Federal Court  Cour fédérale

Date: 20180109

Docket: IMM-2776-17

Citation: 2018 FC 16

Ottawa, Ontario, January 09, 2018

PRESENT: The Honourable Madam Justice McDonald

BETWEEN:

LUTGARDO MALIT

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The Applicant applied pursuant to s.197 of the *Immigration and Refugee Protection Regulations* [IRPR] for a temporary resident visa [work permit] as the partner of a student visa holder in Canada. On May 16, 2017 the Applicant was notified that his application was denied by a Visa Officer of the Embassy of Canada [the Officer] in the Philippines.

[2] The Officer found that the Applicant did not meet the requirements of the *Immigration and Refugee Protection Act* [IRPA] and the IRPR. The Officer noted that he was not satisfied that the Applicant would leave Canada at the end of an authorized stay because of his employment situation and his financial status. Pursuant to s.39 of the IRPA, the Officer also concluded that the Applicant's financial status precluded him from entry into Canada.

[3] In the Global Case Management System Notes, the Officer considered the Applicant's financial situation. He noted the Applicant's submission of a remittance slip and bank account information. The remittance slip was for just over $1000 in Canadian dollars. The bank account is in the name of a BS, the Applicant's brother-in-law. The Officer concluded that the Applicant failed to provide evidence of financial ability to sustain himself in Canada, and failed to demonstrate that he had a job offer in Canada. As such, the Officer concluded that the Applicant and his partner would likely not meet the low-income cut off [LICO] for two in Canada.

[4] The Officer further considered the likelihood that the Applicant would leave Canada at the end of his time in Canada. While the Applicant claimed that he worked as a construction labourer in the Philippines from 2012 to 2015, and in the food services industry, among other positions, the Officer concluded that the Applicant was unable to retain a stable job in the Philippines in the last two years. The Officer noted that construction jobs in the Philippines are not lucrative, and there was no evidence that the labour market in Canada was better—as such, the Applicant would not have sufficient economic ties to the Philippines to ensure that he left Canada at the end of his authorized stay.

I. Statutory Framework

[5] The IRPA and the IRPR create a series of requirements which an applicant must meet to prove eligibility for a work permit.

[6] Section 11(1) of the IRPA provides that a foreign national must apply to Canada for a visa or any other document required under the regulations. The Officer must be satisfied that "the foreign national is not inadmissible and meets the requirements of this Act." As such, s. 11(1) imposes two criteria: non-inadmissibility and consistency with the IRPA.

[7] Respecting inadmissibility in this context, s.39 of the IRPA provides that an applicant is inadmissible for financial reasons if they are or will be unable or willing to support themselves or any other person who is dependent on them.

[8] Respecting consistency with an IRPA, section 20(1)(b) of the IRPA requires an applicant to demonstrate that he/she holds the visa or other document required under the IRPR, and that he/she will leave Canada at the end of the authorized period. Similarly, section 200 (1)(b) of the IRPR provides that a work permit shall be issued to a foreign national if, following an examination, it is established that the foreign national will leave Canada by the end of the authorized period.

II. Issues

[9] In this case, the dispositive issue is the Officer's finding of inadmissibility. As such, the issues are as follows:

A. Is the Officer's financial analysis reasonable?

B. Did the Officer demonstrate a reasonable apprehension of bias?

III. Standard of Review

[10] The standard of review of a visa officer's decision is reasonableness (*Singh v Canada (Citizenship and Immigration)*, 2017 FC 894 at para 15). The standard is applied deferentially in light of the Officer's expertise and because of the factual nature of visa cases.

[11] The standard of review for the reasonable apprehension of bias question, as a matter of procedural fairness, is traditionally correctness (*Mission Institution v Khela*, 2014 SCC 24 at para 79). However, the Federal Court of Appeal recently cautioned that the law in this area remains unsettled (*Vavilov v Canada (Citizenship and Immigration)*, 2017 FCA 132 at para 13). As in *Michel v Adams Lake Indian Band Community Panel*, 2017 FC 835 at para 32, there is no reasonable apprehension of bias in this case under either standard of review.

IV. Analysis

A. *Is the Officer's financial analysis reasonable?*

[12] The Applicant argues that the Officer should have taken into account the financial support of the family members in the s.39 inadmissibility analysis.

[13] However, it is the Applicant's onus to convince the Officer that he would be able to sustain himself (*Kumarasekaram v Canada (Citizenship and Immigration)*, 2010 FC 1311 at para 9) and is not inadmissible. Where required information is not provided, the onus does not shift to the visa officer to pursue the matter further (*Dhillon v Canada (Citizenship and Immigration)*, 2009 FC 614 at para 1 [*Dhillon*]; *Qin v Canada (Minister of Citizenship and Immigration)*, 2002 FCT 815 at para 7).

[14] Furthermore, the Officer's decision is based on the evidence provided by the Applicant, and the Officer was entitled to reach the decision he did based on the legislative requirements (*Dhillon*, at para 43). Beyond the bank account statement, no other financial information was provided by either the Applicant or his brother in law. In fact, the Applicant himself acknowledges that financial support is available only on the assumption that the Applicant will be employed.

[15] No such evidence of employment was offered, which further supports the Officer's conclusions.

[16] This case is different from *Girn v Canada (Citizenship and Immigration)*, 2015 FC 1222 at para 33, where the Court found that an Officer failed to analyze the applicant's substantial assets and letters from family that they would support the applicant during his stay in Canada. Here, the Officer squarely addressed the evidence offered, but found it lacking. In absence of similar detail in the Applicant's materials, the Applicant failed to satisfy his onus, and is not owed an opportunity to respond to the Officer's concerns where those concerns arose directly from the Applicant's own evidence. Here, the Officer took account of the evidence offered but ultimately concluded the Applicant was inadmissible. This was his assessment to make based on his expertise in assessing the legislative requirements for the granting of a visa (*Maxim v Canada (Citizenship and Immigration)*, 2012 FC 1029 at para 19).

[17] There is no error in the Officer's conclusion that the Applicant did not have the financial capability to live in Canada based on the evidence offered by the Applicant.

B. *Did the Officer demonstrate a reasonable apprehension of bias?*

[18] Although the Applicant suggests that the Officer was operating under a bias, the Applicant was not able to identify any evidence or indication on the record which would support this contention.

[19] A reasonable apprehension of bias exists when "…an informed person, viewing the matter realistically and practically—and having thought the matter through…" concludes that such bias exists (*Committee for Justice and Liberty v National Energy Board*, [1978] 1 SCR 369 at 394).

[20] This test imposes a high threshold for parties alleging bias (*Bankole v Canada (Citizenship and Immigration)*, 2011 FC 373 at para 39).

[21] Here the Applicant's assertions of bias are not substantiated by any evidence. Therefore the Applicant's bias arguments are without merit.

V. Costs

[22] The Applicant seeks costs on the basis that there was bias or discrimination "at play in the background" of the denial of the Applicant's work permit. Although costs were sought on this basis, the Applicant also acknowledged that he has no evidence to support these allegations.

[23] Rule 22 of the *Federal Courts Citizenship, Immigration and Refugee Protection Rules* provides that no costs are awarded in immigration proceedings unless the Court, for special reasons, so orders.

[24] There are no special reasons in this case (*Ndungu v Canada (Citizenship and Immigration)*, 2011 FCA 208 at para 7).

[25] No costs are awarded.

JUDGMENT in IMM-2776-17

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed;

2. No question of general importance is certified; and

3. There will be no order as to costs.

"Ann Marie McDonald"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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