

**IN THE HIGH COURT OF NEW ZEALAND  
AUCKLAND REGISTRY**

**CRI-2009-092-10550  
[2012] NZHC 1205**

**THE QUEEN**

v

**YAN YONG MING**

Hearing: 7-11, 16-18, 21 May 2012

Counsel: DG Johnstone and RMA McCoubrey for Crown  
DPH Jones QC, PF Wicks and D-M Cross for Accused

Verdicts: 24 May 2012

Reasons: 31 May 2012

---

**REASONS FOR VERDICTS OF BREWER J**

---

---

**SOLICITORS**

Meredith Connell (Auckland) for Crown  
Forest Harrison (Auckland) for Accused

**COUNSEL**

David PH Jones QC; Paul F Wicks

## Introduction

[1] I delivered my verdicts in this trial on 24 May 2012. I acquitted the accused on all counts and said I would give my reasons later. I now do so.

[2] The indictment filed against the accused contains five counts. The first four, in lay terms, allege that the accused dishonestly used documents for the purpose of obtaining access to New Zealand. The fifth count charges that he made a statement that he knew to be false in a material particular, for the purpose of procuring for himself a grant of New Zealand citizenship.

[3] The first four counts are laid under s 229A(b) of the Crimes Act 1961. For those counts, the Crown has to prove that the accused in each case:<sup>1</sup>

- (1) with intent to defraud;
- (2) used a document;
- (3) which was capable of being used to obtain a privilege or benefit;
- (4) for the purpose of obtaining a privilege or benefit.

[4] For count 1, the document in question is Exhibit 5, an application for visiting New Zealand (date stamped 7 January 2002 by the New Zealand Immigration Service).

[5] For count 2, the document is Exhibit 6, an application for residence in New Zealand under business categories (date stamped 9 January 2002 by the Business Migration Branch of the New Zealand Immigration Service).

[6] For count 3, the documents relied on by the Crown are Exhibits 7 and 8, being medical and x-ray certificates completed on or between 19 December 2001 and 21 December 2001.

---

<sup>1</sup> *R v Hayes* [2008] 2 NZLR 321 (SC) at [23].

[7] For count 4, the document in question is an application for visiting New Zealand (date stamped 30 January 2002 by the New Zealand Immigration Service) produced as Exhibit 9.

[8] Count 5 is laid under s 27(1) of the Citizenship Act 1977. The relevant document is Exhibit 15, being an application for New Zealand citizenship declared at Auckland on 9 May 2005. The elements of count 5 are that the accused, in the application for citizenship, made a statement that he knew to be false in a material particular, for the purpose of procuring for himself a grant of New Zealand citizenship.

### **Judge alone trial**

[9] I have heard the evidence in this case without a jury. It is for me to make the findings of fact which would otherwise be made by a jury and to deliver my verdicts accordingly. In *R v Connell*, the Court of Appeal stated that a Judge hearing a criminal trial without a jury is required to deliver:<sup>2</sup>

... a statement of the ingredients of each charge and any other particularly relevant rules of law or practice; a concise account of the facts; and a plain statement of the Judge's essential reasons for finding as he does. There should be enough to show that he has considered the main issues raised at the trial and to make clear in simple terms why he finds that the prosecution has proved or failed to prove the necessary ingredients beyond reasonable doubt. When the credibility of witnesses is involved and key evidence is definitely accepted or definitely rejected, it will almost always be advisable to say so explicitly.

### **General background**

[10] At the relevant times, the accused was a Chinese national. He had two Chinese passports. The first, expiring on 2 November 2004, was in the name Yan Yong Ming. It gave his date of birth as 15 June 1969. The second, expiring on 23 December 2004, was in the name Liu Yang. The date of birth recorded in the passport was 20 October 1972.

---

<sup>2</sup> *R v Connell* [1985] 2 NZLR 233 (CA) at 237-238.

[11] On 29 November 2001, using his passport in the name of Liu Yang, the accused applied for a New Zealand visitor's visa for business purposes. On 8 December 2001, as Mr Liu, the accused arrived in New Zealand for the first time and received a visitor's permit. On 19 December 2001, he went to see a doctor to obtain immigration medical certificates (Exhibits 7 and 8, count 3).

[12] On 7 January 2002, the accused, as Mr Liu, applied for a New Zealand visitor's permit for business purposes (Exhibit 5, count 1). This form contained questions which should have led to Mr Liu disclosing that he also used the identity Yan Yong Ming. Another question relating to his marital status was answered "never married", when he was by that stage married under the name Liu and had been since 24 November 2001.

[13] On 9 January 2002, still in the name Liu Yang, the accused applied for New Zealand permanent residence (Exhibit 6, count 2). Again, questions which should have elicited the existence of the Yan identity and of his status as being married were not answered accurately.

[14] On 30 January 2002, another application for a New Zealand visitor's permit in the name of Liu Yang was completed (Exhibit 9, count 4). Again, questions that should have elicited the Yan identity and his actual marital status were not answered correctly.

[15] After a series of travels between New Zealand, Australia and the United States, the accused applied on 9 May 2005 for New Zealand citizenship (Exhibit 15, count 5). In this application his marital status was correctly disclosed but the identity of Mr Yan was not. Further, the only passports disclosed were those in the name of Liu Yang and there was a denial of involvement in legal action or investigation.

[16] Preceding his arrival in New Zealand, the accused had used his passport in the name of Yan Yong Ming to travel between China, Australia and the United States. He had obtained various Australian visas and US visas in that name.

[17] On 9 April 2001, the accused applied for an Australian business visitor visa in the name Liu Yang using his passport in that name for that purpose. Although the accused never again used the Yan passport to enter Australia, he did, on 9 August 2001, apply for an Australian business visitor visa using the Yan passport, which was granted on 21 August 2001.

### **The Crown's case – overview**

[18] The Crown's case, in overview, is that the accused had two identities but chose to reveal only one in applying for access to New Zealand. In doing so, he acted dishonestly (counts 1 to 4) and deliberately made false statements (count 5).

[19] The Crown seeks support for this contention by pointing to the evidence of Mr Gambo, a Department of Internal Affairs officer, to the effect that in 2008 the accused told him that the reason why he had Australian visas in both his Liu and Yan passports was so that the Australian authorities would not realise that he had been in Australia earlier.

[20] The Crown invites me to draw inferences adverse to the accused from the record of his dealings with the Australian immigration system.

### **The Defence case – overview**

[21] The Defence relies on evidence (undisputed) that under the Chinese household registration system it is perfectly possible to have two distinct identities and that both passports were genuine. The Defence points to the accused's out of Court explanation that he did not prepare any of the documents founding the charges against him. There is uncontested evidence from a handwriting expert (Linda Morrell) supporting the Defence contention that the accused did not fill out or sign the documents founding counts 1 and 2 and that he did not fill out the documents founding counts 3 and 4.<sup>3</sup>

---

<sup>3</sup> It is accepted that the accused signed the medical certificates founding count 3 and Ms Morrell could not offer an opinion as to whether he signed the count 4 document.

[22] The Defence also points to the evidence of the Defence witness, Mr Phillips (Te Pou), to the effect that the accused did not fill out the application for citizenship nor directly provide any of the information in it (count 5). Although the accused did affirm the contents of the application, it was in circumstances that do not prove that he read them.

[23] The Defence submits that there is insufficient evidence on any of the charges to constitute proof beyond reasonable doubt.

### **Legal considerations**

[24] There are some fundamental factors which as the Judge in this trial I must bear in mind. I state them for the record.

#### *(a) Onus and standard of proof*

[25] The starting point is the presumption of innocence. The onus of proof for each of the essential elements of each count is on the Crown. The Crown, for each count, can only discharge that onus if it does so beyond reasonable doubt. The Crown must prove each essential element of a count beyond reasonable doubt before I may bring in a verdict of guilty on that count.

[26] Proof beyond reasonable doubt is a very high standard of proof, which the Crown will have met only if I am sure that the accused is guilty. It is not enough for the Crown to persuade me that the accused is probably guilty or even that it is very likely that he is guilty. A reasonable doubt is an honest and reasonable uncertainty left in my mind about the guilt of the accused after I have given careful and impartial consideration to all of the evidence.

#### *(b) Prejudice/sympathy*

[27] I must reach my decision uninfluenced by prejudice against or sympathy for the accused or anyone associated with this case. This case has attracted a certain

amount of media interest. It has concentrated on the political support which it is alleged the accused received and which was, it is said, instrumental in him eventually obtaining New Zealand citizenship under the name of Mr Yan. That has nothing whatsoever to do with the decisions which I must reach and I put it entirely to one side. The process I have to go through is a cold, logical one. There is no room for emotion of any sort.

(c) *What constitutes evidence*

[28] I have to decide this case on the evidence. The evidence is the testimony of the witnesses I heard in this Court plus the exhibits, the agreed synopsis of the Defence expert's evidence relating to the Chinese Hukou (household registration) system,<sup>4</sup> and the report of Linda Morrell dated 17 November 2010. I have to put aside any other knowledge I have of this case. This is particularly important because, as a Judge who dealt with pre-trial issues, I am aware that originally the Crown intended to call significant evidence of the accused's activities in China prior to him coming to New Zealand. However, that evidence proved unavailable to the Crown and as a result the accused was discharged on a number of the charges brought against him originally. All of that I put to one side. I have to decide the charges in this case only on the admissible evidence.

(d) *Inferences*

[29] In this case the drawing of inferences is very important. The Crown, for example, submits that I should draw inferences as to the accused's state of mind from his history of dealings with the Australian immigration system. The Defence submits that no adverse inferences can be drawn legitimately from that history. On the other hand, the Defence submits that I should draw inferences favourable to the accused from the evidence of the operation of the Hukou system.

---

<sup>4</sup> The Defence expert was Fei-Ling Wang. I was given a copy of his brief of evidence for the purpose of a pre-trial application. However, counsel agreed on a synopsis being provided and that is what I have had regard to.

[30] An inference is a conclusion drawn from facts that I accept as reliably established. It is not a guess. It is not speculation. If more than one inference is available then I must take the one most favourable to the accused.

## **Analysis**

[31] On counts 1, 2, 3 and 4, I have no doubt that in each case the document or documents in question were used by the accused, were capable of being used to obtain a privilege or benefit, and that the accused used the document or documents for the purpose of obtaining a privilege or benefit. Access to New Zealand (as I will call it broadly) by a foreign national is a privilege or benefit. The documents in question related directly to obtaining such a privilege or benefit and were used by the accused for that purpose. This is not disputed.

[32] The key point is whether the Crown has proved that in each case the use of the document or documents was with the intent to defraud. That can be put in the context of this case as follows: Has the Crown proved that the accused in using the documents deliberately concealed his alternative identity as Mr Yan, knowing that he was acting in breach of his legal obligation to disclose it? In other words, did he dishonestly attempt to conceal his alternative identity?

## **Count 1**

[33] The “Application for Visiting New Zealand” seeks at A3 “other names you are known by”. In the box provided for the answer there is drawn a diagonal line. I take that line to be intended to assert that there are no other names by which the accused (as Liu Yang) is known.

[34] There is a signature in Chinese script in the box on the last page of the form designated “signature of principal applicant”.

[35] At C4 there is a signature in the box allocated for “Full name of interpreter, agent or authorised representative” and a stamp obscuring the latter part of the line



beginning, “Another person has either completed ...”. The stamp reads “New Zealand Immigration & Investment Consultancy Limited”. Another stamp has the company’s address.

[36] On its face, the document is false. It asserts that the accused, as Liu Yang, is not known by other names. (It is also false in that it asserts that the accused’s marital status is “Never married”, but that is a matter subsumed by the wider inquiry).

[37] The issue is whether the Crown has proved beyond reasonable doubt that the accused is so closely associated with the document that the false assertion(s) are deliberately and dishonestly his.

## **Count 2**

[38] The “Application for Residence in New Zealand ...” seeks, also at A3, “other names you are known by”. As with the document in count 1, there is a diagonal line drawn in the box provided for the answer. I take that line to be intended to assert that there are no other names by which the accused (as Liu Yang) is known.

[39] As with count 1, there is, at A8, an assertion that the accused’s marital status is “Never married”.

[40] There is a signature in Chinese script in the box provided for “Signature of principal applicant”.

[41] Section F (“Declaration for Person assisting the Applicant to complete this form”) is:

To be completed and signed by any person who has assisted the applicant to complete this form by explaining, translating or filling in the form for the applicant.

In the box for “Full name of person assisting” is the handwritten name “Vienna W You”. There are also the same stamps as appear in the count 1 document giving the name “New Zealand Immigration & Investment Consultancy Limited”.

[42] Beneath the stamps the form calls for the following certificate:

I certify that I have assisted in the completion of this form and any additional forms at the request of the applicant **and** that the applicant understood the content of the form(s) and the answers given and approved them before signing the declaration.

[43] In the box for the “Signature of person assisting representative” is a signature which appears to read “V You”.

[44] It is uncontested that Ms You later became the accused’s partner and that the two live together and have children. Ms You did not give evidence.

[45] On its face, the document is false. It asserts that the accused, as Liu Yang, is not known by other names (as with count 1, there is also a false assertion about the accused’s marital status).

[46] The issue is whether the Crown has proved beyond reasonable doubt that the accused is so closely associated with the document that the false assertion(s) are deliberately and dishonestly his.

### **Count 3**

[47] The document in question is headed “Medical and X-Ray Certificate Form”. It is in two parts. The first is headed “Medical Certificate for New Zealand”. Section A, “Personal Details”, commences at A1 with the direction: “My surname or family name as shown in my passport is:”. The name “Liu” is printed in the box provided for the purpose.

[48] The next piece of information sought is: “My first or given names as shown in my passport are:”. In the box provided for that purpose, the name “Yang” is printed.

[49] At A10, the marital status box, “Never Married” has been ticked.

[50] There is no question regarding previous identities.

[51] There is a signature in Chinese script in section C in the box provided for the signature of the applicant.

[52] The physician who carried out the medical examination, Dr Peter Morton, gave evidence. It is clear from his evidence that the accused attended upon him for examination in terms of the certificate. The doctor did not fill out the personal details in section A of the certificate. The doctor's task was to complete the rest of the form, partly from his examinations and partly from information provided by the accused. This included the information at B19 of the form which is for details of the applicant's immediate family. I accept that the signature in section C is that of the accused and was put on the form shortly before Dr Morton completed section D (medical examiner declaration).

[53] The second part of the form is the x-ray certificate. The radiographer who certified the accused's identity was called to give evidence. I am satisfied from Ms Begley's evidence that the accused was the person who attended for the x-ray procedure and that he signed (in Chinese script) the section E declaration and consent.

[54] The form does not contain any questions about identity or previous names.

[55] This document is not false on its face, unlike the documents pertaining to counts 1 and 2. It is false only if the name "Liu Yang" is false and/or the family details given at B19 are false.

[56] The issue for this document is somewhat wider, therefore, than for the documents pertinent to counts 1 and 2. It can be stated as whether the Crown has proved beyond reasonable doubt that in causing the medical and x-ray certificates form to be completed in the name of Liu Yang, the accused did so with the dishonest intention of using it to obtain a benefit or privilege, namely access to New Zealand.

#### **Count 4**

[57] The document pertaining to this count is headed “Application for Visiting New Zealand”. It is the same form of application which founds count 1. The box at A3 (“Other names you are known by”) has a diagonal line in it and the marital status box at A11 has a diagonal line in the box “Never married”. A signature in Chinese script appears in the box at C3 for “Signature of principal applicant”. At C4, beneath “Another person has either completed this form for me, or has helped me to complete it. Their details are: Full name of interpreter, agent or authorised representative”, is handwritten “New Zealand Immigration & Investment Consultancy Ltd”. There is a signature in the box for “Signature of interpreter, agent or authorised representative”.

[58] This document is false on its face for the same reasons as the document pertaining to count 1 is false on its face. The issue is the same. It is whether the Crown has proved beyond reasonable doubt that the accused is so closely associated with this document that the falsity, being deliberate and dishonest, can be attributed to him.

#### **Count 5**

[59] The document in question is headed “Application for New Zealand Citizenship”. The applicant’s name is given as “Yang Liu”. In the first part of the form, space is given to respond to: “Other Names (e.g. birth name, unmarried name, name change, alias, English names if used etc)”. That space has been marked “N/A”. I take this to be an assertion that there are no other names by which the accused, as Liu Yang, is known.

[60] On the front page of the application is information that the applicant has an agent and that the agent’s name is Shane Te Pou.

[61] In the section of the application headed “Residence”, there is this request: “Please list all passports/travel documents you hold (include expired documents)”. Two passports are listed, with one parenthesised as “Expired”. Those passports are, from the evidence, in the name of Liu Yang.

[62] In the part of the application headed “Character” is the question: “Are you, or have you been involved in any legal action or investigation?” The space for “No” has been ticked.

[63] Most pages of the application appear to have been signed “Liu” and initialled by the solicitor, Benjamin James Barker, who took the accused’s declaration that the facts in it are correct. I say this because the evidence is uncontested that the accused personally signed the application in the presence of Mr Barker. Mr Barker has since died.

[64] The document is false in material particulars. It asserts that, as Mr Liu Yang, the accused has no other names. It does not list passports he has in the name of Yan Yong Ming and it denies that he has involvement in any legal action or investigation (the evidence is uncontested that by the time the application came to be attested, the Australian immigration authorities were investigating his accessing Australia).

[65] However, despite the uncontested evidence that the accused signed this document and affirmed that its contents were correct, the issue remains whether the Crown has proved beyond reasonable doubt that he is sufficiently associated with its contents as to make the false assertions in it his own, knowing that they were false.

### **The Crown’s submissions**

[66] The Crown submits:

[a] The accused knew that he had two passports. He knew he was travelling on two passports. He knew that each passport referred to him by a different name and date of birth. That is inherently dishonest.

- [b] The accused's dealings with both the Australian and New Zealand immigration authorities show an escalation in the benefits or privileges sought. The first permission sought is to visit, then intermediate rights are sought and, finally, citizenship. The accused was aware of this and his statement that others took these actions for him cannot isolate him from them.
- [c] The overlapping travel between China, Australia, the United States of America and New Zealand could not have been planned and executed without his active involvement. The fact that two passports were involved means that the accused was aware that applications were being made in both names. The fact that at one point he had current Australian visas in both passports is cogent.
- [d] It is true that the accused used immigration agents. But they got their information from him. It is an available inference that when he made known to them the nature of the status he wanted, they would have told him of the prerequisites, including the need to disclose other identities.
- [e] Mr Gambo's evidence should be accepted as reliable and credible. The admission to him by the accused that he had visas in each passport because he did not want Australian immigration to know that he had been there before is telling. It shows an intent to deceive which can be used to refute the accused's claim to ignorance of the deceptive parts of the New Zealand documents.
- [f] There is no inference of honest intent which can be drawn from the accused, as an adult in his 30s, obtaining two passports in close proximity in time, using the same photograph, but with each having a different name and date of birth.
- [g] The accused in his out of Court statement says that Mr Wang made many of the travel and other applications on his behalf and without

him knowing the contents. However, the very closeness of their association allows the drawing of an inference that Mr Wang kept separate the Yan and Liu identities because he knew that that is what the accused wanted.

- [h] The Crown does not have to establish a motive for the accused concealing the Yan identity when seeking the benefit or privilege of access to New Zealand. It is the fact of the concealment coupled with the knowledge of its dishonesty which the Crown has to prove.

### **The Defence's submissions**

[67] The Defence submits:

- [a] It is uncontested that the accused has two legitimate identities – one as Yan (his birth name) and one as Liu (the name given by his foster parents). He is registered under the Hukou system in both names and with different dates of birth. He is entitled to two passports. Each is genuine and legitimate.
- [b] The accused's out of Court statement that as a very wealthy Chinese businessman he had others who made all travel and immigration arrangements for him has not been gainsaid. Indeed, the uncontested evidence is that he did not fill out the documents at the heart of the five counts. He did not even sign two of them (counts 1 and 2) and there is no evidence that he signed a third (count 4).
- [c] A man who has two genuine and valid passports may use them as he sees fit. He may travel on one or the other. No dishonesty is inherent in that.
- [d] The Australian forms do not ask for other names. They ask for passport details.

- [e] Evidence of the accused's visit to a casino in Australia indicates that he used both passports to identify himself as one and the same person. That tends to rebut the Crown's contention that he strove to keep the identities separate.
- [f] From 2001 the accused used only the Liu Yang passport. He decided to use that legitimate identity, and that is the identity in which he sought his benefits or privileges in respect of access to New Zealand.
- [g] Mr Gambo is neither reliable nor credible.
- [h] So far as count 5 is concerned, Mr Te Pou's evidence is sufficient to, at least, inject a reasonable doubt as to knowledge of falsity. The accused had not seen the form until it was handed to him at the base of the Metropolis building. He was absent only 10 minutes before returning with it, having in that period gone to a lawyer's office nearby to declare it correct.

## **Decision**

[68] I start with the fact that the accused has two identities. On the evidence, both are legitimate. The passports issued in respect of each identity are genuine and valid. For a period, the accused travelled on the Yan passport. From May 2001 he travelled on the Liu passport.

[69] I do not draw any adverse inference against the accused from the above matters. It would be very different if the identities and/or the passports were not legitimate.

[70] It follows then that I must consider the circumstances in which each of the documents founding the counts came to be proffered to the New Zealand authorities.

[71] I find that there is a reasonable possibility that the account given by the accused in his affirmation of 6 July 2007 (Exhibit 14A) is correct. As a wealthy



Chinese businessman, he had others to take care of his travel and immigration administration. I agree with the Crown's submission that the accused must have known that applications to New Zealand authorities were being made in his name and that they must have been made because he wanted them made. But that is not the same thing as knowing their detail.

[72] My finding on this matter is based partly on the evidence of the handwriting expert. Her uncontested evidence means that I must take it that the count 1 document (Exhibit 5) was neither filled out nor signed by the accused. It was done by someone acting as his agent. There is no evidence to displace the reasonable possibility that it was Mr Wang who gave instructions to the agent as to how it was to be completed. The handwriting expert's evidence tends to corroborate the accused's explanation as to how immigration matters were handled on his behalf.

[73] The same can be said for count 2, based on Exhibit 6.

[74] Count 3 is based on the medical certificates. The evidence is that the accused did not fill out the personal details section. In any event, the form seeks details "as shown in my passport". There is no question about other identities. Proof of guilt on this count would have to come from proof of the proposition that the Liu identity was being used dishonestly by the accused for the purpose of gaining access to New Zealand. I discuss later why that proposition is not proved beyond reasonable doubt.

[75] The document relevant to count 4 is in the same form as the count 2 document. It was not (according to the handwriting expert) filled in by the accused. She has no opinion on the signature, but given the evidence as to count 2 there must be a reasonable possibility that he did not sign it either. There is no evidence to rebut the accused's explanation that he never saw the document until shown it years later by the authorities.

[76] There is direct evidence as to how the citizenship application founding count 5 was completed. But it comes only from the Defence witness, Mr Phillips

(Te Pou). As an outcome of his evidence, I accept there is a reasonable possibility that the accused was unaware of the contents of the document.

[77] It follows that there is insufficient evidence that the accused was so closely associated with completing the documents upon which the counts in the indictment rely that their contents can be ascribed to him.

[78] However, the accused certainly knew that the documents were being put forward in the name of Liu Yang. If the evidence proves that the use of this name was dishonest – that the accused deliberately used that name to apply for benefits or privileges he knew he might not otherwise be able to obtain – then he will be guilty of the counts.

[79] The Crown submits that the evidence of the accused’s dealings with the Australian authorities and the evidence of Mr Gambo provide that proof.

[80] The Australian evidence proves that the accused gained access to Australia first in the name of Yan and then in the name of Liu. At one stage he had valid Australian visas in each of his passports. The problem for the Crown is that in order to infer dishonesty from that, I would need firm evidence of a dishonest motive, given that the evidence is that the passports were legitimate and genuine. Leaving aside at this point the evidence of Mr Gambo as to an admission by the accused, I can find no admissible evidence of dishonest intent.

[81] I say “admissible evidence” advisedly. In Exhibit 14 (a record of an interview of the accused on 8 September 2005 by an immigration officer) there is this exchange:

Q. We have information which confirms that an arrest warrant in your name has been issued by the authorities in Jilin Province, China on 17 June 2005 for a misappropriation of funds crime committed in December 2000. Would you like to comment on this?

A. I am not aware of this. I am aware that the Chinese govt have issues with me.

[82] The assertions in the question were not accepted by the accused and no evidence was called to substantiate them. I cannot use them as evidence against the accused.

[83] Likewise, Mr Gambo's evidence remarking that he was aware of an arrest warrant outstanding<sup>5</sup> and that "Interpol was looking for him"<sup>6</sup> cannot be used as evidence of dishonest intention. The evidence is relevant only to Mr Gambo's state of mind. There was no evidence to substantiate the matters to which he refers.

[84] I now turn to Mr Gambo's evidence of what I will call the admission. Mr Gambo told the Court that he had a meeting with the accused on 23 May 2008. The purpose of the meeting was to have the accused sign for a second time an application for New Zealand citizenship first signed on 18 March 2008.<sup>7</sup> The point was that at the date of first signing, the accused had not met the residence requirement and so the application could not succeed. By 23 May 2008 the residence requirement had been met, so by re-signing the application it could be sent to Wellington for consideration by the Minister of Internal Affairs.

[85] Mr Gambo's first account of the admission is as follows:<sup>8</sup>

A. You see the signature on this right-hand side, and on the left-hand side is the also "Passport seen Australian Embassy, Beijing." Okay, because the two passports are valid and that (inaudible 11:58:48) to just, because it was a kind of conversation where he was sitting there, I said, "You know, it made no sense to me why you would get Australian visa on this passport"

Q. That's exhibit 20?

A. The first one, yeah, or whichever one that come first. Then subsequently apply for another visa, why not use the, the other passport, the first passport, because normally when you go to a country, that is, it gives you credibility when you have to go again, because there no doubt you are not likely to be an overstayer? So he told me, he said, "I don't want them to know that I've been there." That's how, that's how he said it to me.

Q. Don't want who to know, did he say?

---

<sup>5</sup> Notes of evidence, p 172, lines 27-32.

<sup>6</sup> Ibid, p 173, lines 16-18.

<sup>7</sup> Exhibit 17.

<sup>8</sup> Notes of evidence, pp 163-164.

A. I said, "Who?" I said, "You mean Australian Immigration?" He said, "Yeah." So, and I was quite surprised because then I thought, okay I need to find out more information because from experience –

[86] His second account is as follows:<sup>9</sup>

Q. Can you tell us slowly and carefully what Mr Liu said to you in response?

A. He said, "I don't want them to know I have been there before."

Q. And did you ask him to clarify what he meant when he said "them"?

A. Yes, I said, "Do you mean the Immigration?" He said, "Yes Australia."

Q. From that point did you respond?

A. Yes I did.

Q. What did you say?

A. Well I said to him that obviously from what I'd said earlier in terms of the credibility issue, I said to him "What do you think because in my experience it is most unlikely that the Minister will approve the application given there are a lot of issues?" And also that there was an explanation from one of the expert, it made no sense because the main issue, which is that he was able to obtain the two passports knowing about all the identity issues and that's when he mentioned, I said – he said to me "I'm confident it will be okay, I've got a lot of support from the MPs."

[87] The Crown invites me to accept that the accused made the admission in the words and in the context Mr Gambo described. If I do, then the Crown's submission is that I can infer that in getting an Australian visa for each passport there was a dishonest intent by the accused to deceive the Australian immigration authorities. From that I should infer that the accused's use of the Liu Yang identity in seeking access to New Zealand was also dishonest.

[88] I find that that would be speculative. Assuming that the admission was made, the evidence is that the accused never used the Australian visa in the Yan passport. He used the Liu passport, and only the Liu passport thereafter. There is no evidence as to why he might not wish the Australian authorities to know that he had

---

<sup>9</sup> Ibid, pp 164-165.

been to Australia before. There is no evidence as to why such a wish might make his approaches to New Zealand authorities dishonest.

[89] In any event, I am not sure that the admission was made in the words and context reported by Mr Gambo. My impression of Mr Gambo is that he is a dedicated and competent public servant. He is a strong guardian of the immigration processes. He certainly did not like the way, as he saw it, those processes were being overridden in the accused's case. I emphasise that I found him credible. I am not sure of the reliability of his account, however. In particular, the differences between the evidence of interviewers as to what Mr Gambo told them and what Mr Gambo accepts he told them bears on Mr Gambo's recall and his (no doubt unconscious) tendency to recast interviews to a form more acceptable to him.

[90] My conclusions in relation to the admission are:

[a] If it was made, it would not found the inferences I would have to draw to find proved the necessary dishonest intent in relation to the use of the Liu Yang identity in New Zealand; and

[b] I am left in a state of reasonable doubt as to whether the admission has been reported reliably.

[91] I step back now and look at the evidence as a whole. Overall, it proves a situation that is highly suspicious. An adult male obtains two passports in different names and with different dates of birth. He uses them both to access Australia and the United States of America. He uses one of them to access New Zealand. He does not disclose his dual identities. New Zealand immigration documents are filled in and in some cases signed on his behalf. Four of the five are false in that they assert that there is no other identity. Regardless of the validity of the passports, this proven situation is highly suspicious. But to move from highly suspicious to proof beyond reasonable doubt of dishonest intention, more is required. In the absence of firm evidence that the accused knew of the falsity of the documents there would need to be proof of dishonest intention in using the Liu Yang identity. Such proof, of

course, would have to come from admissible evidence. The Crown has not been able to put such evidence before me.

[92] It is on this basis that I acquitted the accused on all counts in the indictment.

---

Brewer J