Federal Court Cour fédérale

Date: 20150525

Docket: IMM-3919-14

Citation: 2015 FC 657

Ottawa, Ontario, May 25, 2015

PRESENT: The Honourable Mr. Justice Fothergill

BETWEEN:

ASHKAN SAFAEI HAKIMI

Applicant

and

THE MINISTER OF IMMIGRATION AND CITIZENSHIP

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] Ashkan Safaei Hakimi [the Applicant] has brought an application for judicial review pursuant to s 72 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the IRPA]. The Applicant challenges a decision of the Immigration Program Manager [the Officer] of the

Canadian Embassy in Tel Aviv, Israel made on April 8, 2014 to deny him a Canadian study permit.

[2] For the reasons that follow, the application for judicial review is dismissed.

II. Background

[3] The Applicant is a citizen of Israel and a resident of Jerusalem. He is a freelance journalist and writer, and he also works as an editor of an Israeli news website.

[4] In January, 2014 the Applicant was accepted into the Journalism – Print and Broadcast Programme [the Programme] at the Humber Institute of Technology and Advanced Learning in Toronto [Humber College]. The Programme was to begin in September, 2014 and conclude in May, 2016.

[5] Following his acceptance into the Programme, the Applicant submitted an application to the Canadian Embassy in Tel Aviv for a study permit on April 1, 2014. On April 8, 2014, the application was rejected on the basis that the Officer was not satisfied that the Applicant met the requirements for obtaining a study permit prescribed by the IRPA and the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [the Regulations].

III. The Officer's Decision

[6] The Officer's decision consists of a letter that was sent to the Applicant on April 8, 2014 and the Officer's notes in the Global Case Management System (GCMS).

[7] The Officer was not satisfied that the Applicant had sufficient and available financial resources to maintain himself during the proposed period of study without working in Canada. The Officer's GCMS notes indicate that the Applicant had $32,166 in his bank account with recent deposits of $6,300. The Officer questioned the source of the funds, as this was not identified in the application. The Officer observed that this sum may be enough to cover tuition fees and living expenses "for a little while"; however he was not convinced that it would be enough "for the long-term".

[8] The Officer also noted that if the Applicant's parents continued to reside in Iran (the Applicant's country of origin), then they would probably not be able to support him financially due to economic sanctions that have been imposed on that country.

[9] In addition, the Officer was not satisfied that the Applicant would leave Canada upon the expiration of his study permit. The Officer's decision was based on several factors, including the Applicant's travel history; the extent of his family ties in his country of residence; the purpose of his proposed travel to Canada; his employment situation; and his personal assets and financial status.

[10] The Officer noted that the Applicant had lived in Israel only since 2010, and he had offered no evidence to substantiate his claim that he had been working as a freelance journalist since 2012. The Officer questioned whether the Applicant was well-integrated into Israeli society. Given the Applicant's tenuous social and economic ties to Israel, the Officer was not convinced that the Applicant was well-established in that country and that he would leave Canada at the end of his stay.

IV. Issues

[11] The following issues are raised by this application for judicial review:

A. Whether the Officer's conclusion that the Applicant did not meet the requirements of a Canadian study permit was reasonable; and

B. Whether the Applicant was given a sufficient opportunity to respond to the Officer's concerns.

V. Analysis

[12] A visa officer's exercise of authority in granting visas is an administrative decision made in the exercise of discretionary power. The applicable standard of review is therefore reasonableness (*My Hong v Canada (Minister of Citizenship and Immigration)*, 2011 FC 463 at paras 10-13 [*Hong*]).

[13] Whether the Applicant was given a sufficient opportunity to respond to the Officer's concerns is a question of procedural fairness. The Respondent relies on the Federal Court of Appeal's decision in *Maritime Broadcasting System Limited v Canadian Media Guild*, 2014 FCA 59 at paras 50 to 58 [*Maritime Broadcasting*] for the proposition that a specialised tribunal's procedural choices are entitled to deference and should be reviewed against a standard of reasonableness.

[14] *Maritime Broadcasting* was decided in the context of labour relations, and its application to this case is therefore uncertain. This Court has held that questions of procedural fairness arising from visa applications are to be reviewed against a standard of correctness (*Singh v Canada (Minister of Citizenship and Immigration)*, 2012 FC 526 at para 14 [*Singh*]). That said, the procedural protections that arise in the processing of a student visa application are "relaxed" (*Tran v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1377 at para 2 [*Tran*]).

A. *Whether the Officer's conclusion that the Applicant did not meet the requirements of a Canadian study permit was reasonable*

[15] The Officer's GCMS notes read as follows:

> 30 years old national of Israel wants to study at Humber College in Toronto. Single with no children. [Applicant] is born in Iran and moved to Israel in 2010. Says to be working as a journalist freelancer since 2012 but no proof of that has been provided. Has $32,166 in bank with recent deposits of $6,300. This may be enough to cover tuition fees and living expense for a little while however I'm not convinced it is enough for the long-term. No info is given as source of money, whether from parents or not. If parents still in Iran then they are probably unable to send him money because of international sanctions. I note from stamps in his

> passport that [Applicant] was in Canada from September 2013 until March 2014 so not clear if he was working during that time (says on app form that he studied while in Canada). Also not clear if [Applicant] has well-integrated into Israeli society given the relatively short time since arriving in Israel. In sum, I'm not convinced that [Applicant] is well-established in Israel and that he will leave Canada at the end of his stay. Refused.

[16] Decision-makers are presumed to have weighed and considered all of the evidence before them, absent strong indications to the contrary (*Flores v. Canada (Minister of Citizenship & Immigration)*, 2008 FC 723 at para 15). The Officer's GCMS notes are a reasonable reflection of the information submitted by the Applicant in support of his application, including information regarding his work history, bank deposits, family ties, travel history, and the stated purpose of his proposed travel to Canada.

[17] The Applicant complains that the Officer's GCMS notes reveal unwarranted speculation, particularly regarding whether the Applicant worked during his previous visit to Canada and whether the Applicant's parents continue to reside in Iran. The Applicant says that there was no evidence to justify speculation of this kind. Furthermore, the checklist that accompanied the Officer's GCMS notes indicated that the Applicant's travel history was an area of concern.

[18] The Respondent concedes that the inclusion of the Applicant's travel history in the checklist as an area of concern was an error. Nevertheless, the Respondent argues that questions regarding the Applicant's previous visit to Canada and whether his parents might be able to provide financial support arose from the information provided by the Applicant, as well as the requirements of the IRPA and the Regulations, and they were therefore legitimate. I agree. Furthermore, neither of these considerations was central to the Officer's decision, which was

fundamentally concerned with the sufficiency of the Applicant's existing funds to support him throughout his stay in Canada and his willingness to leave at the end of the Programme.

[19] The onus was on the Applicant to satisfy the Officer that he was not an immigrant and that he met the statutory requirements of the IRPA and the Regulations (*Obeng v Canada (Minister of Citizenship and Immigration*), 2008 FC 754 at para 20 [*Obeng*]). As this Court observed in *Hong*:

> [31] Applications for student visa are to be analyzed on a case-by-case basis and the role of the Visa Officer does not amount to supplementing the applicant's evidence, as counsel for Ms. Hong seems to suggest. It is trite law that the onus is on the applicant to provide the Visa Officer with all the relevant information and complete documentation in order to satisfy the Visa Officer that the application meets the statutory requirements of the Act and the Regulations (*Tran v. Canada (Minister of Citizenship & Immigration)*, 2006 FC 1377. More particularly, in this case, it was the applicant's responsibility to provide the Visa Officer with all of the evidence in order to satisfy the Visa Officer of her financial capacity.

[20] The decision of the Officer was discretionary in nature. It was primarily based on questions of fact. The decision is entitled to considerable deference from this Court, given the Officer's special expertise (*Obeng* at para 21; *Singh* at para 31; *Hong* at para 13). The role of this Court is not to reweigh the evidence but to determine if the outcome falls within a range of reasonable outcomes (*Khosa v Canada (Minister of Citizenship and Immigration)*, 2009 SCC 12 at paras 4, 59 and 61). I am satisfied that the Officer's decision fell within the range of possible, acceptable outcomes which are defensible in respect of the facts and law.

B. *Whether the Applicant was given a sufficient opportunity to respond to the Officer's concerns*

[21] The Applicant says that he should have been called for an interview, or given an opportunity by letter or telephone to respond to the Officer's concerns regarding his willingness to leave Canada upon the completion of the Programme, as well as his financial support while in Canada. I disagree. Pursuant to the IRPA and the Regulations, a foreign national seeking to obtain a student visa must convince the visa officer that he is not inadmissible to Canada and that he meets the eligibility requirements set out in the legislation. As noted above, the procedural protections that arise in the context of a student visa application are "relaxed", and there is no requirement that an applicant be permitted to respond to an officer's concerns as they arise (*Tran* at para 30).

[22] If an officer intends to base his decision on extrinsic information of which an applicant is unaware, then an opportunity to respond should be made available to enable the applicant to disabuse the officer of any concerns arising from that evidence (*Huang v Canada (Minister of Citizenship and Immigration)*, 2012 FC 145 at para 7). However, where the issue arises out of material provided by the applicant, as in this case, there is no obligation to provide an opportunity for explanation since the provider of the material is taken to know the contents of the material (*Poon v Canada (Minister of Citizenship and Immigration)* (2000), 198 FTR 56 at para 12, citing *Wang v Canada (Minister of Citizenship and Immigration)* (1999), 173 FTR 266).

[23] A duty to provide an opportunity to respond may also arise where the credibility, accuracy or genuine nature of the information submitted by the applicant is the basis of the officer's concern (*Hassani v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1283

at para 24). However, in this case I agree with the Respondent that the basis of the Officer's concern was not the Applicant's credibility, but rather the sufficiency of the information that he provided in support of his application.

[24] The burden was on the Applicant to satisfy the Officer that he was not an immigrant. It was therefore incumbent upon the Applicant to establish that his intentions were *bona fide*, and that he would leave Canada at the end of the authorized period. A visa officer should be able to make such an assessment on the face of the application (*Singh* at para 32).

[25] I am therefore satisfied that the Respondent complied with the duty of fairness. The Officer reasonably considered the information provided by the Applicant and made his decision in accordance with the legislative framework of the IRPA and the Regulations. The Applicant did not discharge the onus placed on him when he initially made his application, and there was no obligation on the Officer to give him an opportunity to supplement his deficient application.

[26] For the foregoing reasons, the application for judicial review is dismissed. Neither party proposed a question for certification.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed.

No question is certified for appeal.

"Simon Fothergill"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-3919-14
STYLE OF CAUSE:	ASHKAN SAFAEI HAKIMI v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	MAY 11, 2015
JUDGMENT AND REASONS:	FOTHERGILL J.
DATED:	MAY 25, 2015

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