

Federal Court



Cour fédérale

Date: 20150821

Docket: IMM-197-15

Citation: 2015 FC 995

Montréal, Quebec, August 21, 2015

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

MOHAMMAD ALI HAJI

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[52] The Applicant appears to take the position that procedural fairness arises whenever an officer has concerns that the applicant could not reasonably have anticipated. I think the jurisprudence of this Court demonstrates otherwise. What applicants can reasonably anticipate is that officers will bring their own experience and expertise to bear upon the application and will draw inferences and conclusions from the evidence that is placed before them without necessarily alerting applicants on these matters. The onus is upon applicants to put together applications that are convincing and that

anticipate possible adverse inferences contained in the evidence and local conditions and address them.

(As penned by Justice James Russell in *Singh v Canada (Minister of Citizenship and Immigration)*, 2012 FC 526).

II. Introduction

[1] The Applicant challenges a decision dated October 27, 2014, pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA], wherein the Applicant's temporary resident visa to Canada was rejected by a visa officer.

III. Background

[2] The Applicant is a citizen of India, born in the Democratic Republic of Congo, who speaks Gujarati, one of the languages, spoken in India; the Applicant has also traveled with passages documented in Iraq and Iran. The Applicant applied for a study permit to Canada on October 14, 2014, in order to attend LaSalle College in Montréal, where he was accepted as a student.

[3] By way of letter dated October 27, 2014, the officer rejected the Applicant's student permit application pursuant to sections 219 and 220 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [IRPR].

[4] In his reasons, the officer found that the Applicant failed to provide sufficient evidence of his parents' employment and establishment, as well as the origin of the funds in the bank

statement provided by the Applicant. The officer's notes in the Field Operations Support System [FOSS] reveal the following additional reasons:

PA states to have previously been refused an application. However, cannot be found in FOSS. PA states to have been an intern [a]t BEA Congo from April 2014 to May 2014. No other information provided on PA's background or previous activities. Limited docs [to] support PA or parents' establishment in country of residence. Bank docs submitted are in support of lump sum deposits. History of funds not provided. Insufficient docs to support parents' employment submitted. I am not satisfied that funds exist [to] support proposed studies. I am not satisfied that PA is a [bona fide] temporary resident.

(Officer's FOSS notes, dated October 27, 2014, Certified Tribunal Record, at pp 15-16)

IV. Legislative Provisions

[5] The following provisions of the IRPA and of the IRPR are relevant to the officer's determination:

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 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.

Study permits

216. (1) Subject to subsections (2) and (3), an officer shall issue a study permit to a

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 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.

Permis d'études

216. (1) Sous réserve des paragraphes (2) et (3), l'agent délivre un permis d'études à

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

(a) applied for it in accordance with this Part;

(b) will leave Canada by the end of the period authorized for their stay under Division 2 of Part 9;

(c) meets the requirements of this Part;

(d) meets the requirements of subsections 30(2) and (3), if they must submit to a medical examination under paragraph 16(2)(b) of the Act; and

(e) has been accepted to undertake a program of study at a designated learning institution.

Financial resources

220. An officer shall not issue a study permit to a foreign national, other than one described in paragraph 215(1)(d) or (e), unless they have sufficient and available financial resources, without working in Canada, to

(a) pay the tuition fees for the course or program of studies that they intend to pursue;

(b) maintain themselves and any family members who are accompanying them during their proposed period of study; and

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

a) l'étranger a demandé un permis d'études conformément à la présente partie;

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) il remplit les exigences prévues à la présente partie;

d) s'il est tenu de se soumettre à une visite médicale en application du paragraphe 16(2) de la Loi, il satisfait aux exigences prévues aux paragraphes 30(2) et (3);

e) il a été admis à un programme d'études par un établissement d'enseignement désigné.

Ressources financières

220. À l'exception des personnes visées aux sous-alinéas 215(1)d) ou e), l'agent ne délivre pas de permis d'études à l'étranger à moins que celui-ci ne dispose, sans qu'il lui soit nécessaire d'exercer un emploi au Canada, de ressources financières suffisantes pour :

a) acquitter les frais de scolarité des cours qu'il a l'intention de suivre;

b) subvenir à ses propres besoins et à ceux des membres de sa famille qui l'accompagnent durant ses études;

(c) pay the costs of transporting themselves and the family members referred to in paragraph (b) to and from Canada.

c) acquitter les frais de transport pour lui-même et les membres de sa famille visés à l'alinéa b) pour venir au Canada et en repartir.

V. Analysis

[6] The Applicant argues that the officer's decision is unreasonable in that it is based on speculation, and that the officer's concerns were not communicated to the Applicant. Moreover, no additional information was requested from the Applicant, nor was an interview held.

[7] Furthermore, the Applicant argues that the officer erred in his assessment of the evidence, in particular in respect of the available funds and proof of the Applicant's permanent residence in the Congo.

[8] The officer's decision is reasonable. The evidence before the officer did not demonstrate that the employment and establishment of the Applicant's parents were such to enable determination of the bank funds in the bank statement, as proffered, to be clear evidence of such. The requirements of rule 11 of the IRPR, also of paragraph 20(1)(b) of the IRPA and that of rule 220 of the IRPR were not met, in respect of a visa requirements by which to enter Canada, or that departure from Canada would take place; or, that the Applicant had sufficient and available financial resources without working in Canada.

[9] The Applicant did not submit evidence in respect of an internship in the Congo. He did not give evidence of any substance as to his previous history in the Congo. Very scant

information was provided as to his establishment and that of his parents in the Congo. Nor was his parents' employment status provided. In addition, no evidence specified the origin of the funds in the bank account in respect of the lump sums which had been deposited therein.

[10] Actual financial resources could not be determined in the case of the Applicant. As the information as to the Applicant's history and financial assets were scant, the Applicant did not meet his burden of proof (*Baylon v Canada (Minister of Citizenship and Immigration)*, 2009 FC 743 at paras 30-35).

[11] No interview by the visa officer was required, the onus was on the Applicant to provide adequate, sufficient and credible evidence (*Liu v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1025). The duty to motivate a decision is minimal in respect of temporary visa applications (*Zhou v Canada (Minister of Citizenship and Immigration)*, 2013 FC 465).

VI. Conclusion

[12] The Court, therefore, dismisses the application for judicial review.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed.

There is no serious question of general importance to be certified.

"Michel M.J. Shore"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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