

Federal Court



Cour fédérale

Date: 20140408

Docket: IMM-12150-12

Citation: 2014 FC 340

Calgary, Alberta, April 8, 2014

PRESENT: The Honourable Mr. Justice Campbell

BETWEEN:

YINJUN LIAO

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR ORDER AND ORDER

[1] In the present Application the Applicant challenges a decision of a Visa Officer (Officer) wherein the Officer refused her application for permanent residence after making a finding of inadmissibility pursuant to s. 117(9)(d) of the *Immigration and Refugee Protection Regulations* and dismissing the Humanitarian and Compassionate (H&C) submissions made on behalf of the Applicant pursuant to s. 25 of the *Immigration and Refugee Protection Act*.

[2] The Applicant, a citizen of China born in May 1994 and living in China, was sponsored to Canada in November 2011 by her mother, a citizen of Canada who came to Canada in 2005 with her husband and elder daughter. In the decision under review dated November 5, 2012, the sponsorship application was refused because the Applicant was not declared as a dependent by her mother upon arrival in Canada. It is agreed that, since the Applicant turned 18 years of age in May 2012, the Applicant's only recourse to gain approval would be on H&C grounds. The primary issue is whether the Officer's rejection on these grounds is reasonable.

[3] The Officer interviewed both the mother and the Applicant. The Applicant's mother's reasons for leaving her daughter in China when she left for Canada was primarily out of fear of the consequences of China's one child policy. While in China, the Applicant's mother represented the Applicant as her niece. After leaving for Canada the Applicant was cared for by her uncle and maternal grandparents who also took care to hide her identity. The Applicant's mother regularly sent money for the Applicant's care but only visited the Applicant once. The Officer makes it clear in the interview notes that the mother's story was doubted because it was hard for the Officer to believe that a caring mother would act the way she did. Therefore, the Applicant's mother did not receive much sympathy from the Officer in the interview.

[4] However, in questioning the Applicant on November 1, 2012, the Officer showed interest in the impact she suffered as a child by being left behind and the practicalities of her current life situation. The following is the conversation recorded by the Officer in contemporaneous notes of the interview:

How old are you?
18 years old.

What is your birthday?

May 1, 1994.

Where do you currently live?

Usually I live at school during holiday I go to my uncle's place.

Sometimes I go to see my paternal grandmother.

Since your mother left for Canada, who have you lived with most of the time?

Mostly I live with uncle. Most of the time I am at school. I don't go home a lot.

How old were you when your mother left?

I was in grade 4.

What has been the hardest part about your mother living in Canada and you not being able to live with her?

Sometimes when had something with my mom and I couldn't tell her.

Like what?

For example when I didn't get along with some classmates, and something at home.

What did your mother tell you for why she was leaving China and why you couldn't come?

Because when I was born my mother couldn't tell anyone about my existence. Even to the introducer that my mom only has one daughter.

How did it make you feel that your mother wanted to go to Canada, and was going to leave you to go to Canada?

I was sad about that, but I also felt that I still had my father.

When was the last time you lived with your father?

I don't remember, I only remember that I only saw my father twice.

Only twice over what period?

When I was staying at home.

With your mother?

I don't remember. [applicant appears nervous, indicate to her that if she needs a break to let me know]

When your father died, when was the last time you had seen him before he died?

I don't remember.

If you never saw him, why did you feel that his presence in China would help with your mother's absence?

At that time I had my uncle and my uncle's wife, and my paternal grandmother, even my mother couldn't tell others that she had another daughter, but I have these people around me. I had a deep feeling towards my paternal grandmother. And all of them comfort me and they even went to school to see me.

You have had a lot of support from your extended family since your mother's absence?

Yes.

Will you graduate from school this year?

Yes.

Will you go to work after school, or study?

Go to college.

What do you plan on studying?

Learn to make cake.

If you aren't able to go to Canada to be with your mother, what has she told you she will do to maintain your relationship?

I don't know, we haven't talked about it.

Has she said she will pay for your college?

Yes.

Do you think that your other family members, including your uncle will support you if you stay in China?

Yes, they will.

(Tribunal Record, pp. 103-104)

[5] The Officer's reasons for the decision are as follows:

Analysis: Factors

1) The biological relationship between PA and SPR. Based on interview answers and documents on file it appears reasonable to determine there is a genuine biological relationship between the PA and SPR. This is a basic requirement of consideration of H&C in this case as there is little additional evidence of dependency.

2) Level of dependency. For the past 7 years the PA appears to be provided for financially by the SPR. In determining the weight of this information I consider the past nature of that support and potential nature in the future. The PA has been provided funds for her upbringing and schooling; she has indicated that her mother will pay for college. These facts were not and are not predicated on the PA's presence in Canada. She has been fully supported by her mother financially despite separation over 7 years, and is expected to be supported for the foreseeable future.

3) Stability of relationship/length of relationship. The SPR did not demonstrate a credible explanation of her relationship with the PA and development and stability of it. Her decision to leave the PA in China suggest a willingness to put her own well being before that of her daughter. I do not consider this a strong indication of stability in the relationship, or effort to make that relationship stable.

4) Impact of separation, past and future. The SPR indicated hardship due to separation, as did PA, however, support in the form of extended family in China indicated as strong stabilizing factor in PA's life. Ongoing separation would appear to be a continuation of this reality. The PA is now 18 and is therefore an adult, while financial dependency may continue, which will not be affected by separation, responses during interview indicated emotional impact has been and will be diminished.

5) Alternatives. As previously stated the PA appears to be in a stable family relationship with her uncle and paternal grandmother.

Financial support from mother. This situation does not appear to have resulted in undue hardship.

6) I have also considered the SPR's explanations of motivations surrounding leaving her daughter in China and do not find them to indicate hardship. She concealed her daughter from her SPR and chose to move to Canada permanently. She then chose not to attempt to sponsor her daughter for 7 years. Ignorance of Canadian immigration laws and the fear of the one child policy due [sic] not credibly explain these facts. On the basis of the information before me I do consider the referral of this file for positive H&C consideration warranted. Application refused as the PA is not eligible to be sponsored per R117(9)(d) and because I do not consider A25 warranted. Refusal letter prepared.

(Tribunal Record, p. 104)

[6] As can be seen by the questioning quoted above, the past was the prime area of the Officer's interest. With respect to the Applicant's H&C plea, her present and future best interests would have been fully addressed if the decision had been rendered at the time the Applicant was still under 18 years of age. In that case the Officer would have been required to establish that the decision-making was alert, alive and sensitive to the child's best interests. Even though the Applicant was not to be considered a child at the time the decision under review was made, in my opinion the Officer's conclusion was required to display a fundamental understanding of the present and future impact on the Applicant of being separated from her mother, both practically and emotionally. The Officer did investigate practicalities in the interview of the Applicant, but did not ask questions that would illicit answers that would provide a true and clear picture of existing and future humanitarian and compassionate concerns. Because this line of investigation

was required to be engaged, and since it was not engaged, I find that the Officer's decision is unreasonable.

ORDER

THIS COURT ORDERS that

The decision under review is set aside and the matter is referred back for redetermination by a different visa officer.

There is no question to certify.

"Douglas R. Campbell"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-12150-12

STYLE OF CAUSE: YINJUN LIAO v THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: CALGARY, ALBERTA

DATE OF HEARING: APRIL 7, 2014

**REASONS FOR ORDER AND
ORDER:** CAMPBELL J.

DATED: APRIL 8, 2014

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