Federal Court Cour fédérale

Date: 20210531

Docket: IMM-6989-19

Citation: 2021 FC 511

[ENGLISH TRANSLATION]

Ottawa, Ontario, May 31, 2021

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

FATOUMATA NIARE

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION
AND
THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondent

JUDGMENT AND REASONS

[1] This is an application for judicial review of an exclusion order made on November 4, 2019, by an enforcement officer under the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA or Act], subsection 44(2).

[2] The applicant is a citizen of Mali. In January 2015, she came to Canada with a university-level study permit valid until March 31, 2016, which was renewed until March 2019. At the same time, she also renewed her Quebec Certificate of Acceptance (CAQ) during the period in question.

[3] In November 2018, the applicant began college-level studies and, as a result, a new CAQ application was made. This application was denied in March 2019, a decision that was upheld in administrative review in August 2019. The following month, an application for judicial review was filed against this decision. Following an out-of-court settlement reached in November 2019, the CAQ application was reconsidered and granted, in the same month, for a period beginning in December of that year.

[4] During this period, in October 2019, the applicant submitted an application to Immigration, Refugees and Citizenship Canada to renew or extend her study permit.

[5] On November 2, 2019, the applicant was arrested on charges of assault, reckless driving and obstruction. Within days of her arrest, the applicant was questioned by an immigration officer and an inadmissibility report was issued. An exclusion order was issued on November 4, 2019.

[6] This application for judicial review concerns compliance with the principles of procedural fairness and the officer's findings on the evidence. Except in respect of the procedural

fairness argument, the standard of review to be applied by this Court is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 23, 77).

[7] The applicant first argues that the officer's decision was made hastily or arbitrarily and is inconsistent with the purpose and spirit of the IRPA. She argues that the officer did not consider her particular circumstances, which prevented her from renewing her permit or from having it reinstated within the time required by the Act.

[8] Second, in relation to the argument above, the applicant argues that the decision was made without regard to the evidence, i.e., the steps she took to obtain the CAQ in order to regularize her status.

[9] Pursuant to the IRPA, subsections 29(2) and 44(2), section 41, and the *Immigration and Refugee Protection Regulations*, SOR/2002-227, subparagraph 228(1)(c)(iv) [IRPR], an exclusion order may be issued where a foreign national is inadmissible for failing to comply with the Act, including failing to leave Canada at the end of the authorized period of stay.

[10] An enforcement officer has limited discretion, if any, depending on the facts, "to examine whether on an overstay the applicant has applied for restoration or could have been implied to have applied within the 90 day period before he came to the attention of Immigration officials" (*Ouedraogo v Canada (Public Safety and Emergency Preparedness)*, 2016 FC 810 at paras 23–24).

[11] In this case, the judicial review file clearly shows that the applicant took steps to regularize her status in Quebec before and after her study permit expired. Obtaining the CAQ was in fact part of the process for regularizing her status in Canada in the province of Quebec (*Canada-Québec Accord Relating to Immigration and Temporary Admission of Aliens* (February 5, 1991) at para 22(a); see also IRPR, subsection 216(3)).

[12] However, this certificate, along with evidence, is not in the certified tribunal record; there is only evidence of the filing of an application for renewal or extension of the study permit and payment of the $350 fee in October 2019, more than seven months after her permit expired. Evidence of efforts to obtain the CAQ therefore cannot be considered by this Court (*Zheng v Canada (Minister of Citizenship and Immigration)*, 13 Imm LR (3d) 226 at para 18, citing *Asafov v Canada (Minister of Employment and Immigration)*, [1994] FCJ No. 713, and *Lemiecha (Litigation guardian of) v Canada (Minister of Employment and Immigration)*, [1993] FCJ No. 1333; *Aivani v Canada (Citizenship and Immigration)*, 2006 FC 1231 at paras 18–20). Nor can the Court fault the officer for failing to consider what was not produced or brought to his attention (*Dhillon v Canada (Citizenship and Immigration)*, 2015 FC 321 at para 23).

[13] Notwithstanding the above, the case law of this Court has already recognized that where a foreign national is found to be inadmissible under the Act, the Minister’s delegate considers the facts of the case rather than the personal or mitigating circumstances of the person concerned when making an exclusion order under section 228 of the IRPA (*Laissi v Canada (Public Safety and Emergency Preparedness)*, 2013 FC 393 at paras 17–19).

[14] Nor do claims of good faith confer implied status or preclude the application of the Act (*Mbaye v Canada (Citizenship and Immigration)*, 2016 FC 1037 at para 13).

[15] The documents on the record show that the immigration officer considered a number of factors before making a decision, including the recent application for status renewal or extension, which was several months out of time; the absence of reasons for the lack of status during that period; the applicant's means to support herself; and the absence of fear of her country of birth.

[16] The applicant remained in Canada after her temporary resident status expired and she had been out of status for several months, all of which was noted after she was arrested for criminal offences. On this point, the Court notes a certain lack of candour and honesty in the applicant's affidavit, as is clear from the certified record.

[17] As specified by the Court, the purpose of the IRPA to facilitate the entry of students and temporary workers into Canada must be balanced with the need to maintain the integrity of the citizenship and immigration programs and to promote compliance with the various obligations under the Act, including security issues (*Toure v Canada (Public Safety and Emergency Preparedness)*, 2014 FC 1086 at para 16; see also the IRPA, paras 3(1)(h)–(i); *Canada (Minister of Public Safety and Emergency Preparedness) v Cha*, 2006 FCA 126 at para 23).

[18] In conclusion, the Court finds that the officer did not breach procedural fairness and that the decision is reasonable in light of the case law, the legislation and the objectives of the regime. The Court dismisses the application for judicial review for the reasons above.

JUDGMENT in IMM-6989-19

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

No question of general importance is certified.

"Michel M.J. Shore"
Judge

Certified true translation
Johanna Kratz, Reviser

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-6989-19
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