

Federal Court



Cour fédérale

Date: 20120719

Docket: IMM-9721-11

Citation: 2012 FC 900

Montréal, Quebec, July 19, 2012

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

HUSSAIN, TAHIR PASHA

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

Overview

[1] To obtain a student visa, the Applicant should have submitted, the obvious, evidence by which to convince the visa officer that he would leave Canada at the end of the authorized period. Specifically, he did not provide a study plan, a crucial factor by which to prove his reason for travel to Canada.

[2] Under the circumstances, the visa officer did not and does not have the duty to hold an oral interview. As stated by Justice Judith Snider in *Ayatollahi v Canada (Minister of Citizenship and Immigration)*, 2003 FCT 248, 229 FTR 98:

[21] There was not, in my view, a breach of procedural fairness as a result of the visa officer's failure to put his concerns to the Applicant. Most importantly, the burden was on the Applicant to come forward with his best case. He did not do this; specifically, he failed to give any rationale for his proposed course of studies, other than to assist his father upon his return. Given the onus on the Applicant, I believe that it would have been reasonably open to the officer to refuse the application on that basis alone. [Emphasis added].

(Reference is also made to *Duong v Canada (Minister of Citizenship and Immigration)*, 2003 FC 834; *Danioko v Canada (Minister of Citizenship and Immigration)*, 2006 FC 479, 292 FTR 1). As specified above “most importantly, the burden was on the Applicant to come forward with his best case.”

[3] As stated by the Federal Court of Appeal in a unanimous decision by Justices Létourneau, Rothstein and McDonald, in *Wong v Canada* [1999] FCJ No 1049: “We firmly believe the visa officer is entitled, even at the moment of the first application for such visa, to examine the totality of the circumstances, including the long term goal of the Applicant”.

I. Introduction

[4] This is an application, pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA], for judicial review of a decision by a visa officer of the Canadian High Commission, in Islamabad, Pakistan, dated November 29, 2011, who refused the Applicant's application for a student permit.

II. Background

[5] The Applicant, Mr. Tahir Pasha Hussain, is a 22-year-old citizen of Pakistan.

[6] The Applicant applied for a two-year Electrical Engineering program at Humber College in Toronto, commencing in January 2012.

[7] The Applicant applied for a student visa which was refused on November 29, 2011.

III. Decision under Review

[8] After having reviewed the evidence submitted by the Applicant, the visa officer was not convinced that the Applicant would leave Canada by the end of the requested period. This finding is supported by two reasons: the Applicant's travel history and the purpose of his visit.

IV. Issue

[9] Did the visa officer err in determining that the Applicant does not meet the requirements to obtain a student permit?

V. Relevant Legislative Provisions

[10] The following legislative provisions of the *IRPA* are relevant:

Application before entering Canada

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 et documents

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

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.

Obligation on entry

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,

(a) to become a permanent resident, that they hold the visa or other document required under the regulations and have come to Canada in order to establish permanent residence; and

(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.

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.

Obligation à l'entrée au Canada

20. (1) L'étranger non visé à l'article 19 qui cherche à entrer au Canada ou à y séjourner est tenu de prouver :

a) pour devenir un résident permanent, qu'il détient les visa ou autres documents réglementaires et vient s'y établir en permanence;

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.

[11] The following legislative provisions of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [*Regulations*] are relevant:

TEMPORARY RESIDENT VISA

Issuance

179. An officer shall issue a temporary resident visa to a

VISA DE RESIDENT TEMPORAIRE

Délivrance

179. L'agent délivre un visa de résident temporaire à l'étranger

foreign national if, following an examination, it is established that the foreign national

si, à l'issue d'un contrôle, les éléments suivants sont établis :

(a) has applied in accordance with these Regulations for a temporary resident visa as a member of the visitor, worker or student class;

a) l'étranger en a fait, conformément au présent règlement, la demande au titre de la catégorie des visiteurs, des travailleurs ou des étudiants;

(b) will leave Canada by the end of the period authorized for their stay under Division 2;

b) il quittera le Canada à la fin de la période de séjour autorisée qui lui est applicable au titre de la section 2;

(c) holds a passport or other document that they may use to enter the country that issued it or another country;

c) il est titulaire d'un passeport ou autre document qui lui permet d'entrer dans le pays qui l'a délivré ou dans un autre pays;

(d) meets the requirements applicable to that class;

d) il se conforme aux exigences applicables à cette catégorie;

(e) is not inadmissible; and

e) il n'est pas interdit de territoire;

(f) meets the requirements of section 30.

f) il satisfait aux exigences prévues à l'article 30.

ISSUANCE OF STUDY PERMITS

DELIVRANCE DU PERMIS D'ETUDES

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 :

<i>(a)</i> applied for it in accordance with this Part;	<i>a)</i> l'étranger a demandé un permis d'études conformément à la présente partie;
<i>(b)</i> will leave Canada by the end of the period authorized for their stay under Division 2 of Part 9;	<i>b)</i> 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;
<i>(c)</i> meets the requirements of this Part; and	<i>c)</i> il remplit les exigences prévues à la présente partie;
<i>(d)</i> meets the requirements of section 30;	<i>d)</i> il satisfait aux exigences prévues à l'article 30.
<i>(e)</i> [Repealed, SOR/2004-167, s. 59]	<i>e)</i> [Abrogé, DORS/2004-167, art. 59]

VI. Position of the Parties

[12] The Applicant submits that there is no logical link between his travel history and the possibility of staying in Canada illegally. He contends that student permits should not be refused on the basis of generalizations and that the visa officer should have held a hearing by which to permit the Applicant to respond to any apprehensions.

[13] The Respondent argues that the visa officer's Computer Assisted Immigration Processing System [CAIPS] notes support the conclusion reached. The Respondent is of the view that the Applicant had to prove that he is not an immigrant and would leave Canada by the end of the authorized period.

[14] In addition, the Respondent submits that no statutory provision requires that a hearing be held to address doubts arising from evidence.

[15] The Respondent contends that the Applicant did not provide a study plan and that an individual's travel history is a relevant factor.

VII. Analysis

[16] It is trite law that a decision to issue an authorization to enter Canada on a temporary basis is reviewable under the standard of review of reasonableness unless the decision-maker has failed to adhere to principles of procedural fairness (*Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190; *Ji v Canada (Minister of Citizenship and Immigration)*, 2001 FCT 786).

[17] The context of the case is relevant as to whether the Applicant was denied procedural fairness; the duty of procedural fairness may vary depending on the circumstances of each case (*Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817).

[18] The Applicant argues that the officer did not provide adequate reasons. This Court disagrees. With regard to the adequacy of reasons, it is noted that, according to the Supreme Court of Canada, "the reasons must be read together with the outcome and serve the purpose of showing whether the result falls within a range of possible outcomes" (*Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, [2011] 3 SCR 708 at para 14).

[19] In a letter sent to the Applicant, dated November 29, 2011, the visa officer checked off “travel history” and the “purpose of visit” as grounds to support his determination that the Applicant would not leave Canada by the end of his stay. In his CAIPS notes, the visa officer noted:

FOSS check completed. Single male, aged 22, to attend 2.5 yr Electrical Engineering Technology program at the Humber Institute in Toronto. 1 PR brother in Canada; landed SW1 in 2008; NAI found. Submitted: LOA, police certificate, IELTS (7.0). Applicant is in the final year of a B.S (Electronic Engineering) degree program at Sir Syed University. Final exams will be held in December 2011. Transcripts so far show satisfactory results. Funds: parents; funds ok. No study plan submitted. Reasons for pursuing a similar program in Canada immediately after completing a Bachelor degree in PK have not been provided. No personal funds. No evidence of any previous travel. On balance, not satisfied with BFs or ties. Refused. [Emphasis added].

(Tribunal Record [TR] at p 13).

[20] Although, brief, it appears from the CAIPS notes that the Applicant was informed of reasons for the refusal of his visa. As stated by this Court, electronic notes constitute a portion of an administrative decision (*Wang v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1298, 302 FTR 127 at para 19).

[21] While this Court recognizes that the visa officer did, at the outset, contradict himself, in that, he agreed that funds had been provided by the Applicant’s parents and further noted that, nevertheless, the Applicant has no personal funds. This finding, in and of itself, does not have a negative impact on the decision. Indeed, personal assets and financial status did not constitute grounds for the Applicant’s visa application, as stated in a letter, dated November 29, 2011. Other detailed reasons in support of the refusal had also been provided.

[22] The Applicant proposes an interpretative argument to lead this Court to conclude that the word “examination”, used in subsection 216(1) of the *Regulations*, refers to the necessity of holding an oral interview.

[23] The visa officer did not have the duty to hold an oral interview. As stated in *Ayatollahi v Canada (Minister of Citizenship and Immigration)*, 2003 FCT 248, 229 FTR 98:

[21] There was not, in my view, a breach of procedural fairness as a result of the visa officer's failure to put his concerns to the Applicant. Most importantly, the burden was on the Applicant to come forward with his best case. He did not do this; specifically, he failed to give any rationale for his proposed course of studies, other than to assist his father upon his return. Given the onus on the Applicant, I believe that it would have been reasonably open to the officer to refuse the application on that basis alone. [Emphasis added].

(Reference is also made to *Duong v Canada (Minister of Citizenship and Immigration)*, 2003 FC 834; *Danioko v Canada (Minister of Citizenship and Immigration)*, 2006 FC 479, 292 FTR 1).

[24] The principal issue is that the Applicant did not submit evidence by which to convince the visa officer that he would leave Canada at the end of the authorized period. He did not submit a study plan, a crucial element to prove the purpose of his travel to Canada.

[25] Accordingly, in light of the Applicant’s personal travel history, this Court concludes that the visa officer did not make a negative finding without having had assessed the evidence.

VIII. Conclusion

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

JUDGMENT

THIS COURT ORDERS that the Applicant's application for judicial review be dismissed.

No question of general importance for certification.

"Michel M.J. Shore"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: IMM-9721-11

STYLE OF CAUSE: HUSSAIN, TAHIR PASHA v
THE MINISTER OF CITIZENSHIP
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PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: July 18, 2012

**REASONS FOR JUDGMENT
AND JUDGMENT:** SHORE J.

DATED: July 19, 2012

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