation de cette province.

220. An officer shall not issue a study permit to a foreign national, other than one described in paragraph 215(1)(d) or (e), unless they have sufficient and available financial resources, without working in Canada, to

220. À l'exception des personnes visées aux sous-alinéas 215(1)d) ou e), l'agent ne délivre pas de permis d'études à l'étranger à moins que celui-ci ne dispose, sans qu'il lui soit nécessaire d'exercer un emploi au Canada, de ressources financières suffisantes pour :

(a) pay the tuition fees for the course or program of studies that they intend to pursue;

a) acquitter les frais de scolarité des cours qu'il a l'intention de suivre;

(b) maintain themselves and any family members who are accompanying them during their proposed period of study; and

b) subvenir à ses propres besoins et à ceux des membres de sa famille qui l'accompagnent durant ses études;

(c) pay the costs of transporting themselves and the family members referred to in paragraph (b) to and from Canada.

c) acquitter les frais de transport pour lui-même et les membres de sa famille visés à l'alinéa b) pour venir au Canada et en repartir.

[5] The critical issue in this case is the Visa Officer's conclusion that there was inadequate evidence of "sufficient and available financial resources" upon which to base a conclusion that the Applicant would not leave Canada at the end of the period of study. The role of the Study Plan is a secondary consideration.

III. ANALYSIS

[6] There are two lines of authority as to the appropriate standard of review of the Visa Officer's decision. It has been held that the standard is reasonableness *simpliciter* because the question for the Visa Officer is one of mixed fact and law – the application of facts to a legal criterion in the Regulations (see *Boni v. Canada (Minister of Citizenship and Immigration)*, 2006 FCA 68; *Wang v. Canada (Minister of Citizenship and Immigration)*, [2001] F.C.J. No. 95; *Lin v. Canada (Minister of Citizenship and Immigration)*, [2004] F.C.J. No. 106; *Guo v. Canada (M.C.I.)*, 2001 FCT 1353). The other line of cases have held the standard to be patent unreasonableness because the Officer's decision is largely fact-driven (see *Song v. Canada (Minister of Citizenship and Immigration)*, [2002] F.C.J. No. 385, *Li v. Canada (Minister of Citizenship and Immigration)*, [2001] F.C.J. No. 394; *Boni v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 31).

[7] In this case, the standard of review is largely ministerial. However, I do not find that there is a discordance in the authorities. The different standards reflect the nature of the question before the Court in each case. In some cases, it is purely a factual matter on which the case turns, e.g. the date of documents or expert knowledge of conditions in the country. In other cases, the Officer's decision and the judicial review turned on the legal conclusion reached against the backdrop of the facts.

[8] In this case, the Applicant failed to meet the burden of providing the required current documents. The Officer's conclusions concerning the financial information - the modest income of

the father; the uncertain stability of evidence of deposits of money - was open to him. It is not for the Court to re-weigh these findings.

[9] Further, there was a clear rational connection between these factual findings and the conclusion that the Applicant had not provided adequate evidence of sufficient and available resources. The Officer's concerns about the evidence had a reasonable basis.

[10] Finally, given the nature of this type of visa, which is highly discretionary and admits a minimal level of fairness, the Applicant is not entitled to an interview. This is particularly so where the information at issue is straightforward and any lingering issues can be addressed in a new visa application.

IV. CONCLUSION

[11] For these reasons, this application for judicial review will be dismissed. There is no question for certification.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that this application for judicial review is dismissed.

“Michael L. Phelan”

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: IMM-151-07

STYLE OF CAUSE: SHUO YANG

and

THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: December 4, 2007

**REASONS FOR JUDGMENT
AND JUDGMENT:** Phelan J.

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APPEARANCES:

Mr. Cecil Rotenburg FOR THE APPLICANT

Ms. Asha Gafar FOR THE RESPONDENT

SOLICITORS OF RECORD:

MR. CECIL L. ROTENBERG, Q.C. FOR THE APPLICANT
Barrister & Solicitor
Toronto, Ontario

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