Federal Court Cour fédérale

Date: 20160620

Docket: IMM-4153-15

Citation: 2016 FC 690

Ottawa, Ontario, June 20, 2016

PRESENT: The Honourable Mr. Justice Gascon

BETWEEN:

YULIYA SOLOPOVA

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The applicant, Ms. Yuliya Solopova, is a Ukrainian citizen currently residing in Spain. She lives with her common law partner, a citizen of the United Kingdom, and their four-year-old son. In the summer of 2015, Ms. Solopova applied to Citizenship and Immigration Canada [CIC] for a study permit, as she had been admitted to the triOS College in Mississauga, Ontario in the

Physiotherapy/Occupational Therapy Assistant program. Her application for a study permit was refused in June 2015 by a visa officer [the Officer] at the Embassy of Canada in Paris, France, as the Officer was not convinced she would leave Canada at the end of her stay. Ms. Solopova reapplied for a study permit the following month and it was also refused for the same reasons.

[2] Ms. Solopova has filed an application for judicial review of the Officer's decision dated July 27, 2015. She argues that the Officer's decision is unreasonable because it was based on findings of fact unsupported by the evidence and the Officer ignored or failed to consider relevant evidence. Ms. Solopova also contends that the Officer's reasons are inadequate since they do not explain how the Officer reached the conclusion that Ms. Solopova does not intend to go back to her country of origin after her studies. She further submits that the Officer breached his duty of procedural fairness by failing to allow her to respond to his concerns. She asks this Court to quash the decision and to send it back for redetermination by a different visa officer.

[3] This application raises two issues: 1) was the Officer's decision denying the study permit sought by Ms. Solopova reasonable; 2) did the Officer err by failing to ask for additional explanations or to call Ms. Solopova for an interview before deciding on her application.

[4] Having considered the evidence before the Officer and the applicable law, I can find no basis for overturning the Officer's decision. The decision was responsive to the evidence and the outcome was defensible based on the facts and the law. Therefore, I must dismiss Ms. Solopova's application for judicial review.

II. Background

A. *The Officer’s decision*

[5] The Officer’s decision is brief.

[6] The Officer refused Ms. Solopova’s application for a study permit because he was not satisfied that Ms. Solopova would leave Canada at the end of her stay. In reaching his decision, he considered several factors which he then checked off from the standard form used by CIC. These were: Ms. Solopova’s immigration status in her country of residence, her family ties in Canada and in her country of residence, the purpose of her visit, and her current employment situation.

[7] The Officer’s Global Case Management System (GCMS) notes dated July 24, 2015 provide further light on the reasons for the Officer’s refusal. It is useful to reproduce them in their entirety. They state the following:

> Couple: Ukrainian 35 yr old female and older (57 yr old) UK national CL partner – currently residing in Spain. She’s asking for an SP and he an open WP. 4 yr old child to accompany. Previous refusal noted. Rep’s submissions on previous refusal noted. Given ages of clients and previous academic history, appear - at least as far as the female is concerned – to be intending immigrants. The rep’s submissions do not make sense. States the main reason family is choosing Cda over UK is because of the cost of the physiotherapy program – yet states that UK CL partner has some 400 000 euros in savings. Not satisfied of clients’ intentions/decision to return to studies and no evidence that female has ties to Spain, Ukraine, UK or any country which would motivate a departure from Cda.

[8] The GCMS notes dated July 3, 2015 provide additional background information on Ms. Solopova, indicating that she holds long-term residence status in Spain, set to expire in February 2020, and that she works as an office manager.

B. ***The relevant provisions***

[9] The relevant provision of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] is subsection 22(2), which provides that "an intention by a foreign national to become a permanent resident does not preclude them from becoming a temporary resident if the officer is satisfied that they will leave Canada by the end of the period authorized for their stay."

[10] Paragraph 216(1)(b) of the *Immigration and Refugee Protection Regulations,* SOR/2002-227 [the Regulations] further requires a study permit applicant to establish that he or she "will leave Canada by the end of the period authorized for their stay." Thus, it is quite clear that an applicant for a study permit bears the burden of satisfying the visa officer that he or she will not remain in Canada once the visa has expired (*Zuo v Canada (Citizenship and Immigration),* 2007 FC 88 [*Zuo*] at para 12; *Zhang v Canada (Minister of Citizenship and Immigration*), 2003 FC 1493 [*Zhang*] at para 7).

[11] Accordingly, when considering a study permit application, the visa officer must determine whether the applicant is likely to return to his or her country of origin after the studies (*Akomolafe v Canada (Citizenship and Immigration)*, 2016 FC 472 [*Akomolafe*] at para 12; *Zhang* at para 8; *Guo v Canada (Minister of Citizenship & Immigration*), 2001 FCT 1353 at para 11). This Court has taken the view that "[t]he visa officer has wide discretion in assessing the

evidence and coming to a decision. However, the decision must be based on reasonable findings of fact" (*Zhang* at para 7).

C. *The standard of review*

[12] There is no dispute that, when reviewing a visa officer's factual assessment of an application for a student visa and the officer's belief that an applicant will not leave Canada at the end of his or her stay, the standard of review is reasonableness (*Akomolafe* at para 9; *Li v Canada (Citizenship and Immigration),* 2008 FC 1284 [*Li*] at para 15; *Bondoc v Canada (Citizenship and Immigration),* 2008 FC 842 at para 6). Such a decision by a visa officer is "an administrative decision made in the exercise of a discretionary power" (*My Hong v Canada (Citizenship and Immigration)*, 2011 FC 463 [*My Hong*] at para 10). As it is a discretionary decision based on factual findings, it is entitled to considerable deference in view of the visa officer's special expertise [and experience] (*Obeng v Canada (Minister of Citizenship and Immigration),* 2008 FC 754 at para 21).

[13] Based on this standard of review, the Court must ensure that the visa officer's decision meets the test of clarity, precision and intelligibility and that it is supported by acceptable evidence that can be justified in fact and in law. The standard of reasonableness not only commands that the decision at issue falls within a range of possible, acceptable outcomes defensible in respect of the facts and law, but it also requires the existence of justification, transparency and intelligibility within the decision-making process (*Dunsmuir v New Brunswick*, 2008 SCC 9 [*Dunsmuir*] at para 47).

[14] The reasonableness standard also applies in the assessment of the adequacy of reasons (*Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board),* 2011 SCC 62 [*Newfoundland Nurses*] at para 14).

[15] Turning to the principles of natural justice and procedural fairness issues, they are to be reviewed on the basis of a correctness standard of review (*Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 43; *Sketchley v Canada (Attorney General)*, 2005 FCA 404 at para 53; *Li* at para 17).

III. Analysis

A. *Was the Officer's decision reasonable?*

[16] Ms. Solopova argues that the Officer made several erroneous findings of fact. First, she claims that the Officer's statements on her lack of ties to Spain were based on vague and irrelevant facts that misconstrued the evidence. Ms. Solopova contends that her temporary status of long duration in Spain does not imply that her ties with that country are weak. On the contrary, Ms. Solopova and her partner have significant financial assets in Spain and they are both gainfully employed there, two factors ignored by the Officer.

[17] Ms. Solopova further submits that the Officer unreasonably used Ms. Solopova's lack of family connections as an indication that she would likely remain past her intended status in Canada, whereas her absence of family ties in Canada should have instead lead to the opposite

conclusion. Furthermore, Ms. Solopova complains that the Officer failed to consider her twelve years of residence and work in Spain, illustrating her connections to that country.

[18] The Officer's reasons also did not adequately address Ms. Solopova's submissions, namely a letter prepared by her representative stating that she has financial assets and real property in Spain, that an educational program in Spain similar to what she applied for in Canada would require taking several exams and would be financially onerous, and that the program in Canada would allow her to improve her English.

[19] Ms. Solopova also argues that the Officer's reasons for rejecting her application do not provide any substantive analysis or comments as to why her evidence was rejected, merely stating "previous refusal noted" and the "rep's submissions on previous refusal noted." This does not constitute adequate reasons, says Ms. Solopova, and the Officer should have at least considered and responded to new evidence that specifically addressed the concerns raised in the first decision (*Dhillon v Canada (Minister of Citizenship and Immigration)*, 2003 FC 1446 at paras 5-8).

[20] Ms. Solopova finally submits that in assessing whether she would leave Canada at the end of her studies, the Officer failed to consider her dual intent pursuant to subsection 22(2) of the IRPA. She contends that a person may have the dual intent of immigrating and of abiding by the immigration law respecting a temporary entry. Pursuant to that provision, the Officer must be satisfied that applicants will not remain illegally in Canada if they fail to meet the requirements and their application for permanent residence is rejected. Therefore, even if the Officer had

concerns about Ms. Solopova's intention of remaining in Canada permanently, such intention was not a barrier to her entry as a temporary student provided the Officer was satisfied that she would leave at the end of her authorized stay. Ms. Solopova also argues that her compliance with Spanish immigration laws weighs in her favour as "previous immigration encounters are good indicators of an applicant's likelihood of future compliance" (*Momi v Canada (Citizenship and Immigration)*, 2013 FC 162 at para 20).

[21] I am not persuaded by any of Ms. Solopova's submissions and arguments.

[22] The onus was on Ms. Solopova to establish her case on a balance of probabilities and to demonstrate that she would leave Canada at the end of her authorized period. The Court reminds that a student visa applicant bears the burden of providing a visa officer with all of the relevant information to satisfy the officer that he or she meets the statutory requirements of IRPA and the Regulations (*Zuo* at para 11). Ms. Solopova's arguments in this judicial review simply put forth alternative explanations for the Officer's findings and amount to taking issue with the weight given to the factors and evidence by the Officer. On judicial review, it is not the role of this Court to reweigh the evidence.

[23] When the standard of review before this Court is that of reasonableness, it is not sufficient to put forward alternate explanations, even ones that are equally reasonable. What Ms. Solopova had to do to succeed in her application was to point to a conclusion that was outside the scope of reasonableness. She failed to do that.

[24] Further to a review of the record, I am not convinced that the Officer ignored or misconstrued any evidence in assessing Ms. Solopova's application. For example, it was reasonably open to the Officer to find that Ms. Solopova had provided insufficient evidence of ties to Spain, the United Kingdom, the Ukraine or any other country that would motivate her to leave Canada when required.

[25] The Officer also reasonably noted that in addition to having a prior study permit refusal, Ms. Solopova's previous academic history did not accord with her intended field of study in Canada. In the circumstances, it was open for the Officer to find that Ms. Solopova was not a genuine student, seeking now to come to Canada to obtain a diploma as a physiotherapy assistant. It was also within the Officer's expertise to weigh the evidence of Ms. Solopova's spouse's financial situation and to come to a conclusion different from the one proffered by Ms. Solopova as to why she was choosing Canada over the United Kingdom or Spain.

[26] The Officer's GCMS notes mention the relevant evidence contained in the certified tribunal record. I am satisfied that this evidence does not reflect the existence of strong ties to Spain, apart from a large sum of money (approximately 400 000 euros in savings) held by Ms. Solopova's partner. Contrary to Ms. Solopova's assertion, there is no evidence that Ms. Solopova and her partner own any real estate in Spain.

[27] Ms. Solopova claimed that she justified her choice of Canada on the basis of cost. However, I note that the programs used in her comparison were university degree programs whereas Ms. Solopova's chosen program in Canada was for a diploma as a physical or

occupational therapy assistant. Given this fact, in conjunction with Ms. Solopova's previous education history and her spouse's financial situation, it was open to the Officer to find that this financial element was not adequate to explain why Ms. Solopova had opted for Canada.

[28] There is also no basis for an inference that the Officer ignored material evidence that squarely contradicted his conclusions (*Canada (Citizenship and Immigration) v Abdulghafoor,* 2015 FC 1020 at para 22). As I stated in *Mirmahaleh v Canada (Citizenship and Immigration)*, 2015 FC 1085 at para 25, a tribunal is presumed to have considered all the evidence and is not required to refer to each constituent element of that evidence (*Newfoundland Nurses* at para 16). Failure to refer to every piece of evidence does not mean that all the evidence was not considered *(Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)* (1998), 157 FTR 35 (FCTD) at paras 16-17). It is only when a tribunal is silent on evidence clearly pointing to the opposite conclusion that the Court may intervene and infer that the tribunal overlooked the contradictory evidence when making its finding of fact. This is not the case here.

[29] Turning to Ms. Solopova's arguments on dual intent, they have no merit as the Officer did not assess Ms. Solopova's intention to establish permanent residence. The question in this case was whether Ms. Solopova could satisfy the precondition of such dual intent, namely that she would leave at the end of her studies. The Officer found she did not. He made his decision based on Ms. Solopova's lack of evidence to show ties to the United Kingdom, Ukraine, Spain or any other country, her previous academic history, her previous permit refusal and her spouse's request for an open work permit (*Odewole v Canada (Citizenship and Immigration)*, 2008 FC

697 at para 16). As Ms. Solopova failed to convince the Officer on that premise, her dual intent did not become a relevant factor to consider for the Officer.

[30] It is true that the Federal Court has confirmed on numerous occasions that "a person may have the dual intent of immigrating and of abiding by the immigration law respecting temporary entry" (*Kachmazov v Canada (Citizenship and Immigration),* 2009 FC 53 at para 15). The two intentions are complementary, not contradictory (*Loveridge v Canada (Citizenship and Immigration),* 2011 FC 694 [*Loveridge*] at para 18). However, the burden lies on the applicant to first demonstrate that he or she will leave at the end of their study period (*Loveridge* at para 20, *Wang v Canada (Citizenship and Immigration)*, 2009 FC 619 at para 14). This threshold requirement has not been met in this case.

[31] With respect to the sufficiency of reasons, it is trite law that the adequacy of reasons is no longer a stand-alone basis for quashing a decision. In *Newfoundland Nurses*, the Supreme Court provided guidance on how to approach situations where decision-makers provide brief or limited reasons. Reasons need not be fulsome or perfect, and need not address all of the evidence or arguments put forward by a party or in the record. It is sufficient if the reasons permit the Court to understand why the decision was made and determine whether the conclusion falls within the range of possible acceptable outcomes (*Newfoundland Nurses* at para 16). The reasons are to be read as a whole, in conjunction with the record, in order to determine whether they provide the justification, transparency and intelligibility required of a reasonable decision (*Agraira v Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36 at para 53; *Construction Labour Relations v Driver Iron Inc*, 2012 SCC 65 at para 3; *Dunsmuir* at para 47).

[32] Reasonableness, not perfection, is the standard. Even where the reasons for the decision are brief, or poorly written, this Court should defer to the decision-maker's weighing of the evidence and credibility determinations, as long as the Court is able to understand why the decision was made. I add that a visa officer's duty to provide reasons when rejecting a temporary resident is minimal and falls at the low end of the spectrum.

[33] When the decision and the record (including the GCMS notes) are all considered, I conclude that the Officer's reasons are adequate and that his finding on Ms. Solopova's lack of a genuine intention to leave Canada at the end of her studies is reasonable. The role of this Court is not to reweigh the evidence on record and substitute its own conclusions to those of visa officers (*Babu v Canada (Citizenship and Immigration)*, 2013 FC 690 at paras 20-21). Visa officers have a wide discretion when rendering decisions pursuant to paragraph 216(1)(b) of the Regulations. So long as the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law, the decision will not be overturned (*Dunsmuir* at para 47). I am of the view that, in this case, the Officer's decision is transparent and intelligible and clearly falls within such a range.

B. *Did the Officer err by failing to ask for additional explanations or to call Ms. Solopova for an interview?*

[34] Ms. Solopova also argues that the Officer made an adverse credibility finding against her, discounting her submissions that she would leave Canada and drawing a negative inference without putting his concerns before her. By doing so, Ms. Solopova claims that the Officer

breached his obligation of procedural fairness in not giving her an opportunity to provide additional information or in not calling her to an interview.

[35] More specifically, Ms. Solopova submits that she had no way of knowing that the Officer would draw negative inferences from the fact that she had a temporary status of long duration in Spain. She contends that, when a visa officer "forms a subjective opinion that the applicant had no way of knowing would be used in adverse way," procedural fairness is owed (*Campbell Hara v Canada (Citizenship and Immigration)*, 2009 FC 263 [*Hara*] at para 23). Had the Officer not viewed Ms. Solopova's evidence through such a negative lens and had the Officer allowed her the opportunity to disabuse him of those concerns, Ms. Solopova submits that a different conclusion would likely have been reached.

[36] I disagree.

[37] A visa officer's duty on an application for a study permit is relaxed, and Ms. Solopova has failed to establish any unfairness on the part of the Officer. The Officer had no duty to call Ms. Solopova for an interview to advise her of any concerns or to put her on notice that a negative decision would be issued. The onus was instead on Ms. Solopova to satisfy the Officer at first instance that a study permit should be issued.

[38] It is well established that a visa officer has no legal obligation to seek to clarify a deficient application, to reach out and make the applicant's case, to apprise an applicant of concerns relating to whether the requirements set out in the legislation have been met, or to

provide the applicant with a running score at every step of the application process (*Sharma v Canada (Citizenship and Immigration)*, 2009 FC 786 at para 8; *Fernandez v Canada (Minister of Citizenship and Immigration)*, [1999] FCJ No 994 (QL) at para 13; *Lam v Canada (Minister of Citizenship and Immigration)* (1998), 152 FTR 316 (FCTD) at para 4). To impose such an obligation on a visa officer would be akin to giving advance notice of a negative decision, an obligation that has been expressly rejected by this Court on many occasions (*Ahmed v Canada (Minister of Citizenship and Immigration)*, [1997] FCJ No 940 (QL) at para 8; *Dhillon v Canada (Minister of Citizenship and Immigration)*, [1998] FCJ No 574 (QL) at paras 3-4). There is no requirement for a visa officer to seek clarification, or to reach out and make the applicant's case (*Mazumder v Canada (Citizenship and Immigration),* 2005 FC 444 at para 14; *Kumari v Canada (Minister of Citizenship and Immigration)*, 2003 FC 1424 at para 7).

[39] I am therefore of the view that, in the circumstances of this case, the Officer was not required to conduct an interview or inform Ms. Solopova of deficiencies in her application. Contrary to Ms. Solopova’s submissions, this is not a situation where she had a right to respond to the Officer’s concerns. This case is distinguishable from *Hara* or *Li,* relied on by Ms. Solopova. In *Li,* the Court found that the officer had a duty to give the applicant an opportunity to respond to his concerns since there was nothing in the applicant's application, other than a reference to the higher salary in Canada, to suggest the applicant intended to stay in Canada permanently (*Li* at paras 37-38). In the present case, the Officer relied on numerous pieces of evidence to support his conclusion on Ms. Solopova’s intentions.

[40] Ms. Solopova claims that, since credibility was an issue, an oral hearing should have been conducted by the Officer (*Hamadi v Canada (Minister of Citizenship and Immigration)*, 2011 FC 317 at para 14; *Duka v Canada (Minister of Citizenship and Immigration)*, 2010 FC 1071 at para 13). However, Ms. Solopova conflates an adverse finding of credibility with a finding of insufficient evidence. I dealt with this matter in *Ibabu v Canada (Minister of Citizenship and Immigration),* 2015 FC 1068, where I stated the following at paragraph 35:

> [35] **An adverse finding of credibility is different from a finding of insufficient evidence or an applicant's failure to meet his or her burden of proof**. As stated by the Court in *Gao v. Canada (Minister of Citizenship and Immigration),* 2014 FC 59, at para 32, and reaffirmed in *Herman v Canada (Minister of Citizenship and Immigration),* 2010 FC 629 at para 17, "it cannot be assumed that in cases where an Officer finds that the evidence does not establish the applicant's claim, that the Officer has not believed the applicant". This was reiterated in a different way in *Ferguson v Canada (Minister of Citizenship and Immigration),* 2008 FC 1067 at para 23, where Justice Zinn stated that while an applicant may meet the evidentiary burden because evidence of each essential fact has been presented, he may not meet the legal burden because the evidence presented does not prove the facts required on the balance of probabilities.
>
> (Emphasis added)

[41] The burden was on Ms. Solopova to adduce sufficient evidence that she would not overstay in Canada. As stated by Mr. Justice Boivin in *My Hong* at para 31, applications for student visa are to be analyzed on a case-by-case basis and a visa officer does not have to supplement the applicant's evidence when it is lacking. The onus is on the applicant to provide the visa officer with all the relevant information and complete documentation in order to satisfy the officer that all statutory requirements are met. This is what Ms. Solopova neglected to do.

[42] There was therefore no breach of procedural fairness in this case. The duty of fairness does simply oblige visa officers to provide sufficiently clear, precise and intelligible reasons, and I am satisfied that the Officer met that standard.

IV. Conclusion

[43] The Officer's refusal of Ms. Solopova's application for a study permit represented a reasonable outcome based on the law and the evidence before the Officer. On a standard of reasonableness, it suffices if the decision subject to judicial review falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law. This is the case here. In addition, the Officer handled Ms. Solopova's application correctly and there was no breach of procedural fairness. Therefore, I must dismiss Ms. Solopova's application for judicial review.

[44] Neither party has proposed a question of general importance for me to certify, and I agree there is none.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed, without costs; and

2. No question of general importance is stated.

"Denis Gascon"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-4153-15
STYLE OF CAUSE:	YULIYA SOLOPOVA v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	MARCH 15, 2016
JUDGMENT AND REASONS:	GASCON J.
DATED:	JUNE 20, 2016

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