Federal Court Cour fédérale

Date: 20170814

Docket: IMM-4808-16

Citation: 2017 FC 768

Ottawa, August 14, 2017

PRESENT: THE CHIEF JUSTICE

BETWEEN:

JOE MICHAEL PADIDA RAMOS

Applicant

and

THE MINISTER OF IMMIGRATION, REFUGEES AND CITIZENSHIP CANADA

Respondent

JUDGMENT AND REASONS

[1] The Applicant in this proceeding, Mr. Ramos, alleges that the Visa Officer [the Officer] who rejected his application for a temporary work permit committed two errors in his decision. First, he maintains that the Officer failed to take into account the Main Duties and Employment requirements set forth in the National Occupational Classification [NOC]. Second, he submits that the Officer ignored subsection 22(2) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

[2] For the reasons that follow, this Application will be dismissed.

[3] The two issues that have been raised by Mr. Ramos are reviewable on a standard of reasonableness (*Sharma v Canada (Citizenship and Immigration)*, 2014 FC 786, at para 10; *Palogan v Canada (Citizenship and Immigration)*, 2013 FC 889, at para 9).

[4] It is common ground between the parties that the Global Case Management System [GCMS] notes that were made by the Officer form part of the decision that is under review in this Application [the Decision].

[5] Regarding the Officer's alleged failure to take into account the Main Duties and Employment requirements set forth in the NOC, the Officer explicitly recognized in the GCMS notes that Mr. Ramos had received training relevant to the visiting homemaker position that he was offered in Canada by his aunt. In particular, the Officer noted that Mr. Ramos had obtained a certificate in caregiving and that no experience was necessary for the visiting homemaker position.

[6] Mr. Ramos acknowledges this fact. However, he maintains that there is no evidence in the record that the Officer properly weighed his credentials, which largely consisted of the above-mentioned certificate, in reaching the Decision.

[7] It is not the Court's role on judicial review to reweigh the evidence that was before a decision maker (*Hakimi v Canada (Citizenship and Immigration)*, 2015 FC 657, at para 20; *Pan v Canada (Citizenship and Immigration)*, 2010 FC 838, at para 46).

[8] The fact that Mr. Ramos met the educational requirements for the visiting homemaker position was just one of the factors that were relevant to the determinations that the Officer was required to make. In other words, this was not a determinative factor.

[9] The various factors that may be considered by a Visa Officer in assessing an application for a temporary work permit were identified in the Officer's letter to Mr. Ramos, dated September 19, 2016. A number of those factors, together with others, are reflected in the GCMS notes made by the Officer. These included the following:

i. Mr. Ramos' familial relationship with his prospective employer (his aunt), and the person to whom he would be providing care (his grandmother);
ii. Mr. Ramos' certificate in caregiving and his two-year Bachelor degree in respiratory science;
iii. He had only worked for approximately 10 months since June 2006, and that work experience was as a chauffeur;
iv. He had no experience as a visiting homemaker. The Officer recognized that while such experience is not required, it is an asset;
v. He is 40 years of age, with a common law partner and one dependent child;
vi. He "presents weak economic ties to the home country."

[10] Having considered the foregoing factors, it was reasonably open to the Officer to reject Mr. Ramos' application on the basis that he had not demonstrated that he had sufficient employment opportunities and economic ties in his home country to have an incentive to return there at the end of his authorized stay in this country.

[11] Turning to the second issue raised by Mr. Ramos, Mr. Ramos notes that subsection 22(2) contemplates that an applicant for a temporary work permit can have a dual intention to be a temporary resident while also hoping to remain in Canada as a permanent resident. With this in mind, Mr. Ramos maintains that it was unreasonable for the Officer to have focused on whether he would leave Canada by the end of his authorized stay. This is because those who apply under the visiting homemaker program will invariably, or often, make such an application as the first step in an attempt to become a permanent resident in this country. He suggests that it would be therefore incongruous to require such persons to demonstrate an intention to return to their home country upon the expiry of their temporary work permit. He adds that it is precisely because of insufficient economic ties that many of the Applicant's fellow citizens in the Philippines have come to Canada under the visiting homemaker program, and its predecessor program.

[12] This may very well be the case. However, subsection 22(2) of the IRPA states the following:

Dual intent	*Double intention*
22(2) 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.	22(2) L'intention qu'il a de s'établir au Canada n'empêche pas l'étranger de devenir résident temporaire sur preuve qu'il aura quitté le Canada à la fin de la période de séjour autorisée.

[13] In my view, the plain wording of subsection 22(2) makes it clear that, while an intention to become a permanent resident does not preclude an applicant from becoming a temporary resident, the officer who reviews an application for a temporary work permit must nevertheless be satisfied that the applicant will leave Canada by the end of the period authorized for the applicant's stay.

[14] This requirement is reinforced by paragraph 200(1)(b) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [Regulations], which states as follows:

Work permits	*Permis de travail — demande préalable à l'entrée au Canada*
200 (1) Subject to subsections (2) and (3) — and, in respect of a foreign national who makes an application for a work permit before entering Canada, subject to section 87.3 of the Act — an officer shall issue a work permit to a foreign national if, following an examination, it is established that	200 (1) Sous réserve des paragraphes (2) et (3), et de l'article 87.3 de la Loi dans le cas de l'étranger qui fait la demande préalablement à son entrée au Canada, l'agent délivre un permis de travail à l'étranger si, à l'issue d'un contrôle, les éléments ci-après sont établis :
(b) the foreign national will leave Canada by the end of the period authorized for their stay under Division 2 of Part 9;	b) il quittera le Canada à la fin de la période de séjour qui lui est applicable au titre de la section 2 de la partie 9;

[15] As is apparent, this provision effectively requires a foreign national who makes an application for a work permit before entering Canada to establish that he or she will leave Canada by the end of the period authorized for their stay. This is a distinct condition that must be

met, regardless of an applicant's intent to stay in Canada for a longer period of time, and it can be a determinative factor in a visa officer's assessment of an application for a work permit.

[16] In my view, the Officer's determination that he was not satisfied that Mr. Ramos would leave Canada by the end of his authorized stay was well "within a range of acceptable outcomes which are defensible in respect of the facts and the law" (*Dunsmuir v New Brunswick*, 2008 SCC 9, at para 47). The burden was on Mr. Ramos to satisfy the Officer to the contrary (*Solopova v Canada (Citizenship and Immigration)*, 2016 FC 690, at para 30; *Mata v Canada (Public Safety and Emergency Preparedness)*, 2017 FC 200, at para 13). Unfortunately for him, he failed to do so.

[17] I recognize that, if the foregoing provisions of the IRPA and the Regulations are strictly applied, it may be more difficult for those who apply for a temporary work permit to work as a visiting homemaker in Canada, to obtain that permit. However, the IRPA and the Regulations are very clear that a visa officer must be satisfied that the applicant will leave Canada by the end of the period authorized for their stay. If the strict application of this requirement makes it more difficult to attract a sufficient number applicants for temporary positions as visiting homemakers to meet this country's needs, it will be up to Parliament to make any changes to the IRPA and the Regulations that it considers appropriate.

[18] I will pause to add that it is readily apparent from the Officer's last entry in GCMS notes that he was not satisfied that Mr. Ramos would have a sufficient incentive to return to the Philippines in general, whether that be upon the expiry of his temporary work permit, or at a later

point in time. In this regard, the Officer's penultimate statement in the GCMS notes was as follows: "I am not satisfied that subj [sic] has demonstrated employability in home country and sufficient economic ties to have incentive to return."

[19] Mr. Ramos submits that the *Ministerial Instructions Establishing the Caring for People with High Medical Needs Class*, (2014) C Gaz, I, 2906-2908 [Instructions], which were issued on November 29, 2014 pursuant to section 87.3 of the IRPA, over-ride the above-mentioned provisions in subsection 22(2) of the IRPA and in paragraph 200(1)(b) of the Regulations. I disagree.

[20] It is not immediately apparent from the language in subsection 87.3(3), which I have included at Appendix 1 to these Reasons for Judgment, that Ministerial instructions issued under section 87.3 can over-ride the clear language of subsection 22(2) of the IRPA and paragraph 200(1)(b) of the Regulations.

[21] Given that this point was not addressed by the parties, I will not comment on it further. It is sufficient for the present purposes to note that the Instructions are aimed at establishing the "caring for people with high medical needs class" as an economic class under the Regulations. In addition to defining that class, the Instructions outline the requirements to be satisfied by persons who apply for permanent resident visa *as a member of that class*. Given that Mr. Ramos did not apply for a visa as a member of that class, I fail to see how the Instructions assist him to establish that the Officer's decision was unreasonable.

[22] I recognize that there are some distinctions that may be made between Mr. Ramos' situation and the situations that were the subject of this court's decisions in the cases cited at paragraph 16 above. However, given the clear language of subsection 22(2) of the IRPA and paragraph 200(1)(b) of the Regulations, I am satisfied that those cases are good authority for the principle that I described in paragraph 16.

[23] The parties did not suggest that I certify a question for appeal. In my view, no serious question of general importance arises on the facts of this case.

JUDGMENT
(IMM-4808-16)

THIS COURT'S JUDGMENT is that:

1. This Application is dismissed.

2. No serious question of general importance arises on the facts of this case.

"Paul S. Crampton"
Chief Justice

APPENDIX 1 — Relevant Legislation

Immigration and Refugee Protection Act, SC 2001, c 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.
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).
Dual intent	*Double intention*
(2) 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.	(2) L'intention qu'il a de s'établir au Canada n'empêche pas l'étranger de devenir résident temporaire sur preuve qu'il aura quitté le Canada à la fin de la période de séjour autorisée.
Instructions	*Instructions*
87.3 (3) For the purposes of subsection (2), the Minister may give instructions with respect to the processing of applications and requests, including instructions	87.3 (3) Pour l'application du paragraphe (2), le ministre peut donner des instructions sur le traitement des demandes, notamment des instructions :
(a) establishing categories of	a) prévoyant les groupes de

applications or requests to which the instructions apply;	demandes à l'égard desquels s'appliquent les instructions;
(a.1) establishing conditions, by category or otherwise, that must be met before or during the processing of an application or request;	a.1) prévoyant des conditions, notamment par groupe, à remplir en vue du traitement des demandes ou lors de celui-ci;
(b) establishing an order, by category or otherwise, for the processing of applications or requests;	b) prévoyant l'ordre de traitement des demandes, notamment par groupe;
(c) setting the number of applications or requests, by category or otherwise, to be processed in any year; and	c) précisant le nombre de demandes à traiter par an, notamment par groupe;
(d) providing for the disposition of applications and requests, including those made subsequent to the first application or request.	d) régissant la disposition des demandes dont celles faites de nouveau.

Immigration and Refugee Protection Act, SOR/2002-227

Temporary resident	*Résident temporaire*
7 (1) A foreign national may not enter Canada to remain on a temporary basis without first obtaining a temporary resident visa.	7 (1) L'étranger ne peut entrer au Canada pour y séjourner temporairement que s'il a préalablement obtenu un visa de résident temporaire.
Work permits	*Permis de travail — demande préalable à l'entrée au Canada*
200 (1) Subject to subsections (2) and (3) — and, in respect of a foreign national who makes an application for a work permit before entering Canada, subject to section 87.3 of the Act — an officer shall issue a work permit to a foreign national if, following an examination, it is established that	200 (1) Sous réserve des paragraphes (2) et (3), et de l'article 87.3 de la Loi dans le cas de l'étranger qui fait la demande préalablement à son entrée au Canada, l'agent délivre un permis de travail à l'étranger si, à l'issue d'un contrôle, les éléments ci-après sont établis :
….	…
(b) the foreign national will leave	b) il quittera le Canada à la fin de la

Canada by the end of the period authorized for their stay under Division 2 of Part 9;

….

période de séjour qui lui est applicable au titre de la section 2 de la partie 9;

….

FEDERAL COURT

SOLICITORS OF RECORD

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