Federal Court Cour fédérale

Date: 20200327

Docket: IMM-3935-19

Citation: 2020 FC 434

Ottawa, Ontario, March 27, 2020

PRESENT: The Honourable Mr. Justice Zinn

BETWEEN:

ZUZETTE CALO SAN JUAN

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION ALSO KNOWN AS THE MINISTER OF IMMIGRATION, REFUGEES AND CITIZENSHIP

Respondent

JUDGMENT AND REASONS

[1] The Applicant asks the Court to review three decisions – a decision dated April 11, 2019 [the First Decision], a decision dated May 8, 2019 [the Second Decision], and a decision dated June 6, 2019 [the Third Decision] regarding her application for a permanent resident visa under the Live-In Caregiver Program [LICP].

[2] The decisions denied the application "as a result of your failure to produce all relevant evidence and documents required by subsection 16(1) of the Immigration and Refugee Protection Act, SC 2001, c 27." The decisions are premised on the assumption that such documents exist.

[3] Ms. San Juan is a citizen of the Philippines who came to Canada in February 2011 as a temporary foreign worker under the LICP. On or about March 2013, she made the application for a permanent resident visa and included her husband, Vivencio San Juan and their three children in the Philippines, as accompanying family members.

[4] In 2012, Mr. San Juan was accused of "Grave Threats" in the Philippines, pursuant to section 282 of the Philippine Revised Penal Code. The charge was subsequently dismissed. According to the documents submitted for the application, the criminal charge was brought in a private court (the Metropolitan Court) and not through the police in a criminal court. It was thus a private matter. The complainants who accused Mr. San Juan of Grave Threats did not attend the hearing before the Metropolitan Court, and thus the matter was presumed to have been dropped.

[5] The copy of the court order was provided to the Canadian Visa Officer [the Visa Officer], stating that the case was provisionally dismissed on April 17, 2012, and permanently dismissed on April 18, 2013.

[6] The Applicant received three separate requests for documentation to assess her application, in May 2014, May 2015, and June 2018. The majority of the documents requested

related to the accusation of Grave Threats made against Mr. San Juan, including a National Bureau of Investigation [NBI] certificate relating to the accusation, a written explanation of Mr. San Juan detailing the circumstances and events that led to the accusation, as well as all court documents relating to the case against Mr. San Juan, or in the case of settlement, any out-of-court documents relating to same. In the June 2018 request, the court or out-of-court documents were not requested.

[7] On February 15, 2019, the Applicant received a procedural fairness notice from the Visa Officer, stating that she had not provided all pertinent court documents/out-of-court documents relating to the accusation against Mr. San Juan.

[8] Three refusal decisions were provided by the Visa Officer refusing the application for permanent residency visas for the Applicant, her husband and her children. The latter two were made after two reconsideration requests by an immigration consultant retained by the Applicant after she received the procedural fairness notice on February 15, 2019.

[9] The First Decision was grounded in the fact that the Applicant had not provided the evidence and documents within the 30 days of the procedural fairness letter. The Second Decision is based on the Applicant not having provided "All pertinent police reports, testimonies/affidavits/written evidence, court orders/decisions/documents relating to [the] case." The Third Decision affirmed the first refusal decision, noting that the Visa Officer had reviewed and considered all additional submissions contained within the two reconsideration letters, and the initial decision to refuse the application remained unchanged.

[10] In my view, the real issue in this matter is whether the Visa Officer’s decisions were reasonable in refusing the Applicant’s permanent residency application because she had not provided the documentation requested on the issue of her husband’s criminal charge of Grave Threats in the Philippines. Specifically, the Visa Officer asked her to provide the police blotter and the barangay relating to Mr. San Juan’s criminal charge. The requirement for these two documents appears to arise because of an officer’s report from Manila that these two documents are always issued on criminal charges in order to aid in the preliminary investigation.

[11] The Applicant provides the Rules of Criminal Procedure in the Philippines. Rule 112 Preliminary Investigation sets out the entities that can conduct preliminary investigations. This includes judges of the Municipal Trial Courts and Municipal Circuit Trial Courts, but does not include judges of the Metropolitan Court, which was the court that issued the Order stating that the complaint against Mr. San Juan was initiated by private individuals and not by public authority, and the complaint was filed directly with the court. The Order also notes that the complainants did not appear in court, and that the case was dismissed on this basis.

[12] The Applicant submits that Philippine law does not require a police blotter/barangay for private matters brought before the Metropolitan Court. Therefore, the Visa Officer was requesting information that simply does not exist.

[13] The Respondent submits that the requests to reconsider provided by the consultant after the First Decision and Second Decision did not address the underlying issue now raised concerning a lack of documentation regarding the criminal allegations.

[14] I agree with the Respondent that the reconsideration letters of April 11, 2019, and April 18, 2019, did not directly address the issue of the nonexistence of these documents. However, the Applicant's response to the procedural fairness notice dated March 1, 2019, does list all of the documentation submitted demonstrating that the complaint against Mr. San Juan did not go ahead, and was ultimately dismissed. The issue of the lack of documentation was addressed explicitly in the second reconsideration letter, dated May 26, 2019:

> Your decision was based on the statement:
>
> As per letters dated 18 May 2015, 26 June 2018 and 15 February 2019, you have not submitted the following:
>
> **All pertinent police reports, testimonies/affidavits/written evidence, court orders/decision/documents relating to your case**
>
> We unfortunately did not have any police reports as this case was a [*sic*] presumably fabricated and taken to court. There are no police reports, testimonies/affidavits/written evidence at the police station. This case was directly tried at the trial court and to support this fact we have attached a letter from the Chief of Police – Records and Clearance Office indicating that there have been no police records in his name since October 2010. This is also evident from the fact that the complainants did not show up at any of the trials as indicated in the letter 2 that is attached. A warning was issued by the court to the complainants on the 20th of March 2012 and even after that they did not show up for hearing and thereafter the case was provisionally dismissed and subsequently permanently dismissed. [underlining added, bolding in original]

[15] The application was dismissed for a failure to produce documentation pursuant to subsection 16(1) of the Act. None of the three decisions mention the documentation submitted that points to the opposite conclusion from that reached by the Visa Officer, nor that it was explained that the requested documentation simply does not exist.

[16] While the Visa Officer is assumed to have considered all evidence put before him or her, *Cepeda-Gutierrez v Canada (Minister of Citizenship and immigration)*, [1998] FCJ No 1425 at paragraph 17, 157 FTR 35, teaches that "…the more important the evidence that is not mentioned specifically and analyzed in the agency's reasons, the more willing a court may be to infer from the silence that the agency made an erroneous finding of fact without regard to the evidence" [citations omitted].

[17] Here the Visa Officer fails to reference the evidence submitted that there are no police records and the allegation laid was dismissed. In my view, this renders the decision rejecting the application unreasonable as it fails to accord with the evidence before the decision-maker.

[18] This application must be allowed and the permanent resident visa application returned to be assessed by a different officer. In my discretion, the request by the Applicant for costs in this application is not granted; however, given the significant passage of time, the Court urges the Respondent to conduct the reassessment on a very timely basis.

[19] No party proposed a question for certification.

JUDGMENT IN IMM-3935-19

THIS COURT'S JUDGMENT is that the application is allowed and no question is certified.

"Russel W. Zinn"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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