

Federal Court



Cour fédérale

Date: 20140514

Docket: IMM-3845-13

Citation: 2014 FC 464

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Montréal, Quebec, May 14, 2014

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

SOK, LIHENG

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Preamble

[1] The Court notes that it is up to an applicant to prepare an application that would convince an officer that he or she has the necessary qualifications and experience to perform the proposed work in Canada (*Grusas v Canada (Minister of Citizenship and Immigration)*, 2012 FC 733, 413 FTR 82 at paragraph 63). It is not up to an officer to seek evidence that corroborates an

applicant's application at the applicant's workplace. Similarly, as specified by the Federal Court of Appeal, an officer has the discretionary authority to determine the value to be attached to that evidence (*Aguebor v Canada (Minister of Employment and Immigration)* (1993), 160 NR 315 (FCA)).

II. Introduction

[2] This is an application for judicial review pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (IRPA), of a visa officer's decision to refuse the applicant's work permit application.

III. Facts

[3] The applicant, Liheng Sok, is a Cambodian citizen who was born in 1973.

[4] In 2008, the applicant apparently starting working as a cook at the Food and Beverage Center Gallery Café (FBC) restaurant in Cambodia. Prior to 2008, he allegedly worked at a restaurant called Sampheap.

[5] On April 24, 2012, the applicant received a job offer from the Chez Vanna restaurant, which is located in Québec, Quebec.

[6] In December 2012, the applicant filed a temporary work permit application at the Canadian Embassy in Bangkok to work as a cook at the Chez Vanna restaurant. On April 5, 2013, the officer refused the visa application.

[7] On January 30, 2013, the applicant filed this application for judicial review with respect to that decision.

IV. Decision under review

[8] The officer first determined that the applicant had not established that he had the professional experience required to perform the proposed work at the Chez Vanna restaurant. In her Global Case Management System (GCMS) notes, the officer pointed out several deficiencies in the evidence submitted by the applicant that seriously undermined his credibility with respect to his experience. In particular, the applicant was unable to clearly answer the questions he was asked during his interview on January 29, 2013. He was also unable to describe his duties as a cook or the other employees with whom he had worked. Furthermore, he could not explain to the officer where the original copies of his work certificates, which were attached to his work permit application, were.

[9] Given the applicant's total lack of credibility, the officer was not convinced that the applicant would return to his country of origin after the length of his stay in Canada. She therefore refused the work permit application.

V. Issue

[10] Is the officer's decision reasonable?

VI. Relevant statutory provisions

[11] Section 11 of the IRPA applies in this case:

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.

[12] Paragraph 200(3)(a) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 also applies in this case:

Exceptions

(3) An officer shall not issue a work permit to a foreign national if

(a) there are reasonable grounds to believe that the foreign national is unable to perform the work sought;

Exceptions

(3) Le permis de travail ne peut être délivré à l'étranger dans les cas suivants :

a) l'agent a des motifs raisonnables de croire que l'étranger est incapable d'exercer l'emploi pour lequel le permis de travail est demandé;

VII. Standard of review

[13] Decisions by visa officers concerning temporary work permits are reviewable on the reasonableness standard of review (*Grusas*, above; *Dhillon v Canada (Minister of Citizenship and Immigration)*, 2009 FC 614, 347 FTR 24).

VIII. Analysis

[14] According to the applicant, the visa officer erred by failing to explain why he had not discharged his burden of proving that he could meet the requirements for the proposed job at Chez Vanna. He maintains that the officer also disregarded the evidence in the record by not asking his employer enough questions during her visit to the workplace.

[15] After assessing the evidence in the record, namely the GCMS notes and the refusal letter, the Court believes that the officer's decision is reasonable.

[16] The Supreme Court of Canada recently addressed the first issue raised by the applicant regarding the adequacy of reasons in *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, [2011] 3 SCR 708. In *Newfoundland and Labrador Nurses' Union*, at paragraph 14, the Court found that the "adequacy" of reasons is not a stand-alone basis for quashing a decision. Instead, reasons must be "read together with the outcome and serve the purpose of showing whether the result falls within a range of possible outcomes".

[17] Similarly, the Federal Court of Appeal recently confirmed that, to be adequate, the reasons must make it possible for the reviewing court to understand why a decision-maker made a decision and then to determine whether the decision-maker's conclusion was within the range of acceptable outcomes (*Lebon v Canada (Minister of Public Safety and Emergency Preparedness)*, 2012 FCA 132, at paragraph 18).

[18] In this case, the Court finds that the officer's reasons, as a whole, are sufficient for the Court to clearly understand why she made her decision. In her GCMS notes, the officer clearly stated that the main reason for her refusal of the work permit was the applicant's lack of credibility. According to the notes, during the interview, the applicant could not answer simple and relevant questions about his professional experience. Furthermore, the GCMS notes show that there was no credible evidence in support of the applicant's application. The applicant could not even explain to the officer where the original copies of his work certificates were. It was completely reasonable, based on the credibility doubts raised, that the applicant had in fact worked as a cook.

[19] Regarding the second argument, the Court reiterates that it was up to the applicant to prepare an application that would convince the officer that he had the necessary qualifications and experience to perform the proposed work in Canada (*Grusas*, above, at paragraph 63). It was not up to the officer to seek evidence that corroborated the applicant's application at his workplace. Similarly, the officer had the discretionary authority to determine the value to be attached to that evidence (*Aguebor*, above). The Court cannot then substitute its own assessment for that of the officer. Even though the applicant believes that the officer should have come to a

different conclusion in this case, he did not demonstrate how the officer erred in her assessment of the evidence.

[20] In light of the deficiencies in the applicant's evidence, the Court finds that the officer's decision clearly falls within the possible, acceptable outcomes. It was entirely open to the officer to make negative findings regarding the applicant's credibility.

[21] The Court notes that the applicant challenges other comments made by the officer in her notes. It believes that they are otherwise not central to the decision and could not render the decision unreasonable with respect to the other concerns raised by the officer, namely concerning the applicant's credibility.

IX. Conclusion

[22] In light of the foregoing, the applicant's application for judicial review is dismissed.

JUDGMENT

THE COURT ORDERS AND ADJUDGES THAT the applicant's application for judicial review is dismissed without any question of general importance to certify.

"Michel M.J. Shore"

Judge

Certified true translation
Janine Anderson, Translator

FEDERAL COURT
SOLICITORS OF RECORD

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