Federal Court  Cour fédérale

Date: 20210927

Docket: IMM-3423-20

Citation: 2021 FC 1002

Fredericton, New Brunswick, September 27, 2021

PRESENT: Madam Justice McDonald

BETWEEN:

YINGTING WANG

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The Applicant, Yingting Wang, a citizen of China, seeks judicial review of a Visa Officer's (the Officer) decision denying her application for a work permit on June 15, 2020. For the reasons that follow, this judicial review is dismissed as the Officer's decision is reasonable and there was no breach of the Applicant's procedural fairness rights.

Background and Decision Under Review

[2] Following approval by the Saskatchewan Immigrant Nominee Program (SINP), of her proposal to open a bubble tea shop in Martensville, Saskatchewan, Ms. Wang applied for a work visa.

[3] On June 15, 2020, the Officer denied the application, on the grounds that Ms. Wang did not demonstrate she would be able to adequately perform the work, and did not demonstrate that she would perform work that would create or maintain significant social, cultural or economic benefits or opportunities for Canadian citizens as required by Rule 205(a) of the *Immigration and Refugee Protection Regulations* (*Regulations*).

[4] The Officer's notes highlight the following issues: Ms. Wang did not provide a specific address her for business; her business plan was vague with respect to purchasing property; the viability of a bubble tea shop in Martensville and how it would compete with other tea shops; how the applicant would cover the expenses for CPP and EI contributions; and a discrepancy in how Ms. Wang described her partner as both a "boyfriend" and "common-law spouse".

[5] A reconsideration of the Officer's decision was denied on July 12, 2020.

Preliminary Issue

[6] The Respondent objects to paragraphs 14-46, paragraph 48, and Exhibit F (the Exhibit) of the Applicant's Affidavit dated October 12, 2020, and filed in support of her judicial review

application. The Respondent argues that these paragraphs of the Affidavit contain improper opinion and argument, and argues that the Exhibit is extrinsic evidence that was not before the Officer.

[7] Although the Applicant argues that the Affidavit simply addresses the issues raised by the Officer, I agree with the Respondent that portions of the Affidavit containing argument and opinion are not appropriate in the context of a judicial review and will therefore be disregarded.

[8] With respect to Exhibit F to the Applicant's Affidavit, as a general rule, on judicial review the Court is confined to a consideration of the evidence that was before the decision-maker. Additional evidence may be admissible in narrow circumstances such as where it may be needed to resolve issues of procedural fairness or jurisdiction (*Ontario Association of Architects v Association of Architectural Technologists of Ontario*, 2002 FCA 218 at para 30). In my view, such circumstances are not present here, threrefore Exhibit F is not admissible.

Issues

[9] The Applicant raises the following issues for determination:

1. Is the Visa Officer's decision reasonable?
2. Are the Visa Officer's reasons adequate?
3. Did the Visa Officer breach the duty of procedural fairness?

Standard of Review

[10] The parties agree that the standard of review for the first two issues is reasonableness. As stated in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 99, "A reviewing court must develop an understanding of the decision maker's reasoning process in order to determine whether the decision as a whole is reasonable. To make this determination, the reviewing court asks whether the decision bears the hallmarks of reasonableness — justification, transparency and intelligibility — and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision" [Citations omitted.]

[11] The standard of review for the third issue is correctness. Questions of procedural fairness are reviewed on the correctness standard: *Canada (Minister of Citizenship and Immigration) v Khosa*, 2009 SCC 12, per Binnie J. at para 43.

Analysis

1. *Is the Visa Officer's decision reasonable?*

[12] The Applicant argues that the Officer's decision is unreasonable on a number of grounds which I will address below.

SINP Approval

[13] The Applicant argues that the Officer failed to consider s. 4.9 of Annex A of the *Canada-Saskatchewan Immigration Agreement*, 2005, which states that Canada shall consider a

nomination certificate as initial evidence that admission is of significant benefit to the economic development of Saskatchewan, and it was unreasonable for the Officer to substitute their own analysis.

[14] However, this submission fails to acknowledge the distinction between a SINP support letter and nomination certificate under the program. A nomination certificate, as defined in the Business Performance Agreement between the Applicant and the Province, is a certificate "which indicates that the Province has nominated the Applicant to be a Permanent Resident", and is only issued after verification by the Province that the Applicant has satisfied the obligations in the Performance Agreement.

[15] Here the Applicant only had a SINP support letter and while an Officer is required to acknowledge and consider a support letter, there is no requirement for the Officer to agree with it (*Shang v Canada (Citizenship and Immigration*), 2021 FC 633 at para 68).

[16] In any event, the SINP approval was contingent upon her obtaining a work permit, and the support letter itself indicates that it "does not guarantee approval of your application by IRCC for a TWP or for Permanent Residence status in Canada." The Officer explicitly acknowledged the SINP support letter, and found that it alone was insufficient to carry her work permit application.

Proposed location of business

[17] The Applicant argues that the Officer made a number of factual errors in considering her application. The Applicant points to the statement of the Officer that she did not address how she would compete against other tea shops like Starbucks and Booster Juice, when there are no such shops in Martensville.

[18] In the context of considering her business plan, it was appropriate for the Officer to consider potential competing businesses. It was reasonable for the Officer to reference other tea establishments, and in fact, the Applicant herself references Booster Juice and Starbucks in her business plan. This is not properly characterized as an error.

[19] The Applicant also takes issue with the Officer noting that the Applicant had not provided a business address or plan to purchase property. In her work permit application the Applicant lists the "intended location of employment in Canada" as "to be determined." Although the Applicant did include an address in her 2018 business plan, it was reasonable for the Officer to note the lack of location on the Applicant's 2020 application form.

[20] Furthermore, the business plan describes that the Applicant's partner has purchased a residential lot to develop commercial properties, and that the Applicant will purchase a unit in that lot for her business. It was reasonable for the Officer to find this description of an undeveloped lot vague.

[21] Lastly, contrary to the Applicant's assertion, the Officer did not state that she had not provided a business plan, but rather, that she "has not provided a business plan to outline potential significant benefit to Canada." Read in context with the rest of the sentence and reasons as well as the *Regulations*, the Officer was clearly concerned with the sufficiency of the business plan, rather than the presence of a document described as a business plan.

CPP / EI

[22] The Applicant challenges the Officer's conclusion that she failed to identify how she would pay CPP and EI contributions. She argues that the financial information on record clearly supports that she would have been financially able to cover these expenses.

[23] However, read in the full context of the Officer's decision, it is clear that the Officer was raising this issue as an illustration of the lack of detail or specificity in the Applicant's business plan.

[24] Further, the Applicant does not dispute that she did not provide information on CPP and EI contributions in her business plan. Instead, she argues that since these amounts would have been low, they should not have been a concern for the Officer. However, in considering the financial contributions of the Applicant's proposed business, it was reasonable for the Officer to consider such factors as they would ordinarily fall within the scope of expenses addressed in a comprehensive business plan.

Status of Partner

[25] The Applicant argues that the Officer erred in finding a discrepancy regarding the status of her spouse. She argues that the Officer failed to take into account that her boyfriend became a common-law spouse in the time during which her application was pending.

[26] However, in response to the question on the work permit application form "if you are married or in a common-law relationship, provide the date on which you were married or entered into the common law relationship", the Applicant wrote "2017". The Applicant also provided a statutory declaration of common law union which states that the Applicant cohabited with her partner for a period of 3 years between 2017 and 2019. However, the Applicant's 2018 business plan, which was submitted as part of the work permit application, referred to her partner as "boyfriend".

[27] Based upon the inconsistencies in these documents, it was reasonable for the Officer to raise this issue. Likewise, the status of the Applicant's partner was not an insignificant issue as the Applicant's partner was also the owner of the property where she intended to establish her business.

[28] Overall, I do not find that the Officer made errors. Rather, the Officer considered the totality of the evidence and the requirements of the *Regulations* to conclude that the Applicant had not demonstrated that she would be able to adequately perform the work.

[29] The Applicant's arguments invite the Court to reweigh and reassess the evidence, an exercise which *Vavilov* (para 125) specifically instructs courts to refrain from undertaking.

2. *Are the Visa Officer's Reasons Adequate?*

[30] The Applicant points out that the Officer's reasons with respect to why her work would not create an economic benefit is only 352 words and contains a number of factual errors, and are therefore inadequate.

[31] For the reasons outlined above, I disagree that the Officer's decision contains factual errors.

[32] Furthermore, adequacy of reasons are not determined by their length. The Officer's reasons are sufficiently detailed to be understood. As noted in *Patel v Canada (Citizenship and Immigration*), 2020 FC 77 at para 17, "'[r]easonableness' is not synonymous with 'voluminous reasons': simple, concise justification will do." Here, the Officer engaged with the evidence, and provided a clear explanation for why the Applicant failed to satisfy the requirements of the *Regulations* for the issuance of a work permit. That was sufficient in the circumstances.

3. *Did the Visa Officer breach the duty of procedural fairness?*

[33] The Applicant argues that because her application was approved under the SINP program, she was entitled to notice of any concerns the Officer had about her business plan.

[34] The level of procedural fairness owed to visa applicants is at the lower end of the scale. Further, the onus is on the Applicant to establish eligibility for a visa and to provide sufficient evidence to support her Application (*Patil v Canada (Citizenship and Immigration*), 2020 FC 495 at para 37).

[35] Here there was no obligation on the Officer to afford the Applicant the opportunity to clarify or supplement a deficient application or to give her a "running score" of the weaknesses in her application (*Kong v Canada (Citizenship and Immigration*), 2017 FC 1183 at para 29).

[36] No procedural fairness issues arise on these facts.

Conclusion

[37] The Officer's decision, when considered with the evidence on record is intelligible, transparent and justified and therefore reasonable.

JUDGMENT IN IMM-3423-20

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. Neither party proposed a question of general importance, and none arises.

"Ann Marie McDonald"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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