

Date: 20090408

Docket: IMM-3947-08

Citation: 2009 FC 359

Vancouver, British Columbia, April 8, 2009

PRESENT: The Honourable Madam Justice Dawson

BETWEEN:

EUN JUNG MOON YOON

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The applicant, Ms. Yoon, is a citizen of the Republic of Korea. On August 25, 2005, she obtained a work permit at the Vancouver International Airport port of entry. This permit allowed Ms. Yoon to work in Canada as a “babysitter”. It is agreed that this work permit allowed Ms. Yoon to perform all of the duties set out in the definition of live-in caregiver contained in section 2 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 (Regulations).

[2] Ms. Yoon's work permit was renewed on November 5, 2007. Endorsed on the renewed work permit was the following remark:

TEMPORARY RESIDENT STATUS MAINTAINED AS
PER R183(6). ELIGIBLE TO APPLY FOR PERMANENT
RESIDENCE AFTER COMPLETING 24 MTHS FULLTIME
EMPLOYMENT IN 3 YEARS ENDING 25 AUG 2008. LCP.
SAME EMPLOYER. HRSDC #7294310.

[3] Subsequently, Ms. Yoon applied for permanent residence under the live-in caregiver class. Ms. Yoon's application was refused because an officer found that Ms. Yoon did not hold a work permit issued under the live-in caregiver class.

[4] On this application for judicial review of that decision, Ms. Yoon argues that:

- a. The decision is unreasonable and is based upon a misinterpretation of the Regulations.
- b. The respondent Minister breached the legitimate expectations which arose from his promise that Ms. Yoon would be "eligible to apply for permanent residence after completing 24 mths fulltime employment."

[5] This application for judicial review is dismissed because the decision was neither unreasonable nor based upon an incorrect interpretation of the Regulations. No substantive rights could arise by application of the doctrine of legitimate expectations.

The Regulatory Scheme

[6] The live-in caregiver program was established in order to meet a shortage of live-in caregivers in Canada. A key element of the program is that the Regulations permit participants to apply for permanent residence after two years of employment.

[7] The Minister submits, and I agree, that a central requirement of the program is that, in order to participate in the live-in caregiver program, a live-in caregiver application must be made and approved at a visa post outside of Canada. This requirement is made clear in the following provisions of the Regulations (all of the provisions referred to are set out in the appendix to these reasons).

[8] A foreign national in Canada may become a permanent resident if, among other things, it is established that he or she is a member of the live-in caregiver class. See: paragraph 72(1)(c) and paragraph 72(2)(a) of the Regulations.

[9] The live-in caregiver class is prescribed as a class of foreign nationals who may become permanent residents on the basis of the requirements set out in Division 3 of Part 6 of the Regulations. See: section 110 of the Regulations.

[10] A foreign national who seeks to enter Canada as a live-in caregiver must apply for a work permit in accordance with Part 11 of the Regulations. See: section 111 of the Regulations.

[11] Paragraph 198(2)(a) of the Regulations, found in Part 11 of the Regulations, provides that a foreign national may not apply for a work permit when entering Canada when employment is sought as a live-in caregiver.

[12] This provision is consistent with subsection 112(a) of the Regulations which states that a work permit shall not be issued to a foreign national who seeks to enter Canada as a live-in caregiver unless he or she "applied for a work permit as a live-in caregiver before entering Canada."

[13] Paragraph 200(3)(d) of the Regulations, also found in Part 11 of the Regulations, provides that an officer "shall not issue a work permit to a foreign national if [...] the foreign national seeks to enter Canada as a live-in caregiver and the foreign national does not meet the requirements of section 112" of the Regulations. As noted above, one of those requirements is that the foreign national must have applied for a work permit as a live-in caregiver before entering Canada.

[14] A foreign national becomes a member of the live-in caregiver class if, among other requirements, "they hold a work permit as a live-in caregiver." See: paragraph 113(1)(c) of the Regulations. To hold a work permit as a live-in caregiver, the foreign national must have applied for the work permit as a live-in caregiver before they entered Canada. See: subsection 112(a) of the Regulations.

[15] Finally, section 115 of the Regulations requires the foreign national to meet the requirements of sections 112 and 113 of the Regulations not just when they apply for a work permit,

but also when the work permit is issued and when the foreign national becomes a permanent resident.

[16] Ms. Yoon acknowledges that she did not apply at a visa post outside of Canada for her work permit. She also acknowledges that she did not obtain her work permit abroad. Her work permit was issued to her at a Canadian port of entry. On the basis of the regulatory scheme described above, the officer correctly interpreted the regulations and reasonably concluded that Ms. Yoon was not a member of the live-in caregiver class. While she obtained a work permit at the port of entry that allowed her to work as a "babysitter", such work permit was not issued within the live-in caregiver program.

[17] Before leaving this point, I note that the tribunal record does not contain a copy of the original work permit issued to Ms. Yoon. Nor did she put this permit in evidence. The tribunal record does contain a copy of the renewed work permit. Chapter 14 of the Overseas Processing Manual is entitled "Processing Applicants for the Live-in Caregiver Program." Section 8.5 of that chapter notes that Citizenship and Immigration Canada will continue to use "9998-961 (a 7-digit synthetic immigration code) on LCP [live-in caregiver program] work permits" and that the code "'LCP' should also be entered in the special program box of the work permit."

[18] Neither of these notations appears on the renewed work permit. This further supports the conclusion that Ms. Yoon was not a member of the live-in caregiver class and did not receive a work permit as a participant in the live-in caregiver program.

Legitimate Expectations

[19] Ms. Yoon says that promises must be kept and that she should have been granted permanent residence "on the basis of the promise contained in her work permit." The Minister responds that the notation relied upon by Ms. Yoon was entered on the work permit in error.

[20] Ms. Yoon's argument cannot succeed. No legitimate expectation can exist that is contrary to express provisions of the Regulations. Further, in *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817, at paragraph 26, the Supreme Court of Canada confirmed that "the doctrine of legitimate expectations cannot lead to substantive rights outside the procedural domain." What Ms. Yoon seeks is the conferral of a substantive, not a procedural, right. This cannot be obtained pursuant to the doctrine of legitimate expectations.

Conclusion

[21] For these reasons, the application for judicial review will be dismissed.

[22] Counsel posed no question for certification, and I agree that no question arises on this record.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that:

The application for judicial review is dismissed.

“Eleanor R. Dawson”

Judge

APPENDIX*Immigration and Refugee Protection Regulations, SOR/2002-227**Règlement sur l'immigration et la protection des réfugiés (DORS/2002-227)*

2. The definitions in this section apply in these Regulations.

2. Les définitions qui suivent s'appliquent au présent règlement.

[...]

[...]

"live-in caregiver"

«aide familial»

"live-in caregiver" means a person who resides in and provides child care, senior home support care or care of the disabled without supervision in the private household in Canada where the person being cared for resides.

«aide familial» Personne qui fournit sans supervision des soins à domicile à un enfant, à une personne âgée ou à une personne handicapée, dans une résidence privée située au Canada où résident à la fois la personne bénéficiant des soins et celle qui les prodigue.

[...]

[...]

72. (1) A foreign national in Canada becomes a permanent resident if, following an examination, it is established that

72. (1) L'étranger au Canada devient résident permanent si, à l'issue d'un contrôle, les éléments suivants sont établis :

(a) they have applied to remain in Canada as a permanent resident as a member of a class referred to in subsection (2);

a) il en a fait la demande au titre d'une des catégories prévues au paragraphe (2);

(b) they are in Canada to establish permanent residence;

b) il est au Canada pour s'y établir en permanence;

(c) they are a member of that class;

c) il fait partie de la catégorie au titre de laquelle il a fait la demande;

(d) they meet the selection criteria and other requirements applicable to that class;

d) il satisfait aux critères de sélection et autres exigences applicables à cette catégorie;

(e) except in the case of a foreign national who has submitted a document accepted under subsection 178(2) or of a member of

e) sauf dans le cas de l'étranger ayant fourni un document qui a été accepté aux termes du paragraphe 178(2) ou de

<p>the protected temporary residents class,</p> <p>(i) they and their family members, whether accompanying or not, are not inadmissible,</p> <p>(ii) they hold a document described in any of paragraphs 50(1)(a) to (h), and</p> <p>(iii) they hold a medical certificate, based on the most recent medical examination to which they were required to submit under these Regulations within the previous 12 months, that indicates that their health condition is not likely to be a danger to public health or public safety and, unless subsection 38(2) of the Act applies, is not reasonably expected to cause excessive demand; and</p>	<p>l'étranger qui fait partie de la catégorie des résidents temporaires protégés :</p> <p>(i) ni lui ni les membres de sa famille — qu'ils l'accompagnent ou non — ne sont interdits de territoire,</p> <p>(ii) il est titulaire de l'un des documents visés aux alinéas 50(1)a) à h),</p> <p>(iii) il est titulaire d'un certificat médical attestant, sur le fondement de la plus récente visite médicale à laquelle il a été requis de se soumettre aux termes du présent règlement dans les douze mois qui précèdent, que son état de santé ne constitue vraisemblablement pas un danger pour la santé ou la sécurité publiques et, sauf si le paragraphe 38(2) de la Loi s'applique, ne risque pas d'entraîner un fardeau excessif;</p>
<p>(f) in the case of a member of the protected temporary residents class, they are not inadmissible.</p>	<p>f) dans le cas de l'étranger qui fait partie de la catégorie des résidents temporaires protégés, il n'est pas interdit de territoire.</p>
<p>(2) The classes are</p> <p>(a) the live-in caregiver class;</p> <p>(b) the spouse or common-law partner in Canada class; and</p> <p>(c) the protected temporary residents class.</p>	<p>(2) Les catégories sont les suivantes :</p> <p>a) la catégorie des aides familiaux;</p> <p>b) la catégorie des époux ou conjoints de fait au Canada;</p> <p>c) la catégorie des résidents temporaires protégés.</p>
<p>[...]</p> <p>110. The live-in caregiver class is prescribed as a class of foreign nationals who may become permanent residents on the basis of the requirements of this Division.</p>	<p>[...]</p> <p>110. La catégorie des aides familiaux est une catégorie réglementaire d'étrangers qui peuvent devenir résidents permanents, sur le fondement des exigences prévues à la présente section.</p>

111. A foreign national who seeks to enter Canada as a live-in caregiver must make an application for a work permit in accordance with Part 11 and apply for a temporary resident visa if such a visa is required by Part 9.

111. L'étranger qui cherche à entrer au Canada à titre d'aide familial fait une demande de permis de travail conformément à la partie 11, ainsi qu'une demande de visa de résident temporaire si ce visa est requis par la partie 9.

112. A work permit shall not be issued to a foreign national who seeks to enter Canada as a live-in caregiver unless they

112. Le permis de travail ne peut être délivré à l'étranger qui cherche à entrer au Canada au titre de la catégorie des aides familiaux que si l'étranger se conforme aux exigences suivantes :

(a) applied for a work permit as a live-in caregiver before entering Canada;

a) il a fait une demande de permis de travail à titre d'aide familial avant d'entrer au Canada;

(b) have successfully completed a course of study that is equivalent to the successful completion of secondary school in Canada;

b) il a terminé avec succès des études d'un niveau équivalent à des études secondaires terminées avec succès au Canada;

(c) have the following training or experience, in a field or occupation related to the employment for which the work permit is sought, namely,

c) il a la formation ou l'expérience ci-après dans un domaine ou une catégorie d'emploi lié au travail pour lequel le permis de travail est demandé :

(i) successful completion of six months of full-time training in a classroom setting, or

(i) une formation à temps plein de six mois en salle de classe, terminée avec succès,

(ii) completion of one year of full-time paid employment, including at least six months of continuous employment with one employer, in such a field or occupation within the three years immediately before the day on which they submit an application for a work permit;

(ii) une année d'emploi rémunéré à temps plein — dont au moins six mois d'emploi continu auprès d'un même employeur — dans ce domaine ou cette catégorie d'emploi au cours des trois années précédant la date de présentation de la demande de permis de travail;

(d) have the ability to speak, read and listen to English or French at a level sufficient to communicate effectively in an unsupervised setting; and

d) il peut parler, lire et écouter l'anglais ou le français suffisamment pour communiquer de façon efficace dans une situation non supervisée;

(e) have an employment contract with their

e) il a conclu un contrat d'emploi avec son

future employer.

futur employeur.

113. (1) A foreign national becomes a member of the live-in caregiver class if

113. (1) L'étranger fait partie de la catégorie des aides familiaux si les exigences suivantes sont satisfaites :

(a) they have submitted an application to remain in Canada as a permanent resident;

a) il a fait une demande de séjour au Canada à titre de résident permanent;

(b) they are a temporary resident;

b) il est résident temporaire;

(c) they hold a work permit as a live-in caregiver;

c) il est titulaire d'un permis de travail à titre d'aide familial;

(d) they entered Canada as a live-in caregiver and, for a cumulative period of at least two years within the three years immediately following their entry,

d) il est entré au Canada à titre d'aide familial et, au cours des trois ans suivant son entrée, il a, durant au moins deux ans :

(i) resided in a private household in Canada, and

(i) d'une part, habité dans une résidence privée au Canada,

(ii) provided child care, senior home support care or care of a disabled person in that household without supervision;

(ii) d'autre part, fourni sans supervision, dans cette résidence, des soins à domicile à un enfant ou à une personne âgée ou handicapée;

(e) they are not, and none of their family members are, the subject of an enforceable removal order or an admissibility hearing under the Act or an appeal or application for judicial review arising from such a hearing;

e) ni lui ni les membres de sa famille ne font l'objet d'une mesure de renvoi exécutoire ou d'une enquête aux termes de la Loi, ni d'un appel ou d'une demande de contrôle judiciaire à la suite d'une telle enquête;

(f) they did not enter Canada as a live-in caregiver as a result of a misrepresentation concerning their education, training or experience; and

f) son entrée au Canada en qualité d'aide familial ne résulte pas de fausses déclarations portant sur ses études, sa formation ou son expérience;

(g) where they intend to reside in the Province of Quebec, the competent authority of that Province is of the opinion that they meet the selection criteria of the Province.

g) dans le cas où l'étranger cherche à s'établir dans la province de Québec, les autorités compétentes de cette province sont d'avis qu'il répond aux critères de sélection de celle-ci.

(2) The cumulative period referred to in paragraph (1)(d) may be in respect of more than one employer or household and need not be without interruption, but may not be in respect of more than one employer or household at a time.

[...]

115. The applicable requirements set out in sections 112 to 114.1 must be met when an application for a work permit or temporary resident visa is made, when the permit or visa is issued and when the foreign national becomes a permanent resident.

[...]

198. (2) A foreign national may not apply for a work permit when entering Canada if

(a) a determination under section 203 is required, unless

(i) the Department of Human Resources Development has provided an opinion under paragraph 203(2)(a) in respect of an offer of employment — other than seasonal agricultural employment or employment as a live-in caregiver — to the foreign national, or

(ii) the foreign national is a national or permanent resident of the United States or is a resident of Greenland or St. Pierre and Miquelon;

(b) the foreign national does not hold a medical certificate that they are required to hold under subsection 30(4); or

(c) the foreign national is a participant in an international youth exchange program,

(2) Les deux ans visés à l'alinéa (1)d) peuvent être passés au service de plus d'un employeur ou dans plus d'une résidence dès lors qu'ils ne le sont pas simultanément.

[...]

115. The applicable requirements set out in sections 112 to 114.1 must be met when an application for a work permit or temporary resident visa is made, when the permit or visa is issued and when the foreign national becomes a permanent resident.

[...]

198. (2) L'étranger ne peut demander un permis de travail au moment de son entrée au Canada dans les cas suivants :

a) la décision prévue à l'article 203 est requise, à moins que :

(i) le ministère du Développement des ressources humaines n'ait fourni un avis aux termes de l'alinéa 203(2)a) à l'égard d'une offre d'emploi, autre qu'un emploi agricole saisonnier ou qu'un emploi d'aide familial, présentée à l'étranger,

(ii) l'étranger ne soit un national ou un résident permanent des États-Unis ou un résident du Groenland ou de Saint-Pierre-et-Miquelon;

b) l'étranger ne détient pas le certificat médical exigé au paragraphe 30(4);

c) il participe à un programme d'échanges internationaux visant la jeunesse, à moins

unless they are a national or permanent resident of the United States or their application for a work permit was approved before their entry into Canada.

qu'il ne soit un national ou un résident permanent des États-Unis ou que sa demande de permis de travail n'ait été approuvée préalablement à son entrée.

[...]

[...]

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

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

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

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;

(b) in the case of a foreign national who intends to work in the Province of Quebec and does not hold a *Certificat d'acceptation du Québec*, a determination under section 203 is required and the laws of that Province require that the foreign national hold a *Certificat d'acceptation du Québec*;

b) l'étranger qui cherche à travailler dans la province de Québec ne détient pas le certificat d'acceptation qu'exige la législation de cette province et est assujetti à la décision prévue à l'article 203;

(c) the specific work that the foreign national intends to perform is likely to adversely affect the settlement of any labour dispute in progress or the employment of any person involved in the dispute, unless all or almost all of the workers involved in the labour dispute are not Canadian citizens or permanent residents and the hiring of workers to replace the workers involved in the labour dispute is not prohibited by the Canadian law applicable in the province where the workers involved in the labour dispute are employed;

c) le travail spécifique pour lequel l'étranger demande le permis est susceptible de nuire au règlement de tout conflit de travail en cours ou à l'emploi de toute personne touchée par ce conflit, à moins que la totalité ou la quasi-totalité des salariés touchés par le conflit de travail ne soient ni des citoyens canadiens ni des résidents permanents et que l'embauche de salariés pour les remplacer ne soit pas interdite par le droit canadien applicable dans la province où travaillent les salariés visés;

(d) the foreign national seeks to enter Canada as a live-in caregiver and the foreign national does not meet the requirements of section 112; or

d) l'étranger cherche à entrer au Canada et à faire partie de la catégorie des aides familiaux, à moins qu'il ne se conforme à l'article 112;

(e) the foreign national has engaged in

e) il a poursuivi des études ou exercé un

unauthorized study or work in Canada or has failed to comply with a condition of a previous permit or authorization unless

(i) a period of six months has elapsed since the cessation of the unauthorized work or study or failure to comply with a condition,

(ii) the study or work was unauthorized by reason only that the foreign national did not comply with conditions imposed under paragraph 185(a), any of subparagraphs 185(b)(i) to (iii) or paragraph 185(c);

(iii) section 206 applies to them; or

(iv) the foreign national was subsequently issued a temporary resident permit under subsection 24(1) of the Act.

emploi au Canada sans autorisation ou permis ou a enfreint les conditions de l'autorisation ou du permis qui lui a été délivré, sauf dans les cas suivants :

(i) une période de six mois s'est écoulée depuis les faits reprochés,

(ii) ses études ou son travail n'ont pas été autorisés pour la seule raison que les conditions visées à l'alinéa 185a), aux sous-alinéas 185b)(i) à (iii) ou à l'alinéa 185c) n'ont pas été respectées,

(iii) il est visé par l'article 206,

(iv) il s'est subséquemment vu délivrer un permis de séjour temporaire au titre du paragraphe 24(1) de la Loi.

FEDERAL COURT
SOLICITORS OF RECORD

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AND JUDGMENT** DAWSON J.

DATED: April 8, 2009

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