

Federal Court



Cour fédérale

Date: 20150413

Docket: IMM-608-14

Citation: 2015 FC 451

Toronto, Ontario, April 13, 2015

PRESENT: The Honourable Madam Justice Simpson

BETWEEN:

TAMARA KOKAREVA

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

ORDER AND REASONS

(Delivered orally from the Bench in Toronto, Ontario, on April 8, 2015)

[1] Tamara Kokareva [the Applicant] has applied for judicial review of a Decision dated December 5, 2013 made by a visa officer at the Canadian Embassy in Ankara, Turkey [the Officer] wherein he refused the Applicant's application for a temporary resident visa [the Decision]. This application is brought pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27.

[2] The Applicant is a 78 year-old citizen of Baku, Azerbaijan. She retired from her profession as a Russian language teacher in 2010, but continues to work as a private Russian language tutor.

[3] The Applicant's only son died in 1994, and her husband passed away in 2000. Her only granddaughter lives in Russia. She has two sisters, one who resides in Germany, and the other who lives in Canada.

[4] Between 2010 and 2013, the Applicant applied five times for a visa to visit Canada. Each time, her application was refused. The fifth application, which is the subject of the Decision, was submitted on December 2, 2013 [the Present Application], and refused three days later because the Officer was not satisfied that the Applicant would leave Canada at the end of her stay.

[5] In the Present Application, the Applicant explained that she intended to visit her sister and her niece; that she intended to stay for a period of three months; and that she has \$5,000 USD available for her stay. The Certified Tribunal Record includes a letter from the Applicant's Canadian niece, dated November 8, 2013, and a letter from her niece's employer indicating that the niece earns an annual salary of \$88,000.

[6] The Niece's Letter explains that her aunt has a very close connection to her home in Baku Azerbaijan, where she owns her apartment debt free and where the gravesites of her husband and son are located. She notes that the Applicant lives a comfortable life in Baku, where she receives

her deceased husband's pension, as well as her own, and that she is very close to her granddaughter whom she visits regularly in Russia.

[7] Her niece also says that while the Applicant's sisters have both resided abroad for many years, they have maintained a very close connection by talking on the phone and Skype.

[8] Finally, the Applicant's niece states that she will cover the full expenses of her aunt's trip including return air fare and medical coverage; and that her aunt is invited to stay at her home, where she will have a private bedroom and bath.

I. The Decision

[9] The Officer did not express concern about the credibility of either the applicant or her niece but nevertheless was not satisfied that the Applicant would leave Canada at the end of her stay because of:

- Her travel history
- Her family ties in Canada and in her country of residence
- The purpose of her visit
- Her personal assets and financial status

[10] The Officer's notes provide further information about the Decision. The material passages read as follows;

76 year old woman to visit nieces and sister in Canada. Previous refusals disclosed...

PA sisters are in Canada and Germany since 1999 and 1997 respectively. PA never travelled to visit either. PA has a granddaughter in Russia which warrants (according to host) that PA will return to Azerbaijan. Limited funds and assets are evidenced in the file and PA plans on spending 3 months in Canada. Bank account show 5000 USD\$ available.

II. The Issue

[11] The issue is whether the Decision is reasonable.

III. Discussion and Conclusions

[12] In considering the issue, I am aware that the threshold for reasons is low and that the decision is highly discretionary. Nevertheless I find it unreasonable for the following reasons:

- i. The Officer appears to have failed to appreciate import of some of the evidence. For example, the Applicant disclosed the earlier refusals of her applications for temporary resident visas. This shows that she is honest, and yet she apparently is not believed when she says she will return home after her visit to Canada. As well, the Officer did not recognize the importance of the applicant's visits to her granddaughter in Russia. They show an established pattern of regular returns to Azerbaijan; and show that she has close family near her home.
- ii. The Officer treated the Applicant's failure to visit her sister in Canada as a negative factor. This was unreasonable because, at least in recent years, Canada has repeatedly denied her a visa which would permit such a visit.

- iii. The Officer was also dismissive of her assets, which include a family home which she owns.
- iv. The Officer was dismissive of her resources for her visit. No reference was made to the substantial support that the Canadian niece is prepared to provide.
- v. The Officer was also dismissive of the Applicant's ties to Azerbaijan. She has professional ties which include ongoing work as a tutor; she has social and family ties, which include her friends and granddaughter; she has emotional ties to the graves of her son and husband; and she has economic ties, which were not mentioned, that include her own pension and that of her husband.

[13] For all these reasons the application for judicial review will be allowed.

[14] No question was posed for certification for appeal.

ORDER

THIS COURT ORDERS that:

1. The application for judicial review is granted and the Decision is set aside;
2. The visa application is to be reconsidered by a different officer; and
3. The Applicant may file further material for the reconsideration.

“Sandra J. Simpson”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-608-14

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CITIZENSHIP AND IMMIGRATION

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