

Federal Court



Cour fédérale

Date: 20141218

Docket: IMM-5855-13

Citation: 2014 FC 1240

Calgary, Alberta, December 18, 2014

PRESENT: The Honourable Mr. Justice Zinn

BETWEEN:

NAOME KARAMBAMUCHERO

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] This is a judicial review of the decision of a visa officer in Pretoria, South Africa, on July 3, 2013, denying Naome Karambamuchero a Temporary Resident Visa [TRV].

[2] Ms. Karambamuchero is a citizen of Zimbabwe. She sought the TRV in order to visit her daughter, son-in-law, grandchildren, and son in Canada. She had visited her children in Canada in 2002, 2004, and 2007. However, since 2007, she has been refused a TRV four times. As a

result of these refusals, she decided to engage counsel to assist her in the most recent application, presumably hoping for a different result.

[3] In the form letter rejecting her application, the visa officer checked boxes indicating that in reaching that decision several factors were considered including “your family ties in Canada and in your country of residence” and “purpose of visit.” More detail is provided in the notes of the officer which read as follows:

Reviewed application. Pa is still in same employment in Zim as school principal since 1994. Pa has son in UK and 2 children in Cda who were previous refugee claimants – pa travelled to UK in 2010 and 2012 on holiday – pa indicates her previous travel to China in 2012 was for business purposes. Pa has submitted a letter from Cdn lawyer indicating that pa as strong ties to Zim – pa lives with mother, son and a nephew. Fosscheck dghter who made cr claim in 2002 and landed in 2004 and pa’s son made cr claim in 2008 and landed in 2011. Based on the information provided I am not satisfied that pa’s situation has significantly changed since her previous refusals in 2012 – pa remains in same employment etc with same family ties to Cda who both have history of refugee claims in Cda. I have also considered aspects which might influence pa to remain in Cda such as the current unstable situation in Zimbabwe and I am not satisfied that she wld leave Cda after her authorised stay. TRV refused. [*sic* emphasis added]

[4] Ms. Karambamuhero submits there are three issues to be considered: Whether the visa officer failed to consider the totality of the evidence, whether the visa officer breached the duty of fairness by relying on extrinsic evidence and his knowledge of local conditions, and whether the visa officer breached the duty of fairness in failing to provide sufficient reasons to allow the applicant to know why her application had been refused.

[5] I agree with the Minister that no one is entitled to a TRV, that considerable deference is to be given to visa officers in making such decisions, that the duty of fairness lies at the lower end of the scale, and that a court should not parse the wording of decisions too minutely given the nature of the decision and the demands placed upon visa officers. Nonetheless, this application must be allowed and the decision set aside because the decision-making process and accordingly its result does not meet the required standard of justification, transparency and intelligibility.

[6] Ms. Karambamucho provided evidence of several factors that would suggest that she would not overstay a visit to Canada. As the visa officer noted, she is a school principal in Harare. But that is only part of the story. She is the director and principal of Greatstride College, which she founded in 1994. Accordingly, she is not a mere employee; she is a successful business woman. She has two business bank accounts with balances totaling more than \$35,000 USD, and she owns her home and three vehicles. She has family ties to Zimbabwe. She lives with her mother and a son. She has other family in Zimbabwe.

[7] The visa officer observes that there is a “current unstable situation in Zimbabwe” but it is unclear how or whether that impacts Ms. Karambamucho. There is nothing in the record that suggests that the stability of the country has had any impact on her. On the contrary, she appears to be prospering in the country and one must wonder why she would voluntarily leave. The country has in fact been unstable for some time, but she had left Zimbabwe and returned a number of times, including two then recent trips to China on business, and a trip to the United Kingdom to visit her son living there.

[8] There can be no objection to the visa officer accessing the Field Operations Support System [FOSS] to confirm the status of Ms. Ms. Karambamucho's two children in Canada. However, it is troubling that the visa officer does more than note that both are landed residents. Rather, he notes that "both have history of refugee claims." The inference surly is that Ms. Karambamucho will therefore make a refugee claim when she is in Canada. But such an inference is unreasonable on the facts here.

[9] The reality is that Ms. Karambamucho had previously visited Canada when the refugee claims were pending, or had been granted, and then returned to Zimbabwe. Her daughter entered Canada in 2002 and was granted refugee protection in 2004. Her son entered Canada in 2008 and was granted refugee status in 2011. Ms. Karambamucho visited Canada in 2002, 2004, and 2007. Therefore, she visited Canada and returned to Zimbabwe at least once and quite possibly twice after her daughter was granted status. To suggest that she might make a claim for status now, when she did not previously, requires some explanation from the visa officer. There is none.

[10] In summary, the decision rests on two observations by the visa officer: The unstable country conditions in Zimbabwe and previous refugee claims by her children. Absent some explanation how those country conditions might prompt this business woman to flee her country and leave behind a successful business, a mother, a son, a home, and other family, the conditions alone cannot reasonably support the decision. Absent some explanation why her children claiming and being granted refugee status in Canada, might prompt her to do likewise when she did not do so in the past, the visa officer's decision cannot reasonably be supported.

[11] For these reasons, the result is set aside.

[12] Neither party proposed a question for certification.

JUDGMENT

THIS COURT'S JUDGMENT is that this application is allowed, the decision is set aside, the application for a temporary resident visa is to be determined by a different visa officer, the applicant is to be permitted to update her information, and no question is certified.

"Russel W. Zinn"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-5855-13

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APPEARANCES:

Lisa Couillard FOR THE APPLICANT

Maria Green FOR THE RESPONDENT

SOLICITORS OF RECORD:

Caron & Partners FOR THE APPLICANT
Barristers and Solicitors
Calgary, Alberta

William F. Pentney FOR THE RESPONDENT
Deputy Attorney General of Canada
Department of Justice – Prairie Region
Calgary, Alberta