Federal Court Cour fédérale

Date: 20110420

Docket: IMM-4178-10

Citation: 2011 FC 483

Ottawa, Ontario, April 20, 2011

PRESENT: The Honourable Mr. Justice Rennie

BETWEEN:

MANABU TOKUDA

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, 2001, c. 27 (*IRPA)*, for judicial review of a decision of an Immigration Officer (the Officer), dated May 24, 2010, wherein the Officer denied a request to seek a second evaluation of the applicant's application for permanent residence as a member of the Federal Skilled Worker (FSW) Class.

[2] The applicant is a citizen of Japan who applied for permanent residence in Canada in June 2005 as a member of the FSW Class under section 75 of the *Immigration and Refugee Protection Regulations,* SOR/2002-227 (the *Regulations*). The applicant received a total point score of 66 out of a possible 100, below the required 67 points for permanent residence under the FSW Class. The applicant requested that the Officer consider a substituted evaluation under subsection 76(3) of the *Regulations*. The applicant contended that his point total was not a sufficient indicator of whether he would become economically established in Canada because:

i) He has a brother in Canada who is a Canadian citizen;
ii) He has spent considerable time in Canada on a Working Holiday Visa;
iii) He has a degree in English and teaches English in Japan; and
iv) He has approximately 3 times the minimum amount of settlement funds required.

[3] The record of decision indicates that in reviewing the file for a possible substituted evaluation, the Officer considered the fact that the applicant had a relative in Canada and his English language skills as positive factors. The Officer found that the applicant's education level of high school and a two year diploma along with his work experience as a language instructor were neutral factors since the selected area of work may have required higher education. The Officer noted that the applicant's work experience in Canada was for a fish processing plant and was for less than one year. The Officer concluded that the 66 points awarded were an accurate reflection of the applicant's economic prospects in Canada.

[4] The Officer rejected the application finding that the applicant obtained 66 points based on his language ability, experience, age, education and adaptability. The Officer did not consider a substituted evaluation appropriate in the circumstances.

[5] It is this decision that is the subject of this application.

Issues

[6] There are two issues in this application. The first is whether the Officer erred in declining to seek a substituted evaluation determination under subsection 76(4) of the *Regulations*. The second is whether the reasons provided for this decision are adequate.

Analysis

Exercise of Discretion

[7] A principled reading of the *Regulations*, together with their legislative history make clear that the officer may only substitute his or her opinion for the criteria set out in subsection 1(a), namely the point factors. Settlement funds are a consideration under subsection 1(b) and have been expressly removed from the ambit of considerations open to the Officer in considering whether to seek a second opinion. Given the plain and obvious reading of the *Regulations*, it would be an error for the Officer, in the exercise of his discretion under subsection 76(3) of the *Regulations*, to consider the settlement funds available to the applicant. In this regard I agree with the analysis of the *Regulations* and their effect as expressed by Justice Zinn in *Xu v Canada (Citizenship and Immigration)*, 2010 FC 418.

[8] As the Officer was not required to consider the settlement funds under subsection 76(3) of the *Regulations*, I do not see an error warranting judicial intervention.

Adequacy of Reasons

[9] It is important to note that the applicant put forth no rationale, no argument, budget or plan or other considerations that might have prompted the Officer to exercise his or her discretion and direct a second evaluation. The applicant simply reiterated the same factors already advanced, and found insufficient, under the points system.

[10] Decisions of Immigration officers not to seek a second evaluation are entitled to a high degree of deference. In this case, the record of decision indicates that the question whether to seek a substituted evaluation was considered by the Officer. While always desirable, there is no requirement for reasons, other than to confirm that the officer has directed his or her mind to the request; *Poblano v Canada (Minister of Citizenship and Immigration)*, 2005 FC 1167; *Wickramasekera v Canada (Citizenship and Immigration)*, 2010 FC 225. If provided, the brevity of the reasons, as in this case, does not vitiate their integrity.

[11] As noted, the applicant did not advance considerations, arguments or facts which would require analysis. The applicant simply reasserted the same considerations offered, and already rejected. The Officer's reasons cannot be faulted for failing to respond to arguments that were not advanced. There was, in effect, nothing in the scales for the Officer to weigh.

[12] The application for judicial review is dismissed.

[13] No question for certification has been proposed and none arises.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review be and is hereby dismissed. No question for certification has been proposed and none arises.

"Donald J. Rennie"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-4178-10
STYLE OF CAUSE:	MANABU TOKUDA v. THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	Toronto
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