Date: 20071109

Docket: IMM-2079-07

Citation: 2007 FC 1169

Ottawa, Ontario, November 9, 2007

PRESENT: The Honourable Mr. Justice Phelan

BETWEEN:

SEMIRAMISS ZIAEI
HOSSEIN SALMANY

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. INTRODUCTION

[1] The Applicant, Semiramiss Ziaei, a female Iranian citizen, was denied a permanent resident visa by a Visa Officer at the Canadian Embassy in Damascus, Syria. Her application was based on the "skilled worker" category, as a nurse/medical technologist.

The other Applicant was her husband whose visa application was based substantially on that of Semiramiss Ziaei. For ease of reference, Semiramiss Ziaei is referred to in these Reasons as the Applicant.

[2] Despite the forceful arguments of the Applicant's counsel, I am persuaded that there has not been any denial of natural justice or error of fact and law which justifies the Court's interference with the Visa Officer's decision.

II. BACKGROUND

[3] The application process commenced on December 27, 2001; however, for reasons not germane to this judicial review, the application commenced progressing in September 2006 when the Applicant filed additional supporting documents updating her situation.

[4] On November 26, 2006, the Canadian Embassy wrote to the Applicant requesting her International English Language Testing System (IELTS) results, a supplementary form for her spouse, and proof of relationship and residence of her uncle in Canada, Abbas Pakseresht, whose involvement in this judicial review is discussed later in these Reasons.

[5] The IELTS results and documentation concerning her uncle were filed; the supplementary form for her spouse was not.

[6] The Applicant's file was initially reviewed on March 25, 2007 and then referred to the Visa Officer for final decision. The visa was denied, by letter of April 2, 2007, because the Applicant received 62 points under the assessment criteria, less than the 67 points required for a visa.

[7] The key areas of dispute on the facts are that the Applicant only received five out of 10 points for adaptability, six out of 24 for language proficiency and 0 points for arranged employment.

[8] The refusal letter did not provide details of the points assessed; it simply said that the Applicant had failed to obtain the minimum number of points required and therefore the Visa Officer was "not satisfied that you meet the requirements of the Act and the Regulations for the reasons explained above". The details in the CAIPS Notes were not provided.

[9] The CAIPS Notes contained a little more detail but not much more in respect of the final decision. Of importance to the Applicant was the initial assessment where the CAIPS Notes show a points total of 58 before assessment of language skill or adaptability. As to adaptability, the CAIPS Notes indicate that the Applicant was asked to provide proof of the relationship with and residency of her uncle.

[10] The relevancy of the initial assessment, as argued by the Applicant, is that in the final decision, the Applicant should have started with the 58 points assessed initially and have added to the points total the five points for adaptability and six points for language resulting in a score of 69 points.

[11] The Applicant has raised two issues:

- whether the Visa Officer erred in the points assessment; and
- whether there was a breach of procedural fairness in failing to provide detailed reasons.

[12] The Respondent has raised the issue of the admissibility of the affidavit of the Applicant's uncle, Abbas Pakseresht.

III. ANALYSIS

A. *Admissibility of Evidence*

[13] The two affidavits of Mr. Pakseresht would, in many other proceedings, be struck out on the basis that they are largely irrelevant, argumentative and contain (to the extent that they deal with potentially relevant matters) evidence which was not before the Visa Officer. The affidavits are replete with hearsay.

[14] The affidavits were no doubt created because of a sincere concern for the welfare of Mr. Pakseresht's niece but there is no apparent justification in terms of "necessity and reliability" which would overcome the usual rules of evidence.

[15] However, rather than strike the affidavits, the Court will simply take cognizance of that which is relevant and place little or no weight on the evidence which is opinion or argument or irrelevant.

B. *Error in Points Assessment*

[16] The standard of review for this aspect of the Visa Officer's function is patent unreasonableness where there is an element of discretion involved in the points calculation. I concur with the approach of Justice Blanchard in *Silva v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 733 and the cases referred to in his decision. Moreover, in this case, the number of points to be awarded in each category at issue is prescribed by regulation. As such, the Visa Officer has no discretion and therefore the points awarded must be correct in that they must be those mandated by regulation.

[17] Having received the language test results (IELTS), the regulations direct the points to be awarded in accordance with those results. Similarly, the points for "arranged employment" are prescribed – in this case, there was no evidence of arranged employment. Under "adaptability" the Applicant received the maximum number of points available in her circumstances, having a relative in Canada.

[18] Therefore, there is no basis for challenging the points awarded in the final decision. The Applicant's reliance on the initial score of 58 points is misplaced as this was not the thorough and detailed assessment required. The detailed assessment and thus the final decision is the

responsibility of the Visa Officer. In this case, that initial assessment is irrelevant. There is nothing to suggest that in some manner the initial assessment was the correct assessment and that the final negative assessment was created for some ulterior purpose or based on some improper consideration.

C. *Absence of Reasons*

[19] The Applicant tried strenuously to establish that the final decision letter was unfair in that it was not sufficiently detailed and strayed from the format of such letters which are described in a departmental operations manual.

[20] Firstly, the operations manual is a guide, not a dictate or regulation. Secondly, the departure in the wording of the decision letter is not a significant departure from that in the manual.

[21] It is well recognized that the visa decision letter may not contain all of the reasons for a decision. For that reason, the CAIPS Notes form an integral part of the reasons.

[22] The Applicant complains that she did not receive the full reasons or detailed reasons. However, the Applicant never requested more detailed reasons. The absence of full reasons could affect a party at the Leave Application stage since the Certified Tribunal Record is not produced until Leave is granted. Therefore, it is incumbent on an applicant to request further and better reasons and more particularly the CAIPS Notes.

[23] In this case, the decision letter contained more than sufficient details for the Applicant to know the basis upon which and the reasons for the refusal to grant the permanent residence visa. The CAIPS Notes provide little, if any, germane evidence.

[24] The Applicant's reliance on such decisions as *Kidd v. Greater Toronto Airports Authority*, [2004] F.C.J. No. 859 (QL), aff'd [2005] F.C.J. No. 377 (QL), and *Public Service Alliance of Canada v. Canada (Attorney General)*, 2004 FC 1739 is misplaced. Both are cases involving the Canadian Human Rights Commission in which there was no process such as the CAIPS Notes to flesh out the reasons for a decision. Whether there is a breach of fairness in terms of the existence of full reasons requires a consideration of the context and all of the circumstances including the provision of additional information by the decision maker.

[25] In this regard, I adopt the following comments of Justice Barnes in *Wang v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 1298 at paras. 19 and 21-22:

> The adequacy of a given set of reasons for an administrative decision must be assessed in context: see *Via Rail Canada Inc. v. Canada (National Transportation Agency)*, [2000] F.C.J. No. 1685, [2001] 2 F.C. 25 (C.A.) at para. 21. The Court must give due regard to the nature and significance of the decision and to appropriate concerns about administrative efficiencies and costs. This point is well made in the case of *Khan v. Canada (Minister of Citizenship and Immigration)*, [2001] F.C.J. No. 1699, 2001 FCA 345 at paras. 31-32 […]
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> The Applicant complains, however, that the refusal letter was deficient because it did not contain the reasons for the visa refusal. She argues that there is a legal duty on the Respondent to provide its CAIPS notes along with the refusal letter. I do not agree. The Applicant's counsel was aware that CAIPS notes to support the refusal decision are typically available because he had successfully

> requested those notes in connection with the first refusal decision. Inexplicably, he failed to request those same notes before initiating this application for judicial review. At that point, the CAIPS notes were provided to the Applicant by the Respondent in compliance with [the *Federal Court Immigration and Refugee Protection Rules*, r. 9].
>
> CAIPS notes have been accepted as a constituent part of an administrative decision: see *Kalra v. Canada (Minister of Citizenship and Immigration)*, [2003] F.C.J. No. 1199, 2003 FC 941 at para. 15, and *Toma v. Canada (Minister of Citizenship and Immigration)*, [2006] F.C.J. No. 1000, 2006 FC 779 at para. 12. In this case, the CAIPS notes provide additional detail to the formal decision letter and are clearly sufficient to inform the Applicant of the reasons for the refusal of a visa. It is not open to the Applicant to complain that the CAIPS notes were not provided in advance of the initiation of this application because her counsel failed to request them at an earlier stage: see *Hayama v. Canada (Minister of Citizenship and Immigration)*, [2003] F.C.J. No. 1642, 2003 FC 1305 at para. 14 and *Liang v. Canada (Minister of Citizenship and Immigration)*, [1999] F.C.J. No. 1301 at para. 31:
>
> > [31] However, in my opinion, the duty of fairness normally only requires reasons to be given on the request of the person to whom the duty is owed and, in the absence of such a request, there will be no breach of the duty of fairness.

[26] Finally, on this point, since the points awarded are prescribed by regulation, there is no need for a Visa Officer to provide more details – there is nothing more to explain.

IV. CONCLUSION

[27] For these reasons, this application for judicial review will be dismissed. There is no question for certification.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that this application for judicial review will be dismissed.

"Michael L. Phelan"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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