

Federal Court



Cour fédérale

**Date: 20180719**

**Docket: IMM-35-18**

**Citation: 2018 FC 764**

**Vancouver, British Columbia, July 19, 2018**

**PRESENT: The Honourable Mr. Justice Shore**

**BETWEEN:**

**ANGELE CELESTE FIVAZ**

**Applicant**

**And**

**MINISTER OF PUBLIC SAFETY AND  
EMERGENCY PREPAREDNESS**

**Respondent**

**JUDGMENT AND REASONS**

I. Background

[1] The Applicant is a 36-year-old citizen of the Republic of South Africa. On June 27, 2017, the Applicant entered Canada with a visitor visa after obtaining a multiple entry visitor visa valid from December 3, 2015 to May 23, 2023.

[2] In August 2017, the Applicant applied for a work permit as a caregiver through the Temporary Foreign Worker Program. On December 11, 2017, the Applicant received a letter from the Consulate General of Canada, in Los Angeles, California, stating that her application to work in Canada has been approved and that she had to seek entry to Canada by December 31, 2019, in order to obtain her work permit.

[3] On December 26, 2017, the Applicant entered Canada from a port of entry, this time, as a worker. After reviewing the Applicant's passport, as well as her work permit approval letter dated December 11, 2017, a Border Services officer [BSO] believed that the Applicant had been working without authorization in Canada as a visitor.

[4] On January 2, 2018, the Applicant returned to the Canadian port of entry as requested by the BSO. After questioning the Applicant, an officer from the Canada Border Services Agency [CBSA] made a report pursuant to subsection 44(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA]. The officer found that the Applicant was in fact working in Canada without authorization and recommended that the Applicant be inadmissible to Canada pursuant to subsection 41(a), specifically paragraph 20(1)(b) of the IRPA and Rule 8 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [IRPR].

[5] On January 2, 2018, the Minister's delegate [Delegate] issued an exclusion order against the Applicant pursuant to subsection 44(2) of the IRPA, confirming the inadmissibility of the Applicant for failing to comply with the IRPA and the IRPR.

[6] The Applicant is seeking judicial review of that exclusion order under subsection 72(1) of the IRPA.

II. Relevant Provisions

[7] Paragraph 20(1)(b) and subsection 41(a) of the IRPA state:

**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.

**Non-compliance with Act**

**41** A person is inadmissible for failing to comply with this Act(a) in the case of a foreign national, through an act or omission which contravenes, directly or indirectly, a provision of this Act; and

**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.

**Manquement à la loi**

**41** S'agissant de l'étranger, emportent interdiction de territoire pour manquement à la présente loi tout fait — acte ou omission — commis directement ou indirectement en contravention avec la présente loi et, s'agissant du résident permanent, le manquement à l'obligation de résidence et aux conditions imposées.

[8] Rules 8(1) and 228(1)(c)(iii) of the IRPR state:

**Work permit**

**8** (1) A foreign national may not enter Canada to work without first obtaining a work permit.

**Subsection 44(2) of the Act — foreign nationals**

**228** (1) For the purposes of subsection 44(2) of the Act, and subject to subsections (3) and (4), if a report in respect of a foreign national does not include any grounds of inadmissibility other than those set out in the following circumstances, the report shall not be referred to the Immigration Division and any removal order made shall be

...

(c) if the foreign national is inadmissible under section 41 of the Act on grounds of

...

(iii) failing to establish that they hold the visa or other document as required under section 20 of the Act, an exclusion order,

**Permis de travail**

**8** (1) L'étranger ne peut entrer au Canada pour y travailler que s'il a préalablement obtenu un permis de travail.

**Application du paragraphe 44(2) de la Loi : étrangers**

**228** (1) Pour l'application du paragraphe 44(2) de la Loi, mais sous réserve des paragraphes (3) et (4), dans le cas où elle ne comporte pas de motif d'interdiction de territoire autre que ceux prévus dans l'une des circonstances ci-après, l'affaire n'est pas déferée à la Section de l'immigration et la mesure de renvoi à prendre est celle indiquée en regard du motif en cause :

[...]

c) en cas d'interdiction de territoire de l'étranger au titre de l'article 41 de la Loi pour manquement à :

[...]

(iii) l'obligation prévue à l'article 20 de la Loi de prouver qu'il détient les visa et autres documents réglementaires, l'exclusion,

III. Analysis

[9] For the following reasons, the application for judicial review is granted.

[10] The applicable standard of review to a decision of the Delegate issuing an exclusion order is that of reasonableness (*Mancilla Obregon v Canada (Public Safety and Emergency Preparedness)*, 2018 FC 526 at para 6). This Court shall only intervene if the decision falls outside “a 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 [*Dunsmuir*]).

[11] The issues raised in the present matter are whether the Delegate erred in law by issuing the exclusion order and whether the decision is reasonable.

[12] The Applicant relies on *Paranych v Canada (Public Safety and Emergency Preparedness)*, 2018 FC 158 [*Paranych*] to argue that the Delegate did not have the authority to issue an exclusion order for working without authorization in Canada. The Respondent, on the other hand, submits that the decision was fair and reasonable based on the evidence on file.

[13] According to the evidence on file, the Applicant herself admitted to having worked in Canada without first obtaining a work permit. During her interview with a CBSA officer, the Applicant confessed that she had received \$ 3,600 in compensation for her services as an au pair since August 2017 (Certified Tribunal Record [CTR], Solemn Declaration dated January 2, 2018, p 8). Consequently, the officer who issued the Report under subsection 44(1) of the IRPA noted in his reasons that the Applicant was ineligible to work for six months pursuant to subparagraph 200(3)(e)(i) of the IRPR and that she cannot be issued a work permit at that time due to the Regulations (CTR, Subsection A44(1) Highlights Port of Entry Cases (Short), p 6). The exclusion order was therefore based on the same inadmissibility finding, as per indicated in

the report, that the Applicant was found to have violated the provisions of the IRPA for working without authorization in Canada.

[14] The Court agrees with the Applicant's submissions and reiterates the Federal Court's position in *Paranych*, above:

[24] As in *Yang*, the actual alleged violation was not seeking to enter Canada to work without a work permit, but rather previously working without a permit while already in Canada. [...]

[25] [...] Working without a permit is not a breach of the *Act* or *Regulations* for which the Officer had authorization to issue a removal order. The Officer was instead required to refer a report to the Immigration Division, as set out in subsection 44(2) of the *Act*.

[15] The Applicant had in fact applied for a work permit and her application had already been approved when she presented herself at the port of entry in Canada. The Applicant did not seek entry to Canada on December 26, 2017, with the intention of working without a work permit; the Applicant sought entry to Canada in order to obtain her work permit from the border. The Court concludes that the Delegate's decision is unreasonable as it lacked justification, transparency and intelligibility, per *Dunsmuir*, above.

#### IV. Conclusion

[16] The application for judicial review is therefore granted; and, the exclusion order against the Applicant is quashed.

**JUDGMENT in IMM-35-18**

**THIS COURT'S JUDGMENT is that** the application for judicial review be granted. The exclusion order issued against the Applicant be quashed. There is no serious question of general importance to be certified.

"Michel M.J. Shore"  
\_\_\_\_\_  
Judge

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

**DOCKET:** IMM-35-18

**STYLE OF CAUSE:** ANGELE CELESTE FIVAZ v MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

**PLACE OF HEARING:** VANCOUVER, BRITISH COLUMBIA

**DATE OF HEARING:** JULY 18, 2018

**JUDGMENT AND REASONS:** SHORE J.

**DATED:** JULY 19, 2018

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