Federal Court Cour fédérale

Date: 20170510

Docket: IMM-4058-16

Citation: 2017 FC 488

Ottawa, Ontario, May 10, 2017

PRESENT: The Honourable Mr. Justice Fothergill

BETWEEN:

NEHARIKA VERMA

Applicant

and

THE MINISTER OF IMMIGRATION, REFUGEES AND CITIZENSHIP

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Neharika Verma seeks judicial review of a decision of a Case Officer with Immigration, Refugees and Citizenship Canada. The Officer denied Ms. Verma's application for permanent resident status as a member of the Canadian Experience Class [CEC].

[2] For the reasons that follow, the Officer's conclusion that Ms. Verma did not have implied status from June 2, 2015 to July 28, 2015, and therefore did not meet the requirement of a qualifying year of full-time work experience in Canada, was reasonable. The application is dismissed.

II. Background

[3] Ms. Verma is a citizen of India. On December 3, 2013, she obtained a Canadian work permit that was valid until June 2, 2015. On May 25, 2015, she applied for an extension of her work permit.

[4] Ms. Verma's application was returned to her on July 28, 2015 because she had not paid the requisite fee. Ms. Verma had applied for an open work permit, which required payment of a fee in the amount of $255.00. She submitted only $155.00, which was the amount required for a closed work permit. Ms. Verma acknowledges that she was not eligible for either an open or a closed work permit, because she never obtained a labour market impact assessment. Even if she had submitted the correct fee, her application would inevitably have been refused.

[5] In 2016, Ms. Verma applied for permanent resident status as a member of the CEC.

III. Decision under Review

[6] The Officer denied Ms. Verma's application for permanent resident status on September 19, 2016. The Officer found that Ms. Verma did not meet the requirements of s 87.1 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [Regulations]; in particular,

she did not have a qualifying year of full-time work experience in Canada. Ms. Verma claimed to have worked in Canada from July 2014 to August 2015. However, because her work permit expired in June 2015, the Officer declined to recognize the period from June 2, 2015 to July 28, 2015.

IV. Issue

[7] The sole issue raised in this application for judicial review is whether the Officer's decision to refuse Ms. Verma's application for permanent residence was reasonable.

V. Analysis

[8] Decisions regarding applications for permanent residence under the Regulations involve questions of mixed fact and law, and are subject to review by this Court against the standard of reasonableness (*Su v Canada (Citizenship and Immigration)*, 2016 FC 51 at para 10 [*Su*]). The Court will intervene only if the decision falls outside the "range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47).

[9] Ms. Verma relies on ss 183(5) and 183(6) of the Regulations, which provide as follows:

Extension of period authorized for stay	Prolongation de la période de séjour
(5) Subject to subsection (5.1), if a temporary resident has applied for an extension of the period authorized for their stay and a decision is not made on the application by the end of the period authorized for their stay, the period is extended until	(5) Sous réserve du paragraphe (5.1), si le résident temporaire demande la prolongation de sa période de séjour et qu'il n'est pas statué sur la demande avant l'expiration de la période, celle-ci est prolongée :

(a) the day on which a decision is made, if the application is refused; or	a) jusqu'au moment de la décision, dans le cas où il est décidé de ne pas la prolonger;
(b) the end of the new period authorized for their stay, if the application is allowed.	b) jusqu'à l'expiration de la période de prolongation accordée.
[…]	[…]
Continuation of status and conditions	Préservation du statut et conditions
(6) If the period authorized for the stay of a temporary resident is extended by operation of paragraph (5)(a) or extended under paragraph (5)(b), the temporary resident retains their status, subject to any other conditions imposed, during the extended period.	(6) Si la période de séjour est prolongée par l'effet de l'alinéa (5)a) ou par application de l'alinéa (5)b), le résident temporaire conserve son statut, sous réserve des autres conditions qui lui sont imposées, pendant toute la prolongation.

[10] Ms. Verma argues that, by virtue of these provisions, she had “implied status” from the time her work permit expired on June 2, 2015 until her application to extend the permit was returned to her on July 28, 2015. She therefore maintains that it was unreasonable for the Officer to find that she did not satisfy the requirement in s 87.1 of the Regulations of a qualifying year of full-time work experience in Canada.

[11] The central question in this case is whether an incomplete application that is returned to an applicant pursuant to s 12 of the Regulations is a valid application for the purposes of s ss 183(5) and 183(6). Section 12 of the Regulations states:

Return of application	Renvoi de la demande
12. Subject to section 140.4, if the requirements of sections 10 and 11 are not met, the application and all documents submitted in support of it shall be returned to the applicant.	12 Sous réserve de l'article 140.4, si les exigences prévues aux articles 10 et 11 ne sont pas remplies, la demande et tous les documents fournis à l'appui de celle-ci sont retournés au demandeur.

[12] There is conflicting jurisprudence from this Court on whether an incomplete application may subsequently be rectified, or whether it is a nullity. In *Su*, Justice Cecily Strickland conducted a comprehensive review of the jurisprudence, including *Campana Campana v Canada (Citizenship and Immigration)*, 2014 FC 49 [*Campana*], *Ma v Canada (Citizenship and Immigration)*, 2015 FC 159 and *Stanabady v Canada (Citizenship and Immigration)*, 2015 FC 1380 [*Stanabady*]. She also examined the statutory and regulatory scheme of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA], and considered relevant Ministerial Instructions and Regulatory Impact Analysis Statements, before reaching the following conclusion:

> [40] An application must meet the s 10 requirements before it will be considered as having been submitted. And, if an incomplete application is viewed as not having been submitted, then any future submission would be *de novo*. Put otherwise, an application does not "exist" until it is complete and can then be considered and processed.

[13] Justice Sean Harrington's decision in *Stanabady* is to similar effect. Both *Su* and *Stanabady* distinguish Justice Yvan Roy's decision in *Campana* on the ground that he did not specifically consider s 12 of the Regulations.

[14] The divergent jurisprudence of this Court has been largely resolved by the recent judgment of the Federal Court of Appeal in *Gennai v Canada (Citizenship and Immigration)*, 2017 FCA 29 [*Gennai*]. In *Gennai*, Justice David Near held that an incomplete application is not an application within the meaning of the IRPA and the Regulations:

> [6] I agree with the Judge that an incomplete application is not an application within the meaning of IRPA and the Regulations. In

> my view, an incomplete application can no longer exist because the text of section 12 provides that the entirety of an application that has failed to meet the requirements under section 10 is returned to the applicant.

[15] Ms. Verma seeks to distinguish *Gennai* on the ground that it arose in a different factual context. However, both *Gennai* and this case are concerned with the proper interpretation of s 12 of the Regulations. This Court is bound by the interpretation confirmed by the Federal Court of Appeal. The return of Ms. Verma's application to extend her work permit pursuant to s 12 of the Regulations means that it never existed as an application for the purposes of the Regulations.

[16] The Officer's conclusion that Ms. Verma did not have implied status under ss 183(5) and 183(6) of the Regulations from June 2, 2015 to July 28, 2015, and that she did not meet the requirement of s 87.1 of Regulations of a qualifying year of full-time work experience in Canada, was therefore reasonable.

[17] Ms. Verma proposed that the following question be certified for appeal, adapted from the question certified by Justice Harrington in *Stanabady*:

> When a temporary resident has applied for an extension of the period authorized for his or her stay, but the Application is returned to the Applicant due to incompleteness in accordance with section 12 of the *Immigration and Refugee Protection Regulations*, does the Applicant benefit from implied status until that Application is returned?

[18] I agree with the Minister that this question has been answered by the Federal Court of Appeal in *Gennai*, and certifying the question proposed by Ms. Verma would be redundant.

VI. Conclusion

[19] The application for judicial review is dismissed. No question is certified for appeal.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed.

No question is certified for appeal.

"Simon Fothergill"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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