Employer's refusal to release financial records leads to residency denial

Employer didn't have to provide extra financial information to visa officer but needed to if it wanted approval for foreign worker

| BY SERGIO KARAS |

AN EMPLOYER'S refusal to release financial information to a visa officer has led to the denial of a prospective employee's permanent residence application.

A Canadian private company, The Manco Group, obtained an Arranged Employment Opinion (AEO) for Guofei Xu, a Chinese citizen. Xu studied in Canada and received a diploma in Global Business Administration. In early 2007, Xu obtained a work permit and began working for Manco as an office co-ordinator in Toronto.

IMMIGRATION

After Xu's work permit expired in January 2008 and she returned to China, Manco offered her permanent employment and obtained an AEO from Service Canada for the position of office co-ordinator. Xu filed an application for permanent residency supported by the AEO as required by the Immigration and Refugee Protection Act.

In order to verify the job offer, a visa officer at the Canadian embassy in Beijing requested Xu to provide corroborating income tax information from the employer and photographs of its premises. Manco's president provided some of the documentation but pointed out that two of the requested forms were not applicable.

Not satisfied, the visa officer requested corporate tax returns and payroll information along with Manco's most recent business Notice of Assessment. Manco refused to provide the additional information and argued that, since it was a private corporation, it was not obligated to disclose it. The company also indicated that it had followed all the procedures for the AEO application and that the visa officer was requesting an excessive amount of information.

After reviewing the available documentation, the visa officer refused Xu's permanent residency application, indicating she was not satisfied that Manco had the ability and intent to pay the wages offered in the AEO. She relied upon the fact that the company refused to provide further documentation to corroborate the information on the ability to pay the salary. In addition, the visa officer determined that Xu had committed a material misrepresentation as prescribed by the Immigration and Refugee Protection Act and therefore was ineligible to file any further applications for two years.

Manco contacted the visa officer, highlighting some of the information previously sent, but still refusing to provide the corporate tax return and Notice of Assessment. The employer insisted that it was "not obliged" to do so. The visa officer was unimpressed and stuck to her original decision.

The Federal Court allowed the appeal in part, but confirmed the underlying finding that the failure to provide the requested corporate information was fatal. The fundamental problem, said the court, was that the employer's explanation of its information did not make a convincing case of its ability to employ Xu, particularly in light of its refusal to disclose the appropriate corporate tax documents. While the employer was correct in that it had no legal obligation to provide supporting payroll and tax evidence, the information was relevant and reasonable to determine the good faith of the job offer and the employer's ability to employ Xu. Without the corroborating evidence, the visa officer was entitled to refuse the application. In fact, the court said that the heart of the decision was in the visa officer's notes, which indicated the refusal to provide the corroborating documents was the main reason for the rejection.

However, the court noted that the visa officer erred in finding Xu had committed a material misrepresentation. There was nothing on the record to indicate Xu was complicit in the employer's decision not to provide the information requested and, therefore, the finding of misrepresentation was not supported by the evidence. This was a pyrrhic victory for Xu, as the underlying reason for the refusal was upheld and the permanent residency application was refused.

Employers should be cognizant of the fact that applications made to Service Canada supporting the prospective employment of an applicant for permanent residency may be subject to a request for corroborating evidence at the visa post. Visa officers are entitled to review the information provided by the employer and to make reasonable requests to update that information. A refusal to provide documentation may be fatal to the employee's application, and the employer may find itself without the services of a valuable employee. See *Xu v. Canada (Citizenship & Immigration)* 2011 FC 784 (F.C.).

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