Federal Court  Cour fédérale

Date: 20190411

Docket: IMM-3547-18

Citation: 2019 FC 444

Ottawa, Ontario, April 11, 2019

PRESENT: The Honourable Madam Justice McDonald

BETWEEN:

ANNA ZUBOVA

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The Applicant, a citizen of Russia, applied for a work permit as a cook on the basis of a provincial nomination she received from the government of Saskatchewan. Her first application, which was denied on the grounds of misrepresentation, was reconsidered because the visa office overlooked information provided by the Applicant. After a lengthy delay in reconsideration, her application was again denied on the grounds of misrepresentation. The Applicant claims that

there was a breach in procedural fairness in the reconsideration process and she also argues that the decision is unreasonable.

[2] For the reasons that follow, this judicial review is allowed as there was a breach of procedural fairness when the Applicant was not afforded the opportunity to respond to the credibility concerns that arose from the evidence she provided.

Background

[3] In her August 28, 2016 work permit application, the Applicant indicated that she worked as a cook in Russia between July 2007 and August 2008 and included a letter from her former employer with her application.

[4] On September 8, 2016, the Visa Officer sent the Applicant a procedural fairness letter (PFL) raising concerns about the genuineness of her employment history as a cook and claimed that she misrepresented material facts.

[5] Although the Applicant provided a response to the PFL on October 7, 2016, her response was overlooked and on October 25, 2016, her application was refused and she was found to be inadmissible to Canada for misrepresentation.

[6] On February 1, 2018, her application was reopened and reassessed when the Moscow visa office's oversight was discovered.

Decision Under Review

[7] On May 18, 2018, an Officer with the Embassy of Canada in Moscow again refused the Applicant's application for a work permit on the grounds of misrepresentation. The Visa Officer's final determination read, in part, as follows:

> I have considered the supporting documentation submitted, I lend it little weight: while the extract of the pension statement does note a pension contribution for 2007—2008 employment, it does not state what the applicant was employed to do; additionally, the applicant only submitted the first three pages of her work book, which only mentions her employment as a cook, and does not mention her education or any other subsequent employment, as would be expected. Given a consistent history of applications submitted to CIC/IRCC that fail to mention 2007-2008 employment as a cook, weighed against statements that I find self-serving and supporting documentation that is not convincing, I am satisfied that it is more likely than not that the applicant misrepresented her employment history as a cook. This misrepresentation relates to a relevant matter that could have induced an error in the administration of the act insofar as it could have persuaded an officer that the applicant was able to carry out the duties of the employment sought. Application refused. Applicant is inadmissible to Canada as per A40(1)(a), and continues to be inadmissible to Canada as per A40(2)(a), for a period of 5 years as of today's date.

[8] In particular, the Officer was concerned about the Applicant's claimed work experience as a cook, as this experience had not been listed in any of the Applicant's previous applications.

Issue and Standard of Review

[9] The Applicant has raised a number of issues but the issue of procedural fairness is dispositive of the judicial review. As such, I decline to address the other issues.

[10] Currently, matters of procedural fairness matters are considered on a correctness basis (*Mission Institution v Khela,* 2014 SCC at para 79 and *Vavilov v Canada (Citizenship and Immigration),* 2017 FCA 132 at para 13).

Legislation

[11] The relevant provisions of the *Immigration and Refugee Protection Act,* SC 2001, c 27 are as follows:

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.
Misrepresentation	**Fausses déclarations**
40 (1) A permanent resident or a foreign national is inadmissible for misrepresentation	40 (1) Emportent interdiction de territoire pour fausses déclarations les faits suivants
(a) for directly or indirectly misrepresenting or withholding material facts relating to a relevant matter that induces or could induce an error in the administration of this Act.	a) directement ou indirectement, faire une présentation erronée sur un fait important quant à un objet pertinent, ou une réticence sur ce fait, ce qui entraîne ou risque d'entraîner une erreur dans l'application de la présente loi;

Analysis

Breach of Procedural Fairness

[12] The Applicant argues that it was a breach of procedural fairness when she was not afforded the opportunity to respond to the credibility concerns raised by the Officer. The Applicant argues that the Officer was duty-bound to present these concerns to the Applicant and to provide her with an opportunity to respond (see *Ge v Canada (Citizenship and Immigration)*, 2017 FC 594 at para 30).

[13] In the PFL dated September 8, 2016, the Applicant was requested to provide as follows:

> If you decide to respond, your submissions should include your Russian work book and a certificate from the Russian social security company/pension fund providing an extract from your individual social security/pension fund account for 2007 and 2008 indicating the amount of contributions paid, the date on which they were paid, amount of salary, name of employer.

[14] In her response to the PFL, the Applicant included pages from her Russian work book that confirmed her employment as a cook during the relevant time period and she provided a pension statement. However, the Officer gave this evidence "little weight" noting that only the first three pages of the work book had been submitted. The Applicant argues that this was an unfair assessment because the submitted pages included the relevant information to respond to the PFL including the name of the employer, the type of work performed, and the time period of employment. The Applicant argues that, by assigning little weight to these documents, the Officer was making an implicit credibility finding.

[15] The Applicant further argues that the Officer breached procedural fairness by not considering the employment certificates that she had submitted, which she claims were highly probative to her application. The Applicant's August 2016 application included a certification confirming her full-time employment as a cook between July 10, 2007 and August 17, 2008. As part of her reply to the PFL, the Applicant submitted a more recent certificate from the employer, again confirming her past employment. Both certificates were on company letterhead and contained all of the company's contact information, were signed by the company's general director, and bore the same company stamp that appeared in the Applicant's work book.

[16] The Officer either failed to consider these documents or dismissed them because of credibility concerns. In either case, I agree with the Applicant that fairness required that any credibility concerns with her evidence or her documents ought to have been raised with her and she ought to have been given an opportunity to respond. Where there are credibility concerns not put to the Applicant, there is a lapse in procedural fairness.

[17] Applicable to this case is the statement of Justice Mosley in *Hassani v Canada (Minister of Citizenship and Immigration*), 2006 FC 1283 at paragraph 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* and *Cornea* cited by the Court in *Rukmangathan,* above. [Emphasis added.]

[18] Although I acknowledge that the degree of procedural fairness owed to visa applicants is at the low end of the spectrum (*Pan v Canada (Citizenship and Immigration)*, 2010 FC 838 at para 26), an Applicant must still be afforded some opportunity to address concerns relating to credibility.

[19] This is not a situation where the Officer was obliged to provide the Applicant with a "running score" of the issues with her application (see *Rahim v Canada (Citizenship and Immigration)*, 2006 FC 1252 at para 14), rather, the Officer clearly had credibility concerns with the evidence tendered by the Applicant. In the circumstances and in considering the PFL, it was not fair to the Applicant for the Officer to make such credibility findings on the evidence provided in response to the PFL without assessing that evidence in the context of the overall application.

[20] This application for judicial review is, therefore, granted.

JUDGMENT in IMM-3547-18

THIS COURT'S JUDGMENT is that this judicial review is granted. There is no question for certification.

"Ann Marie McDonald"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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