Date: 20071022

Docket: IMM-1438-07

Citation: 2007 FC 1090

Montreal, Quebec, October 22, 2007

PRESENT: The Honourable Mr. Justice Blais

BETWEEN:

VIRASOUK KASISAVANH

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the Act), for judicial review of a decision rendered by the visa officer Marthe Dufour, dated February 9, 2007, wherein the visa officer denied the application for permanent residence.

BACKGROUND

[2] Virasouk Kasisavanh (the applicant) was born December 16, 1956 in Laos and is a citizen of France.

[3] On April 26, 2005, selection certificates were issued by the Quebec provincial authorities to the applicant and four members of his family.

[4] He attended a first interview at the Canadian Embassy in Paris, France on March 15, 2006 and a second interview on September 22, 2006.

DECISION UNDER REVIEW

[5] In a letter dated February 9, 2007, the visa officer refused the permanent resident visa application made by the applicant as an entrepreneur selected by the Province of Quebec, mainly on the basis that the applicant had failed to provide the necessary information to establish that the funds he declared in his application were legally obtained.

ISSUES

[6] The following issues are raised in this judicial review application:

1) Did the visa officer err by concluding that the applicant did not meet the requirements of the Regulations to be issued a permanent resident visa?

2) Did the visa officer breach the duty of procedural fairness owed to the applicant?

PERTINENT LEGISLATION

***Immigration and Refugee Protection Regulations*, S.O.R./2002-227**

88. (1) The definitions in this subsection apply in this	**88.** (1) Les définitions qui suivent s'appliquent à la

Division. […]	présente section. […]
"entrepreneur" means a foreign national who	«entrepreneur » Étranger qui, à la fois :
(*a*) has business experience;	*a*) a de l'expérience dans l'exploitation d'une entreprise;
(*b*) has a legally obtained minimum net worth; and	*b*) a l'avoir net minimal et l'a obtenu licitement;
[…]	[…]

STANDARD OF REVIEW

[7] It is trite law that decisions of visa officers are discretionary decisions based essentially on factual assessments and as such, deference must be shown by the Court when reviewing such decisions. As Justice Yves de Montigny wrote in *Sadiki Ouafae v. Minister of Citizenship and Immigration*, 2005 FC 459 (also cited by the Federal Court of Appeal in *Boni v. Canada (Minister of Citizenship and Immigration)*, 2006 FCA 68 at paragraph 7) at paragraphs 18 and 19:

> 18 Opinion on the appropriate standard of review for decisions by visa officers is divided and appears to have spawned seemingly contradictory decisions. In some cases, reasonableness *simpliciter* was the chosen standard (see, *inter alia, Yaghoubian* v. *Canada (M.C.I.)*, [2003] FCT 615; Zheng v. *Canada (M.C.I)*, [2000] F.C.J. No. 31, IMM-3809-98; *Lu* v. *Canada (M.C.I.)*, [1999] F.C.J. No. 1907, IMM-414-99). In other decisions, patent unreasonableness was chosen instead (see, for example, *Khouta* v. *Canada (M.C.I .)*, [2003] F.C.J. No. 1143, 2003 FC 893; *Kalia* v. *Canada (M.C.I.)*, [2002] F.C.J. No. 998, 2002 FCT 731).
>
> 19 And yet, on closer inspection, these decisions are not irreconcilable. The reason for the different choices is essentially

> that the nature of the decision under review by this Court depends on the context. Thus it goes without saying that the appropriate standard of review for a discretionary decision by a visa officer assessing a prospective immigrant's occupational experience is patent unreasonableness. Where the visa officer's decision is based on an assessment of the facts, this Court will not intervene unless it can be shown that the decision is based on an erroneous finding of fact made in a perverse or capricious manner.

[8] In the present case, the appropriate standard of review concerning the admissibility of the applicant for permanent residence is patent unreasonableness, since it concerns an assessment of the origin of the applicant’s funds which is a pure question of facts.

[9] However, allegations of a breach of procedural fairness will be reviewed on a standard of correctness (*Ellis-Don Ltd. v. Ontario (Labour Relations Board)*, [2001] 1 S.C.R. 221, at paragraph 65).

ANALYSIS

1) Did the visa officer err by concluding that the applicant did not meet the requirements of the Regulations to be issued a permanent resident visa?

[10] The applicant alleges that the visa officer’s conclusion regarding the applicant’s residency application and his net worth is patently unreasonable.

[11] The applicant submitted several documents concerning his net worth. However the documents revealed nothing about the source of his funds. The applicant failed to demonstrate how

he was able to save $301,164 with the income reported in those documents. Even though he had not worked since September 2003 and had stayed in Canada as a tourist for two years.

[12] In another decision concerning an application for judicial review, *Martirossian v. Canada (Minister of Citizenship and Immigration)*, 2001 FCT 1119, I wrote at paragraphs 35 and 36:

> [35] The visa officer never suggested that the applicant was involved in unlawful activities. But, to eliminate that possibility, she wanted the applicant to prove a complete absence of unlawful activity. That is why the origin of the applicant's funds was an extremely relevant factor in connection with his admissibility, a matter that fell within the competence of the visa officer. In fact, without accusing the applicant of anything, it is reasonable to think, absent proof to the contrary, that the large sums acquired by the applicant might originate in illegal activities contemplated by section 19 of the Act such as, for example, money laundering, fraud, organized crime or black market transactions.
>
> [36] The visa officer was dissatisfied by the evidence, for during his interview the applicant produced only bank statements. The applicant was unaware and is still unaware that a bank statement proves only the possession of financial resources, not its origin. [...]

[13] In the case at bar, some of the money can be linked to lawful activities, but the documents provided are clearly insufficient to explain the entire net worth of the applicant.

[14] At the interview held on March 15, 2006, when questioned about crucial information concerning the source of funds - his past employments, the source of the money that he had lent to a business, whether had declared the sale of shares in 1994 - the applicant simply did not remember any of that information. Basically, the money he now had came from savings without any indication

- besides savings accounts since 1990, low priced lodging and family allowances - as to how he could have saved so much with a very ordinary wage from 1998 to 2002 to support his family.

[15] The applicant has not been able to demonstrate a patent and unreasonable mistake in the decision rendered by the visa officer. Thus, I find no reason to interfere with the visa officer's decision.

2. Did the visa officer breach the duty of procedural fairness owed to the applicant?

[16] The applicant alleges that the visa officer did not act fairly and that during the interview, he was not given the opportunity to know the case against his application.

[17] A review of the record clearly shows that the applicant was aware of the importance of documents proving that his net worth came from licit activities.

[18] In a letter to the Canadian Embassy dated May 15, 2006, the applicant stated that he had brought all the necessary documents to the March 15, 2006 interview. However, in that same letter, the applicant also recognized that the visa officer had asked him to provide more documents justifying his income, specifically, his declaration of personal incomes from 1989 to 1997 and of professional incomes from 2000 to 2002.

[19] In the letter, the applicant justifies the fact that he could not submit the documents because he could not reach the person who kept those documents and because the Tax Center does not keep records for such a long period of time.

[20] It is important to note here that, according to the CAIPS notes, duplicates of tax declarations can be easily obtained in France.

[21] On October 2, 2006, the applicant sent another letter with documents attached purporting to complete the evidence that was already before the visa officer during the interviews. Those documents are insufficient to explain the source of the applicant's funds and indicate that on that date, the applicant was aware that the source of his net wealth was still at issue.

[22] The applicant alleges that the visa officer ignored those documents. First, as I mentioned earlier, the documents were of no help concerning the legality of the origin of the applicant's funds and second, the applicant has not rebutted the presumption that the officer has considered all of the evidence before (*Hassan v. Canada (Minister of Employment and Immigration)* (1992), 147 N.R. 317 (F.C.A.), [1992] F.C.J. No. 946 (QL); *Shah v. Canada (Minister of Public Security and Emergency Preparedness*, 2007 FC 132, [2007] F.C.J. No. 185 (QL)).

[23] The applicant submits that the officer failed to consider the interview of September 22, 2006. While it is true that this interview is first mentioned in the CAIPS notes entry of October 16, 2006, it is clear from the refusal letter that the visa officer based her decision on the absence of

documents lawfully requested of the applicant and necessary to verify the admissibility of the applicant.

[24] Finally, failing to follow the findings of the Quebec Immigration Board does not constitute a breach of fairness. In fact, Justice Gilles Letourneau, for the Federal Court of Appeal, in *Biao v. Canada (Minister of Citizenship and Immigration)*, 2001 FCT 43 held, at paragraph 1:

> We consider that this appeal should be dismissed with costs and that this question certified by the motions judge should be answered in the negative:
>
> > Does the Canada-Quebec Accord limit the jurisdiction of the visa officer to question the source of funds of a Quebec-destined applicant for permanent residence in Canada, in order to establish the applicant's admissibility? […]

The federal authorities not being limited in their jurisdiction to question the source of funds for the purpose of admissibility, they are clearly not limited, nor bound to the Quebec findings concerning selection requirements unless the applicant does not meet those criteria for selection.

[25] For all the above reasons, I see no breach of procedural fairness in the present case.

[26] Therefore, the intervention of the Court is not warranted in this case.

[27] Neither counsel suggested questions for certification.

JUDGMENT

[1] The application is denied.

[2] No questions for certification.

"Pierre Blais"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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APPEARANCES:

Mr. Tony Manglaviti	FOR THE APPLICANT
Mrs. Christine Bernard	FOR THE RESPONDENT

SOLICITORS OF RECORD:

ALLEGRA & MANGLAVITI Montreal, Quebec	FOR THE APPLICANT
John H. Sims, Q.C. Deputy Minister Department of Justice Montreal, Quebec	FOR THE RESPONDENT