Federal Court  Cour fédérale

Date: 20190924

Docket: IMM-5851-18

Citation: 2019 FC 1211

[UNREVISED CERTIFIED ENGLISH TRANSLATION]

Ottawa, Ontario, September 24, 2019

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

PHARA GAUTHIER

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Nature of the matter

[1] This is an application for judicial review of a decision rendered by an immigration officer at the Canadian Embassy in Mexico, on September 19, 2018. In his decision, the officer refused to issue a study permit to the applicant, Phara Gauthier.

[2] In his reasons, the officer found that the application for a study permit submitted by the applicant failed to satisfy the requirements of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA], and the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [IRPR]. More specifically, the application was rejected for the following reasons:

1. The immigration officer was not convinced that the applicant would leave Canada at the end of her stay as required under subsection 216(1) of the IRPR, given the significant family ties that the applicant has in Canada and the absence of any close relatives in her country of residence;
2. The immigration officer was not satisfied that the applicant would leave Canada at the end of her stay as required under subsection 216(1) of the IRPR, considering her assets and financial situation.

II. Facts

[3] The applicant was born in Haiti on September 27, 1996.

[4] On July 9, 2018, in a letter to the attention of Immigration Québec and Canada, the École des métiers de l'informatique, du commerce et de l'administration de Montréal confirmed that the applicant had submitted an application for admission to the secretarial vocational training program. The letter set out the conditions for admission to the program, which required obtaining a study permit, a certificat d'acceptation du Québec [Quebec certificate of acceptance] and a work permit for co-op internships. However, in their respective submissions, the parties agree that the applicant was admitted to the program.

[5] On August 14, 2018, Quebec's Direction de l'immigration temporaire – Étudiants issued a Quebec certificate of acceptance.

[6] On September 19, 2018, the applicant's application for a study permit was denied. The officer's explanatory notes confirm that the applicant wanted to complete a secretarial program in Canada over a period of 17 months. The notes also mention that the applicant did not have any financial assets and that her sister, Marie Ketty Louis-Jean, would stand as guarantor in order to support her financially while she was in Canada. However, the immigration officer was not given any information concerning Marie Ketty Louis-Jean's financial obligations, but did receive various documents concerning her financial assets, including the following:

- Confirmation that Marie Ketty Louis-Jean has been employed as a health and social services aide at the Centre intégré universitaire de santé et de services sociaux du Centre-Sud-de-l'Ile-de-Montréal since January 12, 2015. She works an average of 36.25 hours a week at $21.33 an hour;
- Marie Ketty Louis-Jean's notice of assessment issued by Revenu Québec for the 2017 tax year, indicating that she earned a total income of $45,279.68;
- A letter from TD Bank Canada Trust confirming that Marie Ketty Louis-Jean had a chequing and savings account containing assets totalling $31,406.98;
- A statement of financial support dated September 1, 2018, signed by Marie Ketty Louis-Jean for the benefit of her sister, Phara Gauthier, the applicant.

[7] With respect to the applicant's family situation, the immigration officer explained that her father could not be located, that her mother held a valid temporary residence visa in Canada

and that her sister is a permanent resident of Canada as a refugee. According to the officer, the applicant failed to demonstrate having strong family and economic ties to her country of origin.

III. Positions of the parties

A. *Applicant's position*

[8] The applicant appears to be alleging that the immigration officer erred in law in pointing to the lack of information about the guarantor. The immigration officer did indeed note the lack of information about the financial obligations of the applicant's guarantor. The applicant's first argument would therefore be that the IRPA only requires clarifications about the assets held by the applicant and his or her guarantor, but not their liabilities.

[9] The applicant also alleges that her family situation should not be taken into consideration by an immigration officer for the purpose of rejecting her application for a study permit. In this regard, the applicant claims that her family members, including her mother, live in Haiti. She adds that her mother also holds an [TRANSLATION] "RTD" and states that it was obtained in compliance with the IRPA. With respect to her sister, the applicant explains that Marie Ketty Louis-Jean is the only member of her family who lives in Canada as a permanent resident, since her refugee protection claim was validly accepted by a Canadian tribunal. However, the applicant claims that these latter points should not be taken into consideration for the purpose of rejecting her application for a study permit. It should be noted that there is an inconsistency concerning the applicant's recollection of the family relationship between herself and Marie Ketty Louis-Jean in the applicant's memorandum: her memorandum sometimes alleges that Marie Ketty Louis-Jean is her aunt, and at other times, her sister.

[10] Lastly, the applicant appears to allege that by considering the socio-economic conditions in Haiti, the immigration officer committed significant errors of fact and law. This argument is not clear since the applicant does not indicate why the immigration officer allegedly erred in fact and in law, but she stipulates that the duty of an immigration officer is to conduct a case-by-case analysis in accordance with the facts arising from each file and not to generalize. Once again, the applicant does not cite any authority to support this allegation.

B. *Respondent's position*

[11] Under subsections 20(1) and 22(1) of the IRPA, the class of students is a class of temporary residents, and under subsection 11(1) of the IRPA, an immigration officer has the discretion to issue or not to issue a study permit. The respondent also alleges that under paragraph 216(1)(b) of the IRPR, the person applying for a study permit bears the burden of establishing that he or she will leave Canada at the end of the authorized stay (*Solopova v Canada (Citizenship and Immigration)*, 2016 FC 690 at para 22 [*Solopova*]).

[12] It is the respondent's opinion that the status of the applicant's mother and sister in Canada is a factor which could be considered by the immigration officer: the latter had to be satisfied that the applicant would leave Canada after her stay, but her family situation [TRANSLATION] "[is] a factor which could prompt the applicant to remain in Canada".

[13] The respondent adds that [TRANSLATION] "the current socio-economic situation in Haiti is a significant push factor". Contrary to what the applicant seems to allege, the respondent believes that the immigration officer could consider this factor. Indeed, the respondent alleges that

immigration officers can "rely on their personal knowledge of the local conditions in assessing evidence and documents provided in support of visa applications" (*Mohammed v Canada (Citizenship and Immigration)*, 2017 FC 992 at para 7 [*Mohammed*]). The respondent further adds that [TRANSLATION] "the officer did not generalize, but instead considered this factor in light of the applicant's personal situation, namely, her family and economic ties to Haiti".

[14] With respect to the applicant's argument that the immigration officer erred in requesting evidence about her guarantor's assets and liabilities, the respondent does not consider this to be an error since the immigration officer needed to obtain a full picture of the guarantor's finances in order to decide in favour of the applicant.

IV. Relevant provisions

[15] The following provisions of the IRPA and the IRPR are relevant:

Immigration and Refugee Protection Act	***Loi sur l'immigration et la protection des réfugiés***
Application before entering Canada	**Visa et documents**
11 (1) A foreign national must, before entering Canada, apply to an officer for a visa or for any other document required by the 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.	**11** (1) L'étranger doit, préalablement à son entrée au Canada, demander à l'agent les visa et autres documents requis par règlement. L'agent peut les délivrer sur preuve, à la suite d'un contrôle, que l'étranger n'est pas interdit de territoire et se conforme à la présente loi.
Obligation on entry	**Obligation à l'entrée au Canada**
20 (1) Every foreign national, other than a foreign national	**20** (1) L'étranger non visé à l'article 19 qui cherche à entrer

referred to in section 19, who seeks to enter or remain in Canada must establish,

au Canada ou à y séjourner est tenu de prouver :

(a) to become a permanent resident, that they hold the visa or other document required under the regulations and have come to Canada in order to establish permanent residence; and

a) pour devenir un résident permanent, qu'il détient les visa ou autres documents réglementaires et vient s'y établir en permanence;

(b) to become a temporary resident, that they hold the visa or other document required under the regulations and will leave Canada by the end of the period authorized for their stay.

b) pour devenir un résident temporaire, qu'il détient les visa ou autres documents requis par règlement et aura quitté le Canada à la fin de la période de séjour autorisée.

Temporary resident

22 (1) A foreign national becomes a temporary resident if an officer is satisfied that the foreign national has applied for that status, has met the obligations set out in paragraph 20(1)(b), is not inadmissible and is not the subject of a declaration made under subsection 22.1(1).

Résident temporaire

22 (1) Devient résident temporaire l'étranger dont l'agent constate qu'il a demandé ce statut, s'est déchargé des obligations prévues à l'alinéa 20(1)b), n'est pas interdit de territoire et ne fait pas l'objet d'une déclaration visée au paragraphe 22.1(1).

Immigration and Refugee Protection Regulations

Study permits

Règlement sur l'immigration et la protection des réfugiés

Permis d'études

216 (1) Subject to subsections (2) and (3), an officer shall issue a study permit to a foreign national if, following an examination, it is established that the foreign national

216 (1) Sous réserve des paragraphes (2) et (3), l'agent délivre un permis d'études à l'étranger si, à l'issue d'un contrôle, les éléments suivants sont établis :

(a) applied for it in accordance with this Part;

a) l'étranger a demandé un permis d'études conformément à la présente partie;

(b) will leave Canada by the end of the period authorized

b) il quittera le Canada à la fin de la période de séjour qui lui

for their stay under Division 2 of Part 9;	est applicable au titre de la section 2 de la partie 9;
(c) meets the requirements of this Part;	c) il remplit les exigences prévues à la présente partie;
(d) meets the requirements of subsections 30(2) and (3), if they must submit to a medical examination under paragraph 16(2)(b) of the Act; and	d) s'il est tenu de se soumettre à une visite médicale en application du paragraphe 16(2) de la Loi, il satisfait aux exigences prévues aux paragraphes 30(2) et (3);
(e) has been accepted to undertake a program of study at a designated learning institution.	e) il a été admis à un programme d'études par un établissement d'enseignement désigné.

V. Analysis

A. *Reasonableness of the officer's decision*

[16] Since immigration officers have a great deal of discretion in determining whether a person may or may not obtain a study permit, this Court has previously affirmed that such decisions are reviewable on a standard of reasonableness. To borrow the words of Mr. Justice Denis Gascon in *Solopova*, supra:

> [12] There is no dispute that, when reviewing a visa officer's factual assessment of an application for a student visa and the officer's belief that an applicant will not leave Canada at the end of his or her stay, the standard of review is reasonableness (*Akomolafe* at para 9; *Li v Canada (Citizenship and Immigration*), 2008 FC 1284 [*Li*] at para 15; *Bondoc v Canada (Citizenship and Immigration),* 2008 FC 842 at para 6). Such a decision by a visa officer is "an administrative decision made in the exercise of a discretionary power" (*My Hong v Canada (Citizenship and Immigration),* 2011 FC 463 [*My Hong*] at para 10). As it is a discretionary decision based on factual findings, it is entitled to considerable deference in view of the visa officer's special expertise [and experience] (*Obeng v Canada (Minister of Citizenship and Immigration),* 2008 FC 754 at para 21).
>
> [13] Based on this standard of review, the Court must ensure that the visa officer's decision meets the test of clarity, precision

> and intelligibility and that it is supported by acceptable evidence that can be justified in fact and in law. The standard of reasonableness not only commands that the decision at issue falls within a range of possible, acceptable outcomes defensible in respect of the facts and law, but it also requires the existence of justification, transparency and intelligibility within the decision-making process (*Dunsmuir v New Brunswick*, 2008 SCC 9 [*Dunsmuir*] at para 47).

[17] In this case, the immigration officer's decision fails to satisfy the test of intelligibility and is not defensible in respect of the facts and law. In short, this was an unreasonable decision that failed to meet the requirements set out in subsection 216(1) of the IRPR.

[18] To arrive at his findings, the immigration officer was entitled to consider all of the factors—including family-related factors—that could prompt the applicant to stay or not to stay in Canada at the end of her study permit. Since family lies at the heart of our lives, it is an important element in the determination of place of residence. It was therefore reasonable for the immigration officer to consider the applicant's family ties as a "pull factor".

[19] However, in conducting this analysis, the immigration officer placed an unreasonable emphasis on this personal factor. Admittedly, the evidence on the record shows that her sister is in Canada and is prepared to host her; however, it cannot be concluded that the applicant is necessarily at risk of not leaving Canada at the end of her study permit.

[20] Officers can also rely on their personal knowledge of conditions in an applicant's country to assess an application (*Mohammed*, above, at para 7). The immigration officer was therefore entitled to consider the socio-economic situation in Haiti in his decision-making process, since it

is intrinsically linked to the possibility that a visitor may stay beyond his or her right to remain on Canadian soil.

[21] However, in analyzing the applicant's specific situation in light of the case law on applicants for study permits, reasonableness flows entirely from subjective—therefore personal—evidence, but also from objective evidence about "pull factors" and "push factors". In this case, the immigration officer's decision appears to be more speculative than based on concrete evidence; this decision would have required analysis and further justification based on the applicant's personal factors.

[22] Admittedly, the applicant has few economic ties to Haiti, but this is necessarily the case for the vast majority of people in their early twenties: the applicant's young age explains, in and of itself, the absence of a clear roadmap. The immigration officer's conclusion amounts to a *de facto* rejection of all possible study permit applications from applicants from countries with challenging socio-economic conditions and who have a relative willing to host them in Canada.

[23] Lastly, with respect to the analysis of the financial resources of the applicant's sister, who was to act as guarantor, the immigration officer unreasonably concluded that she lacked financial resources. Section 220 of the IRPR requires applicants to provide evidence of the financial resources at their disposal. In this regard, the evidence on the record appears to reasonably satisfy this burden, or, at the very least, raises questions requiring clarification and which the immigration officer did not address.

VI. Conclusion

[24] This Court allows the application for judicial review and refers the application for a study permit back for reconsideration by a different immigration officer.

JUDGMENT in Docket IMM-5851-18

THIS COURT ORDERS that the application for judicial review is allowed; the decision is set aside and the matter is referred back to another officer for reconsideration. There is no question of general importance to certify.

"Michel M.J. Shore"
Judge

Certified true translation
This 8th day of October 2019

Johanna Kratz, Reviser

FEDERAL COURT

SOLICITORS OF RECORD

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APPEARANCES:

Manuel Centurion	FOR THE APPLICANT
Philipe Proulx	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Manuel Antonio Centurion, Counsel Montréal, Quebec	FOR THE APPLICANT
Attorney General of Canada Montréal, Quebec	FOR THE RESPONDENT