

**Decision No. 60B [2015] 3026**

**IN THE MATTER**

of the Sale and Supply of Alcohol Act 2012.

**AND**

**IN THE MATTER**

of application under s. 99 of the Sale and Supply of Alcohol Act 2012 by **S R Jiang Limited** in respect of premises at **119 Riccarton Road**, Christchurch, known as **More Pool** and an application under s. 219 of the Act in relation to a Manager's Certificate by **Xu Jiang**.

**RESERVED DECISION OF THE CHRISTCHURCH DISTRICT LICENSING COMMITTEE**

Chairperson: **Mr P R Rogers**

Members: **Messrs A Lawn and P Buttell**

**HEARING**

at Christchurch on the 24 November 2015.

**PRESENT:**

**Ms J Davison** - Licensing Inspector  
**Sergeant J Harris** - NZ Police  
**Ms P Williams** - Canterbury District Health Board  
**Ms X Jiang** - Applicant  
**Mr B Chow** - Advisor to applicant  
**Mr D Passingham** – Immigration Officer  
**Sergeant J Groen** - Police Officer  
**Ms J Anderson** - Committee Adviser

## **INTRODUCTION**

[1] This matter concerns an application by S R Jiang Limited for an On-licence under s. 99 of the Sale and Supply of Alcohol Act 2012 in respect to premises at 119 Riccarton Road, Christchurch to be known as “More Pool” and an application by Xu Jiang for a Manager’s Certificate pursuant to s. 219 of the Act.

[2] The applicant company is owned by Xu Jiang as the sole director and shareholder. The company intends to open premises at the address to operate as a café/bar, restaurant and pool hall. Although the application for an On-licence is in the company name and the application for a Manager’s Certificate is in Ms Jiang’s name both will be referred to as the applicant.

[3] The application had been opposed by the NZ Police, the Inspector and the Medical Officer of Health, to be known as the Agencies. There were no public objections to the application. The main reasons for the opposition were concerns from the Police over the suitability of the owner of the business Ms Jiang. The Agencies also believed that Ms Jiang did not have sufficient experience to manage what they described as a high risk premise.

[4] Due to the two issues being germane both to the application for an On-licence and the application for a Manager’s Certificate the Committee decided to hear these two matters at the same hearing.

[5] It was explained to the applicant that she would normally give her evidence first and then be cross-examined, however asked if she wanted to give her evidence first or respond to questions from the Agencies, she chose to respond to questions from the Agencies.

## **THE HEARING**

### **Evidence from the Agencies**

[6] The Hearing opened with a witness from Immigration New Zealand (INZ) giving evidence of dealings he had had with the applicant at premises run as a brothel in Auckland known as “Emily’s 8” at which Xu Jiang the applicant had been a manager. He said the premises had been visited three times by INZ between August and November 2011 and the applicant had been present. He identified the applicant Xu Jiang as that person.

[7] Evidence was given that a number of females had been found at the address working illegally in breach of their visas. One of the females gave a statement to INZ of being told by the applicant where to hide in a false wall cavity within the premises if the Police or Immigration should come to the premises. At one of these visits the applicant had been asked who was working at the premises. She informed the officers there was only one girl when in fact four other girls were found on the premises, all Hong Kong nationals. These persons were dressed in lingerie and were in New Zealand on temporary visas, therefore not entitled to work in the sex industry. While the applicant was never charged with the offence

of aiding and abetting a person in breach of their visa he did agree that there was a prima facie case against the applicant.

[8] The second witness for the Agencies was a police sergeant who had attended an address in Christchurch in September 2013 as the result of a complaint of assault which occurred at the address. The Sergeant gave evidence of speaking to a female and asking her name and address. The female gave her name as Grace Wong with a date of birth of 12 November 1984. She advised she was visiting from Auckland. The Sergeant made several attempts to locate this person in the Police National Intelligence Application without success. He then enquired whether this female had a driver's licence, but still could not find her in the system. It was only when told that she should be in the system if she had a driver's licence that the female remembered the driver's licence was in the name of Xu Jiang. He identified the applicant as the person spoken to, Xu Jiang.

### **Evidence from the applicant**

[9] The applicant Xu Jiang then gave her evidence in response to questions. She said she was a pool player and when she came to Christchurch she wanted to open a Pool Hall as there was no venue after the earthquakes. When questioned she said her lack of experience in the hospitality sector was because she had been on a student visa and after she qualified she worked in an area related to her studies. She admitted her only experience was 13 months working in a licensed café.

[10] The applicant said she had cancelled her brothel operator's certificate and never operated a brothel in Christchurch. She claimed her only association with the premise in Christchurch where she had been spoken to by the police was that she knew the owner from working in the brothel in Auckland. She denied managing the premises and said she was just house-sitting.

[11] She said she gave the name Grace Wong as that was the person whom she was looking after the house for and the owner had left her the mobile phone.

[12] Concerning the managing of the premises the applicant said that Bernie Chow, who has held a Manager's Certificate for some time, is more experienced and could direct staff. The Committee noted that while Mr Chow was present and was assisting the applicant he declined to give evidence.

[13] The applicant was questioned over the application and accompanying documents and seemed to have little knowledge of the contents of the Alcohol Management Plan she had submitted and it was put to her it had been downloaded from the Council's website almost without change. She was questioned over the signs of intoxication and while she knew the basics she did not have the level of knowledge expected to run premises of this type and size.

[14] When questioned about her lack of cooperation with the authorities in the past she said she was sorry about that and she was older now.

[15] Questions were put to the applicant as to the number of diners who could be catered for and she said 40 down stairs and 40 upstairs. Later in her evidence when the plan of the

premises was examined it was put to her that she would not get 40 persons seated for dining downstairs never mind upstairs which is a smaller area.

[16] It was put to the witness that she was fronting the application for someone else and she denied this. It was put to her that she was not conversant with the application and she said it was definitely her application. It was put to her that she was in fact Grace Wong and that she had lied to the Committee and she denied this.

**Verbal submissions** on behalf of the three Agencies was presented by the Alcohol Licensing Inspector:

[17] The Inspector said after a day's hearing the evidence produced had been contradictory and the Agencies had been left with the impression the applicant was telling them what she thought the Agencies wanted to hear. As far as her experience goes in the hospitality industry she had worked in a small licensed restaurant for 13 months with no evidence of management experience.

[18] The applicant was given eight working days to present written submissions.

**The Hearing was then adjourned for written submissions from the applicant.**

**Written submissions from the applicant.**

[19] Ms Jiang supplied a letter to the Committee saying she admitted she had made mistakes in the past but that she should be given another chance.

[20] In Mr Chow's submission, he agreed that the applicant had no late night venue experience and that he had been engaged, having 11 years general manager's certificate experience to give advice/guidance. In relation to Ms Jiang's suitability he covered the points that had been brought out in evidence by the Agencies submitting that these were denied by the applicant or there was an innocent explanation such as thinking the police officer wanted the name of the owner of the house when they visited as a result of a complaint of assault.

## **DECISION**

[21] The applicant in this matter S R Jiang Limited has applied for an On-licence, the company being owned by Ms Xu Jiang. Ms Jiang has also applied for a Manager's Certificate. Both applications having been opposed by the Agencies, (there were no public objections) it was considered expedient to hear these two matters together and the applicant agreed to this approach.

[22] The opposition related to her suitability under s. 105(1)(b) of the Act in relation to the On-licence and her suitability to hold a Manager's Certificate under s. 222(a) of the Act. The Committee found that these two issues were so interwoven that this decision will cover both issues.

[23] While English is not the applicant's first language, the Committee did not consider at any time that she had an inability to either understand or express herself in English. It is noted that she also had her advisor present, Mr Chow, who the Committee understands speaks the same language and not once did he have to assist the applicant to understand what was being said.

[24] The applicant was questioned at length on her past history concerning her involvement with brothels in Auckland and Christchurch. While the holder of a brothel owners licence in relation to the Auckland brothel she down played her involvement. When asked by the police was she the manager or the receptionist she said that she was the receptionist, but admitted that she answered the phones, let the customers in, used the intercom to call the galls, communicated with the girls, phoned them to come into work.

[25] Likewise when spoken to by the police in 2013 at a Christchurch address operating as a brothel, she stated she was merely "housesitting".

[26] While she was in Auckland in August and November of 2011 she was managing a brothel where illegal workers were located in breach of their visas. One of these women gave a statement to police that she was told by Ms Jiang where to hide in a secret compartment should the police or immigration visit the premises. While she was never charged, evidence was given that there was a prima facie case against the applicant of aiding and abetting a person to work in breach of their visa.

[27] When questioned by Immigration Officers she lied about how many girls were present on the premises claiming there was only one when in fact there were an additional four Hong Kong nationals located, working in breach of their temporary visas.

[28] Evidence was also given and the Committee recognised her right to do so, that Ms Jiang refused to give the pin number of her mobile phone to the immigration officers as they wished to see what numbers she had been contacting to show her level of involvement in the management of the brothel. To the Committee, this indicated a lack of cooperation with the authorities in general, raising the risk of this occurring in the future in her dealing with the Agencies.

[29] At the address in Christchurch when spoken to by the police she gave the name Grace Wong but the police could find no matches for this person in their intelligence database. Both the Agencies and the Committee put it to her that she was in fact Grace Wong but she continued to deny this. Despite the police sergeant giving evidence of writing in his note book the name Grace Wong and beneath it the same date of birth as the applicant. In her response to questions she failed to convince the Committee of her veracity and more than once she was warned of the importance of telling the truth.

[30] It is the Committee's view that the applicant on the balance of probabilities has shown she would be unlikely to carry out the responsibilities that go with the holding of a licence.

[31] The position was spelt out in *Re Sheard* [1996] NZAR 61, Holland J and he made this comment on the issue of suitability:

"The real test is whether the character of the applicant has been shown to be such that he is not likely to carry out properly the responsibilities that go with the holding of a licence."

[32] In relation to Ms Jiang's experience, she has worked for 13 months in a low risk licensed café in Christchurch from May 2012 to June 2013 in a position described in a character reference supplied with her application for a Manager's Certificate as general café manager serving alcohol, cash handling, stock checking and ordering amongst other things.

[33] The Inspector's Report states that "Xu has sufficient experience albeit on low risk premises and holds the Licenced Controller Qualification." The applicant gave evidence of there being two other managers who would be employed; one of them Mr Chow appears to be very experienced.

[34] If the issue was one of experience alone the Committee would have had a mind to grant the application for Manager's Certificate with a condition that she be under the supervision of Mr Chow at any high risk premises.

[35] This matter however is primarily about suitability and the applicant falls well short of the standards required both to be a licensee and a holder of a Manager's Certificate. As elucidated in, *Ferguson v McCullough* [2007] NZLLA 915 at para 29 the Judge said

We regard a licence as a privilege not a right. However the privilege comes with obligations, one of which is to be honest with the reporting agencies and with the Authority. When he last appeared before us we gave Mr McCullough the benefit of the doubt. On this occasion, Mr McCullough forfeited that right. We regret to report that his evidence was patently implausible. It was our considered opinion that Mr McCullough gave his evidence without regard for the need to be open and honest.

[36] The Committee has grave concerns that the applicant would not be open and honest in her dealing with the Agencies. In *Deejay Enterprises Limited* LLA 531 — 532/97 it was stated:

"The guiding hand or hands-on operator of any company or the potential holder of a General Manager's Certificate now receive greater scrutiny from both the Police and other reporting agencies. Character and reputation are closely examined. The law and human desires of patrons frequently tug in different directions. The Police cannot be everywhere. Little but a licensee's or manager's character and suitability may stand between upholding the law and turning a blind eye. Self-imposed standards in accordance with the law must be set by licensees and holders of General Manager's Certificates who control and manage licensed premises."

[37] The Committee on the evidence presented, believes the applicant cannot be relied on to set the self-imposed standards in accordance with the law required by licensees and holders of Manager's Certificates. As was stated by Holland J in *Hayford v Christchurch District Licensing Agency* (HC Christchurch AP 201/92 3 December 1993):

“A liquor licence is a privilege and not a right.”

[38] It is the Committee's view that Ms Jiang has not earned that right.

[39] The application for the On-licence for S R Jiang Limited is therefore declined as is the application for a Manager's Certificate for Xu Jiang.

**DATED** at Christchurch this 18 day of December 2015.

A handwritten signature in blue ink, appearing to read 'P R Rogers', is centered on the page. The signature is written in a cursive, flowing style.

**P R Rogers**

Chairperson

**CHRISTCHURCH DISTRICT LICENSING COMMITTEE**