

Federal Court



Cour fédérale

Date: 20100907

Docket: IMM-6489-09

Citation: 2010 FC 879

Ottawa, Ontario, September 7, 2010

PRESENT: The Honourable Mr. Justice O'Reilly

BETWEEN:

RIMANTA KISELUS

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Overview

[1] Ms. Rimanta Kiselus came to Canada in 2009 under the terms of a Working Holiday Program between Canada and Latvia. She began working as a sales associate at Shoppers Drug Mart, but was promoted to the position of retail supervisor after just a few months. Shoppers offered her indeterminate employment if she became a permanent resident of Canada.

[2] Ms. Kiselus applied for permanent residence but an immigration officer determined that she was not eligible to make an application. Ms. Kiselus maintains that the officer unreasonably

dismissed her application and, in doing so, misconstrued the applicable *Immigration and Refugee Protection Regulations*, SOR/2002-227. She asks me to order another officer to reconsider her application.

[3] I cannot find any basis to overturn the officer's decision and must, therefore, dismiss this application for judicial review. The sole question is whether the officer's decision was unreasonable.

II. The Officer's Decision

[4] The officer told Ms. Kiselus that "there is insufficient evidence on file that the type of work permit you hold meets the requirements of R82(2)a or the exemption requirements of R82(2)b." The officer was referring to s. 82(2)(a) of the Regulations which requires a determination by an officer that the applicant's employment "would be likely to result in a neutral or positive effect on the labour market in Canada" (relevant provisions of the Regulations are set out in Annex "A"). As the officer noted, this requirement does not apply in the circumstances described in s. 82(2)(b) of the Regulations, including where the applicant has been provided a work permit in Canada under an international agreement recognized under s. 204(a) of the Regulations. The officer did not consider the Canada-Latvia Working Holiday Program to be an eligible international agreement.

(1) Was the Officer's Decision Unreasonable?

[5] Ms. Kiselus submits that the officer's conclusion was unreasonable because, obviously, the Canada-Latvia Working Holiday Program is an "international agreement". She concedes that Ministerial Guidelines suggest that the Program falls under another provision of the Regulations – s. 205(b) – which applies to reciprocal employment programs which, unlike agreements under s. 204(a), are not exempt from the requirement for a labour market analysis. However, she maintains that the Regulations must prevail over the Guidelines.

[6] In my view, the officer's conclusion was not unreasonable. Obviously, there is some overlap between "international agreements" and "reciprocal employment" programs. But the Guidelines help distinguish between them.

[7] The Guidelines refer to "international agreements" in such areas as civil aviation, international free-trade, emergency services, and so on. This is clearly intended to be a broad, general category of arrangements.

[8] By contrast, the Guidelines describe International Youth Programs - bilateral, reciprocal arrangements – that enable persons between the ages of 18 and 35 to work temporarily in the respective countries who are parties to the agreement. Ms. Kiselus's original visa was issued pursuant to this type of youth exchange program.

[9] Accordingly, the reciprocal programs referred to in s. 205(b) appear to be particular category of the international agreements to which the requirement in s. 82(2)(a) for a labour market

analysis applies. The officer's conclusion that Ms. Kiselus's program fell within that category was not unreasonable in the circumstances.

III. Conclusion and Disposition

[10] In light of the regulatory scheme and the applicable guidelines, I cannot conclude that the officer's finding that Ms. Kiselus was ineligible to apply for permanent residence was unreasonable. I must, therefore, dismiss this application for judicial review. No question of general importance arises for certification.

JUDGMENT

THIS COURT'S JUDGMENT IS that

1. The application for judicial review is dismissed.
2. No question of general importance is stated.

“James W. O’Reilly”

Judge

Annex “A”

*Immigration and Refugee Protection Regulations, SOR/2002-227**Règlement sur l'immigration et la protection des réfugiés (DORS/2002-227)*

Definition — arranged employment
Arranged employment (10 points)

Définition : emploi réservé
Emploi réservé (10 points)

82. (2) Ten points shall be awarded to a skilled worker for arranged employment in Canada in an occupation that is listed in Skill Type 0 Management Occupations or Skill Level A or B of the *National Occupational Classification* matrix if they are able to perform and are likely to accept and carry out the employment and

82. (2) Dix points sont attribués au travailleur qualifié pour un emploi réservé appartenant aux genre de compétence 0 Gestion ou niveaux de compétences A ou B de la matrice de la *Classification nationale des professions*, s'il est en mesure d'exercer les fonctions de l'emploi et s'il est vraisemblable qu'il acceptera de les exercer, et que l'un des alinéas suivants s'applique :

- (a) the skilled worker is in Canada and holds a work permit and
 - (i) there has been a determination by an officer under section 203 that the performance of the employment by the skilled worker would be likely to result in a neutral or positive effect on the labour market in Canada,
 - (ii) the skilled worker is currently working in that employment,
 - (iii) the work permit is valid at the time an application is made by the skilled worker for a permanent resident visa as well as at the time the permanent resident visa, if any, is issued to the skilled worker, and
 - (iv) the employer has made an offer to employ the skilled worker on an indeterminate basis once the permanent resident visa is issued to the skilled worker;
- (b) the skilled worker is in Canada and holds a work permit referred to in paragraph 204(a) or 205(a) or subparagraph 205(c)(ii) and the circumstances referred to in subparagraphs (a)(ii) to (iv) apply;

- a) le travailleur qualifié se trouve au Canada, il est titulaire d'un permis de travail et les conditions suivantes sont réunies :
 - (i) l'agent a conclu, au titre de l'article 203, que l'exécution du travail par le travailleur qualifié est susceptible d'entraîner des effets positifs ou neutres sur le marché du travail canadien,
 - (ii) le travailleur qualifié occupe actuellement cet emploi réservé,
 - (iii) le permis de travail est valide au moment de la présentation de la demande de visa de résident permanent et au moment de la délivrance du visa de résident permanent, le cas échéant,
 - (iv) l'employeur a présenté au travailleur qualifié une offre d'emploi d'une durée indéterminée sous réserve de la délivrance du visa de résident permanent;
- b) le travailleur qualifié se trouve au Canada, il est titulaire du permis de travail visé aux alinéas 204a) ou 205a) ou au sous-alinéa 205c)(ii) et les conditions visées aux sous-alinéas a)(ii) à (iv) sont réunies;

International agreementsAccords internationaux

204. A work permit may be issued under

204. Un permis de travail peut être délivré à

section 200 to a foreign national who intends to perform work pursuant to
(a) an international agreement between Canada and one or more countries, other than an agreement concerning seasonal agricultural workers;

Canadian interests

205. A work permit may be issued under section 200 to a foreign national who intends to perform work that

[...]

(b) would create or maintain reciprocal employment of Canadian citizens or permanent residents of Canada in other countries;

l'étranger en vertu de l'article 200 si le travail pour lequel le permis est demandé est visé par :

a) un accord international conclu entre le Canada et un ou plusieurs pays, à l'exclusion d'un accord concernant les travailleurs agricoles saisonniers;

Intérêts canadiens

205. Un permis de travail peut être délivré à l'étranger en vertu de l'article 200 si le travail pour lequel le permis est demandé satisfait à l'une ou l'autre des conditions suivantes :

...

b) il permet de créer ou de conserver l'emploi réciproque de citoyens canadiens ou de résidents permanents du Canada dans d'autres pays;

FEDERAL COURT
SOLICITORS OF RECORD

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**REASONS FOR JUDGMENT
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