Federal Court Cour fédérale

Date: 20210722

Docket: IMM-2384-20

Citation: 2021 FC 781

Ottawa, Ontario, July 22, 2021

PRESENT: The Honourable Mr. Justice Southcott

BETWEEN:

SIMON CHAHASI KICHAMU

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] This is an application for judicial review of a decision of an officer [the Officer] from Immigration, Refugees and Citizenship Canada [IRCC] dated April 22, 2020, in which the Officer refused the Applicant's request for a work permit, on the basis that the Applicant is not a person who can apply for this type of document from within Canada.

[2] As explained in more detail below, this application is dismissed, because the Applicant has raised no basis for the Court to find that the Officer unreasonably concluded that the Applicant was not entitled to apply for a work permit from within Canada.

II. **Background**

[3] The Applicant, Simon Chahasi Kichamu, is a citizen of Kenya. He is in possession of a Canadian 10 year multiple entry visitor visa, which allows him to travel to Canada for six months at a time, as many times as he would like. The visa expires in 2026. He has used this visa to visit his sister in Canada multiple times since 2016. He entered Canada with this visa on February 18, 2019, and was permitted to stay for six months until August 18, 2019.

[4] During his 2019 visit, the Applicant was offered a job as a cleaning and maintenance supervisor by Aztec Maintenance Ltd., subject to approval of a Labour Market Impact Assessment [LMIA]. In a letter dated October 23, 2019, Aztec Maintenance Ltd. received a positive LIMA. The letter indicated that, as the LIMA would expire on April 23, 2020, the Applicant would have to submit his work permit or permanent residence application to IRCC before that date.

[5] While he was awaiting the results of the LMIA, the Applicant applied for a Visitor Record. However, this application was refused on November 17, 2019.

[6] In the meantime, on November 14, 2019, the Applicant went to the Douglas Canada-United States border crossing and applied for a work permit. His application was unsuccessful,

but he was allowed to re-enter Canada as a visitor. In January 2020, the Applicant submitted an online application for a work permit to IRCC's Case Processing Centre [CPC] in Edmonton, Alberta.

[7] That application for a work permit was refused in the decision that is the subject of this application for judicial review. In a decision letter dated April 22, 2020, the Officer stated as follows:

> You are not a person described in Immigration Legislation who can apply for this type of document from within Canada. An application of this type must be made at a Canadian Visa office in another country.

[8] The decision letter also explained that the Applicant's status in Canada as a visitor is valid until May 14, 2020.

[9] Global Case Management System [GCMS] notes dated April 22, 2010 provide further reasons for this decision. These notes describe the Applicant's recent immigration history, including that he was allowed to re-enter Canada as a visitor on November 14, 2019. The GCMS notes state that there was no indication in the system that the Applicant was authorized at a port of entry to remain in Canada as a visitor for less than 6 months. The GCMS notes then explain that the Applicant was requesting a LMIA based on a work permit, but he "is not a person described in Immigration Legislation who can apply for this type of document from within Canada" and "[a]n application of this type must be made at a Canadian Visa office in another country." The GCMS notes then indicate that his application was refused.

III. **Issues and Standard of Review**

[10] The Applicant's Memorandum of Argument describes the issues raised by this application for judicial review as follows:

A. Was the Officer's decision to refuse the Applicant's work permit application reasonable?

B. Did the Officer err in law by misapplying the provisions of s 199 of the *Immigration and Refugee Protection Regulations* (SOR/2002-227) [the Regulations]?

[11] The substance of the Officer's decision is subject to the presumptive reasonableness standard of review (see *Canada (Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 10). I will consider whether the decision was reasonable, taking into account the Applicant's arguments surrounding s 199 of the Regulations.

[12] The Applicant's arguments also raise one point surrounding procedural fairness that I will address later in these Reasons. This issue is subject to the correctness standard of review (see, e.g., *Canadian Association of Refugee Lawyers v Canada (Immigration, Refugees and Citizenship)*, 2020 FCA 196 at para 35).

IV. **Analysis**

[13] The Applicant submits that the Officer erred in concluding that the Applicant was required to submit his application for a work permit to a Canadian visa office in another country. In his Memorandum of Argument, he bases this submission on s 199(d) of the Regulations, which provides as follows:

199 A foreign national may apply for a work permit after entering Canada if they	**199** L'étranger peut faire une demande de permis de travail après son entrée au Canada dans les cas suivants :
[…]	[…]
(d) hold a temporary resident permit issued under subsection 24(1) of the Act that is valid for at least six months;	**d)** il détient, aux termes du paragraphe 24(1) de la Loi, un permis de séjour temporaire qui est valide pour au moins six mois;
[…]	[…]

[14] The Applicant's Memorandum of Argument asserts that he was the holder of a temporary resident permit [TRP] when he applied for his work permit and that, under s 199(d), he was therefore entitled to apply for a work permit within Canada. The Respondent submits that the Applicant's argument is premised on a misunderstanding by the Applicant of the nature of his immigration status. According to the Respondent, the Applicant held a temporary resident visa, not a TRP. Therefore, s 199(d) did not apply to him and, pursuant to s 197 of the Regulations and as found by the Officer, he was required to apply for a work permit outside Canada. Section 197 provides as follows:

197 A foreign national may apply for a work permit at any time before entering Canada.	**197** L'étranger peut, en tout temps avant son entrée au Canada, faire une demande de permis de travail.

[15] At the hearing of this application, I understood the Applicant to acknowledge that he did not hold a TRP. Regardless, the evidence provides no support for a conclusion that the Applicant qualified for, or had been issued, a TRP. As the Respondent submits, a TRP is a document that can be issued on a discretionary basis under s 24(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27, which provides as follows:

24 (1) A foreign national who, in the opinion of an officer, is inadmissible or does not meet the requirements of this Act becomes a temporary resident if an officer is of the opinion that it is justified in the circumstances and issues a temporary resident permit, which may be cancelled at any time	**24 (1)** Devient résident temporaire l'étranger, dont l'agent estime qu'il est interdit de territoire ou ne se conforme pas à la présente loi, à qui il délivre, s'il estime que les circonstances le justifient, un permis de séjour temporaire — titre révocable en tout temps.

[16] Applying the relevant standard of review, I find no basis to conclude that the Officer acted unreasonably in failing to apply s 199(d) to the Applicant's circumstances.

[17] At the hearing of this application, the Applicant advanced an argument that, while s 199(d) allows a person to both apply for and receive a work permit within Canada, it is available to a person who does not benefit from s 199(d) to apply for a work permit within Canada and then leave Canada and have the permit issued at the port of entry upon returning to Canada. However, the Applicant was unable to cite any statutory support for this argument.

[18] In response to this argument, the Respondent submitted that the Applicant was perhaps contemplating a process in which a person who is physically present in Canada submits a work permit application to a Canadian visa office in another country. However, the Respondent emphasized that this is not the process pursued by the Applicant in the case at hand, as the record reflects that he submitted his application to IRCC's CPC in Edmonton, Alberta.

[19] In his reply at the hearing, the Applicant argued that neither the letter nor the GCMS notes prepared by the Officer reflect an analysis of the sort offered by the Respondent. The Applicant also submits that the Respondent has not identified a clear statutory basis for the process to which the Respondent refers.

[20] While I accept these submissions by the Applicant, they do not assist the Applicant in challenging the reasonableness of the Officer's decision. The Respondent's analysis was offered as a potential explanation of the process to which the Applicant referred, in which a person in Canada can apply for a work permit and then leave Canada and be issued the permit at the port of entry upon returning. However, the burden of establishing a reviewable error by the Officer rests with the Applicant. As the Applicant has been unable to identify a statutory basis for the entitlement to submit a work permit application within Canada that he argues he should have been afforded, his argument does not raise a reviewable error.

[21] The Applicant also argued in reply that, upon receiving his application for a work permit at the CPC in Edmonton, the Officer should have returned the application to the Applicant, with an explanation that he was not eligible to submit it to a CPC within Canada, rather than refusing

the application. The Applicant submits that refusing the application, when it could simply have been returned, was unreasonable and unfair.

[22] It is not clear from the Applicant's submissions whether his reference to the Officer's decision being unfair is intended to invoke principles of procedural fairness, to which a correctness standard of review would apply. Regardless, whether applying the standard of correctness or reasonableness, the Applicant has identified no authority for the proposition that the Officer should have approached the application as the Applicant suggests. The Officer was entitled to reject an application that, based on the Applicant's immigrations status, did not meet statutory requirements.

[23] In conclusion, as the Applicant has identified no basis for a determination that the Officer's decision is unreasonable, this application for judicial review must be dismissed. Neither party proposed any question for certification for appeal, and none is stated.

JUDGMENT IN IMM-2384-20

THIS COURT'S JUDGMENT is that this application for judicial review is dismissed.

No question is certified for appeal.

"Richard F. Southcott"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-2384-20
STYLE OF CAUSE:	SIMON CHAHASI KICHAMU V THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	HEARD BY VIDEOCONFERENCE VIA VANCOUVER, BRITISH COLUMBIA
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