Federal Court  Cour fédérale

Date: 20170511

Docket: IMM-4975-16

Citation: 2017 FC 490

[UNREVISED CERTIFIED ENGLISH TRANSLATION]

Montréal, Quebec, May 11, 2017

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

MAKINY WAFFO TÉKADAM

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Background

> [12] It seems evident that the evidence, and especially the appellant's previous record, led the visa officer to conclude that the appellant would not abide by the time limits of his right of residence, regardless of the standard of review applied. A decision which is based on the evidence is impervious to the reasonableness *simpliciter* standard because in dealing with such a decision a reviewing court cannot engage *de novo* in its own analysis or substitute its own reasons (*Law Society of New Brunswick v. Ryan*,

[2003] 1 S.C.R. 247 at paragraph 47). In short, the visa officer had the last word, no matter what standard applied.

(*Eymard Boni v. Canada (Minister of Citizenship and Immigration)*, 2006 FCA 68, according to a unanimous decision by the Federal Court of Appeal, written by Justice Marc Noël, as he then was)

[38] It is well established that a visa officer has no legal obligation to seek to clarify a deficient application, to reach out and make the applicant's case, to apprise an applicant of concerns relating to whether the requirements set out in the legislation have been met, or to provide the applicant with a running score at every step of the application process (*Sharma v. Canada (Citizenship and Immigration)*, 2009 FC 786 at paragraph 8; *Fernandez v. Canada (Minister of Citizenship and Immigration)*, [1999] FCJ No 994 (QL) at paragraph 13; *Lam v. Canada (Minister of Citizenship and Immigration)* (1998), 152 FTR 316 (FCTD) at paragraph 4). To impose such an obligation on a visa officer would be akin to giving advance notice of a negative decision, an obligation that has been expressly rejected by this Court on many occasions (*Ahmed v. Canada (Minister of Citizenship and Immigration)*, [1997] FCJ No 940 (QL) at paragraph 8; *Dhillon v. Canada (Minister of Citizenship and Immigration)*, [1998] FCJ No 574 (QL) at paragraphs 3-4). There is no requirement for a visa officer to seek clarification, or to reach out and make the applicant's case (*Mazumder v. Canada (Citizenship and Immigration)*, 2005 FC 444 at paragraph 14; *Kumari v. Canada (Minister of Citizenship and Immigration)*, 2003 FC 1424 at paragraph 7).

[39] I am therefore of the view that, in the circumstances of this case, the Officer was not required to conduct an interview or inform Ms. Solopova of deficiencies in her application. Contrary to Ms. Solopova's submissions, this is not a situation where she had a right to respond to the Officer's concerns. This case is distinguishable from *Hara* or *Li*, relied on by Ms. Solopova. In *Li*, the Court found that the officer had a duty to give the applicant an opportunity to respond to his concerns since there was nothing in the applicant's application, other than a reference to the higher salary in Canada, to suggest the applicant intended to stay in Canada permanently (*Li* at paras 37-38). In the present case, the Officer relied on numerous pieces of evidence to support his conclusion on Ms. Solopova's intentions.

[40] Ms. Solopova claims that, since credibility was an issue, an oral hearing should have been conducted by the Officer (*Hamadi v. Canada (Minister of Citizenship and Immigration)*, 2011 FC 317 at

> paragraph 14; *Duka v. Canada (Minister of Citizenship and Immigration)*, 2010 FC 1071 at paragraph 13). However, Ms. Solopova conflates an adverse finding of credibility with a finding of insufficient evidence. I dealt with this matter in *Ibabu v. Canada (Minister of Citizenship and Immigration)*, 2015 FC 1068, where I stated the following at paragraph 35:
>
> > [35] **An adverse finding of credibility is different from a finding of insufficient evidence or an applicant's failure to meet his or her burden of proof.** As stated by the Court in *Gao v. Canada (Minister of Citizenship and Immigration)*, 2014 FC 59, at paragraph 32, and reaffirmed in *Herman v. Canada (Minister of Citizenship and Immigration)*, 2010 FC 629 at paragraph 17, "it cannot be assumed that in cases where an Officer finds that the evidence does not establish the applicant's claim, that the Officer has not believed the applicant". This was reiterated in a different way in *Ferguson v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 1067 at paragraph 23, where Justice Zinn stated that while an applicant may meet the evidentiary burden because evidence of each essential fact has been presented, he may not meet the legal burden because the evidence presented does not prove the facts required on the balance of probabilities.
> >
> > (Emphasis added)
>
> (As stated by Justice Denis Gascon in *Solopova v. Canada (Citizenship and Immigration)*, 2016 FC 690)

II. Nature of the matter

[1] This is an application for judicial review under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c. 27 [IRPA] of a decision dated October 17, 2016, by a visa officer at the Canadian Embassy in Paris, refusing the applicant's study permit application.

III. Facts

[2] The applicant, age 28, is a citizen of Cameroon. She arrived in Canada in November 2009 with a study permit that was valid until March 31, 2013.

[3] The applicant put her studies on hold in February 2013, after the death of her father, who provided for her needs, on January 24, 2013. At that time, she had completed two-thirds of her bachelor's degree in chemistry.

[4] The applicant remained in Canada illegally until June 2016. In order to complete her studies, she applied for restoration of temporary resident status on February 1, 2016, which was denied on May 27, 2016. The applicant left Canada on June 15, 2016, to return to Cameroon.

[5] The applicant submitted five new study permit applications between July and September 2016, which were denied. On September 27, 2016, she submitted a new study permit application, which was denied.

IV. Decision

[6] On October 17, 2016, a visa officer from the Embassy of Canada in Paris denied the applicant's sixth study permit application, since he was not satisfied that she met the requirements of the IRPA. In the refusal letter, the officer checked off the following items:

> You have not satisfied me that you would leave Canada at the end of your stay as a temporary resident. In reaching this decision, I considered several factors, including:

> your family ties in Canada and in your country of residence;
>
> purpose of visit;
>
> your history of having contravened the conditions of entry on a previous stay in Canada.
>
> (Letter dated October 17, 2016, Embassy Record, at page 57)

[7] The officer also recorded the reasons for his refusal in the Global Case Management System [GCMS]:

> [TRANSLATION] 5 previous refusals noted. Applicant had a SP valid until March 2013, but stayed in Cda without status until June 2016. Applicant states that she stayed because she was upset about her father's death. Applicant does not explain why she did not return to be with those closest to her at that difficult time. In addition, according to the letter from the Univ. Montréal, in two years, applicant earned only 6 credits. Applicant recently returned to Cameroon, single, no children, seems to have limited ties with her country of residence. I am not persuaded that the applicant is a student in gf. refused [*sic*]
>
> (GCMS notes, Embassy Record, at page 3)

V. Issue

[8] The issue is as follows: did the visa officer err in refusing the applicant's study permit application?

[9] It is well established that a visa officer's decision to refuse or grant a study permit is within that officer's discretion and must be reviewed on a standard of reasonableness. Given their expertise in analyzing and assessing study permit applications, the Court must give

deference to the decisions made by visa officers (*Singh v. Canada (Citizenship and Immigration)*, 2012 FC 526 at paragraph 14).

VI. Analysis

[10] The applicant argues that the officer erred in considering the evidence submitted regarding her family ties in Cameroon and the absence of family in Canada, her intention to complete her chemistry studies in Canada, as well as her violation of the conditions on a previous stay. The applicant further alleges that the officer erred in finding that she would not leave Canada at the end of her stay and that she was not a student in good faith. In her view, the officer should have let her provide explanations in an interview.

[11] The respondent argues on the contrary that the officer adequately analyzed the evidence in the study permit application file. In fact, the officer noted that: (1) the applicant did not return to her family following her father's death, she is single and has no children; (2) she did not demonstrate that the purpose of her stay was to finish her program of study; (3) she remained in Canada illegally between March 2013 and June 2016. Moreover, the respondent submits that the onus was on the applicant to provide all the relevant information and documents in support of her application (*De La Cruz Garcia v. Canada (Citizenship and Immigration)*, 2016 FC 784) and that the officer was not obligated to conduct an interview with her.

[12] The Court must determine whether the visa officer's decision is justified, transparent and intelligible, and thus "falls within a range of possible, acceptable outcomes which are defensible

in respect of the facts and law" (*Dunsmuir v. New Brunswick*, [2008], 1 SCR 190, 2008 SCC 9 at paragraph 47).

[13] Visa officers have discretion in decision-making. They are responsible for considering all of the circumstances of a study permit application (*Rammal (Guardian of) v. Canada (Minister of Citizenship and Immigration)*, [2003] FCJ No. 462, 2003 FCT 318; *Wong (Litigation Guardian) v. Canada (Minister of Citizenship and Immigration)*, (1999), 246 NR 377 (FCA)).

[14] It was open to the officer to draw a negative inference from the fact that the applicant stayed in Canada without status for more than three years after her study permit had expired, as well as from the refusals of her previous visa applications.

[15] Consequently, the officer did not make any error in his decision that requires the Court's intervention.

VII. Conclusion

[16] The application for judicial review is dismissed.

JUDGMENT

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

There are no questions of general importance to be certified.

"Michel M.J. Shore"
Judge

Certified true translation
This 16th day of September 2019

Lionbridge

FEDERAL COURT

SOLICITORS OF RECORD

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STYLE OF CAUSE:	MAKINY WAFFO TÉKADAM v. THE MINISTER OF CITIZENSHIP AND IMMIGRATION
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