Date: 20081015

Docket: IMM-5287-07

Citation: 2008 FC 1167

Ottawa, Ontario, October 15, 2008

PRESENT: The Honourable Orville Frenette

BETWEEN:

XIN HUI WANG

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application in judicial review pursuant to section 72 of the *Immigration and Refugee Protect Act*, S.C. 2001, c. 27 (IRPA) of a decision of an Immigration officer dated October 19, 2007, wherein the officer refused the Applicant's request for a study permit.

BACKGROUND

[2] Ms. Wang is a 21 year old citizen of China. She initially applied in November 2006 for a study permit to attend Centennial College in Toronto, Ontario. That permit was refused because she had not submitted the requisite medical tests; she claimed she did not receive the letter requesting such tests.

[3] She was later accepted at Seneca College for a preparatory one year English Program to be followed, if successful, by a two-year Business program.

[4] She re-applied for a study permit in 2007. She submitted her acceptance letter, proof of funds and particulars of her parents' employment and income. With these papers, she included a paper entitled "study form", which was not dated, unsigned, with no place of reference.

[5] In the process of assessing her application, the officer became concerned with the validity of the letters accompanying her parents' employment, as they appeared similar, despite apparently originating from different companies. On attempting to verify these letters, the officer found that neither company was recognized; the telephone number listed on the letter from the father's alleged employer was registered to another company but the person who answered the telephone stated that it was a hotel to which many wrong calls had been made; the fax number listed on the letter from the father's alleged employer was not registered and was not in service; the company name and number provided in the letter from the mother's alleged employer were not registered; and, the person who answered the phone at the latter number agreed that the woman named worked there but she was unmarried, in her twenties and childless.

[6] The officer then sent a letter to the Applicant informing her that she believed the Applicant had misrepresented her parents' employment and information and gave her 30 days to respond. The Applicant replied by letter dated August 10, 2007 asserting the truth of the facts she submitted together with a letter from her father giving a new number and untranslated copies of business

licences without indication of employment in those businesses or the signature of an authorizing representative. He declared he had a credit bank balance of $111,995.00 (in equivalent Canadian funds) in March, 2007.

[7] The Applicant claimed the person who answered the officer's phone call at her mother's employer misunderstood the question and that a letter had been sent to the embassy to clarify the situation. However, the officer stated in her affidavit that the letter, Tab C – page 46 of the Applicant's Record, was not before her when she made her decision.

THE DECISION

[8] By letter dated October 19, 2007, the Applicant's application for a study permit was refused due to concerns that she was not a *bona fide* temporary resident and would not leave Canada at the end of her authorized study.

STANDARD OF REVIEW

[9] The Supreme Court of Canada in *Dunsmuir v. New Brunswick*, [2008] 1 S.C.R. 190, has recently re-examined the standard of review of judicial reviews and merged the standards of patent unreasonableness and reasonableness *simpliciter* into a single reasonableness standard.

[10] It has established that, henceforth, two standards should be used: correctness and reasonableness. Correctness is to be applied to issues of law or procedural fairness and reasonableness for issues of facts or mixed facts and law. The Supreme Court stated in paragraph

62: *In summary, the process of judicial review involves two steps. First, courts ascertain whether the jurisprudence has already determined in a satisfactory manner the degree of deference to be accorded with regard to a particular category of question. Second, where the first inquiry proves unfruitful, courts must proceed to an analysis of the factors making it possible to identify the proper standard of review.*

THE ISSUES

1. **Was there misrepresentation and if so, was it material?**
2. **Was the officer's decision reasonable?**

ANALYSIS

1. Was there misrepresentation and if so, was it material?

[11] The Applicant submits that there was no misrepresentation and, in any case, it was not material to the conditions of her application to come to Canada. Her counsel relies on the case of *Ali v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 166.

[12] The Respondent replies that there was misrepresentation on fundamental facts establishing the Applicant's financial capacity to pay for her studies and stay in Canada and to her credibility as to whether she would leave Canada once her studies were completed.

[13] There is no evidence of procedural unfairness in this case. Once the officer noted the obvious misrepresentations as to the employment and financial ability of the parents of the

Applicant to finance her stay in Canada, he addressed a letter to the Applicant indicating these concerns. The Applicant attempted to satisfy these concerns but the officer found the material submitted to be wholly inadequate. I agree with his assessment.

[14] This is a question of fact or mixed fact and law reviewable on a standard of reasonableness.

[15] The known facts and the documents submitted by the Applicant and her parents raised serious concerns about their authenticity and their truthfulness.

[16] For example, a letter dated July 9, 2007 refers to a phone verification made the previous day, i.e. Sunday, July 8, 2007; however the embassy does not conduct business on Sundays and the CAIPS notes indicate that the phone verification was made on July 10, 2007 (one day after the date of the letter).

[17] In these circumstances, the officer rendered a decision which on the facts was reasonable. He also satisfied the duty of fairness by giving the Applicant an opportunity to answer these concerns (*Khwaja v. Canada (Minister of Citizenship and Immigration)* 2006 FC 522 at para. 17; see also *Young v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 1287.

[18] I also believe that the financial statement and the employment status of the Applicant's parents was a material fact because the Applicant's ability to meet the financial sufficiency test under paragraph 40(1)(a) of the IRPA depended on this fact.

[19] The Applicant relied on *Ali* where a Visa officer ruled that a Refugee claimant was inadmissible due to misrepresentations. This one page decision is based upon a finding that, even if there were misrepresentations, they were not material to the decision.

[20] The Applicant also relies upon the decision of Justice O'Reilly in *Yue v. Canada (Minister of Citizenship and Immigration)*, 2003 FCT 423, in which a judicial review was allowed to permit an analysis of the evidence of the sufficiency of funds of a student from China. In this case, however, serious doubts as to the Applicant's truthfulness remained unresolved in the officer's mind.

2. <u>Was the officer's decision unreasonable?</u>

[21] The Applicant alleges that the officer should have attempted to verify again the information submitted by the Applicant's mother and father in response to the letter of concern and that not having done so was a breach of procedural fairness.

[22] The Respondent contends that the officer did assess the response letter and document, but found them not to be convincing evidence.

[23] I believe the Respondent's arguments are well founded; the Applicant bore the duty to provide evidence to support her affirmations particularly after receiving a letter of concern. The officer's decision was well within the range of decisions which could have been rendered according to the standard of review elaborated in *Dunsmuir*.

CONCLUSION

[24] For these reasons, the application must be dismissed.

JUDGMENT

THIS COURT ORDERS that

1. The application is dismissed;

2. There are no questions to be certified.

"Orville Frenette"
Deputy Judge

SOLICITORS OF RECORD

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PLACE OF HEARING:	Toronto, Ontario
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APPEARANCES:

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