Federal Court  Cour fédérale

Date: 20181019

Docket: IMM-269-18

Citation: 2018 FC 1052

Ottawa, Ontario, October 19, 2018

PRESENT: The Honourable Mr. Justice Norris

BETWEEN:

TATIANA CERVJAKOVA

Applicant

and

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] In July 2017, the applicant, her husband and their two young children came to Canada as visitors from Latvia, their country of nationality. Shortly after arriving here, the applicant applied for admission to a four year international accounting and finance programme at Seneca College in Toronto. In September 2017, Seneca offered the applicant admission to the programme on the condition that she first complete a year of studies to improve her proficiency in English.

[2] In October 2017, the applicant applied for a study permit to allow her to undertake this five year course of study. She was still in Canada when she submitted the application to the visa office in Los Angeles, CA. The application was refused on January 4, 2018. The visa officer was not satisfied that the applicant would leave Canada at the end of her authorized stay. The officer was also not satisfied that the applicant had sufficient financial means to complete the proposed programme of study.

[3] The applicant now applies for judicial review of this decision under section 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27, arguing that the officer's decision is unreasonable.

[4] For the reasons that follow, the application for judicial review is allowed. In my view, the officer's conclusion that the applicant had not established that she would leave Canada at the end of her authorized stay and that she could afford the proposed programme are unreasonable. The application for a study permit must, therefore, be reconsidered.

[5] The governing legal frameworks are not in dispute.

[6] First, there is a presumption that foreign nationals wishing to enter Canada are immigrants and it is their onus to rebut this presumption (*Danioko v Canada (Minister of Citizenship and Immigration)*, 2006 FC 479 at para 15; *Ngalamulume v Canada (Minister of Citizenship and Immigration)*, 2009 FC 1268 at para 25 [*Ngalamulume*]).

[7] Second, at the judicial review stage, the visa officer's decision is assessed on a reasonableness standard. Deference is owed to the officer because of his or her presumed expertise with respect to the applicable criteria and the largely fact-based nature of this kind of discretionary decision (*Ngalamulume* at para 16). Reasonableness review "is concerned with the reasonableness of the substantive outcome of the decision, and with the process of articulating that outcome" (*Canada (Attorney General) v Igloo Vikski Inc*, 2016 SCC 38 at para 18). The reviewing court examines the decision for "the existence of justification, transparency and intelligibility within the decision-making process" and determines "whether the decision falls within 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). These criteria are met if "the reasons allow the reviewing court to understand why the tribunal made its decision and permit it to determine whether the conclusion is within the range of acceptable outcomes" (*Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para 16). A visa officer is not required to give extensive reasons, but they must be sufficient to explain the result (*Pacheco v Canada (Citizenship and Immigration)*, 2010 FC 347 at para 36; *Ogbuchi v Canada (Citizenship and Immigration)*, 2016 FC 764 at paras 12-13; *Omijie v Canada (Citizenship and Immigration*), 2018 FC 878 at para 22-28). The reviewing court should intervene only if the reasons given, viewed in the context of the record, fail this test.

[8] In her application for a study permit, the applicant explained that she had found the programme at Seneca when she looked into educational opportunities in Canada after she and her family arrived here. The applicant stated that she intended to return to Latvia at the conclusion of her studies, where she would continue to work in the accounting field. Numerous family

members, including the applicant's parents and her husband's parents, all live in Latvia. There was no evidence that the applicant had any family in Canada (apart, of course, from her husband and two children).

[9] The officer's reasons are set out in two places: the standard form letter sent to the applicant, in which certain boxes were checked indicating the officer's conclusions; and the officer's notes in the Global Case Management System [GCMS].

[10] The decision letter stated that the study permit had been refused because:

- The officer was not satisfied that the applicant would leave Canada at the end of her stay, having considered "several factors, including:"
    - The applicant's family ties in Canada and in her country of residence.
    - The length of the proposed stay in Canada.
    - The purpose of the visit.
    - The applicant's current employment situation.
    - The applicant's personal assets and financial status.
- The officer was not satisfied that the applicant had "sufficient and available financial resources, without working in Canada," to pay the tuition fees for the course or programme of study she intended to pursue, to maintain herself and her family during the proposed period of study, and to pay the costs of travel for herself and her family to and from Canada.

[11] The GCMS notes record the reasons for the decision as follows:

> After considering all information available including principal applicant's personal circumstances, employment/financial/family situation, significant cost of proposed study, accessibility of similar programs in home country, I am not satisfied principal applicant's motivation for pursuing studies in Canada is reasonable, primary purpose is to study, and will leave by the end of an authorized stay period.

(In the interests of readability, I have taken the liberty of replacing the abbreviations the officer used in the notes.)

[12] Having regard to all the circumstances of this case, in my view the officer's conclusions fail the tests of transparency, intelligibility and justification. The conclusion that the applicant would not leave Canada at the end of her authorized stay is especially troubling. A finding that the applicant could not be trusted to comply with Canadian law is a serious matter. The applicant had done everything she was supposed to. She obtained a visitor's visa when she first came to Canada. She applied for a study permit when she decided to undertake further studies in her field (she had worked in accounting for several years in Latvia). The only suggestion that she had not complied with Canadian immigration law is found in the officer's observation that the applicant had listed the occupation of her two children as "students" but there was no record of them having been issued study permits. The children were ages 4 and 11. While one might expect them to be in school, there was no evidence that they were when the application was submitted.

[13] Similarly, the officer notes that it is "unclear" why the applicant did not apply for a study permit before she left Latvia for Canada. The applicant was not required to do so. The only

requirement was that the application be processed by a visa office outside of Canada. While the applicant was in Canada when she sent off her application, she was here lawfully. She was entitled to submit her application when and how she did. Simply being unclear about why this happened does not reasonably support a finding that the applicant had not conducted herself with *bona fides*.

[14] The officer was also not satisfied that the applicant had the financial means to afford the programme and to support herself and her family during an extended stay in Canada. This conclusion is not reasonably supported by the record, either. The applicant presented evidence that she had adequate funds to support herself and her family, especially considering that a policy manual states that the applicant's ability to fund the first year of the proposed course of studies is the primary consideration. (After that, an applicant need only demonstrate a probability of future sources of funding.)

[15] The applicant applied for an open work permit for her husband under section 199(e) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227. While it was not obvious that her husband would be able to find work in Canada, the evidence of the applicant's financial circumstances suggested that the viability of her plans did not depend on this happening. It is true that the applicant's husband had left a job behind in Latvia. The applicant's decision to study in Canada could well entail financial sacrifices for herself and her family but the evidence suggested they could afford to make them. This is often what is required to improve one's circumstances in life. There was no basis to conclude that this was an unreasonable decision on the applicant's part that raised doubts about her true motivation.

[16] It may strike one as odd that the applicant and her family would suddenly decide to extend a summer vacation in Canada into a five-year commitment. But life often takes unexpected turns. Nothing in the circumstances of this case reasonably supported the conclusion that the applicant had failed to establish that she wanted to stay in Canada to study in her field, that she could afford to do so, and that she would leave when she was supposed to.

[17] The parties did not suggest any questions for certification. I agree that none arise.

[18] Accordingly, the application for judicial review is allowed, the decision dated January 4, 2018, denying the application for a study permit is set aside, and the matter is remitted to another visa officer for reconsideration.

JUDGMENT IN IMM-269-18

THIS COURT'S JUDGMENT is that

1. The application for judicial review is allowed.
2. The decision dated January 4, 2018, denying the application for a study permit is set aside, and the matter is remitted to another visa officer for reconsideration.
3. No question of general importance is stated.

"John Norris"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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