Federal Court  Cour fédérale

Date: 20150925

Docket: IMM-8237-14

Citation: 2015 FC 1120

Ottawa, Ontario, September 25, 2015

PRESENT: The Honourable Mr. Justice Gleeson

BETWEEN:

SYEDA NADIA SHAUKAT
SYED SHAUKAT MEDHI BUKHARI
SYED HUSSAIN RAZA
SYED ALI RAZA

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] This is an application for judicial review pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] seeking to set aside the decision of a Visa Officer [the officer] from the High Commission of Canada in London [the High Commission] rejecting the applicants' application for permanent residency under the provincial nominee class

pursuant to section 87 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [IRPR].

[2] For the reasons that follow, the application is dismissed.

I. Background

[3] Syeda Nadia Shaukat, the applicant, was named in a nomination certificate by the Province of Saskatchewan under the Saskatchewan Immigrant Nominee Program [the SINP]. The High Commission received the applicant's application for permanent residency under the provincial nominee class in November of 2013. The application identified her current and intended occupation as "Beautician / Hair Stylist" but did not include a letter of offer from a Saskatchewan employer. The application did include the results of the applicant's International English Language Testing System [IELTS] which demonstrated that the applicant had achieved a score of 5.0 in listening, 3.5 in reading, 5.5 in writing and 6.0 in speaking, and an overall band score of 5.0 on a scale where the maximum score is 10.

[4] An initial assessment of the application was completed and it was concluded that the applicant's English language skills were borderline and on balance did not appear sufficient to allow the applicant to become economically established in Canada.

[5] In June of 2014 the High Commission sent an email [the pre-refusal letter] to the applicant and, as provided for in subsection 87(3) of the IRPR, to the Province of Saskatchewan. The pre-refusal letter advises the applicant that communication in one of Canada's official

languages is "vitally important" for economic establishment and notes that although the applicant's IELTS scores were at or above the minimum recommended level, the SINP also provides that nominees must have the English language ability to either do the job offered by a Saskatchewan employer or get a job in the field of training or education. The pre-refusal letter notes that the applicant was not in receipt of a job offer by a Saskatchewan employer and that the Saskatchewan immigration website indicates that applicants with basic communication skills often find they must upgrade their skills before being able to find work.

[6] In response to the pre-refusal letter, the applicant provided a job offer letter from Panjtan Services for the position of Assistant Manager. The applicant also advised that she has been working on her English language skills and has definitely seen improvement.

[7] The Government of Saskatchewan responded to the pre-refusal letter advising that the province maintained its support for the applicant.

II. Decision

[8] On October 17, 2014, the officer advised the applicant by letter, with a copy to the Province of Saskatchewan that the officer was not satisfied that the applicant had the language skills to become economically established in Canada. Further explanations of the officer's reasons for the decision are found in both the pre-refusal letter and the Global Case Management System [GCMS] notes.

[9] The GCMS notes detail the officer's review of the applicant's response to the pre-refusal letter. The notes indicate that the officer considered the applicant's job offer, stating that the offer was for a position in the cleaning industry. The notes further state that the applicant did not indicate that she has any prior experience in the cleaning industry or as a manager. The GCMS notes state that with moderate English language speaking and writing skills, basic listening and reading skills and a lack of experience relevant to the job offer the officer was not satisfied that the applicant had demonstrated her ability to establish economically notwithstanding the ongoing support of the Province of Saskatchewan.

III. Issues

[10] The application raises the following issues:

1. Did the Visa Officer err by mischaracterizing the applicant's English language proficiency?;
2. Was the Visa Officer's failure to defer to the province's position of continued support for the applicant unreasonable?; and
3. Were the reasons underlying the decision sufficient?

IV. Standard of review

[11] The issues raised in this application engage questions of fact and mixed fact and law. My colleague Justice James Russell notes in *Ijaz v Canada (Minister of Citizenship and Immigration)*, 2014 FC 920, [*Ijaz*] at para 18:

> This Court's jurisprudence has established that the reasonableness standard applies to a visa officer's decision to substitute their evaluation for a provincial nomination certificate.

V. Analysis

A. *Mischaracterizing the applicant's English language proficiency*

[12] The applicant submits that while the officer initially characterized her English language skills as reflected by the IELTS assessment correctly, the officer then inaccurately re-categorized her abilities by describing her speaking and writing skills as moderate and her ability to listen and read as basic. The applicant further submits that the officer incorrectly states that the Government of Canada's Job Bank website requires advanced English language skills to perform some of the duties of a hairstylist job and that the combination of these two errors led the officer to unreasonably conclude that the applicant could not become economically established in Canada. The applicant further argues that this error is more glaring as the officer failed to reference the more detailed descriptions of the applicant's language abilities contained in the Canadian Language Benchmark: English as a Second Language for Adults [CLB], and the failure of the officer to consider that the applicant's language skills would have been sufficient had she been applying under another program.

[13] The respondent argues that the officer recognized that the applicant had varying levels of proficiency in the different areas of language assessment and correctly articulated those skill levels based on her IELTS scores. The respondent argues that the officer assessed the applicant's skills based on the information put before her and that the applicant did not challenge the reasonableness of the officer's assessment in responding to the pre-refusal letter. Finally the

respondent argues that the fact that the applicant may have met minimum proficiency levels under another program is of no assistance.

[14] In oral argument the applicant noted that the officer inexplicably describes the applicant's listening ability as basic but her writing ability as moderate when the scores fall within the fifth band on the IELTS scale. This error, the applicant submits, reflects a misapprehension of the applicant's language skills that in turn undermined the transparency of the decision.

[15] I am not persuaded by the applicant's arguments as I am satisfied that the officer demonstrated a clear understanding of the applicant's numerical IELTS scores. The officer clearly states that the applicant's IELTS scores were at or above minimum recommended levels but despite this, the officer was not satisfied that the skill level was sufficient to allow the applicant to become economically established within the meaning of section 87 of the IRPR. This is a justifiable, transparent and intelligible conclusion that falls within the range of possible acceptable outcomes (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47, [2008] 1 SCR 190). The officer's unfortunate use of the term moderate instead of modest, and characterization of the applicant's listening skills as basic are not material errors that disrupt the outcome of this case.

[16] While I find there was no reviewable error committed in characterizing the applicant's English language skills and placing reliance on the IELTS descriptions without citing the CLB's descriptions, I also note that the bases for the officer's conclusions were fully set out in the pre-refusal letter. The applicant was provided the opportunity to respond, and did respond to the letter, without the assistance of counsel. In that response the applicant takes no issue with the

officer's interpretation of the IELTS scores, the characterization of those scores, the information the officer relied on to assess those scores or even the conclusion that her English language skills were not sufficient to allow her to become economically established. Now, the applicant, with the assistance of counsel, has taken the position that the Court should assess the applicant's response in light of the fact that the applicant was unrepresented. While I am prepared to do so, the simple fact is the applicant's response did not in any way challenge the officer's assessment in the above-referenced statement. As noted by the respondent, the reasonableness of the officer's decision must be assessed based on the information before the officer, not the arguments now being made.

B. *The Visa Officer's failure to defer to the province's position*

[17] The applicant argues that the officer unreasonably exercised her discretion in not accepting the province's view that the applicant could become economically established. The applicant cites the CIC Operational Manual and the Annex to the Canada-Saskatchewan Immigration Agreement, 2005 [the Agreement] to support the argument that the officer acted unreasonably by not deferring to the province's position. The applicant further argues that the officer's initial assessment that the applicant's English language proficiency was borderline should have caused the officer to not look behind the explicit instructions of the Operational Manual which creates a presumption of economic establishment for the applicant and the province's continued expression of support for the applicant.

[18] The respondent submits that it is Canada, not the province that determines the prospect of economic establishment. The legislation allows the visa officer to reach another determination

than the province in light of the evidence: visa officers can refuse a Saskatchewan Nominee application should they believe that the nominee cannot become economically established. Section 4.8 to Annex A of the Agreement confirms that Canada is responsible for "exercising the final selection authority" (Applicant's Record, Tab 11 at page 182).

[19] According section 4.9 to Annex A of the Agreement, "Canada shall consider a nomination certificate issued by Saskatchewan as initial evidence that admission is of significant benefit to the development of Saskatchewan and that the nominee has the ability to become economically established in Canada" (Applicant's Record, Tab 11 at pages 182-183). However, section 87(3) of the IRPR expressly allows a visa officer to substitute their evaluation of the likelihood of economic establishment in Canada if they find the certificate of nomination is not a sufficient indicator of said economic establishment. The visa officer may do this so long as, in accordance with subsection 87(3) of the IRPR they consulted with the government that issued the certificate, and pursuant to subsection 87(4) of the IRPR a second visa officer concurs with the evaluation under subsection 87(3) of the IRPR. Both requirements were met in this case.

[20] As noted by my colleague Justice Russell Zinn in *Parveen v Canada (Minister of Citizenship and Immigration)*, 2015 FC 473, [*Parveen*] at para 36:

> It is well established that the federal officer is not bound by the decision of a provincial program officer and is entitled to form his or her own opinion as to the likelihood of an immigrant to become economically established in Canada.

This statement is consistent with both the Agreement and the IRPR. The officer had no obligation to defer to the views expressed by the Saskatchewan Government and did not err in reaching a different conclusion in this case.

C. *Sufficiency of reasons*

[21] The applicant submits that the visa officer erred in failing to analyze the content of the Province of Saskatchewan's response to the pre-refusal letter. Failure to provide meaningful analysis of the province's balanced approach to applicants rendered the decision unreasonable. Furthermore, the applicant submits that the Province of Saskatchewan's statements relating to the availability of employment in Saskatchewan and the demand for skilled workers was contrary to the finding of the officer that the applicant will be unable to find work and become economically established in Canada. The respondent submits that the province's response to the pre-refusal letter is general in nature as such did not warrant any direct consideration by the officer.

[22] The province's response letter does address job availability but there is no obvious linkage between job availability and this applicant's ability to become economically established where the concern is one of language skills. The mere fact that there are many jobs available does not lead one logically to conclude the applicant will become economically established if she lacks the language skills to function. Furthermore, that the applicant met the province's minimum language requirements is not determinative of economic establishment (*Parveen* at para 19). The applicant's submission that the officer failed to consider the province's balanced approach to economic establishment fails to recognize that the officer specifically addresses the

question of family support in the pre-refusal letter noting "I have also noted that you have indicated having support of a family member residing in Saskatchewan but support by and reliance on a family member would not be sufficient to outweigh the concerns over your low level of English language ability".

[23] Although the applicant would have preferred that the officer devote more space in the decision to the province's response, the officer explicitly noted the province's continued support for the applicant in the reasons. The adequacy of reasons is not a stand-alone basis for quashing a decision and reasons need not include all the arguments or other details the reviewing judge would have preferred so long as they do not impugn the validity of either the reasons or the result (*Newfoundland Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at paras 14, 16, [2011] 3 SCR 708 [*Newfoundland Nurses*]).

[24] Moreover, while the focus of these reasons and much of the record are on the issue of English language proficiency, the latter was not the officer's only reason for refusing the application. As Justice Russell held in *Ijaz* at para 59:

> The fact that one factor (language ability) is singled out for particular emphasis does not mean that all other factors were not considered in the weighing process.

The same reasoning applies here, language was one factor, but not the only relevant factor considered in rendering the decision.

[25] The reasons here are not perfect or comprehensive, but they are sufficient to allow the Court to understand why the officer made the decision and "permit it to determine whether the

conclusion is within the range of acceptable outcomes, the *Dunsmuir* criteria are met" (*Newfoundland Nurses* at para 16).

[26] Counsel did not advance a question for certification.

JUDGMENT

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

No question is certified.

"Patrick Gleeson"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-8237-14
STYLE OF CAUSE:	SYEDA NADIA SHAUKAT, SYED SHAUKAT MEDHI BUKHARI, SYED HUSSAIN RAZA, SYED ALI RAZA v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	SEPTEMBER 14, 2015
JUDGMENT AND REASONS:	GLEESON J.
DATED:	SEPTEMBER 25, 2015

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