

US Court Refused to Apply the Chosen Chinese Law due to Public Policy Concern

In *Fu v. Fu*, 2017 IL App (1st) 162958-U, a father brought a claim against his son to revoke an unconditional gift of \$590,000 that he donated to his son for the later to pursue an EB-5 Visa to immigrate to the US. Both parties are Chinese citizens and the defendant is currently a resident of Massachusetts. The gift agreement was entered into in China, drafted in Chinese and contained a clause specifying PRC law should apply. The money was held by the International Bank of Chicago. The plaintiff brought the action in Illinois.

Under the US Law (Title 8 of the Code of Federal Regulations, § 204.6) a foreign national must invest at least \$500,000 in the US to be considered for an EB-5 Visa, and must 'show that he has invested his own capital obtained through lawful means.' (Matter of Ho, 22 I&N Dec. 206, 210 (AAO 1998)) After a few denied EB-5 approval, the plaintiff sought to recover the money, by claiming that the defendant was estranged from his parents, including the donor and refused to support them, and the purpose of the gift contract was for the defendant to obtain an EB-5 Visa but the defendant failed to do so.

Under the Illinois law, a valid gift requires 'delivery of the property by the donor to the donee, with the intent to pass the title to the donee absolutely and irrevocably, and the donor must relinquish all present and future dominion and power over the subject matter of the gift.'" (*Pocius v. Fleck*, 13 Ill. 2d 420, 427 (1958)). Furthermore, the gift agreement between the parties also used the language that the gift was 'unconditional'. However, the plaintiff argued that under the PRC law, gifts may be revocable after the transfer of ownership, if the donee 'has the obligation to support the donor but does not fulfil it', or a donee 'does not fulfill the obligations as stipulated in the gift agreement.' (PRC Contract Law, Art 192)

The Appellate Court of Illinois First Judicial District affirmed the judgment of the circuit court of Cook County that the gift agreement was irrevocable. The plaintiff failed to successfully prove Chinese law. And even if the plaintiff properly pled

PRC law, such interpretation was 'oppressive, immoral, and impolitic'. Under the US law on EB-5 Visa application, the foreign citizen must prove ownership of those funds to be eligible for an EB-5 Visa. The signed agreement stating the gift 'unconditional' would help the defendant to prove he legally owned the funds to acquire an EB-5 visa. If the governing PRC law indeed allows a gift to be given unconditionally and revoked after delivery and acceptance, as argued by the plaintiff, it would facilitate a deception on the US Government and is against public policy.

The full judgment can be found [here](#).