Federal Court Cour fédérale

Date: 20181011

Docket: IMM-687-18

Citation: 2018 FC 1023

Vancouver, British Columbia, October 11. 2018

PRESENT: The Honourable Madame Justice Simpson

Docket: IMM-687-18

BETWEEN:

DEBBIE CECILIA VAN HOFFEN
ASHLEIGH CECILIA GONCALVES

Applicants

and

MINISTER OF CITIZENSHIP
AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. PROCEEDING

[1] Debbie Cecilia Van Hoffen [the Principal Applicant] and her minor daughter, Ashleigh Cecilia Goncalves [Ashleigh] [together the Applicants] have brought this application for judicial review of decisions dated December 15, 2017 [the Decisions] made by an officer in the Visa Section of the High Commission of Canada, Pretoria, South Africa [the Visa Officer] refusing to

grant the Applicants temporary resident visas. This application is brought pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

II. BACKGROUND

[2] The Principal Applicant is a 45-year-old citizen of South Africa. Her daughter, Ashleigh is 7 years old and is also a South African citizen. Since 1989, the Principal Applicant has been in a common-law relationship with Ashleigh's father, Tony Vincente Goncalves [the Husband].

[3] In 2016 and 2017 the Principal Applicant made four applications for Canadian visitor visas and study permits. They were all denied. Thereafter on September 22, 2017, with the assistance of an immigration consultant, the Principal Applicant applied for temporary visas [the Visa Applications] for herself and her accompanying minor daughter so that she could pursue a two-year Business Administration Diploma Program at the Northern Alberta Institute of Technology [NAIT].

III. DECISIONS

[4] The decision relating to the Principal Applicant states that "(y)ou have not satisfied me that you would leave Canada at the end of your stay as a temporary resident." The Visa Officer checked the following boxes showing factors considered: purpose of the visit, employment prospects in country of residence and personal assets and financial status. Ashleigh's negative decision was based on the denial of her mother's application.

[5] There is no Global Case Management System [GCMS] entry in the Certified Tribunal Record [CTR] which predates the Decisions. However, the record does include a GCMS entry dated December 16, 2017. The parties agreed that it is the entry which records the Visa Officer's Decisions.

[6] The GCMS notes read as follows:

> Reviewed application & supporting docs. Application for 2 yr Business Administration program at Northern Alberta Institute of Technology. 4 previous refusals in 2016 & 2017 noted. Use of Rep noted. 44 yr old South African national. To be accompanied by minor child (1-EMXLIE5). For post secondary schooling, indicates studied Financial Management Jan 2005- Nov 2005 at Anova Health Institute (NGO). For work experience, indicated worked as Assistant at Accounting Wise c.c. in Aug 2016, then as Accounting Manager Debtors at Timbali PTY Ltd. (Sep 2016-Jul 2017) and Accountant at Anova Health Institute (NGO) Apr 2017-Sep 2017. Indicates will be staying with mother & sister in Edmonton Alberta. Financial documents carefully reviewed; given previous refusals for financial reasons, also reviewed finances on previous applications. I note that there were a series of lump sum deposits over the intervening months that inflated funds. It is still unclear what was the source of many of these deposits. PA did use pension funds & sold their house to help pay for studies. Transferred $59,008.82 from her spouse's account from the sale of their house. I am concerned that PA chose to take such actions to fund proposed studies. Fully considered study plan & explanation about proposed studies; also reviewed information about proposed program of studies. Similar programs & courses are readily available in South Africa & the region and for much lower costs. I do not find the explanation that it would take longer in South Africa to be credible. Based on information provided , I am not satisfied that the proposed studies makes sense and would justify the costs of studying in Canada rather than pursuing programs readily available in the region for a fraction of the costs. I am not satisfied that PA is a genuine student who will depart Canada at the end of an authorized stay. Refused. [my emphasis]

IV. The Issues

Were the Decisions reasonable?

Was there a breach of the principles of procedural fairness?

V. The Applicants' Submissions

Issue i: Reasonableness

[7] The Principal Applicant submits that she was only required to establish that she had sufficient funds to cover her first year's tuition ($15,085 CAD), travel ($2000.00 CAD), living expenses ($10,000.00 CDN) and a sum for Ashleigh ($3000.00 CDN). The Principal Applicant submits that the evidence before the Visa Officer showed that she had over $100,000 CAD. As well, she provided letters of support from her mother and sister who live in Edmonton, Alberta stating that she and Ashleigh could stay with them without charge for room and board and that they would provide Ashleigh with child care. Thus, the Principal Applicant says that there were no grounds for the Visa Officer to reject the Visa Applications on the basis of personal assets and financial status.

[8] The Principal Applicant further submits that the Visa Officer's concern that she sold the house she owned jointly with her Husband and used her pension fund for her studies was unreasonable and unjustified. The Principal Applicant submits that if she wishes to use her home equity and pension to fund her studies, it is not unreasonable and that the balancing of costs and benefits is not the role of a Visa Officer.

[9] Further, the Principal Applicant submits that although the Visa Officer concluded that educational programs similar to those offered at NAIT were available in South Africa and the region for much lower costs, he or she failed to consider the reasons provided by the Principal Applicant for her preference to study at NAIT. They included her ability to study in Canada on a full time basis, and the prestige accorded a Canadian diploma in South Africa. The Applicant's consultant informed the Visa Officer that social pressure in South Africa would require the Applicant to work on a full time basis while she studied part time over several years. As the GCMS notes indicate, the Visa officer did not find this statement credible.

[10] The Principal Applicant also submits that the availability of other programs for lower cost cannot be determinative. She cites *Zuo v Canada (Citizenship and Immigration)*, 2007 FC 88, where Justice Pinard stated at para 23:

> I agree that it is not unreasonable for a visa officer to consider the availability of similar programs offered elsewhere at a lower cost; however, this fact will not necessarily be determinative. If this factor were determinative then many, if not most, study permit applications could be denied on this ground. Moreover, people choosing educational programs may base their choices on more than the price of a program. The availability of similar programs elsewhere at a lower cost is simply one factor to be considered by a visa officer in assessing an applicant's motives for applying for a study permit.

[11] The Principal Applicant argues that the evidence submitted to the Visa Officer established that she chose the business administration diploma from NAIT because the quality of education in South Africa is poor and foreign study is valued. In this regard she submitted a job offer letter from Accounting Wise, a business in South Africa, which was conditional on her completion of her studies abroad.

[12] Finally, the Principal Applicant submits that there was nothing before the Visa Officer to allow him or her to conclude that the Principal Applicant would not return to South Africa. The Applicant's letter of September 18, 2017, which was before the Visa Officer, stated that her common-law partner was not accompanying her but that he awaited her return, that she has two older sisters, five nieces and her father in South Africa, that she had a job offer there and that she has a positive travel history. She had traveled to Canada three times in the past in 1996, 1998 and 2006 and had always returned to South Africa when her visas expired.

Issue ii: Procedural Fairness

[13] The Visa Officer's Decisions were highly discretionary and procedural fairness, while available, is offered at the low end of the spectrum. Nevertheless, the Applicant submits that, if the Visa Officer was concerned about any of the matters listed below, he or she was obliged to give the Principal Applicant an opportunity to address those concerns:

i. The source of some deposits into the Applicant's bank account shown in the 4 months of bank statements included with the Visa Applications.

ii. The reason why the Applicant cashed in her pension and sold her house when those activities generated more money than was needed for her studies at NAIT.

iii. The fact that social pressure would require her to engage in full time work and part time study in South Africa

[14] In this regard, the Applicant cites *Hassani v Canada (Citizenship and Immigration)*, 2006 FC 1283, where Justice Mosley stated at para 24:

> Having reviewed the factual context of the cases cited above, it is clear that where a concern arises directly from the requirements of the legislation or related regulations, a visa officer will not be under a duty to provide an opportunity for the applicant to address his or her concerns. Where however the issue is not one that arises

> in this context, such a duty may arise. This is often the case where the credibility, accuracy or genuine nature of information submitted by the applicant in support of their application is the basis of the visa officer's concern, as was the case in *Rukmangathan*, and in *John* [*John v. Canada (Minister of Citizenship and Immigration)* (2003), 26 Imm. L.R. (3d) 221 (F.C.T.D.)] and *Cornea* [*Cornea v. Canada (Minister of Citizenship and Immigration)* (2003), 30 Imm. L.R. (3D) 38 (F.C.)] cited by the Court in *Rukmangathan*, above.

[15] It is noteworthy that Mr. Justice Mosley states that a duty “may arise”. In my view, no duty will arise unless the issue can be said to be material.

VI. DISCUSSION OF BOTH ISSUES

i. Reasonableness

[16] In my view the Decisions were reasonable notwithstanding the Visa Officer’s failure to mention all the positive aspects of the Principal Applicant’s Visa Application described above. The Visa Officer was faced with a situation in which the Principal Applicant had cashed in her pension and sold her house which was the only asset she shared with her common-law partner. Given those facts the Visa Officer expressed “concern” and that was reasonable because the Principal Applicant had taken steps to liquidate her assets in South Africa when the cost of her studies in Canada did not appear to justify such steps. In these circumstances, it was open to the Visa Officer to find, notwithstanding the other evidence, that the liquidation of assets supported a conclusion that the Principal Applicant was not a genuine student and that she intended to stay in Canada with her daughter.

ii. Procedural Fairness

[17] Contrary to the Principal Applicant's submissions, the Visa Officer did not rely on her earlier visa applications. He or she only noted that since the most recent application, the four months of bank statements provided with the current Visa Applications showed that more cash had been paid into her accounts and that he or she could not identify the sources of all the payments. However, this observation did not cause the Officer to question the legality of the funds or the fact that they belonged to the Principal Applicant. In these circumstances, there was nothing material for the Principal Applicant to respond to in connection with the Visa Officer's comment that not all her sources of income were known.

[18] The Principal Applicant explained in her letter of September 18, 2017, which was before the Visa Officer, that she would use her funds for her tuition (about $30,000 in total), to pay for her daughter's school, their airfare and living expenses. She advised the Visa Officer that she intended to "live comfortably". Notwithstanding this information, the Visa Officer commented on the house sale and pension liquidation and stated: "I am concerned that the PA chose to take such actions to fund proposed studies". In my view, the Visa Officer already had the Applicant's explanation about why she required $100.000 CAD but was nevertheless concerned. In these circumstances, there was no need to provide the Applicant with a further opportunity to explain why she had sold her assets and created such a large bank balance.

[19] Finally, it is my view that the credibility finding about social pressure was not material and for that reason there was no requirement to provide the Applicant with an opportunity to respond to this finding.

[20] To summarize, the Decisions turned on the Visa Officer's concern that the Principal Applicant had liquidated her assets and the fact that she had done so was not in dispute.

VII. Certification

[21] Neither party posed a question for certification for appeal.

[22] For all these reasons the application for judicial review will be dismissed.

JUDGMENT in IMM-687-18

UPON the Applicants' application for judicial review of the Decisions dated December 15, 2017 denying them temporary resident visas;

AND UPON reading the material filed and hearing the submissions of counsel for both parties in Vancouver on October 10, 2018;

AND UPON being advised that no question was posed for certification for appeal;

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

"Sandra J. Simpson"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-687-18
STYLE OF CAUSE:	DEBBIE CECILIA VAN HOFFEN, ASHLEIGH CECILIA GONCALVES v MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	VANCOUVER, BRITISH COLUMBIA
DATE OF HEARING:	OCTOBER 10, 2018
JUDGMENT AND REASONS:	SIMPSON J.
DATED:	OCTOBER 11, 2018

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