Federal Court  Cour fédérale

Date: 20100223

Docket: IMM-3577-09

Citation: 2010 FC 201

Montréal, Quebec, February 23, 2010

PRESENT: The Honourable Mr. Justice Beaudry

BETWEEN:

Ai Jian WANG

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the Act), of a decision of a Visa Officer dated May 28, 2009 where Ms. Ai Jian Wang (the Applicant) was denied a Temporary Resident Visa (TRV).

Factual Background

[2] The Applicant was born November 5, 1953 and is a citizen of the People's Republic of China (China). She is married, and works as a teacher in China. Her only son is 27 years-old and a permanent resident of Canada. They have not seen each other for eight years.

[3] The Applicant's son invited his mother to visit Canada, and sent a letter of invitation on February 28, 2009. The Applicant applied twice for a TRV, in April 2009 and May 2009, at the Canadian Embassy in Beijing. Both applications were denied. The Applicant now seeks a judicial review of the second rejection, dated May 28, 2009.

[4] The application for judicial review shall be dismissed for the following reasons.

Impugned Decision

[5] In a letter dated May 28, 2009, the Visa Officer denied the Applicant's TRV because her application did not meet the requirements for a visa.

[6] The Visa Officer relied on subsection 11(1) of the Act, which stipulates that any person wishing to become a temporary resident of Canada must satisfy the visa officer that he or she is not inadmissible to Canada and meets the requirements of the Act. According to the Visa Officer, this included the "requirement to establish to the satisfaction of the visa officer that the applicant will respect their conditions of admission and will leave Canada by the end of the period authorized for his or her stay".

[7] The Visa Officer listed a number of factors relevant to granting a TRV:

- the applicant's travel and identity documents,
- reason for travel to Canada,
- contacts in Canada,
- financial means for the trip,
- ties to the country of residence (including immigration status, employment, and family ties), and
- whether the applicant would likely leave Canada at the end of his/her authorized stay.

[8] The Visa Officer was not satisfied that the Applicant met the requirements of the Act and the *Immigration and Refugee Protection Regulations*, SOR/2002-227 (the Regulations):

> I am not satisfied that you are sufficiently well-established and/or have sufficient ties in your country of residence to motivate your departure from Canada at the end of your authorised period of stay.

[9] In the Computer Assisted Immigration Processing System Notes (CAIPS Notes), the Visa Officer took into account a number of circumstances. First, the Visa Officer noted previous TRV refusals. Second, the inviter (the Applicant's son)'s FOSS record showed that he applied for refugee status in 2003, and failed. He retained his permanent resident status through a humanitarian and compassionate application after the pre-removal risk assessment was done. Third, the inviter earns $26,280 CDN. Fourth, the inviter "does not appear established". Fifth, the Applicant has no history of travel outside of China. Finally, the Visa Officer considered that the Applicant's family ties are weak: "spouse is unemployed, only child in Canada is a student." As such, the Visa Officer held that the Applicant is not a *bona fide* temporary resident who will leave Canada at the end of her authorized stay.

Analysis

Standard of Review

[10] I agree with both parties that the applicable standard of review is reasonableness (*Obeng v. Canada*, 2008 FC 754, 330 F.T.R. 196 at para. 21).

Applicant's Arguments

[11] The Applicant submits that the Visa Officer erred by not adequately considering the circumstances of the Applicant and the inviter, the Applicant's son.

[12] First, the Visa Officer erred in stating that the Applicant's son does not appear to be established in Canada because he is a student. The Visa Officer did not consider the fact that the Applicant's son submitted documents showing proof of employment and ownership of a home.

[13] Second, on the Applicant's circumstance, the Officer noted that the Applicant has an unemployed spouse in China. However, the Officer did not consider the fact that the Applicant is the sole bread winner of her family. This amounts to a significant element to motivate the Applicant to return. Further, while the Visa Officer acknowledged that the Applicant was employed, nothing more was addressed. The Applicant submitted documents substantiating that she is a teacher and is off for summer holidays for the months of July and August. As well, the Visa Officer failed to acknowledge that the Applicant had significant property in China: two houses, a car (in her husband's name), and bank accounts. The Applicant argues that based on the above, the Applicant is indeed well-established in China and would be motivated to return at the end of her authorized stay.

[14] Third, the Applicant submits that the Visa Officer did not consider the reasons why the Applicant wanted to visit her son in Canada. The Applicant has explained that: a) she has not seen her son for eight years, and b) she recently lost her mother in the spring of 2009 and wanted to spend time with her son to cope with her loss.

Respondent's Arguments

[15] The Visa Officer's decision is highly discretionary and factual in nature. There is no evidence that the Visa Officer acted outside her powers under the Act, the Regulations and Operation Manual OP-11: Temporary Residents. Manual OP-11 lists questions that officers should explore whether applicants intend to remain in Canada illegally, or apply for refugee status, at the end of the authorized period of stay.

[16] According to the Respondent, the Visa Officer reasonably noted that the Applicant has insufficient ties to China. Her only son is in Canada. The Applicant has no travel history. The Officer reasonably observed that the Applicant's son by-passed the regular immigration process by claiming asylum in Canada and obtaining permanent resident status on humanitarian and compassionate grounds. The Applicant did not satisfy the Visa Officer that she did not intend to by-pass the immigration process in the same manner.

[17] With respect to the assessment of the circumstances of the Applicant's son, the Visa Officer did acknowledge his income. Furthermore, there is no obligation on the Officer to mention all assets belonging to the inviter. Finally, the Applicant does not explain why she needs to enter Canada, and why her son cannot return to China to visit both his parents.

Analysis

[18] Before examining the facts of this case, I wish to set out the relevant legal principles. Justice Shore recently examined relevant legislative provisions and Manual OP-11 with respect to TRV

applications in *Dhillon v. Canada (Minister of Citizenship and Immigration)*, 2009 FC 614, 347 F.T.R. 24. He held that the applicant bears the onus to establish that, on a balance of probabilities, he or she will leave Canada at the end of the authorized period of stay (*Dhillon* at para. 41). Similarly in *Obeng* at para. 20, Justice Lagacé also held that there is a presumption that a foreign national seeking to enter Canada is presumed to be an immigrant; the burden is on the foreign national to rebut this presumption.

[19] The Applicant alleges that the Officer erred by ignoring relevant information. Jurisprudence teaches that the Officer is assumed to have weighed and considered all evidence presented to him or her unless the contrary is shown (see *Obeng* at para. 35; *Florea v. Canada (Minister of Employment and Immigration)*, [1993] F.C.J. No. 598 (F.C.A.) at para. 1). Furthermore, the decision of the Visa Officer is not to be read hypercritically by the Court. There is also no requirement for the Visa Officer to refer to every piece of evidence that is contrary to his or her finding (see *Cepeda-Gutierrez v. Canada (Minister of Citizenship and Immigration)* (1998), 157 F.T.R. 35, 83 A.C.W.S. (3d) 264 at para. 16). According to Justice Lagacé, a visa officer is "entitled to rely on common sense and rationality in determining that the evidence did not establish that the applicant would leave Canada at the end of his stay" (*Obeng* at para. 36). As such, it is not the role of the Court to reweigh evidence already considered by the Officer.

[20] In applying the principles above to the facts of this case, I find that the Visa Officer's decision was reasonable and defensible based on the facts and the law. The Visa Officer's role, under the scheme of the Act, "is to prevent a person from arriving in Canada if that person has not satisfied the officer that he or she will leave" (*Dhillon* at para. 37). The Visa Officer noted that the

inviter is the Applicant's only child in Canada, and that he has a history of by-passing the Canadian immigration process to attain his permanent resident status.

[21] I agree with Snider J. in *Roudenko v. The Minister of Citizenship and Immigration*, 2004 FC 31 citing *Maple Lodge Farms Ltd. v.* Canada, [1982] 2 S.C.R. 2, 1982 CanLII 24 (S.C.C), that the Court cannot quash a decision merely because it would have reached a different outcome than that which was reached by the decision-maker.

[22] I find that the Officer's decision is transparent, intelligible and falls within a range of possible, acceptable outcomes (*Dunsmuir* at para. 47).

[23] No questions for certification were proposed and none arises in this case.

JUDGMENT

THIS COURT ORDERS that the application for judicial review be dismissed.

No question is certified.

"Michel Beaudry"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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