Federal Court  Cour fédérale

Date: 20180719

Docket: IMM-4963-17

Citation: 2018 FC 759

Ottawa, Ontario, July 19, 2018

PRESENT: The Honourable Mr. Justice LeBlanc

BETWEEN:

BRYAN SKIE SUMALDE RAYMUNDO

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The Applicant challenges the legality of the decision of a visa officer at the Canadian Embassy in Manilla [the Officer] who, on September 1, 2017, denied his application for a student visa [the Decision].

[2] The Applicant is a citizen of the Philippines whose mother and two siblings are Canadian permanent residents and whose step-father is a Canadian citizen. In February 2017, the Applicant

applied for a student visa to study at Centennial College, in Toronto, in the college's International Business Program. According to the personal study plan he filed with his visa application, having pursued previous education in marine transportation, the Applicant wishes to pursue the International Business Program offered by the college in order "to inculcate several international trade skills," skills on which the business management programs available in the Philippines place no emphasis (Certified Tribunal Record [CTR], at p 17). Following his studies, the Applicant intends to return to the Philippines and start his own marine transportation business as this industry has "a high scope" in the Philippines. During his proposed studies, the Applicant would be financially supported and hosted by his family in Canada, but his wife and child would remain in the Philippines.

[3] The requested visa was refused because the Officer was not convinced that the Applicant would leave Canada at the end of his stay. The decision letter sent to the Applicant indicates that the Decision was based on his employment prospects in the Philippines, his current employment situation, and his personal assets and financial status.

[4] In particular, the Officer was not satisfied that the studies the Applicant proposed to undertake made sense given the limited information as to how those studies would improve the Applicant's career prospects to a degree that made the cost of the program worthwhile, nor was the Officer satisfied that the proposed studies were part of a logical and consistent study path. Finally, the Officer found that the Applicant had not demonstrated strong enough socio-economic ties to the Philippines so that he would leave at the end of his stay.

[5] The Applicant claims that these findings are unreasonable. In particular, he contends that:

a. in concluding that he had no strong socio-economic ties to the Philippines, the Officer failed to consider that his spouse and child would continue to live there;

b. in finding that it would be much cheaper for him to study in his own country, the Officer advanced a rationale that would exclude many student visa applicants to Canada who believe that a Canadian education is valuable and offers better future career prospects;

c. in expressing concerns regarding his employment and financial status, the Officer ignored that the Applicant's parents would financially support him while in Canada and that they had the means to do so; and

d. in stating that he had "no logical and consistent study path", the Officer ignored that the Applicant clearly indicated in his study plan that he wishes to enroll in the International Business Program in order to start his own marine transportation business in the Philippines and that no equivalent program was available in that country.

[6] In his written submissions, the Applicant also contended that the Officer had placed too much emphasis on the fact that he was previously excluded from his mother's permanent residence application, claiming that this fact appeared to be the main reason for the visa application's refusal. However, he did not push that argument at the hearing.

[7] The sole issue to be determined in the present case is whether the Officer committed a reviewable error in refusing the Applicant's student visa application.

[8] According to section 216 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227, foreign nationals seeking a study permit must show that they will leave Canada by the end of the period authorized for their stay (see also: *Obeng v Canada (Minister of Citizenship and Immigration)*, 2008 FC 754 at para 20; *Dhillon v Canada (Minister of Citizenship and Immigration)*, 2009 FC 614 at para 41). In assessing that factor, and more generally whether to grant or not a student permit or visa application, visa officers enjoy a broad discretion (*Akomolafe v Canada (Citizenship and Immigration)*, 2016 FC 472 at para 12).

[9] As a result, such decisions are subject to the reasonableness standard of review (*Hamad v Canada (Citizenship and Immigration)*, 2017 FC 600 at paras 6-7; *Patel v Canada (Citizenship and Immigration)*, 2017 FC 570 at paras 8-9) but to satisfy that standard, the decision under review must demonstrate justification, transparency and intelligibility within the decision-making process and fall 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).

[10] Here, I find that it does not.

[11] There are, in my view, two issues with the Decision. The first issue concerns the Officer's conclusion that he was not satisfied that the Applicant's proposed studies in Canada made sense and followed a logical and consistent study path given the limited information on how these studies would improve the Applicant's career prospects to a degree that would offset the costs of studying abroad instead of pursuing programs available locally for a fraction of the cost.

[12] This statement is simply not supported by the evidence that was before the Officer and the Officer offers no reasonable explanation as to why the proposed program does not make sense. On the contrary, the Applicant details, in the personal study plan he submitted in support of his visa application, how the proposed program would contribute to his career plan as well as the research he conducted to attempt to find a similar program in the Philippines that teaches the international business skills he seeks to acquire (CTR, at p 17). In this regard, the Officer's decision lacks intelligibility, transparency and justification.

[13] The second issue concerns the Officer's failure to consider the Applicant's family ties in the Philippines in reaching the Decision. This is particularly egregious as the Officer claimed to be unsatisfied that the Applicant demonstrated strong socio-economic ties to that country whereas there was evidence on file that the Applicant's wife and young child would remain in the Philippines during the Applicant's studies in Canada. In failing to engage with these facts in any way, particularly in failing to assess whether the Applicant would return to his wife and son in the Philippines, the Officer overlooked some crucial facts in making his decision. It is therefore appropriate, in my view, for the Court to intervene (*Taiwo v Canada (Citizenship and Immigration)*, 2018 FC 91 at paras 31-32; see also *Ogunfowora v Canada (Citizenship and Immigration)*, 2007 FC 471 at para 43).

[14] The Applicant's judicial review application will therefore be granted. Neither party has identified a question of general importance for certification and none arises.

JUDGMENT in IMM-4963-17

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is allowed;

2. The decision of the visa officer at the Canadian Embassy in Manilla, dated September 1, 2017, denying the Applicant's student visa application is set aside and the matter is referred back to a different visa officer for redetermination;

3. No question is certified.

"René LeBlanc"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-4963-17
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APPEARANCES:

Peter Lulic	FOR THE APPLICANT
Laoura Christodoulides	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Peter Lulic Barrister and Solicitor Toronto, Ontario	FOR THE APPLICANT
Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT