

Date: 20080530

Docket: IMM-3660-07

Citation: 2008 FC 692

Ottawa, Ontario, May 30, 2008

PRESENT: The Honourable Madam Justice Tremblay-Lamer

BETWEEN:

Madre Erielle KIBANGOUD

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review under subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the Act) of a decision rendered by a visa officer (the officer) on June 27, 2007, refusing the applicant's application for a study permit.

[2] The applicant is a citizen of Congo-Brazzaville. She applied for a study permit at the Canadian embassy in Dakar, Senegal, to obtain authorization to pursue a program of studies at the Université de Montréal in Canada.

[3] In her decision, the officer refused the application because she was not satisfied that the applicant had the financial resources to pay for her tuition and accommodations during her stay in Canada or that she would leave Canada at the end of the period authorized for her stay.

Preliminary objections

[4] The respondent is claiming that the applicant provided no valid affidavit in support of her application. The only affidavit on the record was signed by Claude François Itsouhou and provides general information on his own personal situation, as well as his personal opinion of the refusal of the application for a study permit.

[5] In such a case, “where there is no evidence based on personal knowledge filed in support of an application for judicial review, any error asserted by an applicant must appear on the face of the record” (*Turcinovica v. Canada (Minister of Citizenship and Immigration)*, 2002 FCT 164, [2002] F.C.J. No. 216 (QL), at para. 14; *Moldeveanu v. Canada (Minister of Citizenship and Immigration)*, [1999] F.C.J. No. 55 (QL), at para. 15).

[6] The respondent is raising a second preliminary objection concerning the filing of documents that were not in evidence before the officer.

[7] Case law has established that a review of the merits of an impugned decision is conducted based on the evidence that is before a tribunal when it renders the decision (*Zolotareva v. Canada (Minister of Citizenship and Immigration)*, 2003 FC 1274, [2003] F.C.J. No. 1596 (QL), at para. 36;

see *Noor v. Canada (Human Resources Development)*, [2000] F.C.J. No. 574 (QL), at para. 6; *Rodbom v. Canada (Minister of Employment and Immigration)*, [1999] F.C.J. No. 636 (QL), at para. 1). Consequently, those documents will be disregarded in the analysis of this case.

Standard of review

[8] The applicant is claiming that the officer made erroneous findings concerning the sufficiency of the applicant's financial resources and her intention to leave Canada after her studies are finished.

[9] Based on the Supreme Court of Canada decision in *Dunsmuir v. New Brunswick*, 2008 SCC 9 and on this Court's previous case law, I conclude that the applicable standard of review is reasonableness.

[10] As for procedural fairness issues, namely, the invitation to an interview and request for additional information, they are not subject to the standard of review. "It is for the courts, not the Minister, to provide the legal answer to procedural fairness questions" (*Canadian Union of Public Employees (C.U.P.E.) v. Ontario (Minister of Labour)*, [2003] 1 S.C.R. 539, [2003] S.C.J. No. 28 (QL), at para. 100).

Analysis

[11] To obtain a study permit, an applicant must meet the admission criteria set out in the *Immigration and Refugee Protection Regulations*, SOR/2002-227 (the Regulations). Specifically,

under section 216 of the Regulations, the applicant must demonstrate to the officer that they “will leave Canada by the end of the period authorized for their stay” and, under section 220, that they have sufficient and available financial resources to “pay the tuition fees for the course or program of studies that they intend to pursue”, “maintain themselves and any family members who are accompanying them during their proposed period of study” and “pay the costs of transporting themselves and the family members ... to and from Canada”. The onus is on the applicant to establish all of these criteria (*Ramzi v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 486, [2007] F.C.J. No. 656 (QL), at para. 14).

[12] In regard to this, the applicant indicated on form IMM1294 that her expenses in Canada would be covered by her parents or herself. In addition, in a document entitled [TRANSLATION] “Funding”, she stated that her father undertook to cover all of her expenses relating to tuition, her university needs and her stay in Canada. In contrast, a document entitled [TRANSLATION] “Parental Authorization for the Purposes of Guardianship”, on which Mr. Itsouhou’s name appears, indicates that [TRANSLATION] “[Mr. Itsouhou] undertakes to ensure the care and education of the applicant in order to promote her development”, a statement that does not explicitly indicate that he would act as financial guarantor.

[13] According to the information on the record, the amount of money needed for a year of study in Canada is approximately \$22,000, in the applicant’s case. The applicant submitted a bank confirmation in her name from the National Bank of Canada indicating that she has been a client of that bank since October 2006 and that she has \$11,005. In addition, the applicant stated that the

guarantor, her father, is a customs inspector and his monthly salary is equivalent to CAD\$1,036.44. The record shows that he has five dependants, and his bank statement from MUCODEC indicates that this salary is the family's only source of income. Thus, the officer was not satisfied that the applicant's father could provide for the needs of the family in Congo-Brazzaville and pay for the applicant's studies in Canada with his monthly salary of CAD\$1,036.44.

[14] In light of this evidence, it was not unreasonable, in my opinion, for the officer to conclude that the applicant's financial resources were insufficient to cover the costs of the proposed period of study in Canada.

[15] The applicant is also claiming that the officer breached her duty of fairness by not granting the applicant an interview and not asking her to provide additional information to clarify the situation.

[16] First, I note that, the day after the applicant filed her application, after it was first examined, the Canadian embassy in Dakar sent the applicant a letter, asking her to provide additional information in order to satisfy the officer that she had sufficient resources to pay for studies in Canada.

[17] Second, it is settled law that an applicant does not have the right to an interview by reason of the fact that there is insufficient supporting evidence (*Ramzi, supra*, at para. 24; *Dardic v. Canada (Minister of Citizenship and Immigration)*, 2001 FCT 150, [2001] F.C.J. No. 326 (QL), at para. 18).

It was up to the applicant to send the officer all of the evidence that could satisfy her regarding the applicant's financial capacity.

[18] In this case, the officer did not have a duty to request additional information again or to invite the applicant for an interview.

[19] Consequently, the application for judicial review is dismissed.

JUDGMENT

THE COURT ORDERS that the application for judicial review be dismissed.

“Danièle Tremblay-Lamer”

Judge

Certified true translation
Susan Deichert, Reviser

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3660-07

STYLE OF CAUSE: Madre Erielle KIBANGOUD v. MCI

PLACE OF HEARING: Montréal, Quebec

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**REASONS FOR JUDGMENT
AND JUDGMENT:** TREMBLAY-LAMER J.

DATED: May 30, 2008

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