

Federal Court



Cour fédérale

Date: 20250415

Docket: IMM-10180-23

Citation: 2025 FC 699

Toronto, Ontario, April 15, 2025

PRESENT: Madam Justice Whyte Nowak

BETWEEN:

WENBIN HUANG

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Wenbin Huang [Applicant], seeks judicial review of a decision [Decision] of an officer [Officer] of Immigration, Refugees and Citizenship Canada denying his application for permanent residence as a member of the Canada Experience Class [CEC] based on a finding of criminal inadmissibility pursuant to paragraph 37(1)(a) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [Act]. The Applicant was implicated in a foreign language testing

scheme run by his employer. The Applicant submits that the Decision is unreasonable in finding that he was a member of an organization that is believed on reasonable grounds to have engaged in a pattern of organized criminal activity.

[2] For the reasons that follow, I find that the Applicant has not shown that the Decision is unreasonable. The Decision bears the hallmarks of intelligibility and transparency and is justified not only by the investigation report of the Criminal Investigation Section [CIS] of the Canada Border Services Agency [CBSA], but also by the statement of facts from the criminal prosecution of the Applicant's employer who pleaded guilty.

II. Legislative Framework

[3] Pursuant to paragraph 37(1)(a) of the *Act*, a permanent resident or foreign national is inadmissible on grounds of organized criminality for being a member of an organization that is believed on reasonable grounds to be or to have been engaged in activity that is part of a pattern of criminal activity:

Organized criminality

37 (1) A permanent resident or a foreign national is inadmissible on grounds of organized criminality for

(a) being a member of an organization that is believed on reasonable grounds to be or to have been engaged in activity that is part of a pattern of criminal activity planned and organized by a number

Activités de criminalité organisée

37 (1) Emportent interdiction de territoire pour criminalité organisée les faits suivants :

a) être membre d'une organisation dont il y a des motifs raisonnables de croire qu'elle se livre ou s'est livrée à des activités faisant partie d'un plan d'activités criminelles organisées par plusieurs

of persons acting in concert in furtherance of the commission of an offence punishable under an Act of Parliament by way of indictment, or in furtherance of the commission of an offence outside Canada that, if committed in Canada, would constitute such an offence, or engaging in activity that is part of such a pattern;	personnes agissant de concert en vue de la perpétration d'une infraction prévue sous le régime d'une loi fédérale punissable par mise en accusation ou de la perpétration, hors du Canada, d'une infraction qui, commise au Canada, constituerait une telle infraction, ou se livrer à des activités faisant partie d'un tel plan;
...	...

[4] According to section 33 of the *Act*, the facts that constitute inadmissibility under sections 34 to 37 include facts for which there are reasonable grounds to believe that they have occurred, are occurring or may occur.

III. Facts

A. *The Applicant's background*

[5] The Applicant is a 36-year-old Chinese citizen who first entered Canada on April 21, 2008 on a study permit that was valid until September 30, 2012. The Applicant was enrolled in a 4-year program at Seneca College in Toronto.

[6] The Applicant obtained several work permits and related extensions, and on May 16, 2016, he submitted a CEC application for permanent residence.

B. *The facts giving rise to a concern that the Applicant was part of a criminal organization*

[7] The Applicant worked as a school administrator and student accommodation coordinator at St. UKA Education in Markham, Ontario [School] from at least September 2013 to February or March 2014. The owner of the School, Ms. Weijia “Angela” Wang, was the Applicant’s employer. The School offered “Test of English as a Foreign Language” [TOEFL] and “International English Language Testing System” [IELTS] exams to international students.

[8] According to CIS, between 2012 and 2013, Ms. Wang was found to have been charging prospective students a negotiated fee to have surrogate test writers obtain passing scores on the TOEFL and IELTS exams using fraudulent passports containing the students’ biographical data. The students handed over their personal information in order to “buy” certain exam results. Ms. Wang forwarded the data to counterfeiters in the People’s Republic of China [China] where fake passports were made using the surrogate test-takers’ photos for use in confirming their identities at the exams. CIS found that the passports were shipped from China to Ms. Wang’s apartment, where Ms. Wang or her boyfriend, who was listed as the President of the School on its corporate profile, received them. Students were charged a lump sum to cover the costs for test registration, commissions for recruiters and test-takers, and passport production [the Testing Scheme].

[9] Ms. Wang was arrested by the CBSA and eventually pleaded guilty to five counts of importation and five counts of possession of counterfeit passports.

[10] CIS' investigation included information that named or implicated the Applicant in several of Ms. Wang's phone records, notes and financial transactions made between May 2012 and April 2013. CIS determined that the Applicant was a recruiting agent for Ms. Wang's criminal enterprise who received part of the revenue generated by her criminal activity based on the clients he referred to her.

C. *The procedural fairness letter and the Applicant's response*

[11] The Officer raised concerns regarding the Applicant's inadmissibility in a procedural fairness letter dated May 26, 2023 [PFL]. The PFL recited the evidence related to the Applicant's participation in the Testing Scheme from the CIS statement of facts [Statement of Facts] and offered the Applicant the chance to respond.

[12] Counsel for the Applicant responded to the PFL by letter dated June 23, 2023 [PFL Response] and provided an affidavit from the Applicant, affirmed June 20, 2023. The Applicant denied any knowledge of or participation in the organized criminal activity and maintained that he was employed at the School *after* Ms. Wang's period of criminal activity. He explained that the financial transactions found in Ms. Wang's records by CIS relate to repayment of loans he received from her for a new car and his wife's school tuition. The Applicant also detailed the significant hardships that the Applicant and his family would face if his application for permanent residency was rejected.

D. *The Decision*

[13] In the Decision dated July 28, 2023, the Officer found there to be reasonable grounds to believe that the Applicant is inadmissible under paragraph 37(1)(a) of the *Act*.

[14] Citing various jurisprudence and other sources, the Officer provided definitions of terms not provided for in the *Act*, which can be summarized as follows:

- *criminal organization* – criminal organizations tend to be loosely structured, so a flexible approach must be used to identify these groups given their “varied, changing and clandestine character” (*Sittampalam v Canada (Minister of Citizenship and Immigration)*, 2006 FCA 326), but they consist of certain characteristics, which generally include an identity, leadership, hierarchy and an organizational structure;
- *criminal activity* – is not restricted to indictable offences punishable by five years or more in jail; rather, all that is required is “evidence of a pattern of criminal activity”; and
- *membership* – connotes both a knowing link to an organized crime group and the receipt of some benefit from this association. No proof of conviction is required to find the involvement of an individual in a pattern of criminal activity (*Castelly v Canada (Minister of Citizenship and Immigration)*, 2008 FC 788).

[15] The Officer found that the School was a criminal organization and that Ms. Wang and her employees, including the Applicant, engaged in organized criminal activity through the School that generated significant gross and net revenue in the years 2012 and 2013, which Ms. Wang pleaded guilty to.

[16] The Officer accepted the Applicant's explanation for the financial transactions between him and Ms. Wang but found that it did not amount to a full explanation of the evidence implicating him in the Testing Scheme.

[17] The Officer gave no weight to the portion of the Applicant's PFL Response directed at humanitarian and compassionate factors, stating that such grounds are irrelevant in an inadmissibility decision.

IV. Issues and Standard of Review

[18] The Applicant submits that the Officer made three unreasonable findings in relation to the Applicant's employment at the School:

- A. The School constitutes a criminal organization;
- B. Ms. Wang and her employees engaged in an organized criminal activity through the organization; and
- C. The Applicant was a member of the organization.

[19] The applicable standard of review of a decision on the merits is reasonableness as articulated by the Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov]. A reasonable decision "bears the hallmarks of reasonableness – justification, transparency and intelligibility," and the burden is on the challenging party to show that the decision is unreasonable. (*Vavilov* at paras 99-100). Reasonableness review seeks to ensure that a decision contains "an internally coherent and rational chain of analysis ... that is justified in relation to the facts and law that constrain the decision maker" (*Vavilov* at para 85). Both the rationale and the outcome must be justified in

relation to the relevant factual and legal constraints that bear on the decision maker (*Vavilov* at para 99). The Court must engage in a robust review while showing deference to the expertise of the administrative tribunal below and must refrain from reweighing or reassessing the evidence (*Vavilov* at paras 94, 125).

V. Analysis

A. *Did the Officer err in finding that the School constitutes a criminal organization?*

[20] The Applicant submits that Ms. Wang and her employees do not meet the definition of “criminal organization” in the *Criminal Code*, RSC 1985, c C-46 [*Criminal Code*], which requires the following elements be made out:

- i. composed of three or more persons in or outside Canada; and
- ii. whose main purpose or activity includes the commission of one or more serious offences (defined to mean an indictable offence punishable by way of imprisonment for five years or more) that, if committed, would likely result in the receipt of a material benefit by the group or any of its members (subsection 467.1(1) of the *Criminal Code*).

[21] The Applicant denies that the Testing Scheme meets the *Criminal Code* definition of a “criminal organization” as there was only one person – Ms. Wang – who committed the offences and was charged. The Applicant acknowledges that the Federal Court has held that a broad and unrestricted meaning must be given to the word “organization” as it is used in subsection 37(1) of the *Act*, but notes that it does not capture third parties who individually transact with a criminal organization (*Saif v Canada (Citizenship and Immigration)*, 2016 FC 437 at para 17).

[22] I agree with the Respondent's submissions that it was reasonable for the Officer to have found that the School meets the flexible and broad definition of "organization" since it had coordinated activities aimed at illicit purposes, with a leader and hierarchy of members. The Officer described the School as running "as a criminal organization with clear, albeit loose, hierarchical roles and duties ascribed to each party, including a distinct leadership position." Ms. Wang owned the business, managed her employees as well as the testing and was aided by coordinators or "middlemen" like the Applicant who acted as a point of contact for prospective students by taking their payments and personal data on behalf of Ms. Wang.

[23] Contrary to the Applicant's submissions, this was not a "one woman show" and there were clearly more than three members of the organization implicated in the Testing Scheme, including Ms. Wang's boyfriend, the recruiters, the surrogate test takers and the Chinese passport makers.

B. *Did the Officer err in finding that Ms. Wang and her employees engaged in an organized criminal activity through the organization?*

[24] The Applicant submits that the Officer erred in finding that the School was part of the criminal organization and the Applicant was employed for the purposes of engaging in the criminal activity.

[25] First, the Applicant submits that the School may have been used to carry out a criminal activity, but this was not its main purpose. According to the Applicant, the evidence shows that

Ms. Wang separated her legitimate business and criminal activities, pointing by way of example to the fact that she sent the passports to her apartment and not the School.

[26] Second, the Applicant worked for 6 months at the School after the relevant dates for Ms. Wang's criminal convictions. Not only did the School constitute a legitimate business, but he also worked in a legitimate job as an administrator in charge of rental properties which were used as student residences administered by the School.

[27] I agree with the Respondent that it was open for the Officer to find that the School was a criminal organization despite its other legitimate activities (*Nguesso v Canada (Citizenship and Immigration)*, 2016 FC 1295 at para 61). The fact remains that the School was the centre of the Testing Scheme, and it was reasonably open to the Officer to have found that the Applicant's job facilitated the Applicant's engagement with students for both legitimate and illicit purposes.

C. *Did the Officer err in finding that the Applicant was a member of the organization?*

[28] The Applicant makes three arguments as to why it was unreasonable for the Officer to have found that he was a member of a criminal organization in relation to the School's Testing Scheme.

[29] First, the Applicant submits that he has provided an explanation for the financial transactions identified by CIS and that the Officer erred in giving the PFL Response little weight and failing to give an explanation for not believing him. He therefore argues that the presumption of the truthfulness of his evidence was not rebutted (*MalDonado v Minister of*

Employment and Immigration (1979), [1980] 2 FC 302 (FCA) at 305 and *Vodics v Canada* (Minister of Citizenship and Immigration), 2005 FC 783 at para 11).

[30] Second, the Applicant submits that the Officer had to find that the Applicant held a position that was “central” to the functioning of Ms. Wang’s criminal enterprise and that he financially benefited from the Testing Scheme. The Applicant submits that this is not possible, given the timing of the Testing Scheme as compared to his employment and the fact that there was no evidence of any transactions during his time of employment. He says that based on the timing of the events in question, the Officer’s reasons do not add up and it was unreasonable for the Officer to find that he participated in the criminal activity:

- He worked at the School from September 2013 to February 2014, whereas the criminal activity carried out of the School was found to have occurred between 2012 and 2013. Ms. Wang was arrested and charged in September 2013, and she pleaded guilty in December 2013 – all before the Applicant worked at the School.
- The Officer relied on the fact that CIS found that Ms. Wang received \$12,200 from the Applicant between May 2012 and April 2013, but this does not correspond to the timing of his employment between September 2013 and February 2014. There were no transactions during his time of employment.

[31] Contrary to the Applicant’s assertions, the Officer did address the Applicant’s explanation for his financial transactions with Ms. Wang which the Officer found to be deserving of little weight. While the Officer accepted that the Applicant leased a new vehicle in November 2012 and made a tuition payment to Seneca College in March 2013, the Officer was not satisfied that the financial transactions were solely related to these matters. The Officer cited other unexplained transactions and references to the Applicant’s name throughout Ms. Wang’s

personal communications, including reference to the Applicant in a February 2013 note between Ms. Wang and her boyfriend and a March 2013 exchange between Ms. Wang and her mother over WeChat. Both of these communications referred to money owing from Benny Huang, who the Applicant acknowledges is a reference to him. Moreover, the Officer found that the Applicant's evidence was vague and insufficient in addressing the Officer's "broader inadmissibility concerns and the documentary evidence of the applicant's wider involvement with Ms. Wang." This was fair: at no time did the Applicant explain how he knew Ms. Wang and obtained financial loans from her before he was employed at the School.

[32] Third, the Applicant maintains that there is no proof beyond mere suspicion that he took part in Ms. Wang's criminal activities and the Statement of Facts related to Ms. Wang's conviction is hearsay that cannot be relied upon. I agree with the Respondent that this argument is a "red herring," given that the Applicant does not actually dispute the facts contained in the Statement of Facts but takes issue with the inferences that can be drawn from them. It was open to the Officer to accept the conclusions of CIS, given that the standard of proof required reasonable grounds to believe, which is less than belief on a balance of probabilities (*Mahjoub v Canada (Citizenship and Immigration)*, 2017 FCA 157 at paras 88-89, leave to appeal denied, [2017] SCCA No 379). The Officer's Decision was based on compelling objective evidence in the form of the CIS investigation, which itself was based on the personal records found in Ms. Wang's possession.

[33] I find that the Officer's finding that the Applicant was a member in a criminal organization was reasonably supported. The Officer noted that CIS found the Applicant's name,

alias and contact information in “various” of Ms. Wang’s communications which not only identified him as an agent/recruiter, but also included listed fees rendered to him for his referrals and monies owed.

[34] I acknowledge that the Decision can be difficult to follow at times as the Officer’s reasons on each of the elements are mixed together despite there being separate headings for each; however, perfection is not required, and taken as a whole, the Officer’s reasons are intelligible and justified on the facts and the law that constrained the Officer (*Vavilov* at paras 85, 97, 104).

VI. Conclusion

[35] The Applicant has not met his onus of showing a reviewable error. Accordingly, this application is dismissed.

JUDGMENT in IMM-10180-23

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed; and
2. There is no question for certification.

"Allyson Whyte Nowak"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-10180-23

STYLE OF CAUSE: WENBIN HUANG v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: HELD BY WAY OF ZOOM VIDEOCONFERENCE

DATE OF HEARING: APRIL 10, 2025

JUDGMENT AND REASONS: WHYTE NOWAK J.

DATED: APRIL 15, 2025

APPEARANCES:

Ariel Hollander	FOR THE APPLICANT
Gregory George	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Lewis & Associates LLP Barristers & Solicitors Toronto, Ontario	FOR THE APPLICANT
Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT