

Federal Court



Cour fédérale

Date: 20121029

Docket: IMM-1623-12

Citation: 2012 FC 1238

Ottawa, Ontario, this 29th day of October 2012

Present: The Honourable Mr. Justice Pinard

BETWEEN:

Mardon USMANOV

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 by an immigration officer (the “officer”) at the Canadian Embassy in Moscow, Russia. In the decision, the officer refused the applicant’s application for a Canadian study permit.

[2] The applicant is a citizen of Uzbekistan presently residing in Saint Petersburg. He holds a Russian work permit and, as indicated in his study permit application, currently works as a tile installer in Saint Petersburg (the applicant's affidavit stated he resided in Saint Petersburg and worked in Moscow).

[3] On December 23, 2011 the Canadian Embassy in Moscow received the applicant's application for a Canadian study permit. The applicant submitted various supporting documents, including an acceptance letter for a 24-week French as a second language program in Montréal, Canada. The applicant also submitted a receipt for the program's tuition fees made out to the applicant's brother-in-law in Montréal. The applicant stated that he would live with his sister and brother-in-law in Montréal while studying in this program. An affidavit from the applicant's brother-in-law to the effect that he would support the applicant during his stay in Canada was enclosed with the study permit application.

[4] On January 24, 2012, the officer refused the application.

[5] The officer stated she was not satisfied that the applicant would leave Canada at the end of his authorized stay because the applicant had not demonstrated he was sufficiently well established in his country of residence and his proposed studies were not reasonable.

* * * * *

[6] The relevant provisions of the Act are:

Obligation on entry

20. (1) Every foreign national, other than a foreign national referred to in section 19, who seeks to enter or remain in Canada must establish,

...

(b) to become a temporary resident, that they hold the visa or other document required under the regulations and will leave Canada by the end of the period authorized for their stay.

Obligation à l'entrée au Canada

20. (1) L'étranger non visé à l'article 19 qui cherche à entrer au Canada ou à y séjourner est tenu de prouver :

...

b) pour devenir un résident temporaire, qu'il détient les visa ou autres documents requis par règlement et aura quitté le Canada à la fin de la période de séjour autorisée.

[7] The relevant provisions of the *Immigration and Refugee Protection Regulations*, SOR/2002-227, read as follows:

Study permits

216. (1) Subject to subsections (2) and (3), an officer shall issue a study permit to a foreign national if, following an examination, it is established that the foreign national

...

(b) will leave Canada by the end of the period authorized for their stay under Division 2 of Part 9;

Permis d'études

216. (1) Sous réserve des paragraphes (2) et (3), l'agent délivre un permis d'études à l'étranger si, à l'issue d'un contrôle, les éléments suivants sont établis :

...

b) il quittera le Canada à la fin de la période de séjour qui lui est applicable au titre de la section 2 de la partie 9;

[8] The applicant raises the following issues:

1. Did the officer err in finding that the applicant had not demonstrated he was sufficiently well established in his country of residence?
2. Did the officer err in finding that the applicant's proposed studies were not reasonable?

[9] An immigration officer's decision based on the belief that an applicant will not leave Canada at the end of his or her stay is a question of mixed fact and law (*Utenkova v. The Minister of Citizenship and Immigration*, 2012 FC 959 at para 5; *Obot v. The Minister of Citizenship and Immigration*, 2012 FC 208 at para 12). Therefore, the reasonableness standard applies to both issues raised by the applicant.

[10] When reviewing a decision on the reasonableness standard, the Court must determine whether the officer's findings fall within the "range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190 at para 47). Although there may be more than one possible outcome, as long as the officer's decision-making process was justified, transparent and intelligible, a reviewing court cannot substitute its own view of a preferable outcome (*Canada (Citizenship and Immigration) v. Khosa*, 2009 SCC 12, [2009] 1 S.C.R. 339 at para 59).

1. Did the officer err in finding that the applicant had not demonstrated he was sufficiently well established in his country of residence?

[11] The applicant argues that the officer's finding that he had not demonstrated he was sufficiently well established in his country of residence was unreasonable because the officer failed to take into account the presence of the applicant's father, sister and brother in Uzbekistan.

[12] Moreover, the applicant contends it was unreasonable for the officer to take into account the applicant's professional establishment because he is a tradesperson and not a professional.

[13] The applicant explains that he did not submit proof of his income in Russia because he does not make much money. He states that it is because of his lack of funds that his brother-in-law paid the tuition fees for his French language program and would be supporting him financially during his stay in Canada.

[14] In my view, it was reasonable for the officer to find that the applicant had not demonstrated he was sufficiently well established in his country of residence.

[15] First, the officer was concerned with the applicant's establishment in his country of residence (Russia) and not the applicant's establishment in his country of nationality (Uzbekistan). The applicant himself states in his affidavit before the Court that Russia is his country of residence and that Uzbekistan is his country of nationality. Therefore, in my view the officer did not commit a reviewable error by failing to acknowledge the applicant's father, brother and sister living in Uzbekistan.

[16] Moreover, I am of the opinion that the present case is distinct from *Hamad v. The Minister of Citizenship and Immigration*, 2012 FC 336, which is relied upon by the applicant. In that case, the student visa applicant resided in Libya and he and his wife had both demonstrated employment in Libya. The applicant had property as well as close family ties in Libya (his mother and his two brothers and their families). In the present case, the applicant stated in his study permit application that he had been residing in Russia since June 20, 2011. Yet the applicant provided no proof to demonstrate his establishment in his country of residence, such as proof of his work as a tile installer. I am therefore of the opinion that *Hamad* does not apply to the present case.

[17] I believe it was reasonable for the officer to take into account the applicant's professional establishment even though the applicant is a tradesperson and not a professional. Common sense dictates that "professional establishment" in the context of a study permit decision includes the establishment of an applicant in their chosen career, even if the applicant is not a professional. The applicant submitted no authority for a more restrictive definition of "professional establishment" in this context.

[18] Finally, although the applicant may have had a reason for not submitting his proof of income, I think it was reasonable for the officer, on the evidence before her, to note that the applicant had not submitted any proof of his income in Russia, particularly given that the applicant was living in Russia on a work permit and that he stated he was working as a tile installer in Saint Petersburg.

2. Did the officer err in finding that the applicant's proposed studies were not reasonable?

[19] The applicant submits that the officer erred in finding that, in light of his plan that the French course will help him study tile techniques outside Uzbekistan, his proposed French course was not reasonable.

[20] Furthermore, the applicant criticizes the officer for not calling him to an interview to discuss the officer's concerns.

[21] I disagree with the applicant's assertion that the officer ignored his explanation for why he chose to study in a French language program in Canada. The officer explains in her affidavit that she did take into account the applicant's explanation but that she concluded it was not realistic to expect a general French language course for beginners to prepare the applicant for the technical concepts taught in a tile installation course. I find the officer's analysis on this issue to be within the range of possible and acceptable outcomes, and I am therefore of the view that the officer's analysis was reasonable.

[22] Even if, as the respondent argues, the applicant did work in his trade in Saint Petersburg without knowing Russian, I do not understand how that is relevant to the issue of whether it is realistic for the applicant to learn French so that he can study new tile techniques in a foreign country.

[23] Finally, I agree with the respondent that the officer did not have a duty to call the applicant to an interview to discuss concerns which pertain to matters that arose directly from the applicant's own evidence and the statutory requirements (see *Liu v. The Minister of Citizenship and Immigration*, 2006 FC 1025 at para 16).

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[24] For the above-mentioned reasons, the application for judicial review is dismissed.

[25] I agree with counsel for the parties that this is not a matter for certification.

JUDGMENT

The applicant's application for judicial review of a decision by an immigration officer at the Canadian Embassy in Moscow, Russia, in which the officer refused the applicant's application for a Canadian study permit, is dismissed.

"Yvon Pinard"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: IMM-1623-12

STYLE OF CAUSE: Mardon USMANOV v. THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: October 2, 2012

**REASONS FOR JUDGMENT
AND JUDGMENT:** Pinard J.

DATED: October 29, 2012

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Me Mario Blanchard FOR THE RESPONDENT

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