Federal Court  Cour fédérale

Date: 20210708

Docket: IMM-7176-19

Citation: 2021 FC 724

Ottawa, Ontario, July 8, 2021

PRESENT: The Honourable Madam Justice Roussel

BETWEEN:

UZMA QURBAN

Applicant

and

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Uzma Qurban, is a citizen of Pakistan. In 2014, she received a certificate of nomination from the province of Saskatchewan and applied for permanent residence as a provincial nominee from outside Canada. In support of her application, the Applicant provided a letter attesting to her work experience as a full-time cook at a specified marriage hall and restaurant since April 2015.

[2] In February 2016, the Canada Border Services Agency's Islamabad anti-fraud unit [AFU] conducted a site visit to verify the Applicant's employment. Because of concerns that arose from the visit, summarized in a report by the AFU, the reviewing officer sent the Applicant a procedural fairness letter by way of email in April 2016. He informed her that there were reasonable grounds to believe she had misrepresented material facts relating to her work experience and that the employment letter submitted was not genuine. The letter also stated that the employer named in the employment letter had indicated that the Applicant had never worked for him. The Applicant was put on notice that a finding of misrepresentation was contemplated.

[3] Following several unsuccessful requests for additional information about the employment concerns, the Applicant filed reply submissions and provided evidence to corroborate her employment at the specified marriage hall and restaurant. In particular, she provided two (2) statutory declarations from the individuals with whom the in-person verifications were conducted prior to the issuance of the procedural fairness letter. These individuals indicated, among other things, that some of their previous statements to the Canadian officials were wrong and explained the reasons for the discrepancies.

[4] On October 30, 2019, a migration officer [Officer] of the High Commission of Canada located in London denied the Applicant's application for permanent residence on the basis that she was inadmissible to Canada for misrepresentation under paragraph 40(1)(*a*) of the *Immigration and Refugee Protection Act*, SC 2001, c 27.

[5] The Applicant alleges that the Officer breached the rules of procedural fairness by relying on extrinsic evidence to support the decision without disclosing the contents of this evidence to her and giving her a meaningful opportunity to respond. The Applicant relies on *Chawla v Canada (Citizenship and Immigration)*, 2014 FC 434 [*Chawla*], for her argument that the failure to disclose material information that prevents an applicant from knowing the case to meet is a breach of procedural fairness. The Applicant also cites *Mehta v Canada (Minister of Citizenship and Immigration)*, 2003 FC 1073 [*Mehta*], in support of her argument that extrinsic evidence must be disclosed to an applicant.

II. Analysis

[6] When reviewing issues of procedural fairness, the role of this Court is to determine whether the proceedings were fair in all the circumstances (*Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at paras 54-56; *Canadian Association of Refugee Lawyers v Canada (Immigration, Refugees and Citizenship)*, 2020 FCA 196 at para 35).

[7] Upon review of the file and after considering the submissions of the Applicant, I am not persuaded that a breach of procedural fairness occurred in this case.

[8] It is well established that where a finding of misrepresentation is contemplated, the visa officer has a duty to inform the applicant of concerns that may give rise to such a finding and provide the applicant with a meaningful opportunity to respond. This is usually done by sending a procedural fairness letter to the applicant, which must contain enough detail to enable the applicant to know the case to meet (*Bayramov* v *Canada (Citizenship and Immigration)*, 2019

FC 256 at para 15). If the officer has extrinsic information of which an applicant is unaware, the applicant should be given the opportunity to disabuse the officer's concerns arising from that evidence (*Chawla* at para 14; *Amin v Canada (Citizenship and Immigration)*, 2013 FC 206 at para 29).

[9] While the procedural fairness letter to the Applicant did not disclose all the details contained in the AFU report, it clearly communicated the reviewing officer's concern that the Applicant had misrepresented her work experience at the marriage hall and restaurant and that the letter corroborating her employment was not genuine. It also indicated that the employer named in this letter had denied she ever worked for him.

[10] Unlike in *Chawla* and in *Mehta*, the procedural fairness letter informed the Applicant that the reviewing officer's concerns stemmed from a statement made by the person identified in the employment letter as the Applicant's manager. With this knowledge in hand, the Applicant was able to learn that the AFU had also interviewed the gatekeeper at the marriage hall and restaurant. She was able to learn the information they provided during their interviews and to obtain statutory declarations from them. In her response dated July 6, 2016, the Applicant indeed acknowledges that she received information from her manager which could explain the reviewing officer's concerns and she explains in great detail why the AFU may have incorrectly concluded from its interviews with the manager and gatekeeper that she did not work at the marriage hall and restaurant.

[11] Furthermore, in *Chawla*, the applicant had established that the non-disclosure of the extrinsic evidence had prevented him from disputing the information collected and undermining the credibility of the person who had provided the information. In this case, when the Applicant was asked at the hearing before this Court what information contained in the AFU report would have affected her submissions had it been disclosed, her response was limited to the gatekeeper's length of employment. The AFU report states that the gatekeeper had been working at the marriage hall and restaurant since its opening, which was "1.5 years ago", when in fact the gatekeeper had only been working there a few weeks. The Applicant argues that the gatekeeper's recent employment explained why the gatekeeper stated that no women worked at the marriage hall and restaurant.

[12] The difficulty with the Applicant's argument is that both the gatekeeper and the manager address this issue in their statutory declarations. With the exception of the gatekeeper's duration of employment, the Applicant has not pointed to any material information that, had it been disclosed, would have caused her to dispute the information and make additional submissions (*Liu v Canada (Citizenship and Immigration)*, 2016 FC 440 at para 12; *Sidhu v Canada (Citizenship and Immigration)*, 2014 FC 419 at para 15).

[13] Based on the record before me, I am satisfied that the Applicant knew the Officer's concerns and that she was given an opportunity to respond to them. She did so by providing submissions and additional evidence to corroborate her work experience on at least five (5) occasions.

[14] The Global Case Management System notes show that the Officer considered all of the Applicant's evidence, including the two (2) statutory declarations from the gatekeeper and manager as well as the Applicant's additional submissions. In the end, the Officer gave more weight to the AFU report than to the Applicant's evidence given that documentation in Pakistan is often highly unreliable and the ease with which it is possible to obtain documentation through collusion with friends, family or for compensation or under duress. Since the Applicant has not challenged the reasonableness of any of the Officer's findings, it is not open to me to decide whether this finding was reasonable.

[15] Accordingly, the application for judicial review is dismissed. No questions of general importance were proposed for certification and I agree that none arises.

JUDGMENT in IMM-7176-19

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed; and

2. No question of general importance is certified.

"Sylvie E. Roussel"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-7176-19
STYLE OF CAUSE:	UZMA QURBAN v MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	HELD BY VIDEOCONFERENCE
DATE OF HEARING:	JUNE 22, 2021
JUDGMENT AND REASONS:	ROUSSEL J.
DATED:	JULY 8, 2021

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