

Federal Court



Cour fédérale

**Date: 20170203**

**Docket: IMM-3147-16**

**Citation: 2017 FC 133**

**Ottawa, Ontario, February 3, 2017**

**PRESENT: The Honourable Madam Justice Strickland**

**BETWEEN:**

**RAFAEL ASLANYAN**

**Applicant**

**and**

**MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] This is an application for judicial review of the decision of an Immigration Officer in the Visa Section of the Embassy of Canada in Moscow, Russia (“Officer”) dated July 13, 2016 in which the Officer declined the Applicant’s request for an open work permit.

[2] For the reasons that follow, this application for judicial review is granted.

[3] The Applicant is a citizen of Russia. On July 7, 2016, he applied for an open work permit as an accompanying spouse of a study permit holder. The Officer's decision denying his request was rendered by a standard form letter indicating that the Officer was not satisfied that the Applicant would leave Canada at the end of his authorized period of stay. Two factors were checked off as having been considered in that regard: family ties in Canada and in the country of residence, and, the length of proposed stay in Canada.

[4] In response to a request made pursuant to Rule 15 of the *Federal Courts Citizenship, Immigration and Refugee Protection Rules*, SOR/93-22, the Global Case Management System ("GCMS") notes were provided. These form a part of the decision (*De Hoedt Daniel v Canada (Citizenship and Immigration)*, 2012 FC 1391 at para 51; *Afridi v Canada (Citizenship and Immigration)*, 2014 FC 193 at para 20). The relevant entry is as follows:

PA wishes open WP to join SP and spouses son who are on SP in CAD. Spouse of PA has been in CAD since 2011, WP, VR, TRV, and SP. SP living in basement of her sister. PA intends to live at same res. PA employed as Deputy Director from 2009, PA's employment letter states he is granted 28 days paid leave from 1 Sep 2016. This leads me to believe PA's employer not aware PA wishes to reside in CAD for the next two years. PA has strong ties to remain in Canada; PAs spouse has been in CAD since 2011. I am not satisfied PA will leave CAD at end of authorized stay. Application refused.

[5] In my view, the issue in this matter is whether the Officer's decision was reasonable. Accordingly, the standard of review of the Officer's decision, including the Officer's factual findings, is reasonableness (*Ahmed v Canada (Citizenship and Immigration)*, 2013 FC 1083 at para 21; *Maxim v Canada (Citizenship and Immigration)*, 2012 FC 1029 at para 19; *Momi v Canada (Citizenship and Immigration)*, 2013 FC 162 at para 14).

[6] The Applicant submits that the Officer made a clear error of fact by attributing to the Applicant an intention to reside in Canada full-time during the next two years as the Applicant clearly stated throughout his submissions that he was only seeking permission to come to Canada when allowed vacation time from his employer and that he planned to work in Canada only during those visits. The Applicant also submits that the Officer is clearly implying that the Applicant misled his employer and, thereby, questions the Applicant's motives. The Respondent submits that the Applicant's assertion that he never planned to reside in Canada full-time for the next two years is refuted by his statement in his application that the duration of his expected employment was from September 2, 2016 until July 20, 2018. Further, that the Officer reasonably found that the Applicant's strong ties to Canada made it unlikely that he would leave at the end of an authorized period.

[7] As seen from the above, the GCMS notes in this case are quite limited. However, it is evident from these reasons that the Officer's understanding was that the Applicant sought to reside in Canada for the next two years. In my view, to reach that conclusion the Officer either failed to consider or misapprehend the materials in the record before him or her.

[8] In this regard, the letter of the Applicant's representative which accompanied his application may not have been particularly clear on the point. It stated that the Applicant is "a Deputy Director with "Science and Production Association "Region" LLC in Moscow city", where he permanently resides with his dependent mother, and that he was making his application "not only to visit his spouse during her studies in Canada but also to work during the short periods of his allowed stay". It went on to ask that the Applicant's wife's two-year public

college program be taken into consideration and requested that the Applicant be allowed to work in Canada “whenever he is able to visit with his family”.

[9] However, the Applicant also provided a letter in support of his application in which he asked that he be allowed to visit his family “from time-to-time (whenever I am granted official employment vacation leave from work) during the period of their studies in Canada” and that he be permitted to work when in Canada to contribute to the family income. He explained that following a recent work permit application refusal, the family was advised to provide more documentation in support of his application and, in that regard, he provided two letters of support. The Applicant stated that he did not have any immigration intentions and would return to Russia to his dependent mother. He attached a caregiver statement confirming that for the period September 1, 2016 until September 28, 2016, the caregiver would visit the Applicant’s mother three times a week for three hours a day and provide household assistance and medical care as well as a note from a hospital indicating that his mother suffers from health conditions that require medication and regular follow-up with a physician.

[10] The Applicant also provided an employment letter stating that he has been employed full-time at Science and Production Association since August 1, 2009, his current designation is Deputy Director and that he had been granted an official paid vacation, with preservation of his job, for 28 calendar days from September 1, 2016 until September 28, 2016.

[11] A letter from the Applicant’s wife stated that during the period of her studies, she would not be able to travel to Russia to visit her family due to a large study load, and she and their son

would appreciate it if the Applicant was allowed to visit them from time to time and work legally in Canada “whenever he is able to take short vacation from work”. The letter stated that as a full-time employee working as a Deputy Director, the Applicant could afford to pay the expenses associated with short periods of vacation.

[12] A letter of support from Arman Navasardyan states that he has known the Applicant for six years and that the Applicant has no intention of staying in Canada, rather, “just visiting his family from time to time”. A support letter from Sarkis Anjrkouchian and Haroutioun Kalaydjian states that several years ago the Applicant’s family made the decision to allow their son to be educated in Canada and that the Applicant’s wife accompanied the minor child to Canada for that purpose. Further, that the Applicant’s family had dedicated their well-being for the sake of their only son’s education and was willing to live apart and meet only occasionally: “For three years Yulia and Leonid have resided in Canada while Rafael works to support his family back in Moscow. He is the only breadwinner of the family and the only supporter of his dependent mother”.

[13] Thus, the Applicant’s submissions and supporting documentation were all to the effect that he is seeking a work permit to come to Canada to visit his family and to be able to work in Canada during those visits, but that his employment and residence is in Russia where he has a dependent mother. None of this evidence is referenced in the Officer’s reasons.

[14] The Respondent submits that the Officer’s determination is corroborated by the Applicant’s statement in his application that the duration of his employment in Canada is from

September 2, 2016 until July 20, 2018. It is correct that the portion of the form requesting the duration of expected employment contains those dates. However, those dates also reflect that the work permit is being sought for the period of time from the submission of the application to the expiry of the Applicant's wife's study permit on July 20, 2018, a copy of which was also before the Officer.

[15] In my view, in the context of the application in whole, including the supporting documents, these dates reflect the overall period for which the Applicant sought a work permit. However, he had submitted that the work permit would be utilized only on visits to Canada during periods of vacation from his permanent employment and residence in Russia. The Officer's failure to address any of the Applicant's evidence on this point raises serious concerns as to whether the Officer rendered this decision without regard to the evidence. The evidence also does not support the Officer's stated belief that the Applicant's employer was not aware that the Applicant "wishes to reside in CAD for the next two years".

[16] In this matter, the Officer's decision is unreasonable as the Officer overlooked or ignored evidence that was before him or her and as a result, made an erroneous factual finding as to the Applicant's length of proposed stay in Canada which finding was material to the decision (*Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 72; *Banful v Canada (Citizenship and Immigration)*, 2010 FC 1321 at para 19). The decision therefore was not justified, transparent and intelligible nor does it fall within a range of possible, acceptable outcomes that are defensible in respect of the facts and law (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47).

**JUDGMENT**

**THIS COURT'S JUDGMENT is that**

1. The application for judicial review is granted. The decision of the Officer is set aside and the matter is remitted for redetermination by a different officer;
2. No question of general importance is proposed by the parties and none arises; and
3. There will be no order as to costs.

“Cecily Y. Strickland”

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-3147-16

**STYLE OF CAUSE:** RAFAEL ASLANYAN v MINISTER OF CITIZENSHIP  
AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** JANUARY 26, 2017

**JUDGMENT AND REASONS:** STRICKLAND J.

**DATED:** FEBRUARY 3, 2017

**APPEARANCES:**

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