

Federal Court



Cour fédérale

**Date: 20100409**

**Docket: IMM-2462-09**

**Citation: 2010 FC 373**

**Ottawa, Ontario, April 9, 2010**

**PRESENT: The Honourable Mr. Justice O'Reilly**

**BETWEEN:**

**YING TENG**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

I. Overview

[1] In 2001, Ms. Ying Teng came to Canada from China on a study permit. She obtained a diploma in International Business from Seneca College in 2003. She wanted to stay in Canada, so she sought the assistance of an immigration consultant. He gave her bad advice. He suggested that she apply for a work permit but told her that she did not actually have to work for the employer she identified. She obtained a work permit from Sun Rise Co. Ltd., but never worked there.

[2] In 2005, Ms. Teng began working for the Korean Grill House, for which she had no authorization. She applied for permanent residence as a skilled worker but was turned down. She fell one point short of the threshold for success on her application.

[3] At that point, Ms. Teng retained counsel, who arranged for a positive arranged employment opinion for her position at the Korean Grill House. In 2007, Ms. Teng once again applied for permanent residence as a skilled worker (Secretary). She attended an interview during which she admitted that her work permit with Sun Rise Co. Ltd. was false, and acknowledged her unauthorized work for the Korean Grill House. To verify Ms. Teng's work experience, the officer contacted the latter establishment, but the owner denied that Ms. Teng had worked there without a permit. The officer asked Ms. Teng to provide further evidence of her work experience, both in Canada and in China. Ms. Teng supplied the officer with some documents, but the officer still refused her application.

[4] Ms. Teng argues that the officer erred in refusing her permanent residence application. She asks me to order another officer to reconsider it. I can find no basis for overturning the officer's decision and must, therefore, dismiss this application for judicial review.

## II. Analysis

### (a) The evidence supporting Ms. Teng's application

[5] Ms. Teng presented her diploma from Seneca College and her enrolment letter from York University. At the interview, Ms. Teng described her work experience in China. She worked for six months as a secretary at Qingdao Tongcheng Trading Goods and Materials Co. Ltd. (Qingdao). Her duties amounted to answering the phone, taking minutes and arranging appointments. She was then promoted to manager assistant and her duties expanded somewhat.

[6] At the Korean Grill House, Ms. Teng started out as a waitress but was promoted to dining-room manager. She sets schedules for the staff, monitors performance, checks inventory for food and beverages, and calculates profits. As mentioned, though, Ms. Teng's employer denied she worked there. She conceded that she was paid "under the table".

[7] After the interview, the officer asked for further evidence of her work history. Ms. Teng had to show at least one year of employment as a secretary. She provided a letter of reference from her employer in China and some financial particulars.

(b) The officer's decision

[8] The officer noted that Ms. Teng's letter of reference from China identified neither the author, nor his or her position. Further, the contents of the letter did not line up with the duties described by Ms. Teng in the interview. At the interview, Ms. Teng had described her duties as mainly clerical, corresponding with a General Office Clerk, not a Secretary.

[9] Based on the evidence before him, taking into account Ms. Teng's past misrepresentations, the officer concluded that she had not demonstrated that she had the necessary experience in the occupation she desired.

(c) Was the officer's decision reasonable?

[10] Ms. Teng argues that the officer erred by failing to recognize that she merely had to show that she had performed a substantial number of the duties prescribed for a Secretary under the National Occupational Classification (NOC). Since some of her responsibilities at Qingdao met the NOC description of a Secretary, she should have been given credit for her experience there. Ms. Teng further argues that the officer never informed her of his concern about her experience. While she was asked to provide further evidence, she was not specifically advised of the officer's concern. Accordingly, she was not treated fairly because she did not know that she had to provide better evidence of her experience.

[11] In my view, the officer's conclusion was reasonable. He concluded that there was insufficient evidence of Ms. Teng's experience as a Secretary. The officer had the discretion to determine whether Ms. Teng's experience fell under General Office Clerk or Secretary. He found that some of her duties fell under one, others under the other. On the face of the record and the officer's reasons, I cannot see anything unreasonable about his conclusion.

[12] I do not believe the officer had a duty to inform Ms. Teng of his concerns and provide her an opportunity to address them. In any case, the officer did tell Ms. Teng that she should provide

better evidence of her experience. In response, Ms. Teng simply provided a reference letter that had been submitted as part of her earlier application. Her application failed because of an absence of evidence that she met the definition of a skilled worker. At all times, the burden was on her to present sufficient evidence to meet the statutory test. The officer's conclusion that the evidence was wanting was not unreasonable.

### III. Conclusion and Disposition

[13] The officer considered the evidence before him supporting Ms. Teng's application for permanent residence. The officer had concerns about the sufficiency of that evidence and, in the end, concluded that Ms. Teng had not shown that she fell within the occupation of Secretary. I cannot find any basis for concluding that the officer's decision was unreasonable and must, therefore, dismiss this application for judicial review. Neither party proposed a question of general importance for me to certify, and none is stated.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that**

1. The application for judicial review is dismissed;
2. No question of general importance is stated.

“James W. O’Reilly”

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-2462-09

**STYLE OF CAUSE:** TENG v. MCI

**PLACE OF HEARING:** Toronto, ON.

**DATE OF HEARING:** January 14, 2010

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

**DATED:** April 9, 2010

**APPEARANCES:**

Shannon Kampf

FOR THE APPLICANT

Nicole Rahaman

FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

GREEN & SPIEGEL  
Toronto, ON.

FOR THE APPLICANT

JOHN H. SIMS, Q.C.  
Deputy Attorney General of Canada  
Toronto, ON.

FOR THE RESPONDENT