Federal Court  Cour fédérale

Date: 20180712

Docket: IMM-131-18

Citation: 2018 FC 730

[ENGLISH TRANSLATION]

Ottawa, Ontario, July 12, 2018

PRESENT: The Honourable Mr. Justice Lafrenière

BETWEEN:

ANASS EL KAMEL

Applicant

and

THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondent

JUDGMENT AND REASONS

I. Background

[1] This is an application for judicial review of the exclusion order against the applicant, Anass El Kamel, dated December 29, 2017, by the Minister's delegate (delegate) for having found that the report under subsection 44(1) (Report 44) of the *Immigration and Refugee*

Protection Act, SC 2001, c. 27 (IRPA) prepared by the Canada Border Services Agency officer (officer) was founded in fact and in law.

[2] The relevant facts are as follows.

[3] On August 29, 2017, the applicant entered Canada from Morocco and obtained a study permit valid until July 31, 2021, in accordance with section 216 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 (IRPR). Under subsection 220.1(1) of the IRPR, the applicant was required to be enrolled in a designated learning institution at the Université de Moncton and remain enrolled until he completed his studies. He was also required to actively pursue a course or his program.

[4] On December 29, 2017, the applicant and his immigration consultant went to the Saint-Bernard-de-Lacolle port of entry to submit an application to amend his study permit. The officer interviewed the applicant to determine whether he was eligible to enter Canada.

[5] During the interview, the applicant stated the following:

(a) He had never attended his classes at the Université de Moncton or travelled to Moncton since his arrival in Canada.

(b) When he arrived in Canada, he had a fever caused by diabetes-related hypoglycemia. As a result, he felt too ill to travel to Moncton, so he stayed in Montréal.

(c) He contacted the Université de Moncton to withdraw from the program for the fall semester.

(d) He felt better two weeks after having arrived in Canada and having cancelled his studies for the fall semester.

(e) He preferred to stay in Montréal because his brother lived nearby.

(f) In early November 2017, he started working for Impark in Montréal.

(g) He had applied to the Teccart Institute, which confirmed his eligibility for the DVS Computing Support program.

(h) The program he was to complete in Canada was not of great concern to him. He simply wanted to quickly complete a program so that he could then apply for permanent residence in Canada.

[6] The officer prepared a Report 44 concerning the applicant, indicating that the applicant was inadmissible because he had violated section 41 and subsection 29(2) of the IRPA by failing to comply with the requirements of subsection 220.1(1) of the IRPR.

[7] On the same day, the delegate made an exclusion order in accordance with subsection 44(2) of the IRPA and subparagraph 228(1)(c)(v) of the IRPR. The applicant was nevertheless granted authorization to enter Canada for further examination by another removal officer under section 23 of the IRPA.

[8] The applicant filed an application for judicial review on the grounds that the officer committed an irregularity, failed to observe the principles of natural justice, including legitimate expectation and the right to an impartial decision-maker and freedom from bias, the applicant's application to amend his study permit was not dealt with on the merits, and the inadmissibility decision was unreasonable.

II. Analysis

[9] An officer's decision to prepare a report pursuant to subsection 44(1) of the IRPA and a Minister's delegate's decision to make an exclusion order on the basis of such a report are reviewable on the standard of reasonableness. Where the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law, the Court will show deference to the immigration officer's decision and avoid intervening (*Dunsmuir v. New Brunswick*, 2008 SCC 9 at paragraph 47; *Kanthasamy v. Canada (Citizenship and Immigration)*, 2015 SCC 61 at paragraphs 43-44).

[10] In his application and written and oral submissions, the applicant did not identify any errors of law or erroneous findings of fact that the delegate would have made in a perverse or capricious manner in finding that the Report 44 was grounded in fact and law. In fact, the applicant admitted at the hearing that the officer and the delegate were merely enforcing the law.

[11] When a foreign national does not comply with the conditions imposed by law and regulations, he is subject to an exclusion order under section 41 of the IRPA. The Court finds it very unfortunate that the applicant hired an immigration consultant who provided him with bad advice, given that the Court was satisfied that the applicant had acted in good faith. However, ignorance of the law and impaired representation alone do not justify the failure to comply with the requirements of subsection 220.1(1) of the IRPR.

[12] Issues of fairness and natural justice are questions of law to be reviewed for correctness (*Mission Institution v. Khela*, 2014 SCC 24 at paragraph 79; *Canada (Citizenship and Immigration) v. Khosa*, 2009 SCC 12 at paragraph 12). The applicant argued that he had demonstrated his good faith and reiterated his full intention and his serious, forthright steps to maintain his student status. He cited section 6 of the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B of the *Canada Act 1982* (UK), 1982, c. 11 ("*Charter*") and submitted that the Canadian visa granted to a foreign national on Canadian soil allows him to move freely within Canada, travel and return to Canada and enter the country through any port of entry.

[13] The applicant's arguments fail. Although holders of study permits have some mobility rights under subsection 6(2) of the *Charter*, under subsection 6(1) only citizens have the right to enter, remain in and leave Canada: *Canada (Minister of Employment and Immigration) v. Chiarelli*, [1992] 1 SCR 711, at paragraphs 26 and 32. In addition, under subsection 11(1) of the IRPA, a foreign national must, before entering Canada, apply for a visa and any other document required by 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. Under sections 15 to 20 of the IRPA, the examination is performed when a foreign national enters Canada at a port of entry. The evidence does not support the conclusion that there was a denial of natural justice in this case.

[14] There is therefore no reason to intervene in this case. The delegate's decision is transparent and intelligible and is not only a possible, acceptable outcome given the applicable

law and the evidence on the record, but an unavoidable conclusion because the applicant no longer has legal status in Canada. Overall, the decision is reasonable.

[15] Consequently, the application for judicial review is dismissed.

JUDGMENT in IMM-131-18

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed;

2. The style of cause is immediately amended to replace "The Minister of Citizenship and Immigration" with "The Minister of Public Safety and Emergency Preparedness".

3. No questions of general importance were certified.

"Roger R. Lafrenière"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-131-18
STYLE OF CAUSE:	ANASS EL KAMEL v. THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS
PLACE OF HEARING:	MONTRÉAL, QUEBEC
DATE OF HEARING:	JULY 9, 2018
JUDGMENT AND REASONS:	LAFRENIÈRE J.
DATED:	JULY 12, 2018

APPEARANCES:

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Andéa Shahin	FOR THE RESPONDENT

SOLICITORS OF RECORD:

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