

5 June 2019

Decision of the District Licensing Committee in the matter of:

The Application for a New Manager's Certificate by YINGCHUN XIE

Following the hearing of the above application on **29 May 2019**, please find enclosed the decision of the Christchurch District Licensing Committee.

Decisions of the District Licensing Committee may be subject to appeal under Section 154 of the *Sale and Supply of Alcohol Act 2012*. Any party to the proceedings before a licensing committee who is dissatisfied with the decision may appeal to the Alcohol Regulatory and Licensing Authority (ARLA). Such an appeal must be made within 10 working days of this notice of decision; that is by **Wednesday, 19 June 2019**.

Please find below a link to the relevant area of ARLA's website:

<http://www.justice.govt.nz/tribunals/alcohol-regulatory-and-licensing-authority/appeals-to-the-alcohol-regulatory-and-licensing-authority>

Please contact me if you have any queries.

Yours Faithfully



Mark Saunders
Hearings Advisor

mark.saunders@ccc.govt.nz

IN THE MATTER of the Sale & Supply of Alcohol
Act 2012

AND

IN THE MATTER of an application by
YINGCHUN XIE for a Manager's
Certificate pursuant to s219 of
the Act.

DECISION OF THE CHRISTCHURCH DISTRICT LICENSING COMMITTEE

Chairperson Mr R. J. Wilson JP

Members Ms C. Robinson
Mr D. Blackwell OSM

Present Mr Yingchun Xie, applicant
Mr Tingkai Xie, applicant's support person
Ms A. Lavery, Licensing Inspector, CCC, in opposition
Constable G. Jolliffe, NZ Police to assist

Hearing at Christchurch on 29th May 2019

INTRODUCTION

- [1] Mr Yingchun Xie (the applicant) seeks a Manager's Certificate pursuant to s219 of the Act. The application is opposed by the Inspector on the grounds of inadequate knowledge of the Act and of insufficient ability to converse in English. The NZ Police appear in support of the Inspector but did not oppose the application when they had the opportunity to do so.
- [2] The Inspector's report, which was received as a part of our papers, contains no issues of concern except the two referred to above. We accept that Mr Xie is otherwise suitable to be granted a Manager's Certificate. Prior to the hearing, Mr Xie provided a brief of evidence, but there was nothing in this

that impinges on the two issues identified by the Inspector. Constable Jolliffe explained that the NZ Police had not opposed the application because it was previously unaware of Mr Xie's alleged deficiency in knowledge of both the Act and the English language. The NZ Police, being now aware of these alleged deficiencies, supported the Inspector's opposition to the granting of a Certificate.

- [3] The Committee took the view that its task at this hearing was to form a judgement of its own as to Mr Xie's competency in the two issues of concern. Mr Xie for his part did not seek to give evidence, but expressed himself willing to respond to the questions from the Agencies. To this end Ms Lavery and Constable Jolliffe were invited to examine Mr Xie. Mr Xie had also provided a short written statement from his support person Mr Tingkai Xie. Tingkai Xie also provided some interpretive assistance to Mr Xie at the hearing.

EXAMINATION

- [4] By way of background, Mr Xie said that he had been a resident in New Zealand for two years and that had he been employed as a waiter at the China Wok Restaurant for one year. The restaurant has capacity for up to 40 customers, who are of almost entirely Asian origin, mainly Chinese. Although the restaurant is not far from the University of Canterbury, Mr Xie did not think that there was a significant number of students in this clientele. Mr Xie was also of the view that most of the customers came primarily for the food, and that there was little demand for alcohol. Nevertheless, he sought a Manager's Certificate so that he could progress in his employment at the restaurant.
- [5] Ms Lavery asked Mr Xie a number of questions regarding the type of licence held by the restaurant and the various requirements of the legislation with respect to this type of licence. (The restaurant holds a full On-Licence). She also sought Mr Xie's understanding of the role and responsibilities of a Duty Manager.
- [6] Mr Xie was asked to clarify who had written the references he had supplied with his application. Constable Jolliffe asked Mr Xie to outline the tests used to ascertain if a customer was intoxicated.
- [7] It is fair to say that Mr Xie struggled to express himself in the English language throughout this questioning and at times he misunderstood the questions. However, the Committee formed the view that he actually had a

reasonable understanding of both the legislation and the responsibilities of a Duty Manager under it. His difficulty in responding appeared to relate to a lack of understanding of the legal terminology and expressions used in the industry. For example, in response to Constable Jolliffe, he struggled to list the elements to look for when assessing the appearance of a person when intoxicated. He seemed confused by the term "appearance" but understood more clearly when he was asked what they would "look like". He understood the assessment tool acronym SCAB in this context. Similar issues arose with the term "Staff" used by Ms Lavery, but he clearly understood "people who work at the restaurant". Another example was the use of the word "speech", but he clearly understood the term "talk". Despite these issues, the Committee gained the impression that he knew these things perfectly well, but that he had difficulty in responding in English to questions. Similar comments can be made about his understanding of the role and responsibilities of a Duty Manager.

DISCUSSION

- [8] The Committee understands the reservations of the Council's licensing staff with respect to recommending Mr Xie as a suitable person to hold a Manager's Certificate. The matter was properly brought to the Committee for consideration as it is a matter for our judgement as to whether Mr Xie meets the standard required. In the matter of knowledge of the Act, we are satisfied that Mr Xie has a reasonable knowledge, albeit that he had difficulty in expressing it in English. It is the second issue that Mr Xie's difficulty with English may inhibit him from carrying out his responsibilities as a Duty Manager that causes us more concern.
- [9] We are mindful that there is an expectation that an applicant for a Manager's Certificate be able to express him/herself adequately in the English language. This is so that he/she can adequately convey the requirements of the Act to customers who may only speak English and also so that he/she can deal effectively with representatives of the Agencies when they visit in the course of their monitoring responsibilities. The Authority has made this plain on several occasions. In *Soon Young Lim NZLLA PH 887/2005* the Authority said-

[10] "If a manager is unable to communicate with patrons in the English language or with representatives of the enforcement agencies, then there is no way that we can be satisfied that the provisions of the Act (in particular relating to sales to prohibited persons) will be respected and complied with."

and in Jin Li LLA PH 276/2006 it said:

"The Authority has emphasized in a number of decisions in the past the importance of a general manager being able to converse in the English language both with the enforcement authorities and customers of the premises."

[11] Both of these decisions were made under the previous legislation, but the view expressed remains valid. However, the 2012 Act adds a further consideration:

3. (2) The characteristics of the new system are that-

(a) It is reasonable; and

(b) Its administration helps to achieve the object of this Act.

In *Auckland Medical Officer of Health v Birthcare Auckland Limited* [2015] NZHC 2689 at [116] Moore J said that the Act's new system is intended to be reasonable, and that this means a sense of proportionality must characterise its operation. As we have said we are satisfied that Mr Xie has a sufficient understanding of the requirements of the legislation. The matter at issue is his ability to communicate those requirements as required to customers and to deal effectively with the Agencies. We are mindful that the majority of the customers of the China Wok Restaurant are of Chinese ethnicity and that Mr Xie is able to deal with them in his own language. We are satisfied that he can convey the requirements expressed in English in the Act to Chinese speaking customers in their own language if necessary. We were told that there is not much demand for alcohol at the restaurant and that most customers are only there to consume meals. The Inspector has confirmed that the restaurant is regarded as "low risk" and that there have been no problems in the past. We also note that the restaurant management is diligent in the display of signage indicating that alcohol is not for sale when a

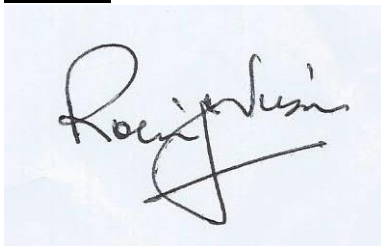
Duty Manager is not present. Given those facts, it is reasonable to assume that the demands on the Duty Manager with respect to ensuring compliance with the legislation would not be great. As for communicating with the Agencies, having observed Mr Xie under examination by the Inspector and the Constable in what must have been a stressful situation for him, we are satisfied that his English is sufficient to cope with day to day requirements. Given his relatively short time in the country, we would also expect his spoken English to improve with use.

[12] We are strengthened in this view by the applicant's willingness to give undertakings that he will only use his Certificate, if granted, at China Wok, and that he will only carry out the duties of a Duty Manager when another English-speaking staff member is present on the premises. We have been told that the restaurant chef (who happens to be the owner of the business) speaks English well, and that this person is invariably present. Under these circumstances, it seems unlikely that visiting representatives of Agencies would be hampered in their duties by an inability to communicate. On balance, we are satisfied that the granting of a Manager's Certificate to Mr Xie would not be inconsistent with the dual Objects of the Act. Mr Xie's situation will of course be subject to review at renewal when the undertakings given can be revisited.

DECISION

[13] The applicant Mr Yingchun Xie is granted a Manager's Certificate for a period of one year.

DATED at Christchurch this 4th day of June 2019.

A handwritten signature in black ink on a light blue background. The signature is cursive and appears to read 'R. J. Wilson'.

R. J. Wilson, Chairperson
Christchurch District Licensing Committee