Federal Court  Cour fédérale

Date: 20130821

Docket: IMM-9680-12

Citation: 2013 FC 889

Ottawa, Ontario, August 21, 2013

PRESENT: The Honourable Mr. Justice Mosley

BETWEEN:

ELVIRA RUTH MARCOS PALOGAN

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The applicant seeks judicial review of the decision of a Visa Officer in Manila, the Philippines, denying her a work permit as a live-in caregiver.

BACKGROUND:

[2] Ms. Palogan, a citizen of the Philippines, was granted a work permit as a live-in caregiver for 11 months from October 2007 and was hired by her brother-in-law in Canada to look after his

child. When that contract expired in September 2008, her employer was unable to continue to employ Ms. Palogan. She asked an agency to find a new employer and to renew the work permit. She was then hired by a sister-in-law but missed the 90 day window for submitting the work permit application. The application was denied and Ms. Palogan was advised by the processing centre to leave Canada immediately.

[3] Ms. Palogan then retained counsel and applied as an overseas applicant via New York. That application was also denied and she was again advised to leave Canada immediately. She applied a third time via the Buffalo visa office and again was unsuccessful.

[4] Ms. Palogan ultimately left Canada on January 10, 2011 and applied again from the Philippines. The decision to refuse that application is the subject matter of this judicial review.

[5] The applicant is married and has a husband, children and siblings in the Philippines. Her eldest daughter and other relations including her parents-in-law and four of their children reside in Canada.

DECISION UNDER REVIEW:

[6] The decision letter from the Visa Officer consists of a form denial, then a checklist on which the Officer has checked the very last box, "Other reasons". The text says:

> You were told to leave Canada immediately by CPC Vegreville on 2009/03/07 as you were out of status in Canada. You remained in Canada until January 2011. I am not satisfied that you will comply with Immigration laws in Canada.

[7] The Computer Assisted Immigration Processing System [CAIPS notes] in the record recount the applicant's immigration history. The notes also record that the applicant's oldest daughter lives in the same city in Canada as her prospective new employer and that six of the applicant's in-laws live in Canada, "which loosenes ties to Phils [*sic*]." Finally, the notes say that "PA has shown disregard to Immigration laws and directions. Not satisfied of BF's of applicant. Not satisfied of any dual intent should PA be granted entry to Canada."

ISSUE:

[8] The sole issue is whether the officer's decision was reasonable. Central to that issue is whether the officer erred in the finding concerning dual intent.

ANALYSIS:

Standard of review;

[9] The standard of review for assessments of applications for temporary work permits has been satisfactorily determined by the jurisprudence to be reasonableness. In *Kachmazov v Canada (MCI)*, 2009 FC 53 [*Kachmazov*], Justice Layden-Stevenson stated that:

> **8** The standard of review applicable to the question of whether a visa officer erred in an assessment of an application for a temporary work permit is that of reasonableness: *Dunsmuir v. New Brunswick*, [2008] 1 S.C.R. 190, 2008 SCC 9; *Li v. Canada (Minister of Citizenship and Immigration)*, [2008] F.C.J. No. 1625, 2008 FC 1284. The Court must not intervene unless the decision falls outside the "range of possible, acceptable outcomes which are defensible in respect of the facts and law: *Dunsmuir* at para. 47.

See also the comments of Justice de Montigny in *Maxim v Canada (MCI)*, 2012 FC 1029, another live-in caregiver case, at para 19.

Did the officer err in the finding concerning dual intent?

[10] As explained by Justice Layden-Stevenson in *Kachmazov*, above, at para 15:

> …a person "may have the dual intent of immigrating and of abiding by the immigration law respecting temporary entry": *Rebmann v. Canada (Solicitor General)*, [2005] 3 F.C.R. 285 (F.C.); *Bondoc v. Canada (Minister of Citizenship and Immigration)*, [2008] F.C.J. No. 1063.

[11] The live-in caregiver class is defined as a class of foreign nationals who may become permanent residents on meeting the requirements in Part 6, Division 3, section 110 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 (the "*Regulations*").

[12] While applicants under the live-in caregiver program enter Canada on temporary work permits, it is expected that they will apply for permanent residence once they have worked for the required two years.

[13] This is clearly stated in the program objectives set out in the Minister's operational manual *OP 14 Processing Applicants for the Live-in Caregiver Program*:

> **2. Program objectives**
>
> Citizenship and Immigration Canada (CIC) established this program to meet a labour market shortage of live-in caregivers in Canada, while providing an avenue for individuals to work and eventually apply for permanent residence from within Canada.

> The LCP brings qualified temporary workers to Canada to provide in-home child care, senior home support care or care of the disabled. The LCP allows applicants to apply for permanent residence from within Canada after being employed full-time as a live-in caregiver for at least 24 months *or* a total of 3,900 hours in a minimum of 22 months within the four years immediately following their entry into Canada under the LCP.

[14] The officer need not, therefore, be convinced that the applicant wishes to return to their country of origin at the expiry of their work permit. But the officer must be satisfied that the applicant will not remain illegally in Canada if they fail to meet the requirements and their application for permanent residence is rejected: *Kachmazov* at para 16.

[15] Arrangements of convenience to acquire status in Canada do not meet the objectives of the program or the requirements set out in the *Regulations*. However, there is no legislative restriction precluding family members from offering relatives jobs as live-in caregivers: *Nazir v Canada (MCI)*, 2010 FC 553 at para 23. The relationship between the applicant and the employer may be a factor that the officer takes into account in assessing the *bona fide* character of the contract: *Duroseau v Canada (MCI)*, 2008 FC 72 at para 19.

[16] The Supreme Court of Canada has instructed in *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 [*Newfoundland and Labrador Nurses*] at para 15 that a reviewing court should not substitute its own reasons for those of the decision-making body but may, if necessary, look to the record for the purpose of assessing the reasonableness of the outcome.

[17] In this case, the CAIPS notes supplement the terse explanation provided in the decision letter and reading the record as a whole, I find that the work permit application was rejected for three reasons:

a. Ms Palogan had a history of failure to comply with immigration law and did not satisfactorily demonstrate an intent to comply if the permit were to be granted on this occasion;
b. She did not demonstrate to the officer's satisfaction that she was a bona fide live-in caregiver applicant; and
c. She did not demonstrate her dual intent to both seek permanent residence and yet leave Canada at the end of the authorized period.

[18] The applicant's circumstances are sympathetic. It appears clear that she wanted to comply with the program in order to eventually bring in her husband and children and had in fact worked as a live-in caregiver, albeit for a term too short to qualify for permanent residence. However, she deliberately overstayed when her work permit expired and three subsequent applications were denied. The applicant contends that she now understands that doing so was a mistake and declares her intent to comply with the requirements. However, the details of her explanation for the overstay were not before the officer and the officer cannot be faulted for failing to take them into consideration.

[19] The officer was not required to discuss every factor in favour of the application, such as the strong familial ties the applicant maintained with the Philippines: *Newfoundland and Labrador Nurses*, above, at para 16. The applicant was not entitled to a work permit. This was a discretionary

decision and the officer's reasoning was transparent and intelligible. There was reason to assess a much higher risk of overstay in the future. The decision fell within the range of acceptable outcomes defensible on the law and the facts.

[20] Despite the very able argument of counsel for the applicant, I am not satisfied that there are grounds for the Court to intervene.

[21] No questions were proposed for certification.

JUDGMENT

THIS COURT'S JUDGMENT is that the application is dismissed. No questions are certified.

"Richard G. Mosley"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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