Date: 20080530

Docket: IMM-4950-07

Citation: 2008 FC 688

Ottawa, Ontario, May 30, 2008

PRESENT: The Honourable Madam Justice Tremblay-Lamer

BETWEEN:

Ayam NASSIMA

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for leave for judicial review pursuant to section 72 of the *Immigration and Refugee Protection Act* (the Act) of a decision rendered on September 20, 2007 by a visa officer of the Canadian High Commission in Islamabad, Pakistan in which the applicant's application for a permanent resident visa in Canada as a member of the country of asylum class (a subcategory of the Humanitarian-protected Persons Abroad class) was denied.

[2] The applicant, a citizen of Afghanistan, and her 5 dependent children, made an application for permanent resident visas on the basis that they are members of the country of asylum class.

[3] The applicant claims that due to the Taliban, she left Afghanistan with her family in 1997 to live as a refugee in Peshawar, Pakistan. Two years later, her husband returned to Afghanistan to sell his business and has been missing since that time.

[4] On September 12, 2007, the applicant was interviewed by a visa officer.

[5] On September 20, 2007, the visa officer denied her application.

[6] In his decision the officer states that after carefully assessing the information on file as well as that provided at the interview, he could not be satisfied that the applicant was entirely truthful and honest at the interview.

[7] The officer was not satisfied that her story was credible as there were many discrepancies between the applicant and her son's stories, especially as relates to where she was living and what she was doing in Pakistan. The officer was not satisfied that she was living in Peshawar, and therefore could not be satisfied that she was not living in Afghanistan. The officer further indicated that the applicant submitted fraudulent documents at the interview. The applicant was given an opportunity to identify these at the start of the interview but did not do so. Although this was not a basis for refusal in this type of case, failing to acknowledge that she had submitted fraudulent documents further damaged the applicant's credibility.

STANDARD OF REVIEW

[8] Pursuant to *Dunsmuir v. New Brunswick*, 2008 SCC 9, in determining the applicable standard of review, reasonableness or correctness, the first step involves ascertaining whether the jurisprudence has already determined in a satisfactory manner the degree of defence to be accorded to a particular category of question. In the context of determining whether applicants meet the requirements of the Convention Refugee Abroad or Humanitarian-protected Persons Abroad classes, in *Khwaja v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 522, [2006] F.C.J. No. 703 (QL), at para. 23, my colleague Justice Edmond Blanchard held that findings of fact are clearly within the purview of a visa officer's responsibilities under subsection 11(1) of the Act and are to be reviewed on a standard of patent unreasonableness.

[9] Given the highly factual nature of questions of credibility, and the prior jurisprudence of this Court, I am of the view that the applicable standard of review is that of reasonableness (*Dunsmuir*, above, at para. 51). Thus, the analysis of the officer's decision will be concerned with "the existence of justification, transparency and intelligibility within the decision-making process [and also with] […] whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir*, above, at para. 47).

[10] The second issue raised by the applicant, the opportunity to respond to the officer's concerns, is one of procedural fairness (see *Rukmangathan v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 284, [2004] F.C.J. No. 317 (QL), at para. 22). Pursuant to *Canadian Union*

of Public Employees (C.U.P.E.) v. Ontario (Minister of Labour), [2003] 1 S.C.R. 539, [2003] S.C.J. No. 28 (QL), at para. 100, "it is for the courts, not the Minister, to provide the legal answer to procedural fairness questions." Thus, questions of procedural fairness are not subject to the standard of review.

PRELIMINARY MATTER

[11] The respondent emphasizes that the applicant did not file her own affidavit in support of the present application for leave, but rather that of her nephew. While the jurisprudence of this Court indicates that applications not supported by affidavits based on personal knowledge do not automatically result in the dismissal of the application, I note that in these circumstances "an error asserted by an applicant must appear on the face of the record" (*Turcinovica v. Canada (Minister of Citizenship and Immigration)*, 2002 FCT 164, [2002] F.C.J. No. 216 (QL), at paras. 12-14; *Moldeveanu v. Canada (Minister of Citizenship and Immigration)*, [1999] F.C.J. No. 55 (QL), at para. 15; see *Sarmis v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 110, [2004] F.C.J. No. 109 (QL), at para. 10).

ANALYSIS

[12] The Act establishes that before entering Canada, and being issued a visa or any other document required by the regulations, a foreign national must satisfy a visa officer that he meets the requirements of the Act (s.11(1)). Thus, in the context of applications for permanent resident visas

as members of the country of asylum class (s. 147 of the *Immigration and Refugee Protection Regulation*s, SOR/2002-227 (the Regulations)), applicants bear the burden of proof to demonstrate that they are members of this class in that they are "outside their country of nationality" and "have been and continue to be, seriously and personally affected by civil war, armed conflict or massive violation of human rights" (*Salimi v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 872, [2007] F.C.J. No. 1126 (QL), at para. 7). This test is conjunctive and the applicant must satisfy each of the conditions.

[13] The officer's decision letter makes reference to inconsistencies between the applicant's and her son's stories, where they are living, and what they are doing in Pakistan, which resulted in the officer not being satisfied that they are living in Peshawar and thus that they are not living in Afghanistan.

[14] With respect to the discrepancies between the applicant's and her son's stories, the officer's affidavit and the CAIPS notes indicate that the main inconsistency between the stories was that the applicant had indicated that her children weave carpet at home, while her son indicated that he worked for a carpet company 15 minutes away.

[15] Other reasons for refusing the application stem from the applicant's and her son's inability to provide information to the officer capable of satisfying him that she did indeed live in Peshawar. For example, neither the son nor the applicant were able to provide the phone number of a neighbour's home where they receive phone calls, they simply referred to the number that was in

the application. Further, while she knew the location, the applicant did not know the address of the house where she and her children were living and had no documents bearing her name to prove that she lived there. She was also unable to provide the phone number of the home where she was working. The officer also indicated that the report cards that were submitted appeared to be fraudulent given that they did not have a phone number on them. With regard to these documents, I note that their apparent fraudulent status was not determinative of the decision, but rather constituted an additional factor impugning the applicant's credibility.

[16] After reviewing the CAIPS notes and decision letter, I am unable to conclude that the officer's decision was unreasonable. The applicant bore the burden of satisfying the decision maker that she was indeed living and working in Pakistan, which she was unable to do.

[17] The applicant then submits that she was not afforded an opportunity to respond to the officer's concerns. In support of this contention, the applicant cites a recent decision of my colleague Justice Yves de Montigny in *Belkacem c. Canada (Ministre de la Citoyenneté et de l'Immigration*), 2008 CF 375. However, I note that in that case Justice de Montigny concluded that the visa officer erred by not allowing the applicant to clarify certain unclear areas that remained in her file to the extent that they could have resulted from miscommunication at the interview. This is not the case in the present instance.

[18] The jurisprudence establishes that where concerns arise directly from the requirements of the Act and Regulations, visa officers are not required to make these concerns known to the

applicant (*Hassani v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 1283, [2006] F.C.J. No. 1597 (QL), at para. 24; *Rukmangathan*, above, at para. 23; *Yu v. Canada (Minister of Employment and Immigration)* (1990), 36 F.T.R. 296, *Ali v. Canada (Minister of Citizenship and Immigration*) (1998), 151 F.T.R. 1; *Bakhtiania v. Canada (Minister of Citizenship and Immigration)*, [1999] F.C.J. No. 1023 (QL)). Indeed this was also noted in *Liu v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 1025, [2006] F.C.J. No. 1289 (QL), at para. 16, by Justice de Montigny, who, relying on the jurisprudence of this Court, held that:

> The officer was under no obligation to alert Mr. Liu of these concerns since they were about matters that arose directly from Mr. Liu's own evidence and from the requirements of the Act and of the Regulations. An applicant's failure to provide adequate, sufficient or credible proof with respect to his visa application does not trigger a duty to inform the applicant in order for him to submit further proof to address the finding of the officer with respect to the inadequacy, deficiency or lack of credibility . . .

I note that the present case is not one in which extrinsic evidence was relied upon and thus where fairness would require that an applicant be given an opportunity to respond to that evidence (*Muliadi v. Canada (Minister of Employment and Immigration)*, [1986] 2 F.C. 205, at para. 17).

[19] Accordingly, I am satisfied that the contested decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law.

[20] In light of the foregoing, I am unable to conclude that the officer committed any reviewable error and thus this application for judicial review is dismissed.

JUDGMENT

[21] **THIS COURT ORDERS that** the application for judicial review is dismissed.

"Danièle Tremblay-Lamer"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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