Federal Court Cour fédérale

Date: 20150504

Docket: IMM-8398-13

Citation: 2015 FC 579

Ottawa, Ontario, May 4, 2015

PRESENT: The Honourable Mr. Justice Russell

BETWEEN:

MARIANA BESHARA NAWWAR FARID

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION CANADA

Respondent

JUDGMENT AND REASONS

I. INTRODUCTION

[1] This is an application under s 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 for judicial review of the decision of a visa officer [Officer], dated November 3, 2013, which refused the Applicant's application for a temporary resident visa.

II. BACKGROUND

[2] The Applicant is a citizen of Egypt. In March 2013, she was offered a job with a company located in Toronto. In May 2013, the Applicant applied for a work permit and temporary resident visa.

[3] In August 2013, the applications were rejected because the Officer was unsatisfied with the Applicant's financial documentation.

[4] In October 2013, the Applicant re-applied for a work permit and temporary resident visa.

III. DECISION UNDER REVIEW

[5] The Applicant's second application was rejected on November 3, 2013. The Officer was not satisfied that the Applicant would leave Canada at the end of her stay as a temporary resident because of her family ties in Canada and Egypt, and because of her limited employment prospects in Egypt. The Officer was also not satisfied by the contact information on the Applicant's employment letter. The Officer indicated that the "[f]ax number may have been erased and there are no land line numbers which is uncommon in Egypt. No evidence of social insurance subscription" (Certified Tribunal Record [CTR] at 4). The Officer also said that there was no documentation relating to the Applicant's husband.

[6] Further reasons for the Decision are provided in the Global Case Management System [GCMS] notes (CTR at 105):

> Prev intvw notes show contradictions. On the one hand, PA indicates that husb earns low salary from govt job but then indicates that salary from private engg work is EGP 30k per month which is very high yet could not indicate why he insists on keeping govt job.
>
> Also if husb is earning that much, how come she indicated wishes to go to Cda for 2 yrs to save some money.
>
> Funds last time were deposited all at once. This time, no evidence of funds at all.
>
> After a careful review of all the foregoing, I am not satisfied that PA is well-established in Egypt nor that she would return to Egypt after the 2 yrs of her LMO have been terminated, if granted a WP.
>
> No docus provided this time as evidence of husb's employment and reasons why he is not accompanying. I believe that husb is only staying behind to act as a tie to Egypt.
>
> Refused.

IV. ISSUES

[7] The Applicant raises the following issues in this proceeding:

1. Whether the Officer fettered his or her discretion;
2. Whether the Officer breached procedural fairness; and
3. Whether the Decision is unreasonable.

V. STANDARD OF REVIEW

[8] The Supreme Court of Canada in *Dunsmuir v New Brunswick*, 2008 SCC 9 [*Dunsmuir*] held that a standard of review analysis need not be conducted in every instance. Instead, where the standard of review applicable to a particular question before the court is settled in a satisfactory manner by past jurisprudence, the reviewing court may adopt that standard of

review. Only where this search proves fruitless, or where the relevant precedents appear to be inconsistent with new developments in the common law principles of judicial review, must the reviewing court undertake a consideration of the four factors comprising the standard of review analysis: *Agraira v Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36 at para 48.

[9] The Applicant submits that the Officer's factual assessments are reviewable on a standard of reasonableness: *Dhillon v Canada (Citizenship and Immigration)*, 2009 FC 614 at para 19 [*Dhillon*]. The Respondent submits that the Officer's conclusions with respect to findings of fact or mixed fact and law are reviewed on a standard of reasonableness: *Dunsmuir*, above, at paras 47, 53, 55, 62; *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at paras 52-62 [*Khosa*].

[10] The Court agrees that the Officer's factual determinations are reviewable on a standard of reasonableness: *Dhillon*, above, at para 19; *Zhou v Canada (Citizenship and Immigration)*, 2013 FC 465 at para 8. Questions of procedural fairness are reviewable on a standard of correctness: *Mission Institution v Khela*, 2014 SCC 24 at para 79; *Exeter v Canada (Attorney General)*, 2014 FCA 251 at para 31.

[11] When reviewing a decision on the standard of reasonableness, the analysis will be concerned with "the existence of justification, transparency and intelligibility within the decision-making process [and also with] whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law": see *Dunsmuir*, above,

at para 47; *Khosa*, above, at para 59. Put another way, the Court should intervene only if the Decision was unreasonable in the sense that it falls outside the "range of possible, acceptable outcomes which are defensible in respect of the facts and law."

VI. STATUTORY PROVISIONS

[12] The following provisions of the Act are applicable in this proceeding:

Obligation on entry	**Obligation à l'entrée au Canada**
20. (1) Every foreign national, other than a foreign national referred to in section 19, who seeks to enter or remain in Canada must establish,	20. (1) L'étranger non visé à l'article 19 qui cherche à entrer au Canada ou à y séjourner est tenu de prouver :
[…]	[…]
(b) to become a temporary resident, that they hold the visa or other document required under the regulations and will leave Canada by the end of the period authorized for their stay.	b) pour devenir un résident temporaire, qu'il détient les visa ou autres documents requis par règlement et aura quitté le Canada à la fin de la période de séjour autorisée.
[…]	[…]
Temporary resident	**Résident temporaire**
22. (1) A foreign national becomes a temporary resident if an officer is satisfied that the foreign national has applied for that status, has met the obligations set out in paragraph 20(1)(b), is not inadmissible and is not the subject of a declaration made under subsection 22.1(1).	22. (1) Devient résident temporaire l'étranger dont l'agent constate qu'il a demandé ce statut, s'est déchargé des obligations prévues à l'alinéa 20(1)b), n'est pas interdit de territoire et ne fait pas l'objet d'une déclaration visée au paragraphe 22.1(1).

[13] The following provisions of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 are applicable in this proceeding:

Issuance	**Délivrance**
179. An officer shall issue a temporary resident visa to a foreign national if, following an examination, it is established that the foreign national	179. L'agent délivre un visa de résident temporaire à l'étranger si, à l'issue d'un contrôle, les éléments suivants sont établis :
(a) has applied in accordance with these Regulations for a temporary resident visa as a member of the visitor, worker or student class;	a) l'étranger en a fait, conformément au présent règlement, la demande au titre de la catégorie des visiteurs, des travailleurs ou des étudiants;
(b) will leave Canada by the end of the period authorized for their stay under Division 2;	b) il quittera le Canada à la fin de la période de séjour autorisée qui lui est applicable au titre de la section 2;
[…]	[…]

VII. ARGUMENT

A. *Applicant*

[14] The Applicant submits that the Officer erred in finding that she would not return to Egypt when her visa expired: *Dhanoa v Canada (Citizenship and Immigration)*, 2009 FC 729; *Cao v Canada (Citizenship and Immigration)*, 2010 FC 941. The Applicant relies primarily on the fact that her husband will remain in Egypt, where he works and earns a high income. She also has other family members who will remain in Egypt. The Applicant says that her lack of

employment prospects in Egypt cannot be a valid consideration because no applicant would ever receive a work permit if that were the standard.

[15] The Applicant also submits that the Officer erred in discounting her employment letter. The Officer should have contacted the Applicant or her employer if there were questions regarding the letter. The Applicant also complains that, in an earlier temporary resident visa application, she was not advised that there were problems with the employment letter. As a result, it was reasonable for her to expect that the letter was sufficient. Further, it is uncommon for employees in Egypt to have social insurance numbers.

[16] Finally, the Officer erred in finding that there was no documentation concerning the Applicant's husband. The Applicant submitted documents relating to his employment, property ownership and tax records.

B. *Respondent*

[17] The Respondent objects to the evidence attached to the Applicant's affidavit which was not before the Officer. Judicial review should proceed only on the basis of the evidence that was before the decision-maker: *Lemiecha v Minister of Employment and Immigration* (1993), 72 FTR 49 at para 4; *Samsonov v Canada (Citizenship and Immigration)*, 2006 FC 1158 at para 7.

[18] The duty to provide reasons for temporary resident visas is minimal. An applicant has no legal right to obtain a visa and bears the burden of establishing the merits of his or her request; and the refusal of a temporary resident visa has a minimal impact on someone who is outside of

Canada: *Donkor v Canada (Citizenship and Immigration)*, 2011 FC 141; *Obeng v Canada (Citizenship and Immigration)*, 2008 FC 754; *Singh v Canada (Citizenship and Immigration)*, 2009 FC 620. The Officer met the minimal requirements. The Officer gave reasons for not being satisfied that the Applicant would leave Canada at the end of her authorized stay. The Officer considered the Applicant's family ties in Canada and the limited employment prospects in her home country. There was also insufficient contact information in the Applicant's employment letter and she failed to provide evidence of a social insurance number. The Officer is entitled to consider the totality of the circumstances: *Wong v Canada (Minister of Citizenship and Immigration)* (1999), 246 NR 377 (FCA); *Pei v Canada (Citizenship and Immigration)*, 2007 FC 391 at para 15. The Officer clearly explained why the Applicant's application was rejected and the Applicant simply asks the Court to reweigh the evidence.

[19] The Federal Court has held that an officer has no obligation to provide a visa applicant with a running score of the weaknesses in an application: *Thandal v Canada (Citizenship and Immigration)*, 2008 FC 489 at para 9; *Nabin v Canada (Citizenship and Immigration)*, 2008 FC 200 at paras 7-10 [*Nabin*]; *Kaur Soor v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1344 at para 12. The Officer had no obligation to notify the Applicant of his or her concerns.

[20] Finally, the Officer was not bound by any findings in the Applicant's previous visa applications. The Officer was only required to consider the evidence placed before him or her in this application. Regardless, there are no findings concerning the employment letter in the previous decision.

C. *Applicant's Reply*

[21] In reply, the Applicant reiterates her submissions and submits that if the Officer required her social insurance number, the Officer could have contacted the Applicant for the information. She was unable to include it in her original application because of long delays in obtaining it from the Egyptian government.

VIII. ANALYSIS

[22] The Respondent is right to point out that it is not open to the Applicant to supplement the record and ask the Court to consider materials and facts that were not before the Officer. See *Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22 at paras 19-20. Consequently, I will only address the concerns raised by the Applicant on the basis of the record that was before the Officer.

[23] Two principal points arise out of the Decision: the Officer's concerns about the contact information on the Applicant's employment reference letter, and "No docus for husb."

[24] It is not clear why the contact information provided was a problem. The contact information on the reference letter included the company's address and gave the cell phone of the general manager who signed the letter. The reasons say that the "[f]ax number may have been erased and there are no land line numbers which is uncommon in Egypt." It is unclear whether the contact information prevented the Officer from making appropriate investigations with the company, or whether it caused the Officer to doubt the authenticity of the reference

letter. After reading the GCMS notes, my conclusion is that the Officer is simply pointing out certain features of the reference letter but they do not play any material role in the Decision which is clearly based upon the Officer's determination that he or she was not satisfied that the Applicant would leave Canada at the end of the visa period.

[25] The reasons say there were no documents for the Applicant's husband, and the GCMS notes elaborate and say "No docus provided this time as evidence of husb's employment and reasons why he is not accompanying. I believe that husb is only staying behind to act as a tie to Egypt."

[26] The CTR contains a letter from the Applicant in which she says that she is submitting the following "financial support documents" (CTR at 16):

a) The experience letter for the Applicant's spouse's work as a civil engineer in Saudi Arabia;

b) The current employment letter and the payslips for the Applicant's spouse as a civil engineer from the local unit of Talkha-El Dakahha – Egypt;

c) The business registration for the spouse's engineering consulting company; and

d) The Notice of Assessment from the "National Taxes Authority" for the years 2012, 2011, 2010, and 2005 related to the consulting office income.

[27] The Applicant explains that "[m]y spouse is working as a civil engineer in the local unit of Talkha city, El Dakha, Egypt from 07/04/1997 till 07/10/1997 and from 01/01/2002 till now" [*sic*, emphasis removed]. She also explains that "[m]y spouse has an Engineering Consulting Office from 01/09/2004."

[28] My review of the CTR reveals that it does not include the evidence of the husband's current employment (as referred to above) and does not explain why he is not accompanying. There is an experience letter relating to the Applicant's husband's work as a civil engineer in Saudi Arabia which indicates that he worked for the company until 2001 (CTR at 18). There are a series of other documents following this experience letter but they all appear to be written in Arabic.

[29] Applicants are advised that their supporting documents must be provided in English or French, or be translated into English or French (Government of Canada, Guide 5487 – Applying for a Work Permit outside of Canada):

> **Translation of documents**
>
> Unless instructed otherwise by a CIC employee, all supporting documentation must be:
>
> • in English or French; or
>
> If it is not in English or French, it **must be accompanied** by:
>
> • the English or French translation; and
>
> • an affidavit from the person who completed the translation;
>
> • and a certified photocopy of the original document.
>
> [Emphasis in original]

[30] The CTR does not contain translated copies of the documents. The documents may be, as the Applicant says, evidence of her husband's current employment and consulting work. But without translated copies of the documents, there was no way for the Officer to know what information they contained, and there is no way for the Court to know.

[31] In her application record, the Applicant includes (at 85, 87, 92-94):

a) A "Certificate of Experience" for her spouse showing that he returned to work for the local unit for Talka city center on 12/01/2002. While the translation is not clear, it appears that he continues to work for the company ("he one of staff headed by the center city of Talkha so far…");

b) A "Statement of Salary Synonyms" for the month of July 2013;

c) A "Tax Card" from the Arab Republic of Egypt. It is unclear what information the tax card provides. It provides a starting date of 01/09/2004 and says it was issued for an individual. An annex, dated 15/05/2011, provides that the Applicant's husband requested that the address of an engineering office be moved as of 16/11/2006. The final page is described as a "Tax avowal/ wealth avowal" which simply states it was issued 15/05/2011 and expires 14/05/2016.

[32] There is no evidence that any of this documentation was before the Officer. It does not appear in the CTR which, in accordance with Rule 17 of the *Federal Courts Citizenship, Immigration and Refugee Protection Rules*, SOR/93-22, is a certified record of the documents that were before the Officer.

[33] At the oral hearing of this application, the Applicant questioned the accuracy and the completeness of the CTR but offered no reason why it should be incomplete. The record shows that the Applicant has made several visa applications that have been refused and she does not appear to be entirely clear as to what she submitted with each application as she regards them all as part of one application, which they are not.

[34] The Applicant also requested further time to provide the Court with evidence that the CTR is incomplete and that she did submit the documentation referred to in this application as listed above.

[35] If the Applicant felt that the CTR was incomplete, she should have obtained a copy of it and submitted evidence of its incompleteness with her application. In fact, the covering letter that accompanies the CTR shows that a copy of the CTR was sent to the Applicant in accordance with Rule 17. I have no evidence before me that the Applicant did not receive her copy or that she could not have raised any issues regarding the CTR in her application.

[36] In any event, even if the information that the Applicant says she submitted had been before the Officer, it is entirely unclear what the documentation establishes. The tax card references an engineering office but it does not establish that her husband has a consulting business. There is no other documentation to establish her husband's consulting business, and there is no evidence as to the reasons why he is not accompanying the Applicant.

[37] On the record before me, then, I cannot say that the Officer was mistaken regarding the husband's documentation, or that it gives rise to a material reviewable error.

[38] The Respondent is right to say that the Applicant has no legal right to a visa and bears the burden of establishing the merits of her request and providing the information and documentation required for the Officer to make an assessment. See *Hamza v Canada (Citizenship and Immigration)*, 2013 FC 264 at para 22 [*Hazma*]; *Nabin*, above, at para 7.

[39] It is also clear that, in this context, the Officer was under no obligation to contact the Applicant with a view to correcting any weaknesses or gaps in her application. The Officer's concerns are in relation to the sufficiency of the evidence, not with the credibility or authenticity

of the evidence. See *Lam v Canada (Minister of Citizenship and Immigration)* (1998), 152 FTR 316 at para 4; *Hassani v Canada (Citizenship and Immigration)*, 2006 FC 1283 at para 24; *Hamza*, above, at para 24. I can see no procedural fairness issue.

[40] All in all, I can find no reviewable error with this Decision that would require it be returned for reconsideration.

[41] Both sides agree there is no question for certification and the Court concurs.

JUDGMENT

THIS COURT'S JUDGMENT is that

1. The application is dismissed.

2. There is no question for certification.

"James Russell"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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