Federal Court  Cour fédérale

Date: 20150129

Docket: IMM-1261-14

Citation: 2015 FC 113

Montréal, Quebec, January 29, 2015

PRESENT: The Honourable Mr. Justice Locke

BETWEEN:

NAJMA JALIL

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Nature of the Matter

[1] The Applicant (Najma Jalil) seeks judicial review of a decision (the Decision) of a Visa Officer (the Officer) denying an application for a permanent resident visa as a member of the provincial nominee class pursuant to section 87 and following of the *Immigration and Refugee Protection Regulations* (*IRPR*). Though the Applicant was nominated (by the province of Saskatchewan), the Officer was not satisfied that the Applicant was likely to become

economically established in Canada as contemplated by section 87 of the *IRPR*. In particular, the Officer was concerned that the Applicant lacked the necessary language skills. In accordance with subsection 87(3), the Officer substituted her evaluation of the likelihood of the Applicant's ability to become economically established in Canada.

[2] For the reasons set out below, I have concluded that the Decision should stand and the application should be dismissed.

II. Issues

[3] The Applicant raises three issues:

1. Did the Officer comply with the duty to consult the province before denying the visa, as required by subsection 87(3) of the *IRPR*?
2. Did the Officer misinterpret the requirement to become economically established in Canada by requiring that the Applicant show that she was likely to become economically established immediately, rather than within a reasonable time?
3. Was the Officer's Decision unreasonable having regard to all of the evidence?

III. Analysis

[4] In considering this matter, I am fortunate to have the benefit of a recent decision of Justice Russell in which similar issues were disputed in a case having similar facts: *Ijaz v Canada (Citizenship and Immigration)*, 2014 FC 920 (*Ijaz*). To the extent that the facts in the present case are the same as in *Ijaz*, I agree with Justice Russell's conclusions.

A. *Standard of review*

[5] With regard to the first issue, the duty to consult the province is a matter of procedural fairness which is reviewed on a standard of correctness (*Ijaz* at para 15).

[6] The other two issues are fact-driven and are therefore reviewed on a standard of reasonableness (*Ijaz* at para 18).

B. *Issue 1: Duty to Consult the Province*

[7] The Respondent submits that it complied with its duty to consult the province by sending it a courtesy copy of the Officer's "pre-refusal" letter (which advised the Applicant of the Officer's concerns). In the absence of a response from the province, the Officer concluded that the province had no comments.

[8] The Applicant notes that there is no evidence that the letter was actually received by the province. Certainly, no response was received. The Applicant also notes that there is no evidence that the courtesy copy was even sent except for the indication at the end of the letter itself and notes found in the Respondent's electronic database. The Applicant suggests that, because the Respondent provided no evidence on the issue, I should infer that the courtesy copy was not sent. As did Justice Russell in *Ijaz* (para 49), I decline to draw such an inference. There is no evidence that the province did not receive the letter, and the evidence suggests that it was, in fact, sent. The decision in *Ijaz* also refers to earlier decisions in which the duty to consult the nominating province was satisfied by simply sending it a courtesy copy of the pre-refusal (or fairness) letter:

Hui v Canada (Citizenship and Immigration), 2011 FC 1098, and *Bhamra v Canada (Citizenship and Immigration)*, 2014 FC 239.

[9] Accordingly, I conclude that the Respondent complied with its duty to consult the province before denying the Applicant's application for a permanent resident visa.

C. *Issue 2: Requirement to Become Economically Established in Canada*

[10] The Applicant argues that, by focusing on her limited language skills at the time of the Decision and the language requirements of her intended occupation (school teacher), the Officer erroneously required the Applicant to become economically established in Canada immediately. The Applicant argues that it is sufficient that she show that she is likely to become economically established in Canada within a reasonable time. The Applicant argues that she clearly indicated to the Officer that she did not expect to become a teacher right away and that she intended to work at other jobs and improve her language skills while becoming qualified to teach in Saskatchewan.

[11] The Respondent notes that the Applicant did not provide any evidence as to how long it would take her to become economically established in Canada; nor did she indicate that she had received, or even sought, any job offers in Canada. The Officer was therefore unable to assess whether the time required for the Applicant to become economically established in Canada would be reasonable. The Respondent also argues that determining whether or not an applicant is likely to become economically established is an area in which immigration officers have significant experience and expertise. This justifies deference to the Officer's Decision.

[12] I side with the Respondent on this issue. The following words of Justice Russell in *Ijaz* at para 52 apply equally in the present case:

> The Officer does not insist upon immediate economic establishment but attempts to find out how the Applicant might ever "become economically established" over time; not whether she will be economically established upon arrival. […] The word "become" obviously indicates that economic establishment need not occur immediately but can take place over time.

[13] Accordingly, I am satisfied that the Officer understood and reasonably applied the requirements to become economically established in Canada.

D. *Issue 3: Reasonableness of the Decision*

[14] The Applicant has several arguments in support of her submission that the Decision was unreasonable. Though there is some repetition and overlap in her arguments, I summarize them here as follows:

1. The Officer failed to consider the factors set out in *Wai v Canada (Citizenship and Immigration)*, 2009 FC 780 at para 44 (*Wai*), for determining the likelihood of economic establishment: "age, education, qualification, past employment experience, the province's views, as well as motivation and initiative."
2. The Officer relied unreasonably on her own assessment of the Applicant's language skills.
3. The Officer unreasonably focused on the Applicant's intended occupation when assessing her ability to become economically established in Canada.
4. The Officer was not in a position to conclude that the Applicant was not employable in Canada as a teacher.

5. The Officer acted unreasonably in concluding that the Applicant's language skills were insufficient despite the fact that the Applicant had demonstrated language skills above the minimum recommended by the province of Saskatchewan in order to do most jobs well.

[15] With regard to the factors set out in *Wai*, I am not satisfied that the Officer failed to take them into account such that the Decision might have been different if they had been thoroughly considered. The Officer was principally concerned with the Applicant's limited language skills and the absence of details concerning her plans to find a job and become qualified in Canada in her intended occupation. I see no reason to conclude that the Officer failed to consider whether these important concerns were outweighed by other factors. The absence of discussion of those other factors in the Decision does not mean that they were not considered. The onus of establishing that the other factors should outweigh the Applicant's cited shortcomings was on the Applicant. In addition, the Applicant bears the onus of establishing that those other factors were not properly considered by the Officer. I am not satisfied on either point.

[16] With regard to the second point above, I am satisfied that the Officer had the necessary experience and expertise to make a determination of whether the test results provided by the Applicant indicated that she had sufficient language skills to permit her to become economically established in Canada. It was reasonable for the Officer to conclude that work in her intended occupation, and even becoming qualified in that occupation, requires greater language skills than the Applicant could demonstrate.

[17] The Officer's electronic notes concerning the Applicant indicate that the Applicant's proposal to take the language test again in the hope of improving her results was not requested

and suggests "that she may not have understood the contents of the [pre-refusal] letter – which reinforces concern about her English lang[uage] proficiency." This reasoning seems flawed and unreasonable. However, it was not mentioned in the Decision and I do not believe it formed a relevant part of the reasons for the Decision.

[18] The third argument raised by the Applicant in an effort to show that the Decision was unreasonable is that the Officer focused too much on the Applicant's intended occupation. In my view, the Decision was reasonable in this aspect since it was in this intended occupation that the Applicant indicated she planned to become economically established. Other jobs she referred to (e.g. at Tim Hortons or McDonalds) were intended simply to fund the Applicant's efforts to become qualified in Canada. It does not appear that the Applicant's plan was to become economically established by virtue of these other jobs.

[19] The Applicant's fourth argument in support of the unreasonableness of the Decision is that the Officer was not in a position to conclude that the Applicant was not employable in Canada, as a teacher. Again, the real concern is the Applicant's language skills to work or become qualified as a teacher. It appears that the parties do not disagree on the fact that the Applicant's foreign experience is such that she must become qualified if she is to work as a teacher in Canada. Accordingly, I cannot agree with the Applicant on this argument.

[20] Finally, the Applicant argues that the Officer was unreasonable in concluding that her language skills were insufficient. The Applicant observes that she demonstrated language skills above the minimum recommended by the province of Saskatchewan in order to do most jobs well. For its part, the Respondent argues that it was open to the Officer to conclude that the Applicant needed more than the minimum recommended language skills in order to become

economically established in Canada. The Respondent notes that meeting the minimum requirement simply avoided the Applicant being screened out from the outset. As stated above, the Officer has experience and expertise to consider requirements for becoming economically established in Canada.

[21] In my view, the following passage from *Ijaz* at para 63 applies (in essence) here:

> All in all, this meant that the Applicant had no plan to pursue a teaching career, she had not produced the job offer for a cashier position, and she had only modest language skills in English. It is not difficult to see why the Officer was concerned that the Applicant had not demonstrated how she would become economically established if she came to Canada.

IV. Conclusion

[22] In light of the foregoing, I have concluded that this application should be dismissed.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The present application for judicial review is dismissed; and

2. There is no serious question of general importance to be certified.

"George R. Locke"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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