

Federal Court



Cour fédérale

Date: 20170612

Docket: IMM-4377-16

Citation: 2017 FC 570

Ottawa, Ontario, June 12, 2017

PRESENT: The Honourable Mr. Justice Mosley

BETWEEN:

**PINKALBEN KULDEEP PATEL
KULDEEP AMRUTHBHAI PATEL**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. INTRODUCTION

[1] The applicants are a married couple and citizens of India. They are challenging a decision of a visa officer refusing to grant Ms. Pinkalben Kuldeep Patel's application for a study permit in Canada under subsection 216(1) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [IRPR]. Mr. Kuldeep Amruthbhai Patel's application for a temporary resident

visa was refused on the basis that his wife's application was denied. The applicants are not challenging the decision made with respect to Mr. Patel's application.

[2] On July 29, 2016, Ms. Patel was accepted as a full-time student of a two-year Master of Business Administration (MBA) program at the New York Institute of Technology in Vancouver, British Columbia. Ms. Patel prepaid a deposit of CAD \$2,686 in tuition fees and was supposed to begin her studies in Fall 2016. Her husband, it was submitted, would be "visiting" while she attended classes.

[3] On July 31, 2016, Ms. Patel submitted an application for a study permit to the Department of Citizenship and Immigration Canada. On August 20, 2016, her study permit application was refused by a visa officer for failing to meet the requirements of the IRPR. This is a judicial review of that decision commenced under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

[4] At the conclusion of the hearing I informed counsel that the application would be dismissed. These are my reasons for that decision.

II. ISSUE

[5] The sole issue to be determined on this application is whether the visa officer erred in law by failing to provide intelligible reasons.

III. RELEVANT LEGISLATION

[6] The relevant provisions of the IRPA read as follows:

Application before entering Canada

11 (1) A foreign national must, before entering Canada, apply to an officer for a visa or for any other document required by the regulations. The visa or document may be issued if, following an examination, the officer is satisfied that the foreign national is not inadmissible and meets the requirements of this Act.

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.

Temporary resident

22 (1) A foreign national becomes a temporary resident

Visa et documents

11 (1) L'étranger doit, préalablement à son entrée au Canada, demander à l'agent les visa et autres documents requis par règlement. L'agent peut les délivrer sur preuve, à la suite d'un contrôle, que l'étranger n'est pas interdit de territoire et se conforme à la présente loi.

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.

Résident temporaire

22 (1) Devient résident temporaire l'étranger dont

<p>if an officer is satisfied that the foreign national has applied for that status, has met the obligations set out in paragraph 20(1)(b), is not inadmissible and is not the subject of a declaration made under subsection 22.1(1).</p>	<p>l'agent constate qu'il a demandé ce statut, s'est déchargé des obligations prévues à l'alinéa 20(1)b), n'est pas interdit de territoire et ne fait pas l'objet d'une déclaration visée au paragraphe 22.1(1).</p>
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[7] The relevant provisions of the IRPR 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

- (a) applied for it in accordance with this Part;
- (b) will leave Canada by the end of the period authorized for their stay under Division 2 of Part 9;
- (c) meets the requirements of this Part;
- (d) meets the requirements of subsections 30(2) and (3), if they must submit to a medical examination under paragraph 16(2)(b) of the Act; and

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 :

- a) l'étranger a demandé un permis d'études conformément à la présente partie;
- 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;
- c) il remplit les exigences prévues à la présente partie;
- d) s'il est tenu de se soumettre à une visite médicale en application du paragraphe 16(2) de la Loi, il satisfait aux exigences prévues aux paragraphes 30(2) et (3);

(e) has been accepted to undertake a program of study at a designated learning institution.

e) il a été admis à un programme d'études par un établissement d'enseignement désigné.

Financial resources

Ressources financières

220 An officer shall not issue a study permit to a foreign national, other than one described in paragraph 215(1)(d) or (e), unless they have sufficient and available financial resources, without working in Canada, to

220 À l'exception des personnes visées aux sous-alinéas 215(1)d) ou e), l'agent ne délivre pas de permis d'études à l'étranger à moins que celui-ci ne dispose, sans qu'il lui soit nécessaire d'exercer un emploi au Canada, de ressources financières suffisantes pour :

(a) pay the tuition fees for the course or program of studies that they intend to pursue;

a) acquitter les frais de scolarité des cours qu'il a l'intention de suivre;

(b) maintain themselves and any family members who are accompanying them during their proposed period of study; and

b) subvenir à ses propres besoins et à ceux des membres de sa famille qui l'accompagnent durant ses études;

(c) pay the costs of transporting themselves and the family members referred to in paragraph (b) to and from Canada.

c) acquitter les frais de transport pour lui-même et les membres de sa famille visés à l'alinéa b) pour venir au Canada et en repartir.

IV. ANALYSIS

[8] The parties submit, and I agree, that the standard of review is reasonableness. Where there is existing jurisprudence that has determined the standard of review applicable to a

particular issue before the Court, the reviewing court may adopt that standard: *Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] SCJ No 9 at para 57 [*Dunsmuir*].

[9] The decision attracts a reasonableness standard as it involves a question of statutory interpretation and a question of mixed fact and law, involving the officer's interpretation of his or her enabling statute and regulations connected with it: *Singh v Canada (Minister of Citizenship and Immigration)*, 2012 FC 526, [2012] FCJ No 548 at para 15; *Chow v Canada (Minister of Citizenship and Immigration)*, 2015 FC 861, [2015] FCJ No 893 at para 8, citing *Dunsmuir*, above, at para 124.

[10] The applicants submit that the officer's insufficient consideration of the evidence renders the decision unintelligible. They submit that the officer failed to assess important evidence such as what factors in the application led to the conclusion that Ms. Patel's reasons for study were not logical, and why Ms. Patel was deemed to have weak ties to India.

[11] The applicants further submit that the decision maker failed to provide adequate reasons as to why and how the evidence provided was insufficient to satisfy the office that the applicant would leave Canada at the end of her stay: *Hussein v Canada (Minister of Citizenship and Immigration)*, 2015 FC 88, [2015] FCJ No 56 at para 25 [*Hussein*].

[12] As a foreign national seeking temporary entry into Canada, the onus is on Ms. Patel to establish her case on a balance of probabilities and to demonstrate that she would leave Canada at the end of her authorized period. Ms. Patel bears the burden of providing all the relevant

information to satisfy the officer that she meets the statutory requirements of the IRPA and the IRPR: *Solopova v Canada (Minister of Citizenship and Immigration)*, 2016 FC 690, [2016] FCJ No 662 para 22 [*Solopova*]; see also *Obeng v Canada (Minister of Citizenship and Immigration)*, 2008 FC 754, [2008] FCJ No 957 at para 20.

[13] The visa officer's reasons are brief; however, as this Court has previously noted, "*Newfoundland Nurses* allows reviewing courts to connect the dots on the page where the lines, and the direction they are headed, may be readily drawn": *Komolafe v Canada (Minister of Citizenship and Immigration)*, 2013 FC 431, [2013] FCJ No 449 at para 11. I find that there are sufficient dots on the page that could be connected in the present matter. I also note that the adequacy of reasons is not a "stand-alone" basis for quashing a decision: *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, [2011] SCJ No 62 at para 14.

[14] Ms. Patel had not been employed since graduating from her Bachelor of Business Administration program in 2014. Moreover, she failed to present evidence of income, aside from the very modest incomes of family members, sufficient to pay tuition and living expenses during the MBA program. As such, it was open to the visa officer to conclude that she lacked economic establishment in India and that she would not be able to support herself without working in Canada as provided by section 220 of the IRPR.

[15] I further find that it was open to the officer to conclude that Ms. Patel failed to show establishment in her chosen field. In her statement of purpose, she stated that she intends to

return to the booming computer service industry in India upon completing the MBA, and expects to develop a successful career within five years of graduation. However, Ms. Patel failed to provide any evidence of relevant work experience as she has been unemployed since graduating with a Bachelor of Business Administration in 2014.

[16] The applicants' reliance on this Court's decision in *Hussein*, above, is misplaced. That case is distinguishable from the facts and circumstances of the case at bar. *Hussein* involved an appeal under the *Citizenship Act*, RSC 1985, c C-29. The Citizenship Judge in that case chose to apply a test which involved a strict counting of days of physical presence in Canada. However, the Citizenship Judge failed to engage in any counting of days as required by the test: *Hussein*, above, at para 16.

[17] The Citizenship Judge also failed to address a key piece of evidence presented by the applicant: *Hussein*, above, at para 19. Finally, extensive supporting documentary evidence was provided by the applicant, but the Judge failed to provide any explanation as to why that evidence was unsatisfactory: *Hussein*, above, at para 20. I note that similar circumstances do not exist in the present matter as the reasons provided show that the officer was alive to the documentary evidence in the record.

[18] As in *Solopova*, Ms. Patel's arguments in this judicial review are seeking to provide "alternative explanations for the Officer's findings and amount to taking issue with the weight given to the factors and evidence by the Office": *Solopova*, above, at para 22.

V. CONCLUSION

[19] I am not satisfied that the applicants have shown that the visa officer's conclusion was outside the scope of reasonableness. The visa officer's decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law. This application for judicial review is, therefore, dismissed.

[20] No questions for certification were proposed by either party.

JUDGMENT in IMM-4377-16

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

“Richard G. Mosley”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4377-16

STYLE OF CAUSE: PINKALBEN KULDEEP PATEL
KULDEEP AMRUTHBHAI PATEL
V THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

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