Federal Court  Cour fédérale

Date: 20090722

Docket: IMM-4664-08

Citation: 2009 FC 744

Ottawa, Ontario, July 22, 2009

PRESENT: The Honourable Mr. Justice Russell

BETWEEN:

GLENDA ANGELES

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application pursuant to s. 72 (1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (Act) for judicial review of a decision of an Officer of Citizenship and Immigration Canada stationed at Makati City, Philippines (Officer), dated August 13, 2008 (Decision), refusing the Applicant's application for a work permit.

BACKGROUND

[2] The Applicant is a citizen of the Philippines. She was born on October 11, 1985 in San Miguel Pampanga, Philippines. She has been married to Johnston Angeles for two years.

[3] The Applicant and her husband have a daughter, Jiah, who was born on December 20, 2006. The Applicant has made arrangements for her parents to look after Jiah while she and her husband work as fish processors in Canada for two years. The Applicant's husband has secured a visa and is currently working as a fish processor in British Columbia, Canada. The Applicant hopes that by coming and working in Canada she can prepare a "better financial future for [her and her] family."

[4] The Applicant graduated from Guagua National College on March 2004 and is certified as a Nursing Aide. She has been working as a nursing aide for over three years. She works at Mercy Clinic Hospital in Guagua, Pampanga, Philippines. She draws a monthly salary of 8000 pesos per month, which is equivalent to $195.00 CDN.

[5] The Applicant has received an offer of employment from Grand Hale, a fish processing plant in Richmond, British Columbia as a fish processor. She would be responsible to cut, clean and pack fish and other seafood products. The Applicant would make $12 per hour CDN, which is 70720 pesos more per month than she currently makes at her job.

[6] The Applicant completed a medical examination requested by the Canadian Consulate in Makati City on June 6, 2008. She also received a positive Labour Market Opinion from Service Canada.

DECISION UNDER REVIEW

[7] The Officer held that the Applicant was required to establish that she met all of the requirements under Part 11 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 (Regulations): (1) that she would not contravene the conditions of admission; (2) that she does not belong in a category of persons inadmissible to Canada under the Act; (3) that her intentions were *bona fide*; and (4) that she would leave Canada by the end of the period authorized for her stay.

[8] The Officer concluded that the Applicant had not satisfied him that she would leave Canada by the end of the period authorized for her stay because she "h[ad] not demonstrated ties that would satisfy [the Officer] of [the Applicant's] intention to return."

[9] The Officer indicated that the Applicant did not meet the requirements of the Act and the Regulations and her application was refused.

[10] In the Officer's CAIPS notes, he noted that the Applicant's qualifications were inconsistent with her desired employment in Canada, since she worked in health care but had prospective employment that required "repetitive, manual, labour-intensive tasks." The Officer expressed

concern about whether the Applicant "would be able to perform [the] duties and terms and conditions of the contract and the LSP."

[11] The Officer also noted the Applicant's present weak economic ties and noted that her spouse was applying for the same job, which further weakened familial ties.

ISSUES

[12] The Applicant submits the following issues on this application:

1) Should the Officer's Decision be quashed and the matter be referred back for a fresh decision by another officer on the basis that it is unreasonable in law?

STATUTORY PROVISIONS

[13] The following provisions of the Act are applicable in this proceeding:

20. (1) Every foreign national, other than a foreign national referred to in section 19, who seeks to enter or remain in Canada must establish,	**20.** (1) L'étranger non visé à l'article 19 qui cherche à entrer au Canada ou à y séjourner est tenu de prouver :
…	…
(*b*) to become a temporary resident, that they hold the visa or other document required under the regulations and will leave Canada by the end of the period authorized for their stay.	*b*) pour devenir un résident temporaire, qu'il détient les visa ou autres documents requis par règlement et aura quitté le Canada à la fin de la période de séjour autorisée.

STANDARD OF REVIEW

[14] The Applicant submits that the standard of review of a decision of a visa officer is the standard applicable to the Immigration of Refugee Board which, in the Applicant's view, is correctness: *Dunsmuir v. New Brunswick*, 2008 SCC 9 (*Dunsmuir*) and *Pushpanathan v. Canada (Minister of Citizenship and Immigration)*, [1998] 1 SCR 982.

[15] The Respondent submits that the Officer's assessment of the application for a work permit involved an exercise of statutory discretion which should be given a high degree of deference. Therefore, the appropriate standard of review is reasonableness: *Dunsmuir*. The Respondent also submits that this Court defer to an officer's decision if his or her findings are justified, transparent and intelligible, and fall within the range of possible outcomes given the evidence as a whole. See: *Dunsmuir* and *Choi v. Canada (Minister of Citizenship and Immigration)* 2008 FC 577. The Respondent says that the standard of review is not correctness as the Applicant asserts.

[16] The standard of review for decisions of a visa officer has been reasonableness *simpliciter*: *Castro v. Canada (Minister of Citizenship and Immigration)* 2005 FC 659 at paragraph 6 and *Ram v. Canada (Minister of Citizenship and Immigration)*, [2003] F.C.J. No. 855. When a visa officer refuses a work permit solely on statutory interpretation, the standard of review is correctness: *Singh v. Canada (Minister of Citizenship and Immigration)* 2006 FC 684 at paragraph 8 and *Hamid* v. *Canada (Minister of Citizenship and Immigration)* 2005 FC 1632 at paragraph 4.

[17] In *Dunsmuir*, the Supreme Court of Canada recognized that, although the reasonableness *simpliciter* and patent unreasonableness standards are theoretically different, "the analytical problems that arise in trying to apply the different standards undercut any conceptual usefulness created by the inherently greater flexibility of having multiple standards of review": *Dunsmuir* at paragraph 44. Consequently, the Supreme Court of Canada held that the two reasonableness standards should be collapsed into a single form of "reasonableness" review.

[18] The Supreme Court of Canada in *Dunsmuir* also held that the standard of review analysis need not be conducted in every instance. Instead, where the standard of review applicable to the particular question before the court is well-settled by past jurisprudence, the reviewing court may adopt that standard of review. Only where this search proves fruitless must the reviewing court undertake a consideration of the four factors comprising the standard of review analysis.

[19] Thus, in light of the Supreme Court of Canada's decision in *Dunsmuir* and the previous jurisprudence of this Court, I find the standard of review applicable to the stated issue to be reasonableness. When reviewing a decision on the standard of reasonableness, the analysis will be concerned with "the existence of justification, transparency and intelligibility within the decision-making process [and also with] whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law": *Dunsmuir* at paragraph 47. Put another way, the Court should only intervene if the Decision was unreasonable in the sense that it falls outside the "range of possible, acceptable outcomes which are defensible in respect of the facts and law."

[20] In written arguments the Applicant also raised procedural fairness issues. The standard of review for procedural fairness is correctness: *Suresh v. Canada (Minister of Citizenship and Immigration)* 2002 SCC 1.

ARGUMENTS

The Applicant

[21] The Applicant says that the Officer's Decision should be quashed and the matter referred back for a fresh decision by another Officer on the basis that it is unreasonable in law. The Applicant says that she meets the requirements of section 20 of the Act and that the Officer's Decision was unreasonable since relevant evidence was ignored and unwarranted assumptions drawn.

[22] The Applicant submits that the Officer made assumptions that the Applicant was not economically established and would not return to the Philippines on the expiry of her work permit. The Applicant says that this is "without foundation, irrational and untenable."

[23] As well, the Applicant states that the Officer ignored the relevant facts in front of him including that the Applicant:

1) Has an active working history;

2) Has a daughter and elderly parents in the Philippines;

3) Owns and will inherit property in the Philippines;

4) Has customs and traditions that are consistent with her returning to her homeland upon the expiration of the work permit; and

5) Deposed in her affidavit that she is aware that this employment contract is not extendable.

[24] The Applicant states that, even in applying the most stringent standard of review, the Officer erred if he relied on a single fact to outweigh all the other relevant facts provided by the Applicant. See: *Guo v. Canada (Minister of Citizenship and Immigration)* 2001 FCT 1353; *Yuan v. Canada (Minister of Citizenship and Immigration)* 2001 FCT 1356 and *Malhi v. Canada (Minister of Citizenship and Immigration)* 2005 FC 1120.

[25] The Applicant submits that the Officer's "purported personal experiences or knowledge cannot be the primary basis of his decision. The decision must be based primarily on the merits of the case." See: *Wang v. Canada (Minister of Citizenship and Immigration)* 2003 FCT 365.

[26] The Applicant says she was not given an opportunity to respond to any of the concerns the Officer may have had. The Officer made unsupportable assumptions when refusing her work permit application. She says she must be given an opportunity to provide an explanation for perceived or apparent deficiencies and respond to an Officer's concerns. See: *Vandi v. Canada (Minister of Citizenship and Immigration)* 2002 FCT 515 and *Chow v. Canada (Minister of Citizenship and Immigration)* 2001 FCT 996.

Respondent

[27] The Respondent submits that the Officer considered all of the evidence, particularly since the Officer's CAIPS notes indicate that:

1) The Applicant has a two-year offer of employment in Canada;
2) She is a 22-year-old married female with one dependant;
3) She has no previous travel and no relatives in Canada;
4) She has been employed as a nursing aide since May 2004;
5) Her qualifications are inconsistent with her desired employment in Canada, as her work experience is in health care;
6) The prospective employment is menial, repetitive and labour-intensive. There was also some concern as to whether the Applicant would be able to perform the duties specified; and
7) Her husband had applied for the same job, so this suggests weak familial ties.

[28] The Respondent submits that the Officer reasonably considered the Applicant's specific circumstances.

[29] The Respondent submits that the onus was on the Applicant to satisfy the Officer that she would depart Canada at the end of the period authorized for any temporary work in Canada. The Officer was entitled to examine the totality of the circumstances relating to the Applicant's case. The Applicant's financial and other ties to the Philippines, age, family circumstances, and

employment were all relevant factors for the Officer to consider. When an applicant has an incentive to remain in Canada, this is part of the "broader picture" that an officer ought to consider in assessing whether an applicant will leave Canada at the end of the period authorized for any temporary stay. The weight to be assigned to each factor is a matter for an officer's discretion and is not a basis for judicial review. See: *Wang v. Canada (Minister of Citizenship and Immigration)* 2006 FC 1298 at paragraphs 9-10; *Nguyen v. Canada (Minister of Citizenship and Immigration)* 2005 FC 1087; *Skoruk v. Canada (Minister of Citizenship and Immigration)* 2001 FCT 1220 and *Ayatollahi v. Canada (Minister of Citizenship and Immigration)* 2003 FCT 248 at paragraph 23.

[30] In relation to the Applicant's argument that she should have been granted an interview, the Respondent submits that the duty of fairness prescribes minimum standards of procedural decency and that the content of the duty varies according to context. Several factors tend to reduce the content of the duty of fairness owed to visa applicants, some of which are considered in *Chiau v. Canada (Minister of Citizenship and Immigration)*, [2001] 2 F.C. 297 (F.C.A.) at paragraphs 35-36. The factors tending to limit the content of the duty in the case at bar include: the absence of a legal right to a visa; the imposition on the applicant of the burden of establishing eligibility for a visa; and the less serious impact on the individual that the refusal of a visa typically has. See also: *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817 at paragraphs 21-28 and *Ha v. Canada (Minister of Citizenship and Immigration)* 2004 FCA 49 at paragraph 37.

[31] The Respondent says that when dealing with the duty of fairness for determining visa applications, the Court must guard against imposing a level of procedural formality that, given the

volume of applications that officers are required to process, would unduly encumber efficient administration. The public interest in containing administrative costs and in not hindering expeditious decision-making must be weighted against the benefits of participation in the process by the person directly affected. See: *Khan v. Canada (Minister of Citizenship and Immigration)*, [2002] 2 F.C. 413 (F.C.A.) and *Fargoodarzi v. Canada (Minister of Citizenship and Immigration)* 2008 FC 90.

[32] The Respondent concludes that the Applicant's application should be dismissed.

ANALYSIS

[33] The assessment of an application for a work permit involves an exercise of statutory discretion and attracts a high degree of deference from this Court. Apart from the procedural fairness issues raised, the applicable standard of review in this case is reasonableness. See: *Dunsmuir* and *Choi*.

[34] The Applicant says that the Decision is unreasonable because the Officer ignored all of the relevant facts in front of him and did not make appropriate inquiries about facts which were in question.

[35] The Decision makes it clear that all of the Applicant's submissions were considered and that the deciding factor was that the Applicant had failed to satisfy the Officer that she would leave Canada at the end of the authorized period.

[36] The CAIPS notes reveal the Officer noted that the Applicant:

a) Was 22 years old and married;

b) Had one dependent;

c) Had no declared relatives in Canada;

d) Had completed a Nursing Aide course and had worked as a Nursing Aide in a hospital;

e) Had job qualifications inconsistent with the desired employment in Canada;

f) Had weak economic ties with the Philippines;

g) Had a husband who was applying for the same job in Canada.

[37] It is, of course, always possible to disagree with a decision and to take issue with it. But disagreement does not render a decision unreasonable. The fact that a decision in favour of the Applicant might have been reasonable does not mean that the Officer's negative Decision was unreasonable. On the present facts, I cannot say that the Officer ignored relevant evidence or made an unreasonable Decision on the evidence presented by the Applicant. The weight to be assigned to the various factors is a matter for the Officer's discretion. See *Wang* at paragraphs 9-10. The CAIPS notes reveal that the Officer based his Decision on the fact that the Applicant did not appear to be established in the Philippines and that she had weak economic ties there. Also, her husband was applying for the same job in Canada, which weakened familial ties.

[38] The Applicant says the evidence showed that she was well-established in the Philippines: she was born there; she was married; she had a child and a job waiting for her there. Also, she argues that she did not have weak economic ties because she was leaving behind her daughter, siblings and parents, as well as a stable and permanent job that she could go back to. She also points out that the Officer was speculating about the requirements of the Canadian job and her inability to perform the duties at the fish plant.

[39] On the other hand, she does appear to be ready to walk away from her child (in fact, both husband and wife have shown themselves willing to leave their child behind.)

[40] I can see that a decision in favour of the Applicant might also have been reasonable. But there is nothing in this Decision that takes it outside the range of possible, acceptable outcomes which are defensible in respect of the facts and law.

[41] The Applicant also says that the Decision is unfair because she was not given an interview or an opportunity to respond to the Officer's concerns. This brings upon procedural fairness issues that I have reviewed on a standard of correctness.

[42] Justice Zinn recently conducted a review of the jurisprudence dealing with whether a visa officer is under an obligation to allow an applicant an interview or an opportunity to address concerns. See *Singh v. Canada (Minister of Citizenship and Immigration)* 2009 FC 620 at paragraph

7. In the present situation, there was no obligation on the Officer to hold an interview with the Applicant or to conduct some kind of dialogue with the Applicant.

[43] It is also worth pointing out that the Officer makes it clear in his Decision that “If there is any significant new information that you would like to be considered, you are welcome to re-apply. Where possible, a different officer will be assessing the application.”

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that

1. This application is dismissed.

2. There is no question for certification.

"James Russell"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-4664-08
STYLE OF CAUSE:	**GLENDA ANGELES** **Applicant** **and** **THE MINISTER OF CITIZENSHIP AND IMMIGRATION** **Respondent**
PLACE OF HEARING:	Vancouver, British Columbia
DATE OF HEARING:	June 16, 2009
REASONS FOR JUDGMENT AND JUDGMENT:	JUSTICE RUSSELL
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