

Federal Court



Cour fédérale

Date: 20160829

Docket: IMM-4977-15

Citation: 2016 FC 964

Fredericton, New Brunswick, August 29, 2016

PRESENT: The Honourable Mr. Justice Bell

BETWEEN:

JIN ZHANG

Applicant

and

**THE MINISTER OF IMMIGRATION,
REFUGEES AND CITIZENSHIP**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] This is an application for judicial review of an Immigration Officer's refusal to issue a study permit to Jin Zhang [Ms. Zhang]. The Officer concluded Ms. Zhang was ineligible for a study permit because she had engaged in unauthorized study in Canada while a temporary resident (on a visitor's visa). For the reasons set out below, I would dismiss the application for

judicial review. The Officer's decision meets the test of reasonableness set out in *Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190 [*Dunsmuir*].

II. Context

[2] Ms. Zhang was born in China on March 23, 1975. She arrived in Canada on a visitor's visa on August 23, 2014, which was valid until February 23, 2015. On January 16, 2015, she applied for, and was eventually granted an extension of that visa, until August 30, 2015. On January 5, 2015, Ms. Zhang began a 14-week English as a Second Language [ESL] program at Lambton College, a designated learning institution under the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the Act].

[3] On May 17, 2015, approximately one month after completing the ESL program, Ms. Zhang, while still in Canada, submitted an application for a study permit with respect to a two-year hospitality management program at Lambton College. The program was to commence on August 31, 2015.

[4] The 14-week ESL program undertaken by Ms. Zhang was a prerequisite to her participation in the hospitality management program. Subparagraph 215(1)(f)(iii) of Division 2 of Part 12 of the IRPR provides that a foreign national who is a temporary resident may apply for a study permit after entering Canada if they have completed a course or program of study that is a prerequisite to enrolment at the designated learning institution. Ms. Zhang contends this provision permits her to apply for a study permit from within Canada.

[5] The Officer, however, relied upon paragraph 188(1)(c) of the IRPR to conclude that Ms. Zhang had engaged in unauthorized study while in Canada. That paragraph provides that a foreign national may study in Canada without a study permit provided the duration of the course is “six months or less and will be completed within the period for their stay authorized upon entry into Canada”. [My emphasis]

[6] The Officer concluded that since the 14-week ESL program commenced on January 5, 2015 it was evident that it was not completed by February 23, 2015, the date at which Ms. Zhang was authorized to remain in Canada ‘upon entry’. The Officer rejected Ms. Zhang’s contention that the authorized completion date for her ESL program should be extended to August 30, 2015, the date to which the visitor’s visa was extended. As a result, the Officer concluded that Ms. Zhang had engaged in unauthorized studies while in Canada, violating paragraph 183(1)(c) of the IRPR.

[7] The Officer further considered whether Ms. Zhang was eligible for relief under section 221 of the IRPR. The Officer concluded she was ineligible to apply for a study permit while in Canada and refused her application.

III. Standard of Review

[8] Both parties agree that the applicable standard of review is reasonableness. Where a decision-maker is interpreting his or her home statute, deference generally prevails (*Dunsmuir*, above at para 54; *Chow v Canada (Minister of Citizenship and Immigration)*, 2015 FC 861 at para 8). In applying the reasonableness standard, this Court will not substitute its own views, nor

will it intervene, if the officer's decision is justified, transparent and intelligible, and falls "within a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir*, above at para 47).

IV. Legislative Scheme

[9] Section 11(1) of the Act provides that a foreign national must apply for any document required by the IRPR before entering Canada. This includes applications for study permits, in accordance with section 213 of the IRPR. Subsection 9(1) of the IRPR provides that a foreign national may not enter Canada to study without first obtaining a study permit. Furthermore, section 212 of the IRPR also provides that a foreign national may not study in Canada unless authorized to do so by the Act, a study permit or the IRPR. While subsection 215(1) of the IRPR provides exceptions to the general rule that one must obtain a study permit prior to entering Canada, none of those exceptions apply in the present case. Similarly, as already noted, paragraph 188(1)(c) of the IRPR also provides for an exception.

[10] Paragraph 221(a) of the IRPR reads as follows:

221 Despite Division 2, a study permit shall not be issued to a foreign national who has engaged in unauthorized work or study in Canada or who has failed to comply with a condition of a permit unless

221 Malgré la section 2, il n'est délivré de permis d'études à l'étranger qui a déjà étudié ou travaillé au Canada sans autorisation ou permis ou qui n'a pas respecté une condition imposée par un permis que dans les cas suivants :

(a) a period of six months has elapsed since the cessation of the unauthorized work or study or failure to comply with a condition;	a) un délai de six mois s'est écoulé depuis la cessation des études ou du travail sans autorisation ou permis ou du non-respect de la condition;
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[11] Attached hereto as Appendix 'A' are the relevant provisions of the Act and the IRPR.

V. Matters in dispute

[12] Ms. Zhang contends that the Officer committed a reviewable error in his or her interpretation of paragraph 188(1)(c) of the IRPR. She contends the information published on the official Citizenship and Immigration Canada [CIC] website constitutes a reasonable interpretation of paragraph 188(1)(c). The website reads:

You can study in Canada without a study permit if: the duration of your course of program of study is six months or less and you will complete your course or studies within the time you are allowed to stay in Canada. [My emphasis]

[13] The words “within the time you are allowed to stay in Canada”, in contrast to the words “within the period of stay authorized upon entry into Canada”, suggest a broader interpretation of paragraph 188(1)(c) of the IRPR than that adopted by the Officer. Ms. Zhang contends that according to the information found on the CIC website, the duration of her authorized period of study without a permit must include the date to which her visitor's visa was extended; namely, August 30, 2015.

[14] Furthermore, Ms. Zhang contends that section 221 of the IRPR permitted the Officer to issue a study permit since more than 6 months had elapsed from the cessation of her

unauthorized study by the time the Officer had rendered the decision. The Minister contends section 221 of the IRPR has no application in the circumstances. In the alternative, the Minister contends the Officer's conclusion meets the test of reasonableness.

VI. Analysis

A. *Paragraph 188(1)(c)*

[15] I cannot accept Ms. Zhang's contention regarding the interpretation of paragraph 188(1)(c) of the IRPR. Indeed, the Officer's conclusions cannot be based upon information found on websites. He or she is required to interpret the Act and the IRPR. The words "upon entry into Canada" as found in paragraph 188(1)(c) are unambiguous. It is common ground that words in a statute are to be given their plain meaning unless the context requires otherwise: see, Ruth Sullivan, *Statutory Interpretation*, 2d ed (Toronto: Irwin Law, 2007) at 49-50. Upon entry into Canada Ms. Zhang was authorized to remain until February 23, 2015. I find it reasonable to conclude that that is the date by which she was required to complete any study, pursuant to paragraph 188(1)(c), for which she did not have a study permit. Even if I were to hold the view that the Officer was incorrect in his interpretation of the relevant provisions, he or she must be afforded deference when interpreting his or her home statute. Reasonableness, not correctness, is the standard of review to be applied.

B. *Paragraph 221(a)*

[16] Ms. Zhang also contends the Officer committed a reviewable error in determining that a study permit could not be issued pursuant to paragraph 221(a) of the IRPR. She makes two

submissions. First, she contends that by the time the Officer issued the decision on her application, a period of six months had passed following the conclusion of the 14-week ESL program. She therefore submits that she met the exception set out in paragraph 221(a) in that six months had elapsed from the cessation of the unauthorized study. The Officer considered her application based upon the date it was filed ('lock-in date'). The objective of a lock-in date is briefly described in the Overseas Processing 1 - Procedures of Immigration, Refugees and Citizenship Canada, at 5.24:

The lock-in date is a reference point used to freeze certain factors for the purpose of processing applications. Neither the Act nor the Regulations define it. It does not overcome any requirements of the Act and Regulations that applicants must satisfy when an officer admits them.

[17] Ms. Zhang filed her application for a study permit in May 2015, approximately one month after the cessation of her unauthorized study. It was not unreasonable for the officer to determine that a study permit could not be issued to Ms. Zhang under paragraph 221(a) of the IRPR because six months had not elapsed since the end of her unauthorized study.

[18] As is evident in paragraphs 15 and 16 of these reasons, the Officer appears to have presumed that section 221 of the IRPR applied in the circumstances, but concluded the facts did not favour Ms. Zhang. The Minister, however, contends that section 221 has no application unless the requirements of Division 2 of Part 12 are met. Since they were not met, the Minister contends no analysis is necessary under section 221. Given my finding that the Officer's conclusion regarding the six month delay was reasonable in the circumstances, it is unnecessary to determine whether section 221 of the IRPR applies only in circumstances where an applicant meets the requirements of Division 2.

VII. Conclusion

[19] I find that the Officer's decision meets the test of reasonableness as set out in *Dunsmuir*. It is "within a range of possible, acceptable outcomes which are defensible in respect of the facts and law". There is no basis upon which this Court may intervene. I would therefore dismiss the application for judicial review without costs. Given that the Officer's decision is factually driven there is no need to certify a question with respect to the application of section 221.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed without costs. No question is certified.

"B. Richard Bell"

Judge

APPENDIX A

***Immigration and Refugee
Protection Act, SC 2001, c 27***

***Loi sur l'immigration et la
protection des réfugiés, LC
2001, ch 27***

**Application before entering
Canada**

Visa et documents

11 (1) A foreign national must, before entering Canada, apply to an officer for a visa or for any other document required by the regulations. The visa or document may be issued if, following an examination, the officer is satisfied that the foreign national is not inadmissible and meets the requirements of this Act.

11 (1) L'étranger doit, préalablement à son entrée au Canada, demander à l'agent les visa et autres documents requis par règlement. L'agent peut les délivrer sur preuve, à la suite d'un contrôle, que l'étranger n'est pas interdit de territoire et se conforme à la présente loi.

Work and study in Canada

Études et emploi

30 (1) A foreign national may not work or study in Canada unless authorized to do so under this Act.

30 (1) L'étranger ne peut exercer un emploi au Canada ou y étudier que sous le régime de la présente loi.

Authorization

Autorisation

30 (1.1) An officer may, on application, authorize a foreign national to work or study in Canada if the foreign national meets the conditions set out in the regulations.

30 (1.1) L'agent peut, sur demande, autoriser l'étranger qui satisfait aux conditions réglementaires à exercer un emploi au Canada ou à y étudier.

***Immigration and Refugee
Protection Regulations,
SOR/2002-227***

***Règlement sur l'immigration
et la protection des réfugiés,
DORS/2002-227***

Study permit

Permis d'études

9 (1) A foreign national may not enter Canada to study without first obtaining a study

9 (1) L'étranger ne peut entrer au Canada pour y étudier que s'il a préalablement obtenu un

permit.

permis d'études.

No permit required

Permis non exigé

188 (1) A foreign national may study in Canada without a study permit

188 (1) L'étranger peut étudier au Canada sans permis d'études dans les cas suivants :

...

...

(c) if the duration of their course or program of studies is six months or less and will be completed within the period for their stay authorized upon entry into Canada; or

c) il suit un cours ou un programme d'études d'une durée maximale de six mois qu'il terminera à l'intérieur de la période de séjour autorisée lors de son entrée au Canada;

...

...

Authorization

Autorisation

212 A foreign national may not study in Canada unless authorized to do so by the Act, a study permit or these Regulations.

212 L'étranger ne peut étudier au Canada sans y être autorisé par la Loi, par un permis d'études ou par le présent règlement.

Application before entry

Demande avant l'entrée au Canada

213 Subject to sections 214 and 215, in order to study in Canada, a foreign national shall apply for a study permit before entering Canada.

213 Sous réserve des articles 214 et 215, l'étranger qui cherche à étudier au Canada doit, préalablement à son entrée au Canada, faire une demande de permis d'études.

Application after entry

Demande après l'entrée au Canada

215 (1) A foreign national may apply for a study permit after entering Canada if they

215 (1) L'étranger peut faire une demande de permis d'études après son entrée au Canada dans les cas suivants :

...

...

(f) are a temporary resident

f) il est un résident temporaire

who

qui, selon le cas :

...

...

(iii) has completed a course or program of study that is a prerequisite to their enrolling at a designated learning institution; or

(iii) a terminé un cours ou un programme d'études exigé pour s'inscrire à un établissement d'enseignement désigné;

...

...

Failure to comply with conditions

Non-respect des conditions

221 Despite Division 2, a study permit shall not be issued to a foreign national who has engaged in unauthorized work or study in Canada or who has failed to comply with a condition of a permit unless

221 Malgré la section 2, il n'est délivré de permis d'études à l'étranger qui a déjà étudié ou travaillé au Canada sans autorisation ou permis ou qui n'a pas respecté une condition imposée par un permis que dans les cas suivants :

(a) a period of six months has elapsed since the cessation of the unauthorized work or study or failure to comply with a condition;

a) un délai de six mois s'est écoulé depuis la cessation des études ou du travail sans autorisation ou permis ou du non-respect de la condition;

...

...

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SOLICITORS OF RECORD

DOCKET: IMM-4977-15

STYLE OF CAUSE: JIN ZHANG v THE MINISTER OF IMMIGRATION,
REFUGEES AND CITIZENSHIP

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: MAY 4, 2016

JUDGMENT AND REASONS: BELL J.

DATED: AUGUST 29, 2016

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