

Federal Court



Cour fédérale

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<b>FROM / EXPÉDITEUR :</b> Taina Wong	<b>DATE :</b> July 8, 2013
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#### SUBJECT / OBJET :

Court File No. / N° du dossier de la Cour: IMM-5492-12

Between / entre: HUI LIU v.MCI

Enclosed is a true copy of the Order: // Vous trouverez ci-joint une copie conforme de l'ordonnance:

Justice Snider dated / daté du 8-JUL-2013.

#### COMMENTS / REMARQUES :

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Federal Court



Cour fédérale

**Date: 20130708**

**Docket: IMM-5492-12**

**Toronto, Ontario, July 8, 2013**

**PRESENT: The Honourable Madam Justice Snider**

**BETWEEN:**

**HUI LIU**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**ORDER**

**UPON** application for judicial review to review and set aside a decision of a case officer (the Officer), dated May 7, 2012, in which decision the Officer refused the Applicant's application for permanent residence as a foreign skilled worker with experience in National Occupational Classification (NOC) code 1221-B – Administrative Officer, on the basis that the Applicant had failed to meet the skilled work experience requirement;

**AND UPON** reading the written submissions and hearing the oral submissions of the parties;

**AND UPON** reviewing the Certified Tribunal Record;

**AND UPON** determining that this application should be allowed for the following reasons:

1. Delay in bringing application for judicial review

As the Applicant's application for permanent residence and the decision of the Officer are both matters arising in Canada, the Applicant was required to commence her application for judicial review within 15 days of the decision in question (s. 72(b) of the *Immigration and Refugee Protection Act (IRPA)*). In this case, the Notice of Application was filed with the Court on June 7, 2012, about 15 days late. The excuse provided by the Applicant is that she was given "somewhat confusing advice from her Immigration Consultant". While this is a weak argument, I am prepared to exercise my discretion to grant the extension of time.

2. Breach of Fairness

In assessing the Applicant's application, the Officer placed a telephone call to Ms. Yu, the employer who wrote the letter of recommendation submitted as part of the application. In the file notes, the Officer wrote that the employer confirmed that the Applicant "did not supervise administrative support staff as stated in application and reference letter". In this judicial review, the only argument made by the Applicant is that, by relying on this "extrinsic evidence", the Officer failed to comply with the rules of fairness; the Applicant should have been confronted

with this “evidence” and been provided with an opportunity to respond. On the facts of this case, I agree with the Applicant.

I agree with the Respondent that not every concern must be put to an Applicant; an officer is not required to provide a “running score” to the Applicant. However, in this case, the telephone call to the employer and subsequent reliance on the contents of that call appear to have formed key considerations for the rejection of the application.

*Hassani v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1283, [2007] 3 FCR 501 [Hassani], at para 24, suggests that a duty to inform the Applicant of concerns and provide the Applicant with an opportunity to respond may arise when the Applicant’s credibility is at issue.

In my view, the actions of the Officer indicate that he or she was concerned about the credibility of the Applicant’s application materials. The logical implication to be drawn from the file notes is that the Officer believed that the Applicant had misrepresented her position and job duties in her application and reference letter. The issue was the veracity of the Applicant’s documents; the application was not rejected because the Applicant failed to submit relevant documents or because the documents she submitted were ambiguous.

Hence, the Officer breached procedural fairness by failing to give the Applicant an opportunity to respond to concerns of credibility. This is a reviewable error, since the Applicant may have been able to clarify these concerns if they were fairly communicated. In her affidavit filed as part of the Applicant’s record, Ms. Yu affirms the duties stated in that reference letter

and states that, although she spoke to the Officer, she did not tell the Officer that the Applicant did not supervise staff. This affidavit raises the possibility that the outcome could have been different absent the breach of fairness.

I acknowledge that the Applicant did not present a strong case with respect to her duties in the position. It may well be that, upon a re-consideration, the Applicant's job duties will still be found to be inadequate to meet the requirements of NOC 1221-B. However, that is not a foregone conclusion. The application should be re-considered with the Applicant permitted to make additional submissions, if she chooses.

**THIS COURT ORDERS that:**

1. The application for judicial review is allowed, the decision of the Officer quashed and the matter remitted for re-determination by a different officer, with an opportunity provided to the Applicant to make further submissions if she chooses; and
2. No question of general importance is certified.

\_\_\_\_\_  
"Judith A. Snider"

Judge