Federal Court  Cour fédérale

Date: 20190725

Docket: IMM-4811-18

Citation: 2019 FC 998

Ottawa, Ontario, July 25, 2019

PRESENT: Madam Justice McDonald

BETWEEN:

LEONID KOLOKOLOV; NINA ABYZOVA

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The Applicants are citizens of Russia who seek judicial review of the Visa Officer's refusal of their applications for temporary resident visas ("TRVs") to visit family in Canada. For the reasons outlined below this judicial review is dismissed.

Preliminary Issue

[2] The Applicants are self-represented and they did not appear at the hearing of this judicial review. Their daughter came to the hearing on their behalf.

[3] At the opening of the hearing, legal counsel for the Respondent Minister objected to their daughter making submissions on behalf of the Applicants on the grounds that she has no standing pursuant to Rule 119 of the *Federal Courts Rules*, SOR/98-106. The Applicants were not represented by a lawyer and there was no representation order allowing their daughter to make submissions on their behalf.

[4] The Court offered an adjournment to allow the Applicants time to retain legal counsel or alternatively to make arrangements for the Applicants to appear by videoconference. However, the Applicants' daughter advised that they had already attempted to retain legal counsel without success and she indicated that a videoconference would not be of assistance as the Applicants do not speak English or French.

[5] Accordingly, the hearing proceeded, and while the Court did not hear oral submissions on behalf of the Applicants the Court did consider the following written materials filed by the Applicants: Application for Leave and for Judicial Review; Applicants' Record filed October 30, 2018; and Reply Submissions filed January 10, 2019.

Visa Officer's Decision

[6] By letter dated August 9, 2018, the Visa Officer at the Embassy of Canada in Moscow refused the Applicants' TRVs on a number of grounds.

[7] The Officer was not satisfied they would leave Canada at the end of their stay pursuant to paragraph 179(b) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [*IRPR*] based upon the following:

- Their travel history;
- Their family ties in Canada and in their country of residence;
- The purpose of their visit;
- Limited employment prospects in their country of residence;
- Current employment situation; and
- Personal assets and financial status.

[8] The Officer found there was insufficient documentation to support their host's (i.e. their daughter's) income and assets. The Officer was also not satisfied that the Applicants themselves had sufficient funds to maintain themselves while in Canada, and to ensure their departure.

[9] The Officer concluded that they did not meet the requirements of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*] and the *IRPR*, and the Officer was not satisfied that they would leave Canada at the end of an authorized stay.

Issue and Standard of Review

[10] In their Application for Leave and for Judicial Review, the Applicants claim that the Visa Officer made the following errors:

1. The decision-maker applied the wrong test for reviewing the submitted applications and supporting documents and therefore erred in law in making the decision;
2. The decision-maker based the decision on erroneous findings of fact that were made in a perverse or capricious manner and without regard to the presented materials;
3. The decision-maker ignored relevant evidence properly presented before it which substantiated the Applicants' rights to have visitor visas granted;
4. The decision-maker acted without jurisdiction, acted beyond its jurisdiction, or refused to exercise its jurisdiction in determining that the Applicants provided valid information for the purpose of visiting Canada; and
5. The decision-maker misstated and misconstrued the evidence to make patently unreasonable findings.

[11] When considered together, the grounds outlined by the Applicants are essentially a challenge to the entire decision of the Visa Officer.

[12] On judicial review the standard of review applied by this Court when reviewing a decision of a Visa Officer is reasonableness (*Singh v Canada (Citizenship and Immigration)*, 2017 FC 894 at para 15).

[13] This means that the Court shows deference to the decision of the Visa Officer provided the decision is justified, transparent and intelligible and falls within the range of possible, acceptable outcomes which can be defended on the facts and the law (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47).

[14] If the Court determines there is no error in the Visa Officer's decision, the judicial review will be dismissed.

Analysis

Is the Visa Officers Refusal Decision Reasonable?

[15] The Applicants allege that the Visa Officer failed to consider the relevant evidence they provided in support of their request for TRVs. They point to the paystubs of their host, letters from their pension fund as proof of their income, and evidence of their financial status. They also claim that the Officer failed to consider their previous travel to Canada and their ties in Russia as evidence that they will return to Russia at the end of their stay.

[16] The decision of a Visa Officer to grant a TRV application is a highly discretionary one and therefore a high degree of deference is afforded to the decision. Accordingly, the requirements of the Visa Officer to provide detailed reasons and afford procedural fairness are at the low end of the spectrum of duties (*Canada (Minister of Citizenship and Immigration) v Patel*, 2002 FCA 55 at para 10).

[17] In this case the Visa Officer considered the evidence but was not prepared to grant the TRVs based upon the following:

- No significant travel history (apart from travel to Canada in 2011);
- Previous TRV refusals in 2012 and 2013;
- Modest income in Russia;
- Weak ties to Russia;
- Recent deposit of funds in the Applicants' account that were not consistent with the declared income;
- Unclear source of the Applicants' savings; and
- No proof of the Applicants' host daughter's savings.

[18] While the Applicants take issue with the treatment of their evidence by the Officer, they have not identified particular evidence or documents that were overlooked by the Visa Officer. In essence, they are arguing that the Visa Officer should have reached a different conclusion based upon the evidence. However, this is not a sufficient basis to argue that evidence was ignored or misconstrued.

[19] The factors considered by the Visa Officer including: travel history, family ties in their home country, employment, and financial status have all been accepted by this Court as relevant factors for officers to consider in deciding applications for temporary resident visas (see *Obeng v Canada (MCI)*, 2008 FC 754 at para 13; *Huang v Canada (MCI)*, 2012 FC 145 at para 11; *Skobrev v Canada (MCI)*, 2004 FC 485 at para 8; and *Baylon v Canada (MCI)*, 2009 FC 743 at paras 26). This means that it was not unreasonable for the Visa Officer to consider these factors and rely upon these factors in denying the Applicants TRVs here.

[20] When applying for TRVs, the responsibility rests on the Applicants to provide the necessary information to satisfy the Visa Officer that they will leave Canada at the end of an authorized period of stay. In *Abdulateef v Canada (MCI)*, 2012 FC 400, Justice Rennie, as he was then, concluded that the *IRPA* and its regulations "place the onus on the applicant to prove that she is not an immigrant, but rather is a bona fide temporary resident who will leave at the end of her authorized stay" (at para 10). It is the Visa Officer, and not this Court, who makes this determination based upon a review and a consideration of the factual evidence provided by the Applicant.

[21] Although the Applicants claim that the Visa Officer failed to consider their evidence, this claim is not supported by the decision which shows that the Officer considered the evidence but had concerns with the evidence. On judicial review this Court cannot reweigh the evidence that was before the Visa Officer (*Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 61).

[22] Further, to the extent the Visa Officer found there was insufficient evidence to satisfy his concerns, there is no obligation on the Visa Officer to follow up with the Applicants for additional information (*Qin v Canada (Minister of Citizenship and Immigration)*, 2002 FCT 815 at para 7, as referenced in *Dhillon v Canada (Citizenship and Immigration)*, 2009 FC 614 at para 1).

[23] Overall, the Applicants have not identified any error by the Visa Officer. The Officer considered the evidence provided by the Applicants and provided his reasons as to why the

evidence did not convince him that the Applicants would leave Canada at the end of their authorized stay. In the absence of any error by the Visa Officer in this assessment, there is no basis for this court to intervene with the decision.

[24] The decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law. It is not the Court's role to substitute its judgment for that of the Visa Officer.

[25] This judicial review is dismissed.

JUDGMENT in IMM-4811-18

THIS COURT'S JUDGMENT is that the application for judicial review of the Visa Officer's decision is dismissed and there is no question for certification.

"Ann Marie McDonald"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-4811-18
STYLE OF CAUSE:	LEONID KOLOKOLOV ET AL v MCI
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	JUNE 5, 2019
JUDGMENT AND REASONS:	MCDONALD J.
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APPEARANCES:

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