Federal Court  Cour fédérale

Date: 20110126

Docket: IMM-1006-10

Citation: 2011 FC 93

Ottawa, Ontario, January 26, 2011

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

LEONID REZNITSKI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Overview

[1] When is a reply, a full reply, or a final reply? If an answer is given in response to a question without a statement to the effect that more of a reply will be forthcoming, or that more may be forthcoming, within an allotted time period, it would be unreasonable to assume that the answer is

not final. If that was not the case, transactions would be left hanging without conclusion, unless the end of a prescribed time period would have been reached.

[2] Thus, as the counsel for the Respondent, Mr. Lorne McClenaghan, succinctly stated in his oral pleadings: “Is an applicant’s response to a visa officer an answer? The answer is yes!” The Court considers the answer to be implicit and explicit.

II. Introduction

[3] This is an application for judicial review, pursuant to section 72 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (IRPA), of a decision of an Immigration Officer refusing the Applicant’s application for a Permanent Resident Visa.

III. Facts

[4] The Applicant, Mr. Leonid Reznitski, applied for permanent residence as a skilled worker. In his application, he indicated that he was unemployed from 1996 to 2001.

[5] As part of the assessment process, the Applicant was asked for further information on January 14, 2010 and given 30 days to respond. In particular, the Applicant was asked to forward copies of passports; for details of his military service and to further account for his activities during the years 1996 to 2001.

[6] On January 26, 2010, the Applicant responded to the January 14, 2010 letter. The Applicant provided copies of his and his family members’ passports and provided details of his military

service; however, with respect to the inquiry concerning his activities between 1996 and 2001, the Applicant elected to answer the inquiry by tersely restating information he had already given and simply indicated that he was unemployed (‘je n’ai pas travaillé’).

[7] The Officer reviewed the Applicant’s response and concluded that he was not satisfied that the Applicant met the criteria for admission since there was a serious gap in the information about the Applicant and his activities. The Officer noted section 16 of the IRPA, which provides that applicants must truthfully answer all questions put to them for the purpose of examination. The Officer noted that the Applicant was not asked if he was working but to provide an account of his activities during the period. Based on the Applicant’s lack of candour, the Officer was unable to find that he was admissible and the Officer accordingly refused the application.

[8] After receiving the rejection letter, the Applicant purported to supply further details, and embellished his initial response.

III. Issue

[9] Did the Immigration Officer err in principle or render a decision in bad faith?

IV. Standard of Review

[10] The standard of review of decisions of visa officers was recently reiterated by Justice Yves de Montigny:

> [15] … This Court has consistently held that the particular expertise of visa officers dictates a deferential approach when reviewing their decisions. There is no doubt in my mind that the assessment of an Applicant for permanent residence under the Federal Skilled Worker Class is an exercise of discretion that should be given a

> high degree of deference. To the extent that this assessment has been done in good faith, in accordance with the principles of natural justice applicable, and without relying on irrelevant or extraneous considerations, the decision of the visa officer should be reviewed on the standard of patent unreasonableness: *Postolati v. Canada (M.C.I.),* 2003 FCT 251; *Singh v. Canada (M.C.I.),* 2003 FCT 312; *Nehme v. Canada (M.C.I.),* 2004 FC 64; *Bellido v. Canada (M.C.I.),*2005 FC 452, [2005] F.C.J. No. 572 (QL).

(*Kniazeva v Canada (Minister of Citizenship and Immigration)*, 2006 FC 268, 288 FTR 282).

[11] This equates to a standard of review of discretionary decisions of visa officers previously referred to as reasonableness *simplicitor*. Where the statutory discretion has been exercised in good faith, with fairness, and without reliance on irrelevant or extraneous considerations, the Court will not interfere (*Liu v Canada (Minister of Citizenship and Immigration)*, 2001 FCT 751, 2008 FTR 99, at par 26; *Benammar v Canada (Minister of Citizenship and Immigration)*, 2001 FCT 1176, 112 ACWS (3d) 137, at para 27). Now the *Dunsmuir* decision standard is one of reasonableness which clearly embodies that which it connotes and denotes (*Dunsmuir v New-Brunswick*, 2008 SCC 9, [2008] 1 SCR 190).

V. Analysis

[12] The Court agrees with the position of the Respondent.

[13] The Applicant elected not to answer the Officer's question and declined to account for his activities during a five year period. The fact that the Applicant supplemented his response after he obtained the refusal is his own tacit acknowledgement that the initial response was not sufficient. The Officer was clearly entitled to also find that it was insufficient and to refuse the application on that basis.

[14] The Applicant argues that a decision was made on the file before 30 days after the date of the January 14, 2010 letter had expired. The Officer gave the Applicant 30 days to provide the information; the reason the decision was made before the expiry of 30 days is that the Applicant provided his response in less time. The Applicant's response is clearly his full response and does not indicate that anything else is either outstanding or forthcoming. In the circumstances, the Officer is not required to keep the file open for the full 30 days. The Applicant's response is abundantly clear in that it is his complete ('non') response and he does not indicate that any further response is coming.

[15] The facts also do not support the Applicant's claim in his affidavit that he had 'not yet finished gathering information (Application Record at p 14). He had no information to gather for the purposes of answering the question; he simply declined to answer it. The Applicant did not need any time to 'gather' information on his activities, all he needed to do was disclose, but he simply decided that he was not going to share that information. The notion that the Applicant was working on a further reply is a claim that is simply unworthy of belief. The Applicant's February 1, 2010 letter was provoked by the refusal letter and the refusal letter alone. The Applicant's January 26, 2010 letter was his complete response.

[16] The facts also run directly contrary to the Applicant's self serving argument at paragraph 26 that he was 'clearly not attempting to avoid providing information'. Avoiding answering the question was precisely what the Applicant was doing. An application for leave based on argument unmoored from the actual facts does not give rise to any serious issues.

[17] As for the fairness argument, the argument is also bereft of merit. The Officer was not required to warn the Applicant that his answer was deficient. It is manifestly deficient and the Applicant deliberately provided the same information that he had previously provided and by so doing, declined to answer the Officer's question. The Applicant was not complying with the requirement to answer questions. The Applicant had an opportunity to fill in the details and he declined to do so. The Officer was not required to inform the Applicant of the obvious, that his 'wasn't working' answer is insufficient. The step taken by the Officer in the face of the Applicant's refusal to answer was the only step open to the Officer and there was no need to warn the Applicant of the obvious outcome of his failure to answer the question (*Moreau-Berube v New Brunswick (Judicial Council)*, 2002 SCC 11, [2002] 1 SCR 249).

[18] As the Applicant's argument is predicated on his claim that his non-responsive response was 'not unreasonable or outside the realm of acceptability', the argument is unfounded: the Applicant's response merely repeated information the Officer already held.

[19] As the Applicant provided further details on February 1, 2010 (which the Applicant claims he was working on providing all the while), the Applicant himself must be taken to be acknowledging that his January 26, 2010 response was deficient, which it clearly was. The Applicant's argument that he was unaware that further details were required does not easily co-exist with his evidence that he was all the while working on providing a more fulsome response to the Officer's inquiry.

VI. Conclusion

[20] It is trite law that on an application for judicial review this Court is not to substitute its decision for that of the first-instance tribunal. In any judicial review of the factual determinations, the primary question to be asked is whether the finding was one that could reasonably have been made on the evidence before the tribunal. If the finding is reasonable, it must stand and review must only take place where the findings of fact may be construed as perverse, capricious or made without regard to the material before it (*Federal Courts Act*, RSC 1985, c. F-7, at para 18.1(4)(*d*)).

[21] The Applicant has not met this test. The Officer's determination that the Applicant had failed to satisfy her that he had experience in the intended occupations was reasonably open to the officer on the face of the record.

[22] For all of the above reasons, the Applicant's application for judicial review is dismissed.

JUDGMENT

THIS COURT'S JUDGMENT is that the Applicant's application for judicial review be dismissed. No question for certification.

"Michel M.J. Shore"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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