

Federal Court



Cour fédérale

Date: 20160321

Docket: IMM-3081-15

Citation: 2016 FC 338

Ottawa, Ontario, March 21, 2016

PRESENT: The Honourable Madam Justice Heneghan

BETWEEN:

MINHAJ BEGUM RAJ GAFFUR

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] Ms. Minhaj Begum Raj Gaffur (the “Applicant”) seeks judicial review of the decision of a Visa Officer (the “Officer”) who determined that the Applicant did not meet the requirements for a Canadian study visa.

[2] The facts set out below are taken from the Certified Tribunal Record.

[3] The Applicant is a citizen of India. She was born on September 2, 1983. She married on November 23, 2005. She gave birth to her first child on August 28, 2006 and to her second child on December 2, 2009.

[4] The Applicant attended a college in India from June 2000 to April 2005 and obtained a Bachelor's Degree in English literature. She obtained another degree, that is a Bachelor's Degree in Education, in December 2012.

[5] The Applicant was employed as an assistant restaurant manager in India from September 2014 until December 2014. Her current application for a study permit is dated December 1, 2014 and she applied for the permit so she could attend Fleming College in Peterborough, Ontario to pursue a program in Hotel and Restaurant Management for the period December 1, 2015 until April 30, 2016.

[6] The Officer refused the application on the grounds that the Applicant did not meet the requirements of the *Immigration and Refugee Protection Act*, S.C. 2001 c. 27 (the "Act") and the *Immigration and Refugee Protection Regulations*, SOR/2002-227 (the "Regulations"). The refusal, set out in a letter dated June 11, 2015, referred to "Other Reasons", specifically that the Applicant's "proposed studies are not reasonable in light of your qualifications, previous studies, gap in studies, employment, or your future prospects and plans".

[7] The Global Case Management System ("GCMS") notes record the following entry, dated June 11, 2015 about the Applicant's application:

... I have reviewed submissions regarding the grounds for the previous refusal: however they do not overcome my concerns regarding the proposed studies. Based on the information before me, given the gap in studies and employment as well as the strong family ties to Canada I am not satisfied that the proposed studies are reasonable giving the PA's educational and working background. The PA has failed to establish that he is a bona fide student and temporary resident who would leave Canada at the end of the period authorized for stay as per R21691)(b) of IRPA Refused.

[8] The decision in question, involving the assessment of the evidence against the statutory criteria, including the criteria set out in the Regulations, raises a question of mixed fact and law and is reviewable on the standard of reasonableness; see the decision in *Lin v. Canada (Minister of Citizenship and Immigration)* (2004), 245 F.T.R. 103 at paragraphs 20-21.

[9] The standard of reasonableness requires that a decision be transparent, justifiable and intelligible; see the decision in *Dunsmuir v. New Brunswick*, [2008] 1 S.C.R. 190 at paragraph 47.

[10] The Certified Tribunal Record does not contain any information about the grounds for the previous refusal. In those circumstances, in my opinion, the observations of the Officer reproduced above do not meet the standard of reasonableness.

[11] The Minister of Citizenship and Immigration (the "Respondent") argues that the decision is reasonable but in any event, the Court should not exercise its discretion to hear this application since it is moot. The Respondent submits that the time period for which the Applicant wanted the study permit has now expired; that is the basis of his mootness argument.

[12] I disagree with these submissions and referred to the decision in *Chhetri v. Canada (Citizenship and Immigration)* (2011), 2 Imm. L.R. (4th) 326 at paragraph 4 where Justice Rennie, as he then was, said the following:

In my view, the existing applications are not moot. The second refusal did not insulate the first decision from review. There remains a live controversy between the parties as to adequacy of the reasons for rejecting the application. There remains a *lis* between the parties and the fact is that this decision could have practical effect. The motion was therefore dismissed and the application heard on the merits.

[13] I agree with his reasoning and adopt the same in this case. The Applicant's application for judicial review is not moot and the Officer's decision does not meet the legal standard of reasonableness. It follows that this application for judicial review is allowed, the decision is set aside and the matter is referred to a different officer for redetermination. That Officer should have due regard for all the evidence available to the Respondent in connection with the Applicant's application for a study permit.

JUDGMENT

THIS COURT'S JUDGMENT is that this application for judicial review is allowed, the decision is set aside and the matter is referred to a different officer for redetermination, no question for certification arising.

"E. Heneghan"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3081-15

STYLE OF CAUSE: MINHAJ BEGUM RAJ GAFFUR v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: MARCH 10, 2016

JUDGMENT AND REASONS: HENEGHAN J.

DATED: MARCH 21, 2016

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