Federal Court Cour fédérale

Date: 20120410

Docket: IMM-5508-11

Citation: 2012 FC 400

Ottawa, Ontario, April 10, 2012

PRESENT: The Honourable Mr. Justice Rennie

BETWEEN:

BALSAM KAMAL ABDULATEEF

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The applicant seeks judicial review pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (*IRPA*) of the decision of a visa officer (the "Officer"), dated July 19, 2011, which refused the applicant's application for a Study Permit because the Officer was not satisfied that the applicant would leave Canada at the end of the study period if she were authorized to enter. For the reasons that follow the application is dismissed.

Facts

[2] The applicant, Balsam Kamal Abdulateef, is a 35 year old citizen of Iraq who resides in Cairo, Egypt with her husband and three children.

[3] The applicant applied for a Study Permit based on acceptance to Niagara College for an English as a second language (ESL) program to be followed by a Business Management Program.

[4] By letter dated July 19, 2011, the applicant's application for a Study Permit was refused. The Officer refused the Study Permit because he was not satisfied that the applicant was a *bona fide* temporary resident who would leave Canada at the end of the authorized period of stay. In the Global Case Management System (GCMS) notes, the Officer listed the documents submitted by the applicant and then found that: there was no satisfactory reason why the applicant wished to pursue such studies; there was no proof of funds; the applicant had weak ties to her home country (Iraq) and Egypt; and the applicant had no compelling reason for travel to Canada.

Issue and Standard of Review

[5] Was the Officer's decision to refuse the applicant's application for a Study Permit reasonable?

[6] The Supreme Court of Canada held in *Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190 at para 62, that where the standard of review has been previously determined, a standard of review analysis need not be repeated. This Court recently held that an Officer's conclusion that an applicant will not leave Canada at the end of his or her authorized stay is a question of mixed fact

and law which accordingly attracts the reasonableness standard of review: *Obot v Canada (Minister of Citizenship and Immigration)*, 2012 FC 208 at para 12.

Analysis

[7] The legislative background provides critical context for assessing the reasonableness of the Officer's decision. Section 11 of the *IRPA* requires a foreign national to meet the requirements of the *IRPA* in order for an officer to issue a visa:

11. (1) A foreign national must, before entering Canada, apply to an officer for a visa or for any other document required by the regulations. The visa or document may be issued if, following an examination, the officer is satisfied that the foreign national is not inadmissible and meets the requirements of this Act.	11. (1) L'étranger doit, préalablement à son entrée au Canada, demander à l'agent les visa et autres documents requis par règlement. L'agent peut les délivrer sur preuve, à la suite d'un contrôle, que l'étranger n'est pas interdit de territoire et se conforme à la présente loi.

[8] Section 20 of the *IRPA* requires that, in order to become a temporary resident, a foreign national establish that he or she will leave Canada by the end of the period authorized for his or her stay:

Obligation on entry	Obligation à l'entrée au Canada
20. (1) Every foreign national, other than a foreign national referred to in section 19, who seeks to enter or remain in Canada must establish, …	20. (1) L'étranger non visé à l'article 19 qui cherche à entrer au Canada ou à y séjourner est tenu de prouver : …
(b) to become a temporary resident, that they hold the visa or other document required under the regulations and will leave Canada by the end of the period authorized for their stay.	b) pour devenir un résident temporaire, qu'il détient les visa ou autres documents requis par règlement et aura quitté le Canada à la fin de la période de séjour autorisée.

[9] Section 216 of the *Immigration and Refugee Protection Regulations* (SOR/2002-227) reiterates this requirement for those applying for a study permit:

Study permits	Permis d'études
216. (1) Subject to subsections (2) and (3), an officer shall issue a study permit to a foreign national if, following an examination, it is established that the foreign national	216. (1) Sous réserve des paragraphes (2) et (3), l'agent délivre un permis d'études à l'étranger si, à l'issue d'un contrôle, les éléments suivants sont établis :
(a) applied for it in accordance with this Part;	a) l'étranger a demandé un permis d'études conformément à la présente partie;
(b) will leave Canada by the end of the period authorized for their stay under Division 2 of Part 9;	b) il quittera le Canada à la fin de la période de séjour qui lui est applicable au titre de la section 2 de la partie 9;
(c) meets the requirements of this Part; and	c) il remplit les exigences prévues à la présente partie;
(d) meets the requirements of section 30;	d) il satisfait aux exigences prévues à l'article 30.

[10] These provisions, taken together, place the onus on the applicant to prove that she is not an immigrant, but rather is a *bona fide* temporary resident who will leave at the end of her authorized stay. The question of whether the applicant has established that she meets this requirement is a question of fact, and therefore the findings of the Officer are accorded deference by the Court. The Officer is entitled to consider the totality of the circumstances: *Zheng v Canada (Minister of Citizenship and Immigration)*, [2001] FCJ No 110 (TD), and so long as the Officer's conclusion falls within the range of possible, acceptable outcomes in light of the facts and the law, the Court has no basis to intervene.

[11] In this case, the Officer was not satisfied that the applicant was a *bona fide* temporary resident because: she failed to provide a satisfactory reason for pursuing her proposed course of study; she provided no proof of funds; she had weak ties to Iraq and Egypt; and had presented no compelling reason for travel to Canada. I cannot find, with the possible exception of the finding regarding funds, that any of these findings were unreasonable. In light of the family's recent departure from Iraq (2005) and temporary status in Egypt, the finding of weak ties was open to the Officer. It was also open to the Officer to be unconvinced by the applicant's explanation for choosing her proposed program of study in Canada. No compelling explanation was given as to why the applicant had selected Niagara College in Welland, Ontario, to pursue the education, an omission that was accentuated by the fact that she had previously travelled to England where she also had close family. When pressed on this point, the applicant said that the tuition costs were lower. The Officer asked that she produce the comparative tuition and living costs between Canada and English schools, but the applicant failed to do so. Taken together they amply support the Officer's conclusion and the outcome falls within the acceptable range in light of the circumstances.

[12] I reach this conclusion despite my agreement with the applicant that the statement that she provided no proof of funds was erroneous. She submitted a letter from her father indicating he would pay all expenses related to her study in Canada, and she provided her father's bank statement showing considerable assets. However, in light of the Officer's other findings, which were reasonably open to the Officer in light of the record this error does not render the Officer's conclusion unreasonable. The application is therefore dismissed.

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

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