Date: 20070303

Docket: IMM-1650-07

Citation: 2008 FC 284

Ottawa, Ontario, March 3, 2008

PRESENT: The Honourable Orville Frenette

BETWEEN:

JAHANSHASH ANBOUHI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review of a decision rendered by a visa officer (officer) in Damascus, Syria, dated March 1, 2007, rejecting the applicant's application for permanent residence in Canada and finding the applicant inadmissible pursuant to section 40(1)(a) and 40(2)(a) of the *Immigration and Refugee Protection Act* (IRPA).

I. Background facts

[2] The applicant is a citizen of Iran. She applied for permanent residence in Canada under the Investor Category, along with her husband and her son, Hessam Pedram, and her daughter-in-law, Mojgan Hosseinpoor.

[3] The applicant is a chemist who owns and is chair of a company in Iran and is interested in investing money in the Province of Quebec. Her son and daughter-in-law are university educated, and each possesses a bachelor's degree.

[4] The applicant presented her application on June 29, 2005 in Damascus, Syria. She was assisted by an immigration consultant, M. Shahid & Associates, situated in Damascus, Syria.

[5] In her application, she declared that her son Hessam Pedram had married Mojgan Hosseinpoor on February 18, 2001 and presented a document to prove this fact.

[6] The officer decided to have this document investigated because Hessam Pedram had declared that he was not married in an application he made for a student visa in 2004. The document was investigated and questions arose as to the authenticity of the document because, amongst other reasons, no record of the marriage could be found.

[7] On January 25, 2007, the officer wrote to the applicant and outlined the problem. The applicant was given 30 days to address it.

[8] On February 6, 2007, the consultant asked the officer why the document of marriage was considered false and requested an unspecified amount of time to solve the problem. It was justified on the basis that the letter had only been received on the 5th. The officer replied by fax on February 8 it was because of the applicant's son's declaration and the fact that the marriage was not registered. Further, the officer denied the request for an extension.

[9] The court documents reveal that the couple resided in the applicant's home and began intimate relations as of February 18, 2001.

[10] In the correspondence that followed, Hessam Pedram explained that he declared that he was not married in 2004 because of Iranian customs; the parties were only considered engaged until the public celebration was held in 2004, when an official marriage was celebrated and registered in the Tehran registry. He also said the 2004 celebration was also held to accommodate a guest who could not attend the 2001 celebration.

[11] The tribunal record (page 204) reveals that Hessam Pedram and Mojgan Hosseinpoor had a new marriage ceremony on February 18, 2007. Verification of the marriage certificate was sent by email to the officer stating that all marriage certificates must bear a number and the region it is issued, which is then registered in the main Tehran office (see p.110 of the tribunal record).

[12] In this case, the marriage certificate of 2004 does not bear either a number or the region where it was issued. However, there is a certified copy of a religious marriage between the parties, dated February 18, 2007 (Certified Tribunal Record (CTR.), p. 204).

[13] On February 20, 2007, the applicant's consultant sent a letter to the officer accompanied by documents (12 pages) to confirm the couple's marriage in 2001.

[14] The applicant also sent a letter with enclosed documents to the officer on February 21, 2007, to explain the marriage and registration in a provincial registry office in 2001, and suggest reasons why the Tehran main office was not aware of this fact. She also offered to fax the original first marriage certificate if necessary (CTR, p.58).

[15] On February 28, 2007, the applicant's consultant sent a letter to the officer accompanied by 35 pages of documents to prove the 2001 marriage was genuine (CTR, p.8). It included a declaration by a marriage registry office in Tehran indicating that there had been a mistake because the notary's certificate indicated that the marriage occurred in 2004, while it was celebrated on February 18, 2001 (CTR, p.11) (this letter was sent on February 28, 2007 to the visa office but was only received on March 4, 2007, i.e. after the decision of March 1, 2007).

II. Decision of the officer

[16] The officer determined that the applicant does not qualify for immigration to Canada on the basis of subsections 40(1)(a) and 40(2)(a) of the IRPA.

[17] The officer stated that the applicant misrepresented the date of marriage of her son. The officer made this determination on the basis that the applicant's son's marriage certificate (dated February 18, 2001) that was submitted with the application had been sent for verification and found to be unregistered in addition to other discrepancies indicating that it was not authentic. Further, in the student application made by the applicant's son in June 2004, he declared himself to be unmarried.

[18] The officer noted that this could have induced errors in the administration of the Act because dependants who were married before the age of 22 may be considered eligible for inclusion in an application for permanent residence.

[19] Therefore, the officer found that the applicant was inadmissible into Canada for two years from the date of the letter. As she was inadmissible, her application was refused.

[20] The reasons also include Computer Assisted Immigration Processing System (CAIPS) notes.

[21] These notes include the information described before. They also indicate that on February 21, 2007, the applicant provided a letter of explanation, a letter from a Notary Public, a letter from the official who wed the couple, a copy of the marriage statement and affidavits from the applicant and her son. The CAIPS notes indicate that the applicant and her son alleged that the marriage was

not consummated until some time after it had occurred, therefore the applicant's son considered himself engaged and not married at the time of the student visa application. The CAIPS notes indicate that the applicant also alleged, in regard to the 2001 certificate, that the couple did marry twice (once in 2001 and once in 2004), because a wedding guest was missing from the first ceremony.

[22] The CAIPS notes indicate that further documents were sent on February 26, 2007, and that these documents contradicted the earlier claims of celibacy as they included a letter from Hessam's wife's gynaecologist that indicated that the couple entered into an intimate relationship on February 18, 2001.

[23] The CAIPS notes indicate that on February 27, 2007, even more documents were received that contradicted the earlier affidavits about the couple's relationship. Further the CAIPS notes also indicate that the issue of the false marriage certificate had not been adequately addressed.

[24] Finally, the applicant's consultant sent a letter on February 28, 2007, to the officer accompanied with documents (35 pages) emanating from the applicant, her son or daughter-in-law or other persons that essentially repeated or affirmed the explanations about the marriage. It was only received by the officer on March 4, 2007, after the decision was rendered.

III. Issue

[25] Only one issue exists.

A. *Did the officer breach procedural fairness by failing to provide sufficient time for the applicant to disabuse the officer's concerns?*

IV. Position of the parties

Applicant's submissions

[26] The applicant submits that the only issue is that a request was made for further time to provide documents that she believed would satisfy the officer, but that such time was not granted. The applicant further suggests that the respondent does not address this issue in its submissions.

[27] The applicant submits that *Tam v. Canada (Minister of Citizenship and Immigration)*, [1995] F.C.J. No. 1784, (1995) 35 Imm. L.R. (2d) 201 at paras. 4 to 6 is similar to the present case. The applicant submits that the fact that documents were provided does not distinguish the present case from *Tam* as more time was required to properly reply; in effect, the officer did not allow reasonable time to provide the information. The applicant suggests that a time frame cannot be reasonable if they are unable to provide all that they would in the time given even if they provided all that they could in that time.

[28] The applicant also argues that the present case cannot be distinguished from *Tam* on the basis of the fact that the misrepresentation was unknown since that implies the applicant would have known the officer's finding before it was given.

Respondent's submissions

[29] The respondent submits that the applicant was given sufficient time to respond to the issues that arose in regard to her application.

[30] The respondent also submits that the assertion that the refusal of an additional extension of time to respond impinged on the applicant's ability to fully address the issues raised is without merit. The respondent points out that the CAIPS notes reveal that the applicant's consultant submitted the following in response to the issues surrounding her application: (a) a letter of explanation from the applicant; (b) a letter from Notary Public No. 24; (c) a letter from officiant at the applicant's son's wedding; (d) a copy of the marriage statement; (e) an affidavit from Hessam; and (f) an affidavit from the applicant. The respondent also notes that in Hessam's affidavit he claims he was celibate at the time of his 2004 application despite his 2001 marriage, but that this contradicts the letter of his wife's gynaecologist which states that the couple entered into an intimate relationship on February 18, 2001. The respondent further notes that the claim of two (or three) marriages for Hessam and his wife did not address the fraudulent nature of the marriage certificate, which had no registry number and did not include the name of the district where it was issued.

[31] Based on the above, the respondent submits that the applicant had a full and fair opportunity to explain the misrepresentation. The respondent also submits that the explanation and evidence were found to be not credible and outright contradictory.

[32] The respondent differentiates the present case from *Tam* on the basis that: (1) the applicant had a first extension of time; (2) the applicant in the present case, and her consultant did submit supporting documents; (3) the applicant knew of her son's marital status unlike in Tam where the medical examination revealed the condition for the first time.

[33] The respondent submits that the applicant had ample time to go to a registry office in Tehran with the marriage certificate and have it registered or at least authenticated. Instead of doing that, the applicant obtained a certificate confirming the date of the marriage involved from a Tehran lawyer on February 18, 2007, wrote an opinion on the subject (CTR, p.13).

V. Analysis

Standard of review

[34] The applicant suggests the standard of review of correctness as this is a matter of procedural fairness.

[35] When a statute delegates power to an administrative decision maker, the reviewing judge must began by determining the standard of review. However, a distinction must be made between the standard of review to be applied to the ultimate decision of an administrative decision maker as opposed to the procedural framework in which the decision is made.

[36] When dealing with an allegation of denial of natural justice or procedural fairness, a court is not obliged to engage in an assessment of the appropriate standard of review.

Analysis

[37] The content of the duty of fairness will vary depending on the facts of each case: *Ha v. Canada (Minister of Citizenship and Immigration)*, 2004 FCA 49, [2004] F.C.J. No. 174.

[38] In *Khwaja v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 522, [2006] F.C.J. No. 703 at para. 17, Justice Blanchard stated that the duty of fairness "requires that an applicant be given notice of the particular concerns of the visa officer and be granted a reasonable opportunity to respond by way of producing evidence to refute those concerns." (see also *John v. Canada (Minister of Citizenship and Immigration)*, 2003 FCT 257, [2003] F.C.J. No. 350, and *Haghighi v. Canada (Minister of Citizenship and Immigration)*,[2000] 4 F.C. 407, [2000] F.C.J. No. 854 (F.C.A.)).

[39] In this case, the issue is whether or not the time provided (30 days from January 25 plus 4 since the decision was rendered on March 1, 2007) was a reasonable opportunity to respond to those concerns.

[40] In *Gakar v. Canada (Minister of Citizenship and Immigration)*, [2000] F.C.J. No. 661, (2000), 189 F.T.R. 306, Justice Teitelbaum quashed a decision of a visa officer refusing a request for an additional 30 days on top of the 30 days already given to respond. It is important to note that the applicant in that case provided reasons for why the required documentation could not be obtained within the time granted. This point was raised in *Ching-Chu v. Canada (Minister of*

Citizenship and Immigration), [2007] F.C.J. No. 1117 where the court determined that there was no violation of natural justice, and *Gakar* was found to be distinguishable on this, and other, basis.

[41] As noted by Justice Muldoon in *Prasad v. Canada (Minister of Citizenship and Immigration)*, [1996] F.C.J. No. 453, (1996), 34 Imm. L.R. (2d) 91 (F.C.T.D.) at paragraph 7:

> The onus is on the applicant to satisfy the visa officer fully of all the positive ingredients in the applicant's application. It is not for the visa officer to wait and to offer the applicant a second, or several opportunities to satisfy the visa officer on necessary points which the applicant may have overlooked. [Emphasis added]

[42] In *Tam*, at para. 5, Madam Justice Simpson stated the following:

> In my view, having offered the applicant an opportunity to respond, the Officer had an obligation to allow reasonable time for that purpose. Given that the medical condition was a new discovery and that the application was already four years old and that the applicant's solicitor was located near Toronto while the applicant was in Hong Kong, Mr. Lee's request for approximately two additional weeks to submit material was reasonable in the circumstances. In my view, it was unfair of the Officer to decide the case without granting the extra time and without even acknowledging the request for additional time.

[43] In that case, the applicant requested only two more weeks to respond. In the present case, the applicant has made an open-ended request for time. Further, in *Tam* the officer did not even acknowledge the request for additional time.

[44] In the present circumstances, it appears that the applicant had a reasonable opportunity to respond by way of producing evidence to refute the concerns raised, i.e. produce a valid or certified copy of the marriage from a registry office in Tehran.

[45] The applicant based her request for more time on the claim that the letter had been received slightly over a week late, thus providing her with less than the 30 days offered to respond. While this is problematic, the applicant did not say why this lost time made it so she could not properly respond. She did not explain how much more time she required, what additional evidence she was seeking to acquire, or why that evidence could not be provided within the days remaining.

[46] In fact, the applicant did send in a significant amount of material during the time provided. The evidence, while of questionable value, goes to both issues raised by the officer. Unfortunately for the applicant, there were a number of documents in those submissions that that the officer claimed contradicted each other. Further, the applicant was able to ultimately provide explanations for both issues raised by the officer. Those explanations were simply insufficient to convince the officer of the applicant’s claims.

[47] The only hint of what else the applicant might have sought came in those additional submissions where the applicant seems to suggest that she is undertaking to find something out about why the marriage certificate was not registered. There is the suggestion that the matter is being pursued and that documents will be presented to the officer at some point, but no further extension is requested and no timeline is provided.

[48] The first is a letter on page 11 of the Certified Tribunal Record purportedly from “State Organization of Documents & Real Estates Registration Marriage Registry No. 24 of Tehran”. However, it appears to be an affidavit related to a request to change the date of their 2004 marriage certificate to 2001, rather than a document relating to the knowledge of someone at a registry about the 2001 marriage certificate itself.

[49] The second document, at page 13 of the Certified Tribunal Record, is simply a letter from a lawyer. He states that couple were married in 2001 and simply had their marriage entered by Marriage Registry No. 24 (Contract No. 10028) entered later on.

[50] Taken together, these letters also seem to contradict the applicant’s earlier statements about registration problems. Instead, the applicant now seems to be trying to use the changed date on the 2004 marriage certificate as if it is evidence of the 2001 marriage.

[51] Therefore, it appears that the applicant did provide some evidence as to the fraudulent marriage certificate, but she could not successfully explain the marriages of 2001 and 2004 (and now the marriage of February 18, 2007 and registered the same day).

[52] Had the request simply been an extension for 10 or so more days to make up for the slow mail service and because those 10 days were necessary to gather certain documents, such a request may have been reasonable. However, what the applicant appears to have requested here is a finding

that it was reasonable in the circumstances to grant an indefinite extension until the applicant was satisfied with what she had assembled. Further, as noted above, the applicant had the opportunity to provide both evidence an explanation on the issues surrounding the date of her son's marriage. The applicant took advantage of the opportunity and has not indicated further why she needs more time to respond nor how much more time she will require.

[53] A delay of 30 days to produce a document was held to be a reasonable time limit and did not breach the rules of national justice, see *Fargoodarzi v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 90, [2008] F.C.J. No. 133 at para. 19. The same application determines the result of the present case.

[54] I must conclude that the situation does not reveal any reviewable error on the part of the officer.

[55] Therefore, this application should be dismissed. No question is to be certified.

JUDGMENT

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

"Orville Frenette"
Deputy Judge

FEDERAL COURT

SOLICITORS OF RECORD

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