Federal Court  Cour fédérale

Date: 20190320

Docket: IMM-3622-18

Citation: 2019 FC 341

[UNREVISED CERTIFIED ENGLISH TRANSLATION]

Ottawa, Ontario, March 20, 2019

PRESENT: The Honourable Madam Justice Roussel

BETWEEN:

JIGANG SHANG

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Background

[1] The applicant is a citizen of the People's Republic of China. He has been self-employedworking on his own account as a new media writer since 2014. His work consists mainly in promoting new products in the computer and technology market on different online platforms, in plain language that is accessible to a general audience.

[2] In March 2017, the applicant applied for a permanent resident visa in the self-employed persons class under section 100 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [IRPR]. He intends to establish himself as a new media writer in the Toronto area. He included his spouse and two children in his application.

[3] On May 8, 2018, the applicant was called for an interview to determine whether he met the requirements of a "self-employed person" as defined in subsection 88(1) of the IRPR. At the interview on June 6, 2018, the visa officer raised the following concerns with the applicant: (1) the employment of a new media writer is not a cultural activity as described in the IRPR; (2) the applicant has not conducted any concrete market research and was not in a position to discuss in detail how he plans to create his own job in Canada; (3) the applicant has not demonstrated a reasonable knowledge of English or French in order to carry out his business plan in Canada; (4) the applicant has indicated that he intends to continue his current employment with Chinese companies after arriving in Canada since his workplace has no impact on his employment; and (5) the applicant has not demonstrated that he intends and is able to create his own employment in Canada and make a significant contribution to specified economic activities in Canada.

[4] On June 8, 2018, the visa officer rejected the application for permanent residence on the grounds that the applicant does not meet the definition of "self-employed person" in subsection 88(1) of the IRPR. First, the visa officer considers that the title of new media writer does not constitute a cultural activity. Second, the officer is not satisfied that the applicant

intends or has the ability to create his own employment in Canada and to make a significant contribution to Canada's economic activities.

[5] The applicant is seeking judicial review of this decision. He criticizes the visa officer for having erred in considering that the work of a new media writer does not constitute relevant experience as a self-employed worker in respect of cultural activities. The applicant also considers the visa officer's conclusion that he has not demonstrated the intention or ability to create his own employment and to make a significant contribution to specified economic activities in Canada to be unreasonable. In particular, the applicant argues that the visa officer's failure to consider the experience as a self-employed worker as relevant had tainted the analysis of other criteria, namely intent, capacity and significant contribution to Canada's specified activities.

II. Analysis

[6] The parties agree that for decisions by a visa officer on an application for permanent residence as a member of the self-employed persons class the applicable standard of review is that of reasonableness (*Wang v Canada (Citizenship and Immigration)*, 2019 FC 284 at para 5 [*Wang*]; *Sidhu v Canada (Citizenship and Immigration)*, 2017 FC 1139 at para 9; *Tollerene v Canada (Citizenship and Immigration)*¸ 2015 FC 538 at para 13 [*Tollerene*]; *Griscenko v Canada (Citizenship and Immigration)*, 2012 FC 614 at para 10; *Ding v Canada (Citizenship and Immigration)*, 2010 FC 764 at para 8; *Kim v Canada (Citizenship and Immigration)*, 2008 FC 1291 at para 18).

[7] Where the reasonableness standard applies, the Court's role is to determine whether the decision falls within "the range of possible, acceptable outcomes which are defensible in respect of the facts and law". If there is "justification, transparency and intelligibility within the decision-making process", it is not for this Court to substitute its own preferred outcome (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47 [*Dunsmuir*]; *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 59).

[8] It is also well established that the notes recorded by the visa officer in the Global Case Management System are an integral part of the reasons for the decision, as they allow the Court to better understand the visa officer's reasoning (*Wang* at para 6; *Tollerene* at para 24).

[9] Subsection 12(2) of the *Immigration and Refugee Protection Act*, SC 2001, c 27, provides that foreign nationals in the economic class are selected on the basis of their ability to become economically established in Canada. The economic immigration categories in which a foreign national may apply are specified in Part 6 – Economic Classes of the IRPR. In this case, the applicant submitted his application in the self-employed persons class as described in the IRPR under Part 6, Division 2 – Business Immigrants.

[10] Under subsection 100(1) of the IRPR, a foreign national who applies as a member of the self-employed persons class must meet the definition set out in subsection 88(1) of the IRPR. The latter defines a "self-employed person" as a foreign national who has relevant experience and has the intention and ability to be self-employed in Canada and to make a significant contribution to specified economic activities in Canada. The terms "relevant experience" and

“specified economic activities” are also defined. In this case, the experience claimed by the applicant is related to the field of cultural activities.

[11] If an applicant in the self-employed persons class is not a self-employed person within the meaning of subsection 88(1), the visa officer will terminate the examination of the application and reject it in accordance with subsection 100(2) or the IRPR.

[12] Finally, the respondent’s operational manual OP 8 Entrepreneurs and Self-Employed [Operational Manual OP 8] further clarifies the regulatory definitions and the procedures to be followed in assessing applications.

[13] As mentioned above, the applicant argues that the visa officer erred in determining that he did not have relevant work experience in respect of cultural activities. He is of the opinion that the profession of new media writer falls under code 5121, Authors and Writers, of the National Occupational Classification, thus constituting a cultural activity for the purposes of the self-employed class.

[14] The Court does not intend to rule on this argument since it is of the opinion that the visa officer could reasonably conclude that the applicant had not demonstrated that he intended and was able to create his own employment in Canada and make a significant contribution to cultural activities in Canada.

[15] One of the concerns raised by the visa officer at the interview was the lack of concrete research conducted by the applicant in the Canadian market and his difficulties in discussing in detail how he planned to create his own job in Canada. The applicant indicated to the visa officer that he planned, during the initial phase of his settlement in Canada, to continue his current work with the companies with which he was doing business in China, noting that his location had no impact on his work. The applicant explained to the visa officer that there were many high-tech companies in Canada and that these companies would need people to promote their products. The visa officer then questioned the applicant as to whether he had contacted the companies in question when he was preparing to carry out his business plan in Canada. The applicant explained that he had contacted his clients in China who were doing business internationally with the intention of having them refer him to their Canadian subsidiaries. When asked if any referrals had been made, the applicant acknowledged that he had not been referred.

[16] Another of the concerns raised by the visa officer was the applicant's proficiency in either official language. The applicant confirmed to the visa officer that although he could read documents in English, he did not speak English. He also confirmed that he had just enrolled in English classes. Given that the applicant had not demonstrated a reasonable command of English or French to implement his business plan, the visa officer sought to understand how the applicant planned to create a job as a new media writer in Canada when he planned to write his articles in English. The applicant replied that this is why he was learning English and that he did not plan to immigrate to Canada for four years.

[17] Finally, the officer questioned the applicant about the significance of his contribution to cultural activities in Canada. He replied that he knew there were about 8,200 new media writers in Toronto, with no further explanation.

[18] The Court considers, in light of the answers provided by the applicant, that it was reasonable for the visa officer to conclude that the applicant did not intend to establish a business in Canada since he planned to work remotely to continue the work he was already doing in China, and that he had not done any concrete research to determine whether his plan was viable in the competitive Toronto market. In addition, and in the circumstances of this case, it was also reasonable for the visa officer to conclude that the applicant did not have the ability to establish a business in Canada that would make a significant contribution to cultural activities in Canada because he did not have the necessary language skills to carry out his business plan as a new media writer, that is, to promote new products in the computer and technology market on different online platforms in clear language accessible to the general English Canadian public.

[19] The applicant argued at the hearing that proficiency in either official language was not a relevant criterion and that, according to Operational Manual OP 8, a person's financial assets could also be a measure of that person's intention and ability to establish themselves in Canada. According to the applicant, it is sufficient that the person has the ability to support himself or herself until the self-employment has been created.

[20] The Court cannot agree with the applicant's argument.

[21] It is an error to claim that an applicant's language skills are irrelevant. Paragraph 102(1)(c) of the IRPR requires the visa officer to assess the applicant's proficiency in Canada's official languages to determine whether the applicant and their family members will be able to become economically established in Canada. In addition, the applicant was informed in a letter dated May 8, 2018, summoning him to his interview, that his English or French skills would be part of the assessment of his ability to make a significant contribution to specified economic activities in Canada.

[22] While it is true that there is no time limit for the creation of self-employment, the fact remains that determining the intent and ability to create one's own employment in Canada falls within the visa officer's expertise. The same applies to the assessment of the degree of contribution to cultural activities in Canada. The visa officer is in a better position than the Court to assess these elements and determine whether the quality of an applicant's language will allow them to meet the requirements of the IRPR. The Court must defer to the visa officer's decision and will only intervene if the contested decision does not fall within the range of possible, acceptable outcomes that can be justified on the facts and the law (*Dunsmuir* at para 47). The applicant did not satisfy the Court that this was the case.

[23] For these reasons, the application for judicial review is dismissed. No question of general importance has been submitted for certification, and the Court is of the view that this case does not raise any.

JUDGMENT in IMM-3622-18

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed;

2. No question of general importance is certified.

"Sylvie E. Roussel"
Judge

Certified true translation
This 27th day of May, 2019.
Michael Palles, Translator

FEDERAL COURT

SOLICITORS OF RECORD

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