Date: 20071120

Docket: IMM-5773-06

Citation: 2007 FC 1217

Ottawa, Ontario, November 20, 2007

PRESENT: The Honourable Madam Justice Dawson

BETWEEN:

VALLY OLLAH SEPEHRI NODIJEH

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] Vally Ollah Sepehri Nodijeh is a citizen of Iran who applied for permanent resident status in Canada under the New Brunswick Provincial Nominee Program. It is a requirement of that program that an applicant attend an interview in Canada. Mr. Sepehri was thus required to apply for, and obtain, a visitor visa. Mr. Sepehri's application for a visitor visa was refused, and this application for judicial review is brought in respect of the decision of a visa officer refusing Mr. Sepehri's visa application.

[2] A single issue is raised by Mr. Sepehri on this application. He asserts that the reasons of the visa officer for rejecting his application were inadequate. I find that the reasons were adequate, and the application for judicial review is therefore dismissed. In dismissing the application, I give no weight to the affidavit of the visa officer filed in opposition to Mr. Sepehri's application because, in my view, the officer's reasons prepared at the time of the decision should not be supplemented when the Court is asked to review the adequacy of the reasons.

[3] Before turning to the facts of this case, the question of the adequacy of the officer's reasons raises an issue of procedural fairness. Two things flow from that. First, no pragmatic and functional analysis is necessary in order to determine the applicable standard of review because it is for the Court to determine what the duty of fairness requires in any case. Second, the content of the duty to give reasons depends upon the particular context before the Court. The duty of fairness generally owed to an applicant for a permanent resident visa has been found to be located towards the lower end of the range. See: *Patel v. Canada (Minister of Citizenship and Immigration)* (2002), 288 N.R. 48 (F.C.A.), relying upon *Chiau v. Canada (Minister of Citizenship and Immigration)*, [2001] 2 F.C. 297 (C.A.). The content of the duty of fairness generally owed to an applicant for a visitor visa can be no higher, even where the visitor visa is sought in conjunction with a pending application for permanent residence.

[4] As to what, at law, constitutes adequate reasons, the general rule is that reasons are adequate when they fulfill the functions for which the duty to provide them was imposed. See: *Via Rail Canada Inc. v. Lemonde*, [2001] 2 F.C. 25 at paragraphs 21 and 22 (C.A.). In the present context,

reasons are required in order to allow the applicant for the visa to know why his or her request was denied and to allow consideration as to whether to seek leave and judicial review of that decision.

[5] Turning now to the circumstances of the present case, paragraph 20(1)(*b*) and subsection 22(1) of the *Immigration Refugee Protection Act*, S.C. 2001, c. 27 (Act), and sections 179, 191, and 192 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 (Regulations), together require that an applicant for a visitor visa establish that he or she will leave Canada by the end of the period authorized for their stay. In the present case, the officer found that Mr. Sepehri had not met that requirement. The officer's reasons for reaching that conclusion are at issue on judicial review.

[6] In that regard, the officer's Computer Assisted Immigration Processing System (CAIPS) notes (which, it is well accepted, form part of the officer's reasons) record that the officer convoked an interview in order to explore Mr. Sepehri's ties to Iran, why he wanted to immigrate to New Brunswick and what his knowledge of New Brunswick was. The CAIPS notes also record the officer's concerns during and following the interview that:

- Mr. Sepehri was not well established in Iran in that his business was only a year and a half old, his wife no longer worked outside the home, and her brother and parents lived in the United States.

- Mr. Sepehri had admitted to prior dishonest conduct.

[7] On this basis, the officer was not satisfied that Mr. Sepehri would leave Canada when required.

[8] In my view, those reasons, while regrettably meagre, are just sufficient to enable Mr. Sepehri to know why his application for a visitor visa was refused and to assess whether proceedings for leave and judicial review should be commenced. As such, the reasons were adequate.

[9] As adverted to above, the visa officer swore a brief affidavit in this proceeding in which he stated that he reviewed the CAIPS notes, that the notes reflect his recollection and understanding of the file, and that the notes indicate why he came to his decision. He then, over the next two pages of the affidavit, explains why the application was refused.

[10] The affidavit was not egregious in that it did not raise matters that were not referred to in the CAIPS notes. However, as my colleague Madam Justice Gauthier recently noted in *Jesuorobo v. Canada (The Minister of Citizenship and Immigration),* 2007 FC 1092, section 14 of the Citizenship and Immigration Canada Operating Manual OP 11 instructs officers that they "should ensure that case notes in CAIPS are complete and accurate" and that the notes should "detail the reasons for the refusal". This reflects the reality that, in the many months between the making of the decision and the preparation of the affidavit in proceedings challenging the decision, the officer will have dealt with numerous other applications. As my colleague Madam Justice Mactavish observed in *bin Abdullah v. Canada (Minister of Citizenship and Immigration),* [2006] F.C.J. No. 1482 at paragraph 14, this "would inevitably have had a negative impact on [the officer's] ability to recall her precise thought processes" in assessing the application.

[11] Because of the instructions given to officers with respect to the need for complete CAIPS notes, the potential unreliability of evidence that is prepared months after the decision with the knowledge that the decision is being challenged, and the unfairness inherent in allowing an officer to supplement their reasons when the adequacy of the original reasons is at issue, I am of the view that no weight should be given to the officer's affidavit.

[12] The same conclusion was reached by Justice Gauthier in *Jesuorobo* at paragraph 12.

[13] The application for judicial review is therefore dismissed. Counsel posed no question for certification, and I am satisfied that no question arises on this record.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that:

1. The application for judicial review is dismissed.

"Eleanor R. Dawson"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-5773-06
STYLE OF CAUSE:	VALLY OLLAH SEPEHRI NODIJEH, Applicant and THE MINISTER OF CITIZENSHIP AND IMMIGRATION, Respondent
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APPEARANCES:

WENNIE LEE	FOR THE APPLICANT
CATHERINE VASILAROS	FOR THE RESPONDENT

SOLICITORS OF RECORD:

LEE & COMPANY BARRISTERS & SOLICITORS TORONTO, ONTARIO	FOR THE APPLICANT
JOHN H. SIMS, Q.C. DEPUTY ATTORNEY GENERAL OF CANADA	FOR THE RESPONDENT