

Federal Court



Cour fédérale

Date: 20180305

Docket: IMM-4001-17

Citation: 2018 FC 248

Ottawa, Ontario, March 5, 2018

PRESENT: The Honourable Madam Justice Gagné

BETWEEN:

MATIAS SEBASTIAN MARANON LUCO

Applicant

and

**MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Nature of the Matter

[1] Matias Sebastian Maranon Luco [Applicant] is a citizen of Chile and currently resides in Montréal, where he is a Master's student at McGill University. He seeks judicial review of the decision of Immigration, Refugees and Citizenship Canada [IRCC] rejecting his application for permanent residence, submitted as part of the Federal Skilled Worker [FSW] class.

[2] For the reasons set out below, this application for judicial review will be dismissed.

II. Facts

[3] The Applicant is 29 years old and was born in Chile. His aunt (a Canadian citizen), uncle and cousin live in Toronto.

[4] On June 30, 2016, the Applicant applied to the FSW program via the Express Entry portal, where he had created an Express Entry profile [EEP]. On August 9, 2017, he received an invitation to apply for permanent residence and submitted his application shortly thereafter.

[5] On September 2, 2017, the Applicant moved to Canada on a study permit to begin his studies as a Master's student at McGill University in mining engineering.

[6] On September 11, 2017, his application for permanent residence was rejected by IRCC for being incomplete.

III. Impugned Decision

[7] IRCC rejected the Applicant's application for permanent residence for not meeting the requirements of a complete application, as specified in sections 10 and 12.01 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [IRPR]. Specifically, the application specified his province of destination as Quebec, which is not an option available to an applicant applying for permanent residence as a member of the FSW class.

IV. Issue

[8] This application for judicial review raises the following issue:

- Was IRCC's decision reasonable?

[9] The reasonableness standard requires that this Court determine whether IRCC's decision falls within a range of "possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47).

V. Analysis

[10] The Applicant submits that IRCC erred in rejecting his application on the basis of incompleteness for indicating Quebec as his intended province of destination because (a) his application was complete; and (b) his application did not specify Quebec as his intended province of destination.

[11] He makes a distinction between his EEP and his application for permanent residence. For the former, the Applicant asserts that he selected the response "All Provinces and Territories" to the question "Which Provinces or Territories would MATIAS MARANON consider living in?" He further asserts that the response, "All Provinces and Territories" lists all of Canada's provinces and territories, excluding Quebec. For the latter, the Applicant specifies that the application for permanent residence did not ask where he intends to reside.

[12] The rest of the Applicant's submissions speculate as to why IRCC mistakenly thought he intends to reside in Quebec. He thinks that IRCC's mistaken belief derives from the fact that he currently lives in Quebec, though only temporarily to complete his Master's degree at McGill University. He states that he will complete his degree within two years and then plans to move to Toronto. He intends to live in Toronto because his family lives there, he does not speak French and there are plentiful job opportunities for him there in the mining industry.

[13] The Applicant qualifies IRCC's decision as discriminatory and maintains that IRCC's decision failed to consider his real intention to reside permanently in Toronto.

[14] There is a clear misunderstanding involved in this case.

[15] The Applicant believes that his application for permanent residence did not ask where he intends to reside, yet the print-out of his file from the Global Case Management System indicates that he selected his province of destination as Quebec and his city of destination as Montréal.

[16] Given this error, it was reasonable for IRCC to conclude as it did, since it was not in fact clear where the Applicant intends to reside. Although it is now very clear that the Applicant intends to reside in Toronto, Ontario upon completing his studies in Montréal, that information was not properly communicated in his application for permanent residence.

[17] I disagree with the Applicant that the case of *Dhaliwal v Canada (Citizenship and Immigration)*, 2016 FC 131, applies here. In that case, Ms. Dhaliwal's application for permanent

residence got much farther along in the process than the Applicant's because her application was not incomplete. Her application was ultimately refused by a visa officer because the officer did not believe that Ms. Dhaliwal intended to reside in Brampton, Ontario since she was in the process of completing her PhD in Montréal.

[18] In granting Ms. Dhaliwal's application for judicial review, Justice Alan S. Diner specified that the geographic requirement in subsection 75(1) of the IRPR simply requires that an applicant intend to live in a province other than Quebec at the time of his or her application, rather than live there at the time of application or take any particular action to prove that intention.

[19] The Applicant was never challenged as to his intention of where he plans to establish himself because the Applicant's intention was never made clear to IRCC. The Applicant's mistake in indicating Montréal, Quebec as his intended city and province of destination is the reason for the conflicting information in his application and IRCC's subsequent rejection of it.

[20] The Applicant will thus need to submit a new EEP and a new application for permanent residence, should he be invited to apply, as specified in the rejection notice sent to him on September 11, 2017.

VI. Conclusion

[21] For the reasons explained above, this application for judicial review is dismissed. The parties did not submit any question of general importance for certification and none arises from this case.

JUDGMENT in IMM-4001-17

THIS COURT'S JUDGMENT is that:

1. The Applicant's application for judicial review is dismissed;
2. The style of cause is amended to replace the "Immigration, Refugees and Citizenship Canada" with the "Minister of Citizenship and Immigration";
3. No question of general importance is certified;
4. No costs are granted.

"Jocelyne Gagné"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4001-17

STYLE OF CAUSE: MATIAS SEBASTIAN MARANON LUCO v
MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: QUÉBEC, QUEBEC

DATE OF HEARING: FEBRUARY 8, 2018

JUDGMENT AND REASONS: GAGNÉ J.

DATED: MARCH 5, 2018

APPEARANCES:

Matias Sebastian Maranon Luco

FOR THE APPLICANT
(SELF-REPRESENTED)

Sherry Rafai

FOR THE RESPONDENT

SOLICITORS OF RECORD:

Attorney General of Canada
Montréal, Quebec

FOR THE RESPONDENT