Federal Court  Cour fédérale

Date: 20101125

Docket: IMM-604-10

Citation: 2010 FC 1182

Ottawa, Ontario, November 25, 2010

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

MIRA MINA

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Introduction

[1] It is trite law that procedural fairness varies from one type of a decision to another:

> The concept of procedural fairness is eminently variable and its content is to be decided in the specific context of each case…

(*Knight v. Indian Head School Division No. 19*, [1990] 1 S.C.R. 653 at 682).

[2] That does not mean that procedural fairness is arbitrary. Procedural fairness must be examined in light of the situation, the circumstances and the context in which it is scrutinized, to ensure that neither the means nor the ends are sacrificed, thus, to ensure the picture as a whole is seen in its entirety. The forest must not be lost for a tree.

II. Judicial Procedure

[3] This matter is in respect of an application in regard to subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (IRPA), for leave to seek judicial review of a decision by a Visa Officer, dated November 11, 2009, wherein the Applicant's permanent resident application, based on her skill as an architect, was denied.

III. Background

[4] The Applicant, Ms. Mira Mina, is an Egyptian national who applied for permanent residence as a member of the federal skilled worker class. A Visa Officer considered her application but rejected it. Subsequent to subsection 76(3) if the *Immigration and Refugee Protection Regulations*, SOR/2002-227 (IRPR), the Officer also considered whether to exercise discretion to undertake a substituted decision. This option, however, was rejected as the points awarded to the Applicant appeared to accurately reflect her chances of economic settlement in Canada. The Officer also provided reasons for rejecting the application in the Computer Assisted Immigration Processing System (CAIPS) (Applicant's Application Record (AR), Refusal letter at pp. 6-7; CAIPS Notes at pp. 8-9).

IV. Issue

[5] Has the Applicant raised an arguable case?

V. Analysis

[6] In an application for leave and for judicial review, a serious, arguable case with serious issues must be submitted; for the reasons noted below, the Applicant has not raised an arguable case. Leave, therefore, the application, should be dismissed (*Krishnapillai v. Canada*, [2002] 3 F.C. 74, 2001 FCA 378 at paras. 10-11 (C.A.); *Dzah v. Canada (Minister of Citizenship and Immigration)* (1995), 92 F.T.R. 309, 54 A.C.W.S. (3d) 326).

[7] Although the Applicant argues that the Officer should have considered a substituted evaluation under subsection 76(3) of the IRPR in light of missing the minimum point total by two points, it is evident from the CAIPS Notes and refusal letter, that the Officer did just that. The argument, as such, is not serious:

> Subsection 76(3) of the IRPA Regulations permit an officer to substitute their evaluation of the likelihood to become economically established in Canada if the number of points awarded are not a sufficient indicator of whether the skilled worker may become economically established in Canada. Subsection 76(4) states that such an evaluation requires the concurrence of a second officer. I have considered your case under this section. I have determined that the points that you have been awarded are an accurate reflection of the likelihood of your ability to become economically established in Canada. As a result, I did not forward your application to the program manager for consideration.

(AR, Refusal letter at p. 7).

> R76(3) CONSIDERED. POINTS APPEAR TO ACCURATELY REFLECT CHANCES FOR ECONOMIC SETTLEMENT.

(AR, CAIPS Notes at p. 9).

[8] The Applicant argues that the Officer should have, when considering a substituted evaluation, considered her credentials, professional experience, financial establishment and her husband's credentials. The CAIPS Notes (at pp. 8-9) show that the Officer did do so; therefore, the Court is in complete agreement with the position of the Respondent.

[9] To be clear, while remarks on all these factors were made at least once in the CAIPS Notes, none were reiterated a second time for the purposes of the Officer's substituted evaluation consideration. No duty to undertake such a repetitious task, however, exists. Certainly, the Applicant points to no caselaw suggesting otherwise. Indeed caselaw would appear to point in the opposite direction, especially where no evidence exists that the Applicant actually requested a substituted evaluation: "… The officer was not required to address each factor separately…" (*Requidan v. Canada (Minister of Citizenship and Immigration)*, 2009 FC 237, [2009] F.C.J. No. 280 (QL) at para. 28).

[10] The Applicant argues that the Officer ignored her settlement funds when considering a substituted evaluation. This argument is not serious. No evidence suggests that the Officer ignored this factor.

[11] The Officer did write about the Applicant's settlement funds in the CAIPS Notes:

> LICO: 6587KWD = CAD 25443
> LICO MET

(AR, CAIPS Notes at p. 9).

[12] It bears noting, furthermore, that the Applicant's settlement funds were not significant – the $26,000 she claimed to have in fungible funds was merely a few hundred dollars over the low-income-cut-off (LICO) calculated for her. In addition to the caselaw cited above, no duty exists for a Visa Officer to expressly review each relevant factor, administrative law principle posists that only significant factors affecting a decision need require comment. It is clear that meeting the LICO cannot, *ipso facto*, be considered a factor relatively more significant than any other factor which a visa applicant encounters (*Cepeda-Gutierrez v. Canada (Minister of Citizenship and Immigration)* (1998), 157 F.T.R. 35, 83 A.C.W.S. (3d) 264 at paras. 15-17).

[13] Indeed, if the Officer in the within case was required to comment on the Applicant's settlement funds, then such a duty would effectively be imposed on officers every time someone met the LICO. This is clearly not the situation as it stands as to what Parliament intended (*Dunsmuir v. New Brunswick*, [2008] 1 S.C.R. 190, 2008 SCC 9 at para. 47).

[14] The Applicant argues that the Officer failed to properly exercise her discretion under subsection 76(3) of the IRPR. No grounds, in this regard, are advanced; nor are any facts referenced in support of this argument. As such, therefore, the argument is not considered serious.

[15] The Applicant complains that the Officer used a boiler plate refusal passage when writing about her refusal to substitute her decision under subsection 76(3) of the IRPR, stating that it is inadequate. This argument is not serious, however, for three reasons.

[16] First, describing a set of reasons as of a ‘boiler plate’ variety required consideration which this Court gives. The purpose of written reasons is to provide substantive proof that an applicant’s application or request was considered; therefore, it is essential to evaluate the substance of the reasons, not simply how they have been categorized. No serious issue, therefore, arises from such a categorization without substantiation.

[17] Second, if formatted decisions were inadequate *per se*, then, decisions, on the basis of checkmarks would be invalid. This is not the case.

[18] Third, no legal requirement exists under the existing circumstances for the Officer to have written a lengthier or more in-depth written passage for the purposes of a substituted evaluation. Indeed, an officer need only acknowledge consideration of a substituted evaluation:

> [7] … See *Behnam v. Canada (Minister of Citizenship and Immigration)*, [2003] F.C.J. No. 798 at paragraph 6: The officer merely has to inform the applicant that she considered the request for substitution of evaluation. That was done in this case. (Emphasis added).

(*Poblado v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 1167, 142 A.C.W.S. (3d) 146).

[19] This was done; thus, no serious issue exists. (AR, Refusal letter at p. 7; CAIPS Notes at p. 9).

[20] The Applicant points to *Adu v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 565, 139 A.C.W.S. (3d) 164, to suggest that more fulsome reasons were required in respect of the officer’s refusal to exercise positive discretion under subsection 76(3) of the IRPR. This matter,

however, is in regard to a humanitarian and compassionate (H&C) decision. It is trite law that procedural fairness varies from one type of decision to another:

> The concept of procedural fairness is eminently variable and its content is to be decided in the specific context of each case…

(*Knight*, above).

[21] The Applicant points to *Ogunfowora v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 471, 157 A.C.W.S. (3d) 628, however, it is not relevant to this matter as it is in respect of a decision as to a visitor's visa (TRV).

[22] That both H&C and TRV decisions are different from a decision on a substituted evaluation, is clear from the fact that the first two decisions determine a main application, whereas a substituted evaluation is made after a main application has been rejected and then, only, in "clearly exceptional" circumstances (*Fernandes v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 243, 165 A.C.W.S. (3d) 340 at para. 7; *Requidan*, above, at para. 29).

[23] The substituted evaluation is, therefore, more of a discretionary nature and subject to a standard of fairness which is different from standards applicable to H&C and TRV decisions. Although the CAIPS Notes, in an of themselves, were sparse, they were acceptable:

> [10] … I agree with the respondent that the reasons in the officer's CAIPS notes, though spare, meet the benchmark established in the jurisprudence: they are "sufficiently clear, precise and intelligible so that a claimant may know why his or her claim has failed and be able to decide whether to seek leave for judicial review" (*Mendoza v. Minister of Citizenship and Immigration*, 2004 FC 687, at paragraph 4).

(*Odutola v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 1352, 337 F.T.R. 276).

VI. Conclusion

[24] The Applicant has not raised any serious issues. No arguable case has been demonstrated; therefore, the application for judicial review is dismissed.

JUDGMENT

THIS COURT'S JUDGMENT is that

1. The application for judicial review be dismissed;

2. No serious question of general importance be certified.

"Michel M.J. Shore"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-604-10
STYLE OF CAUSE:	MIRA MINA v. THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	Toronto, Ontario
DATE OF HEARING:	November 12, 2010
REASONS FOR JUDGMENT AND JUDGMENT:	SHORE J.
DATED:	November 25, 2010

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