

Federal Court



Cour fédérale

Date: 20170925

Docket: IMM-3-17

Citation: 2017 FC 854

[ENGLISH TRANSLATION]

Montréal, Quebec, September 25, 2017

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

SHIREEN SHUBBAR FAKHRI ADHARI

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Nature of the case

[1] This is an application under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c. 27 [IRPA], for a judicial review of a decision on December 8, 2016, by an immigration officer at the Canadian Embassy in Ankara, Turkey, whereby the applicant's application for a temporary resident visa was rejected.

II. Facts

[2] The applicant is 34 years old and is a citizen of Iraq.

[3] The applicant is divorced from Mr. Asad Abbas, with whom she has a child who is now eight years old. The child is a Canadian citizen and currently lives in Canada.

[4] The applicant became a permanent resident of Canada in 2007.

[5] On or about April 5, 2009, the applicant received authorization from her husband (now ex-husband) to travel to Iraq with their son, provided that she return to Canada no later than October.

[6] Having not returned to Canada with the child on time, the applicant recounted that her ex-husband went to get their son to bring him back to Canada without her. According to the applicant, her ex-husband also took her permanent resident card and threatened to kill her.

[7] By all accounts, the applicant therefore did not return to Canada or try to obtain a new permanent resident card between 2009 and 2015.

[8] In December 2015, the applicant filed a new permanent residency application, which was refused by an immigration officer on April 11, 2016, for non-compliance with her residency obligation.

[9] That decision is currently being appealed before the Immigration Appeal Division of the Immigration and Refugee Board.

[10] On November 4, 2016, the applicant filed an application for a temporary resident visa to visit her son in Canada and to initiate legal action regarding his custody.

III. Decision

[11] On December 8, 2016, under subsection 11(1) of the IRPA, the officer refused the applicant's application for a temporary resident visa because he was not satisfied that the applicant would leave the country after her stay in Canada as a temporary resident. In reaching that conclusion, the officer considered the following factors: her family ties in Canada and in her country of residence, and the purpose of her visit to Canada.

[12] The officer also recorded the reasons for his refusal in the Global Case Management System (GCMS):

PA was previously PR, but did not meet residency requirements (see R301087023). Letter from representative indicated that PA wants to go to CDA in order to initiate legal action regarding custody agreement child name Shireen Shubbar Fakhri DOB: 13DEC2008. PA is divorced and has very limited ties in country of residence. There is no information provided indicating any arrangement regarding the child mentioned. I do note however that the interview notes from R301087023 appear to indicate the PA would have signed a Power of Attorney document regarding her child and that she recognized having signing it. I see no information/documentation indicating the legal action have been initiated as such, nor that the PA has been requested to testify in court. I have considered the family situation in this case however, the PA is able to have legal action initiated through a representative. [...] Given the limited ties in the country of

residence and the strong pull factors that would be if the PA is allowed to travel to CDA, I am not satisfied that the applicant will be a genuine temporary resident who will depart CDA at the end of the authorized period of stay.

(Notes in GCMS, Embassy file, at p. 3.)

[13] It is that decision that is the subject of this application for judicial review.

IV. Issue

[14] The Court finds that there is only one issue, namely whether the officer erred in refusing the applicant's application for a temporary resident visa.

[15] The applicant claims that the decision by an officer to issue a temporary resident visa is subject to the reasonableness standard (*Dunsmuir v New Brunswick*, [2008] 1 SCR 190, 2008 SCC 9 [*Dunsmuir*]). The respondent is also of the opinion that it is a discretionary power granted to visa officers and that the Court must therefore show restraint regarding that decision in an application for judicial review (*Ngalamulume v Canada (Citizenship and Immigration)*, 2009 FC 1268, at para 16).

V. Relevant provisions

[16] The following provisions of the IRPA apply to this judicial review:

**Application before entering
Canada**

11 (1) A foreign national must, before entering Canada, apply to an officer for a visa or for

Visa et documents

11 (1) L'étranger doit, préalablement à son entrée au Canada, demander à l'agent les

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.

...

Obligation on entry

20 (1) Every foreign national, other than a foreign national referred to in section 19, who seeks to enter or remain in Canada must establish,

...

(b) to become a temporary resident, that they hold the visa or other document required under the regulations and will leave Canada by the end of the period authorized for their stay.

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.

...

Obligation à l'entrée au Canada

20 (1) L'étranger non visé à l'article 19 qui cherche à entrer au Canada ou à y séjourner est tenu de prouver :

...

b) pour devenir un résident temporaire, qu'il détient les visa ou autres documents requis par règlement et aura quitté le Canada à la fin de la période de séjour autorisée.

[17] The following provision of the *Immigration and Refugee Protection Regulations*, SOR/2002-227, is also relevant:

Temporary Resident Visa Issuance

179 An officer shall issue a temporary resident visa to a foreign national if, following an examination, it is established that the foreign national

(a) has applied in accordance with these Regulations for a temporary resident visa as a member of the visitor, worker

Visa de résident temporaire Délivrance

179 L'agent délivre un visa de résident temporaire à l'étranger si, à l'issue d'un contrôle, les éléments suivants sont établis :

a) l'étranger en a fait, conformément au présent règlement, la demande au titre de la catégorie des visiteurs, des travailleurs ou des

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| or student class; | étudiants; |
| (b) will leave Canada by the end of the period authorized for their stay under Division 2; | b) il quittera le Canada à la fin de la période de séjour autorisée qui lui est applicable au titre de la section 2; |
| (c) holds a passport or other document that they may use to enter the country that issued it or another country; | c) il est titulaire d'un passeport ou autre document qui lui permet d'entrer dans le pays qui l'a délivré ou dans un autre pays; |
| (d) meets the requirements applicable to that class; | d) il se conforme aux exigences applicables à cette catégorie; |
| (e) is not inadmissible; | e) il n'est pas interdit de territoire; |
| (f) meets the requirements of subsections 30(2) and (3), if they must submit to a medical examination under paragraph 16(2)(b) of the Act; and | f) s'il est tenu de se soumettre à une visite médicale en application du paragraphe 16(2) de la Loi, il satisfait aux exigences prévues aux paragraphes 30(2) et (3); |
| (g) is not the subject of a declaration made under subsection 22.1(1) of the Act. | g) il ne fait pas l'objet d'une déclaration visée au paragraphe 22.1(1) de la Loi. |

VI. Observations by the parties

A. *Submissions by the applicant*

[18] The applicant first claims that the officer erred in his analysis, as he did not carefully consider the best interests of the child in reaching his decision.

[19] To support this argument, the applicant cites numerous decisions from jurisprudence regarding the need to pay particular attention to the interests and needs of children.

[20] The applicant alleges in this regard that the notes in the Computer Assisted Immigration Processing System that led to the officer's decision make no mention of the best interests of the child as part of an application for a temporary resident visa.

[21] Finally, the applicant suggests that the officer made an unreasonable decision, as he made an incorrect assessment of the applicant's intention to return to her country of origin following her stay in Canada.

B. *Submissions by the respondent*

[22] The respondent argues that the officer's decision was reasonable, as he appropriately considered all the evidence presented to him.

[23] The respondent noted that a visa officer is not required to assess the best interests of the child as part of an application for a temporary resident visa. The officer nonetheless considered the applicant's family status, noting in particular the lack of evidence regarding any legal action concerning custody of the child.

[24] The respondent added that the applicant failed to show that she would leave Canada following her visit. In fact, as the applicant has also filed an application for permanent residency, the respondent claims that the best way to claim humanitarian and compassionate considerations would be in an application for permanent residency, as the applicant has lost her father (in a patriarchal society like Iraq, a key point to be considered).

[25] According to the applicant's allegations, her son is her only anchor and her reason for being. If that allegation is in fact part of the guiding principle of the applicant's life, it is clear that her reason for being exists in the desire to live to raise her son.

VII. Analysis

[26] For the following reasons, the application for judicial review is dismissed, while not forgetting, however, that steps have been taken to obtain permanent residency. The circumstances alleged by the applicant could also raise the granting of humanitarian and compassionate considerations to give the applicant a purpose or a goal in her life, as the applicant has lost her father, as mentioned previously.

A. *Did the officer err in refusing the applicant's application for a temporary resident visa?*

[27] In this case, the officer refused the applicant's application for temporary residence due to her strong ties to Canada, namely the presence of her child in Canada, as alleged by the applicant. However, all the facts noted above can change the applicant's status in Canada following an eventual decision regarding her permanent residency.

[28] If the allegations are proven, the Court considers that the child, a Canadian citizen, would have the opportunity and possibility of living in Canada in peace and safety, with his mother. The child, who is already living in that safe environment, could continue to live in health and safety in Canada, if possible, without the disruptions to life found in Iraq (*Kanthasamy v. Canada (Citizenship and Immigration Canada)*, [2014] 3 FCR 438, 2013 FC 802, at para 51).

[29] It would be up to the applicant to refute the presumption of law that any person seeking to enter Canada is deemed to be an immigrant. The applicant had to convince the officer that she would leave Canada at the end of her authorized stay (*Danioko v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 479, at para 15; *Li v. Canada (Minister of Citizenship and Immigration)*, [2001] FCJ No 1144, 2001 FCT 791, at para 35).

[30] As the applicant did not discharge her burden of proof, the officer was justified in not issuing her a visitor visa.

[31] In that sense, in *Rahman v. Canada (Citizenship and Immigration)*, 2016 FC 793, Cecily Y. Srickland J., writing for the Federal Court, stated at para 12:

Further, it is well-established that an officer must weigh the extent of an applicant's economic incentives and family ties in Canada and their home country. The weight to be assigned to these factors is a matter for the officer's discretion and is not a basis for judicial review (*Wang v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1298 at paras 9-10; *Chhetri v Canada (Citizenship and Immigration)*, 2011 FC 872 [*Chhetri*]).
[Emphasis added.]

[32] After considering all the evidence presented to him, the officer noted that the applicant had previously been a permanent resident of Canada, that she had a son living in Canada, and that she would therefore be less likely to return to Iraq.

[33] Moreover, although the officer was not required to consider the best interests of child as part of an application for temporary residency, he nonetheless addressed the applicant's family status in Canada, particularly in noting that the purpose of her visit was to visit her child and

initiate legal action to obtain custody of her son. The officer also noted that the power of attorney forms were apparently signed and respected by the applicant (*Farhat v. Canada (Citizenship and Immigration)*, 2006 FC 1275 at para 36; *Afridi v. Canada (Citizenship and Immigration)*, 2014 FC 193 at para 21).

[34] The officer's decision falls within the possible, acceptable outcomes that are defensible in respect of the fact and law (*Dunsmuir*, supra, at para 47).

VIII. Conclusion

[35] This application for judicial review is dismissed.

JUDGMENT

THE COURT RULES that the application for judicial review is dismissed. There are no important questions to be certified.

“Michel M. J. Shore”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3-17

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