



IAD File No. / N° de dossier de la SAI : VB7-04442

Client ID no. / N° ID client : 5363-7156

Reasons and Decision – Motifs et décision

REMOVAL ORDER

Appellant(s)	Wei HUANG	Appellant(e)(s)
and		et
Respondent	The Minister of Public Safety and Emergency Preparedness	Intimé(e)
Date(s) of Hearing	February 19, 2018	Date(s) de l'audience
Place of Hearing	Vancouver, BC	Lieu de l'audience
Date of Decision	April 30, 2018	Date de la décision
Panel	Judith Boer	Tribunal
Counsel for the Appellant(s)	Frederick Li	Conseil(s) de l'appelant(e) / des appelant(e)(s)
Designated Representative(s)	N/A	Représentant(e)(s) Désigné(e)(s)
Counsel for the Minister	Laura Merriam	Conseil du ministre

REASONS FOR DECISION

[1] These are the reasons and decisions of the Immigration Appeal Division (the “IAD”) in the appeal of Wei HUANG (the “appellant”) from an exclusion order issued against him on August 11, 2017. The appellant was found to be inadmissible under paragraph 40(1)(a) of the *Immigration and Refugee Protection Act* (the “Act”)¹ for misrepresentation.

BACKGROUND

[2] Mr. Huang is a 47-year-old citizen of China who became a permanent resident of Canada in October 2005. He was a dependent family member of his wife who was the principal applicant as an investor. The couple immigrated with their 5-year old son and had a daughter in Canada in November 2006.

[3] While his wife and two young children established themselves in Canada, the appellant did not and he did not meet his residency obligations as a permanent resident in Canada. Mr. Huang hired New Can Consultants Canada Ltd. (“New Can”) to apply for the renewal of his permanent resident card (“PR card”). His application contained fraudulent information regarding his time spent in Canada. Mr. Huang came to the attention of Canadian immigration authorities when a copy of his PR card application was found during the execution of a search warrant for the criminal investigation of Mr. Xun (“Sunny”) Wang, who operated New Can.²

[4] At the Immigration Division (the “ID”) proceedings, Mr. Huang conceded that misrepresentations were made in the process of the renewal of his permanent resident card. However, he submitted that he was not a party or co-conspirator to the misrepresentation committed by Sunny Wang. The ID determined that Mr. Huang was ultimately responsible for the misrepresentations made on his behalf by Sunny Wang as per the broad interpretation of

¹ *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.

² Record, Subsection 44(1) Report and Solemn Declaration of L. Wunderlich, pages 22-27.

misrepresentation.³ Accordingly, Mr. Huang was issued an exclusion order pursuant to section 40(1)(a) of the *Act*.

POST-HEARING DISCLOSURE

[5] At the end of the hearing on February 19, 2018, I requested two items from the appellant to assist me in reaching a decision in his appeal. I requested documentary evidence of his travels (i.e. copy of his passport and itineraries) in order to assess whether his travel patterns had changed since January 2016. I also requested a copy of the police report for his stolen passport in order to determine whether his passport had truly been reported stolen in 2009. The appellant was able to provide a copy of his passport but not the police report. He did provide a copy of the *Privacy Act* request for a copy of the police report.

[6] In addition to these two specific requests, the appellant took it upon himself to provide me with other post-hearing documentary evidence and further post-hearing submissions. As these were not requested, and came after the completion of the hearing and the appellant's testimony, I did not review these documents nor take them into consideration for this decision. The exemption to this was the documentary evidence that showed that some of the appellant's recent travels were family trips taken together with his wife and children. My concern at the completion of the hearing was with the time that the appellant spent away from his family and therefore proof that some of the travels were taken with his family are a relevant consideration.

[7] I accepted the following documents into evidence after completion of the oral hearing on February 19, 2018:

- Appellant's passport (25 September 2009 – 24 September 2019);
- Appellant's US Travel History summary;
- Exit-entry record from China, with translation;

³ *Goudarzi v. Canada (Citizenship and Immigration)*, 2012 FC 425.

- Travel summary provided by the appellant;
- Passport of appellant's spouse (19 June 2013 – 19 June 2018);
- Passport of appellant's spouse (13 March 2017 – 13 March 2027);
- Passport of appellant's son (21 June 2013 – 21 June 2018);
- Passport of appellant's daughter (16 September 2016 – 16 September 2021);
- Passport of appellant's daughter (21 February 2012 – 21 February 2017); and,
- *Privacy Act* request for the police report of 2009.

[8] The remainder of the documents submitted after February 19, 2018 were not considered for this appeal.

ISSUES

[9] There are two issues before me. The first issue is whether the appellant committed misrepresentation. The second issue is whether the appeal may still be allowed, if the appellant did commit misrepresentation, pursuant to the IAD's discretionary jurisdiction to grant special relief. The appellant must establish that taking into account the best interests of a child directly affected by the decision, sufficient humanitarian and compassionate considerations warrant special relief in light of all the circumstances of the case.

DECISION

[10] I find the exclusion order made on August 11, 2017 to be legally valid because the appellant did commit misrepresentation. However, based on all the evidence before me, I find

there are sufficient humanitarian and compassionate considerations to warrant special relief in light of all the circumstances of the cases. The appeal is allowed for the following reasons.

ANALYSIS

[11] The documentary evidence established that the appellant's declaration regarding his absences from Canada were incorrect. He was absent from Canada for a total of at least 1174 days not the 940 days that he declared on his application. This false information induced errors in the administration of the *Act*. The appellant admitted that his PR card application contained false information and I find that the determination that Mr. Huang is inadmissible for misrepresentation, pursuant to 40(1)(a) of the *Act*, is legally valid.

[12] The IAD may allow an appeal from a removal order if the appellant is successful in establishing a case for discretionary relief. The factors to be considered by the IAD when exercising its discretionary jurisdiction in the context of a misrepresentation, include the following:

- the seriousness of the misrepresentation and circumstances surrounding it;
- the degree of remorse demonstrated by the appellant;
- the length of time spent in Canada and the appellant's degree of establishment;
- the appellant's family in Canada and the impact to the family that removal would cause;
- the family and community support available to the appellant;
- the degree of hardship that would be caused to the appellant by his return to his country of nationality; and
- the best interests of any child directly affected by the decision.

[13] I may also consider any other special circumstances sufficient to warrant relief: the impact on family members (often spouse and child) in the home country, and the impact of the time limited five-year ban resulting from the exclusion order.

The Misrepresentation

[14] Mr. Huang testified that he had seen advertisements for Sunny Wang's business New Can on a Chinese TV channel in Canada. He believed New Can to be a reputable business based on the frequent television advertisements. Mr. Huang and his wife decide to contact New Can in 2009 as their PR cards, and their son's PR card, were going to expire the following year. They had an informal meeting and Mr. Huang and his wife felt comfortable with Sunny Wang and trusted him. They had another meeting in early 2010 and were instructed to bring their PR cards and passports. Mr. Huang's wife questioned Sunny Wang about her husband's residency obligation as he travelled to China frequently. They were told that as long as he had at least one year of presence in Canada it would be okay since this was going to be his first PR card renewal. They were charged \$1500 for the renewal of all three PR cards. Staff at New Can prepared the applications and submitted them on the appellant's behalf. In September 2010, Mr. Huang's wife and son received their new PR cards in the mail, and Mr. Huang was requested to pick his new PR card up in person. After a brief interview with the immigration officer, Mr. Huang received his new PR card which was valid until August 19, 2015.⁴

[15] Mr. Huang's application indicated that he was absent from Canada for a total of 940 days. Based on his seized passports and Integrated Customs Enforcement System (ICES) Traveller History Report, a Canada Border Services Agency (CBSA) officer determined that Mr. Huang had actually been absent for at least 1174 days. In total, there were about 224 days of absence which were not declared on the application.⁵ When a person is absent from Canada for more than three years (1095 days) then the card is not automatically renewed. By not declaring his absences from Canada accurately, Mr. Huang closed off an avenue of investigation for the

⁴ See also Record, translation of personal statement from Mr. Huang, pages 114-117.

⁵ Record, Transcript of Proceedings, IRB-ID, 11 August 2017, page 12.

immigration officer who assessed the application. The appellant's misrepresentation was very serious and this is a significant negative factor for this appeal.

Remorse

[16] Mr. Huang testified that he regrets not exercising more due diligence when he hired New Can and during the application process. He admitted that he did not fully understand all the residency requirements and that he simply put his trust in Sunny Wang. For the application, Mr. Huang provided his passport to New Can and he did not ask that the forms be translated to him or that they be reviewed with him. He signed where he was asked to sign and did not ask for explanations. Mr. Huang did not ask for a copy of his application and did not see or review his residency calculations.

[17] I do note that Mr. Huang was not charged an excessive fee for the renewal of his application, which is something that could have raised his suspicions. Mr. Huang did obtain a new passport in 2009, which, based on some of New Can's known schemes, raises suspicions. However, there is no evidence before me that Mr. Huang's passports were tampered with or that fraudulent passport information was submitted for his application. Mr. Huang testified that his passport was stolen in Canada and I do not draw an adverse conclusion from the fact that he obtained a new passport in 2009.

[18] I find that Mr. Huang testified as to his remorsefulness in a straightforward and genuine way. He explained that he had no cause to question New Can's professionalism at the time of his dealings with the company but that in hindsight he should have been more responsible with his application. While he does blame New Can to some extent, Mr. Huang does ultimately take responsibility for his actions. This is a positive factor.

Impact to the Family

[19] Mr. Huang's spouse Grace Yu Lan Gu ("Grace") was the principal applicant for the family's immigration application to Canada. She is 46 years old and she became a Canadian citizen about five years ago.

[20] Grace has Ankylosing Spondylitis, which is a form of arthritis and which often affects her vision (uveitis). She also suffers from pain and insomnia. The condition affects Grace's ability to drive and perform day-to-day household tasks.

[21] Mr. Huang's son, Sky Tian Chen Huang ("Sky"), is now 18 years old. He was born in China and was 5 years old when he moved to Canada. He is now a Canadian citizen. In 2013, Sky started attending St. George's School and performed very well academically.⁶ Unfortunately, later he started struggling with school and started to miss many classes.⁷ His parents suspected that he suffered from depression and sought medical assistance.

[22] In January 2016, Sky was indeed diagnosed with major depressive disorder. Dr. Jack Young has assessed and treated Sky and states that Mr. Huang's presence and support for his family has been very significant and necessary for both his son and wife.⁸ Currently, Sky does not attend school regularly due to his mental health concerns and it is unlikely that he will graduate in June.⁹ Mr. Huang testified that his son is very withdrawn and that he is unwilling to leave the house. Because of his drastic moods, Mr. Huang and his wife ensure that he is not left alone. Mr. Huang candidly stated that the pressure of providing care and earning money for the family has been a heavy burden on him.

[23] For this appeal, Dr. Young provided two letters of support regarding Sky and Grace. Dr. Young states that Sky and Grace both benefit from Mr. Huang's presence in Canada. Mr. Huang

⁶ Record, St. George's School Report Card 2014-2015, pages 279-281.

⁷ Record, St. George's School Report Card 2016-2017, pages 282-284.

⁸ Record, Letter from Dr. Jack Young, page 225.

⁹ A1, e-mail correspondence between Sky's parents and school administrators, pages 17-22.

is able to provide Grace with support and relief of parental duties, and he engages Sky in recreational activities. Dr. Young states that he is very concerned for the health of Sky and the family if Mr. Huang's permanent stay in Canada is declined. He also states that the uncertainty of Mr. Huang's immigration status has added stress to Grace which has, in turn, become an additional strain on Sky. Dr. Young believes that the mother's health and the father's uncertain immigration status have contributed to Sky's depression and his difficult recovery.¹⁰ I give Dr. Young's opinion significant weight given the psychologist's expertise and professional knowledge of Sky's mental health status.

[24] In their subsection 44(1) report, the CBSA officer raised the concern that it does not appear that Mr. Huang has made any changes to his travel patterns in order to spend more time in Canada with his son or wife.¹¹ This concern remained before me at the hearing.

[25] Mr. Huang testified that he has tried to remain in Canada as much as possible to assist his son and wife. On direct examination, Mr. Huang stated that he travelled to China about 3-5 times per year in recent years. In cross-examination, Mr. Huang estimated that he travelled to China about four times in 2017 and four to five times in 2016. At the hearing, counsel for the Minister of Public Safety and Emergency Preparedness provided an up-to-date ICES Traveller History report which shows that Mr. Huang made six international trips in 2016,¹² five international trips in 2017, and one in 2018.¹³ Mr. Huang testified that he travels for work and that he also travels to China to spend time with his father who is not well. He testified that he has attempted to reduce the frequency of his travel abroad and that his stays abroad are shorter in length (about 2-4 weeks at a time) than before. He stated that he resides in Canada about 9 to 10 months out of the year.

¹⁰ Record, Letter from Dr. Jack Young, pages 287-288; A1, Letter from Dr. Jack Young, pages 1-2.

¹¹ Record, subsection 44(1) report, page 24.

¹² The ICES Traveller History shows an entry on November 12, 2016 at Vancouver International Airport and an entry on November 13, 2016 at Pearson International Airport. Since the entries are one day apart, I treat this as one trip/entry.

¹³ R1, ICES Traveller History – Traveller Passage Report (January 1, 2010 to February 15, 2018).

[26] According to the information provided post-hearing, three of the six trips in 2016 were business trips for a total of about 50 days. In 2017, Mr. Huang took three trips to China without his family members and he was absent about 70 days.

[27] I find that the post-hearing documents support Mr. Huang's testimony (as provided in cross examination) regarding his absences from his family. He was present in Canada for about 9-10 months in both 2016 and 2017. I note that this is a decrease of the number of trips in 2015 (11 trips) and 2014 (10 trips). I do also recognize that Mr. Huang and his family are reliant on his income from his import-export endeavours.

[28] Mr. Huang and his wife testified that they are extremely concerned to relocate the family to China if this appeal is dismissed. This is primarily due to Sky's serious mental health concerns, the medical treatment being received by both Sky and Grace in Canada, and the children's lack of status in China as they are Canadian citizens.

[29] The appellant's family in Canada and the impact to the family that the appellant's removal would cause is a significant factor in this appeal and is in the appellant's favour.

Best Interest of the Child

[30] Mr. Huang has an 11 year old daughter who was born and raised in Canada. Her name is Angela and she is currently in grade 6 at a public elementary school in Richmond.

[31] She has taken dance lessons at the Lorita Leung Dance Academy since 2010. In her letter of support, the principal of the school writes that Mr. Huang is one of the academy's most supportive parents. He regularly drives Angela to and from dance classes and rehearsals, and attends her many dance performances and events throughout the year. He was also one of the parents who accompanied the dance group to their one-week performance at the Disney World

Resort in Florida in July 2016. She concludes by stating that Mr. Huang's involvement not only assists the academy but that it also helps build Angela's confidence and self-esteem.¹⁴

[32] Mr. Huang is an active and involved father for his young daughter. He takes his parental responsibilities seriously, especially given his wife's limitations due to her medical condition. It is in Angela's best interests to have her father be a continued presence in her life.

Establishment

[33] Mr. Huang owns a house in Richmond, BC, where he lives with his wife and two children. Mr. Huang is the sole income earner for the family. He is in the seafood import and export business and he exports seafood from Canada to China. He is in the process of negotiating a deal between seafood companies in British Columbia and China. Once the merger is complete, Mr. Huang will likely have a managerial role in the Vancouver office.

[34] In September 2013, Mr. Huang started a business called Sea Square International, which exports seafood to China. He is the general manager of the company. The company has two other employees: his wife Grace who deals with administrative and financial matters, and Phillip who deals with customer service and transportation. Phillip also acts as an interpreter for Mr. Huang. While this company has not generated a significant amount of income for the family, I find that Mr. Huang has been making serious efforts to relocate his profession and income from China to Canada.

[35] Mr. Huang now spends the majority of his time in Canada and he has established a strong network of friends. Mr. Huang's establishment in Canada and his business efforts in Canada are positive factors in his favour for this appeal.

¹⁴ Record, Letter from Jessica Jone, Lorita Leung Dance Academy, page 289.

Family and Community Support

[36] Aside from his wife and children, Mr. Huang does not have family members in Canada. Mr. Huang and his wife do have friends in Canada, whom they rely on to assist in the household. Mr. Huang testified that when he is away their friends assist by taking Grace and Sky for their medical appointments, and by taking Angela to school and her dance activities. Even while Mr. Huang is present Canada, friends take Angela to school every day.

[37] While it would have been of assistance to have received letters of support from their friends, I do accept the testimony of the appellant and his wife regarding the involvement of their friends in their daily lives. The community support for this family is a positive factor in this appeal.

Hardship to the Appellant

[38] There is little evidence to suggest the appellant would face hardship in China. He would be returning to country conditions that are not foreign or unusual to him as he has spent most of his life in China. This is a neutral factor.

CONCLUSION

[39] Based on all the evidence before me, I find that the impact on the appellant's wife and children that the appellant's removal would cause is of particular significance in this appeal, and that, overall, the positive factors outweigh the negative factors. I find there are sufficient humanitarian and compassionate considerations to warrant special relief in light of the circumstances of the case. The appeal is allowed.

NOTICE OF DECISION

The appeal is allowed.

(signed)

"Judith Boer"

Judith Boer

April 30, 2018

Date

Judicial Review – Under section 72 of the *Immigration and Refugee Protection Act*, you may make an application to the Federal Court for judicial review of this decision, with leave of that Court. You may wish to get advice from counsel as soon as possible, since there are time limits for this application.