Federal Court  Cour fédérale

Date: 20101118

Docket: IMM-5599-09

Citation: 2010 FC 1158

Ottawa, Ontario, November 18, 2010

PRESENT: The Honourable Madam Justice Heneghan

BETWEEN:

JUAN FRANCISCO CORTES RUZ

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR ORDER AND ORDER

[1] Mr. Juan Francisco Cortes Ruz (the "Applicant") seeks judicial review of the decision of a visa officer at the Canadian Embassy in Mexico, denying him a permanent resident visa as a member of the family class. The decision in question was made on September 29, 2009.

[2] The Applicant is a citizen of Mexico. In June 1998, he came to Canada as a visitor. In March 2001, he claimed refugee protection. In his sworn Personal Information Form (the "PIF"), he claimed a fear based on his former involvement with street gangs in Mexico. He did not attend his refugee hearing and the claim was declared abandoned.

[3] On November 20, 2004, the Applicant met his future spouse. He proposed marriage on February 14, 2005, before being deported from Canada on February 28, 2005. The Applicant married his spouse in Mexico on May 21, 2005. In June 2005, he submitted an application for a permanent resident visa. He was found inadmissible pursuant to paragraph 37(1)(a) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the "Act"), due to his membership in a criminal organization, that is the street gangs that he mentioned in his PIF. In the course of that application, the Applicant did not amend his PIF. He only attempted to orally contradict its contents when he was interviewed about the PIF by a visa officer in Mexico.

[4] The Applicant was granted leave to judicially review the decision of the visa officer relative to the refusal of his permanent resident visa application. By Judgment dated April 12, 2007, the application was dismissed by Justice Phelan; see *Cortes Ruz v. Canada (Citizenship and Immigration)*, 2007 FC 380. With respect to the visa officer's credibility findings, Justice Phelan held that the "timing of the change in his story was critical to the credibility finding"; *Ruz*, paragraph 9. In other words, the Court found that the change in the story, when convenient, was a reasonable basis to raise concerns about the Applicant's credibility.

[5] The Applicant submitted a second application for a permanent resident visa in August 2007. He was interviewed to address the prior inadmissibility findings and again, he was found to be inadmissible pursuant paragraph 37(1)(a) of the Act.

[6] With the application for permanent residence, the Applicant submitted new evidence to show that his PIF could not be accurate. He provided school records and employment documents that purported to show that at the time of his alleged involvement in street gangs, he could not have been where the street gang was operating according to his PIF.

[7] In this application for judicial review, the Applicant has proposed a single issue:

> Did the Canadian Embassy commit reviewable errors of law by failing to consider the submissions and evidence that demonstrated that the statements in the PIF were false, and by stating that there was no evidence to indicate what was written in the PIF was not genuine?

[8] In the decision in *Dunsmuir v. New Brunswick*, [2008] 1 S.C.R. 190, paragraph 43, the Supreme Court of Canada stated that decisions of administrative decision-makers are reviewable on one of two standards, that is correctness or reasonableness. The standard of reasonableness also applies to the process by which the decision was reached, that is "reasonableness is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process"; *Dunsmuir*, paragraph 47.

[9] As well, in *Dunsmuir*, the Supreme Court said that when the jurisprudence has established the standard of review applicable to a particular type of decision, that standard of review should be adopted. It is established that decisions of visa officers are reviewable on the standard of reasonableness; see *Thomas v. Canada (Minister of Citizenship & Immigration)* (2009), 85 Imm.

L.R. (3d) 133 (FC). Accordingly, the decision of the visa officer in this case will be reviewed on the standard of reasonableness.

[10] The Applicant was found to be inadmissible pursuant to paragraph 37(1)(a) of the Act which provides as follows:

Organized criminality	Activités de criminalité organisée
37. (1) A permanent resident or a foreign national is inadmissible on grounds of organized criminality for	37. (1) Emportent interdiction de territoire pour criminalité organisée les faits suivants :
(a) being a member of an organization that is believed on reasonable grounds to be or to have been engaged in activity that is part of a pattern of criminal activity planned and organized by a number of persons acting in concert in furtherance of the commission of an offence punishable under an Act of Parliament by way of indictment, or in furtherance of the commission of an offence outside Canada that, if committed in Canada, would constitute such an offence, or engaging in activity that is part of such a pattern; or	a) être membre d'une organisation dont il y a des motifs raisonnables de croire qu'elle se livre ou s'est livrée à des activités faisant partie d'un plan d'activités criminelles organisées par plusieurs personnes agissant de concert en vue de la perpétration d'une infraction à une loi fédérale punissable par mise en accusation ou de la perpétration, hors du Canada, d'une infraction qui, commise au Canada, constituerait une telle infraction, ou se livrer à des activités faisant partie d'un tel plan;

[11] A belief on reasonable grounds, for the purposes of paragraph 37(1)(a) of the Act, must be based on credible evidence. I agree with that submission of the Applicant. He also argued that his PIF was not credible and accordingly, it could not be the basis of "reasonable grounds" for the purposes of paragraph 37(1)(a) of the Act.

[12] In my opinion, the visa officer should not be precluded from relying upon the PIF, as long as the balance of the evidence is considered as well. A PIF is a sworn document which should carry the same weight as any other sworn document. In the face of evidence that contradicts the PIF, the officer must weigh the other evidence that contradicts the PIF.

[13] The Applicant further submitted that the officer erred by stating that there was "no evidence to discart (*sic*) that what was declared in the PIF was not genuine". This statement is found in the Computer Assisted Immigration Processing System ("CAIPS") notes.

[14] The Applicant submitted additional documentary evidence that contradicted his PIF when he submitted his most recent application for a permanent resident visa. When invited to attend the interview on March 20, 2009, the Applicant was asked to bring "documents demonstrating all his activities during the time he has declared (*sic*) he was working or studying…". However, he did not bring any additional evidence to the interview.

[15] It is reasonable to conclude that when reviewing the CAIPS notes, in the context of the chronology of events, that the officer's comment related to what happened at the interview. The Applicant did not present further documents at the interview. I reject the Applicant's submissions that this brief reference in CAIPS notes means that the officer ignored "59 pages of submissions". Having regard to all of the circumstances, it is reasonable to find that this statement relates to the context of the interview.

[16] The CAIPS notes contain the statement by the visa officer that “I presented my concerns to the subject during the interview but subject was unable to provide additional information”. This notation indicates that the Applicant was informed of the officer’s concerns, at the interview. When considering the CAIPS notes, the Applicant’s sworn PIF and the outcome of his initial application for a permanent resident visa, I am satisfied that the Applicant was given an intelligible explanation for the refusal of his visa.

[17] The visa officer committed no reviewable error and there is no basis for judicial intervention in the decision. The application for judicial review will be dismissed.

ORDER

THIS COURT ORDERS that this application for judicial review is dismissed, no question for certification arising.

"E. Heneghan"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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