Date: 20081021

Docket: IMM-1363-08

Citation: 2008 FC 1184

Ottawa, Ontario, October 21, 2008

PRESENT: The Honourable Mr. Justice Martineau

BETWEEN:

TESSIE CAINHOG CAGAMPANG

Applicant

and

THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review under section 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the Act) of the exclusion order issued by Randy Firlotte, a delegate of the Minister of Citizenship and Immigration (the Minister's delegate) on March 9, 2008.

[2] The applicant, Tessie Cainhog Cagampang, is a citizen of the Philippines. On March 2, 2008, she arrived in Canada seeking entry as a temporary resident to work under the Live-In Caregiver Program. During the examination at the first level of immigration, the Canada Border Services Agency (CBSA) officer who examined the applicant identified concerns about the validity

of her employment offer. Thus, the applicant's examination was furthered until March 5, 2008 so that clarifications and additional information could be obtained. Consequently, the applicant's prospective employer, Ms. Lorraine Lowe, finally confessed to the CBSA officer not being willing, at that time, to employ the applicant. As a result, the CBSA officer prepared a report on inadmissibility pursuant to section 44 of the Act, indicating that the applicant was inadmissible to Canada, as she had failed to satisfy the requirements of the Act and applicable regulations with regards to the entry to Canada of foreign nationals. On March 9, 2008, the Minister's delegate reviewed the report and issued the exclusion order against the applicant which is now the object of the present application.

[3] The applicant alleges that she obtained a work permit prior to travelling to Canada. Counsel refers to the Immigration Manuals, namely IP 4, *Processing Live-in Caregivers in Canada* and OP 14, *Processing Applicants for the Live-in Caregiver Program*, whereby visa officers are responsible for the initial selection process and issuance of work permits to live-in caregivers. Prior to entering into Canada, Service Canada had issued a positive labour market opinion (LMO) which had been submitted by the applicant to the visa post in Hong Kong, together with the applicant's offer of employment signed by her prospective employer, Ms. Lowe. Since the application had been accepted by the Hong Kong office who issued a temporary visa, the applicant submits that the immigration officer at the port of entry had in turn the legal obligation to issue the work permit upon the arrival of the applicant in Canada. Therefore, the applicant asserts that the immigration officer exceeded her jurisdiction by calling the prospective employer directly and asking the latter to come to the office with a number of documents. As a result of the illegal actions, Ms. Lowe was no longer

interested in employing the applicant. Accordingly, pursuant to the applicant's submissions, the exclusion order issued against the applicant is not valid in law.

[4] I have determined, as past decisions of this Court suggest, that the standard of review of a Minister's delegate's findings, except where they concern pure questions of law, is now that of reasonableness: *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] S.C.J. No. 9 (QL). In the case at bar, the applicant's admissibility to Canada was to be assessed by the officer under the combined effect of relevant provisions of the Act and the *Immigration and Refugee Protection Regulations*, SOR/2002-227 (the Regulations). This is a mixed question of fact and law. In particular, the Minister's delegate had determined that: "Regulation 200(3)(d) and regulation 112(e) are very clear in that a foreign national may not be issued a work permit unless they have an employment contract with their future employer. It is clear that there is no employer in this case". For the reasons below, I see no legal motive to interfere with this conclusion which is consistent with the applicable provisions of the Act and the Regulations, and is based on the evidence on record and is otherwise reasonable in the circumstances.

[5] The arguments made by the applicant are based on a misapprehension of the applicable legal process and the nature of the actions taken by the visa office in Hong Kong. Contrary to the applicant's submissions, the document issued to the applicant on September 6, 2007 by the Canadian Consulate General in Hong Kong, was not a working permit but a temporary resident visa which is solely a travel document.

[6] As stated in the "Letter of Introduction" provided to the applicant by the visa office, she was to be issued a work permit only at the port of entry, provided that she met the requirements for admission into Canada:

> Your application for work permit has been approved; you may now travel to Canada. You must have a valid passport or travel document. Please show this letter and confirmation of job offer to the Canada Customs officer when you arrive in Canada. He or she will direct you to a Canada Immigration officer who will ensure that you meet the requirements for admission to Canada and issue a work permit to you. (Bold emphasis in the original)

[7] This is also clearly stated at the CIC web site:

> After you pass the medical examination and security screening and meet all other requirements, you will receive a letter of approval. The work permit will be issued only upon your arrival in Canada. (Emphasis added)
>
> The Live-In Caregiver Program: After applying
> http://www.cic.gc.ca/english/work/caregivers/apply-after.asp

[8] Since the port of entry's responsibilities have been transferred over to the CBSA in October 2004, it is the CBSA who issues work permits at the port of entry. There is no CIC presence at the port of entry now that the CBSA has been created. Thus, CBSA, which is responsible for the port of entry, had the legal power, prior to issuing a work permit, to verify if there was still a valid offer of employment upon the arrival of the applicant in Canada, and in case of doubt, to contact the prospective employer and ask for clarifications and relevant documentation, as the case may be.

[9] The jurisdictional argument made by the applicant in this instance completely ignores the applicant's obligation upon seeking admission at the port of entry. Subsection 18 (1) of the Act required the applicant to present herself for examination:

18. (1) Every person seeking to enter Canada must appear for an examination to determine whether that person has a right to enter Canada or is or may become authorized to enter and remain in Canada.	**18.** (1) Quiconque cherche à entrer au Canada est tenu de se soumettre au contrôle visant à déterminer s'il a le droit d'y entrer ou s'il est autorisé, ou peut l'être, à y entrer et à y séjourner.

[10] Section 8 of the Regulations required the applicant to have a work permit to enter into Canada to work. For this she had to have a valid employment contract as per paragraph 112 (e) of the Regulations. Paragraph 20(1) (b) of the Act also required her to have a temporary resident permit to enter Canada.

[11] Indeed, paragraph 180 (b) of the Regulations, placed a positive burden on the applicant to demonstrate she met the requirements at time of examination on entry into Canada:

180. A foreign national is not authorized to enter and remain in Canada as a temporary resident unless, following an examination, it is established that the foreign national and their accompanying family members:	**180.** L'étranger n'est pas autorisé à entrer au Canada et à y séjourner comme résident temporaire à moins que, à l'issue d'un contrôle, les éléments suivants ne soient établis à son égard ainsi qu'à celui des membres de sa famille qui l'accompagnent :

(*a*) met the requirements for issuance of their temporary resident visa at the time it was issued; and	*a*) ils satisfaisaient, à la délivrance du visa de résident temporaire, aux exigences préalables à celle-ci;
(*b*) continue to meet these requirements at the time of the examination on entry into Canada	*b*) ils satisfont toujours à ces exigences lors de leur contrôle d'arrivée.

(emphasis added)

[12] Thus, upon the applicant's arrival to Canada, and pursuant to the applicant demonstrating that she was meeting the requirements set forth in the relevant provisions of the Act and the Regulations, a work permit was to be issued at the port of entry for her admission to Canada. However, since Ms. Lowe was no longer interested in the applicant's services when the applicant attended the port of entry examination, the loss of the applicant's employment contract triggered the application of paragraph 200(3)(d) of the Regulations which prohibits the issuance of a work permit to a foreign national if the foreign national seeks to enter Canada as a live-in caregiver without a valid employment contract with her future employer. As the applicant was not issued a work permit, her request for admission to Canada became contrary to section 8 of the Regulations and paragraph 20(1)(b) of the Act which ultimately resulted in the issuance of the exclusion order.

[13] In view of the above, the present application for judicial review must fail. Counsel for the applicant agrees that this case does not raise a question of general importance for certification, and none is stated.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that the present application for judicial review be dismissed. No question is certified.

"Luc Martineau"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-1363-08
STYLE OF CAUSE:	TESSIE CAINHOG CAGAMPANG v. MPSEP
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	October 9, 2008
REASONS FOR JUDGMENT AND JUDGMENT:	MARTINEAU J.
DATED:	October 21, 2008

APPEARANCES:

Mr. Matthew Jeffery 416-944-3267	FOR THE APPLICANT
Mr. Tamrat Gebeyehu 416-973-9665	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Mr. Matthew Jeffery Barrister and Solicitor Toronto, Ontario	FOR THE APPLICANT
John H. Sims Deputy Attorney General of Canada Ontario Regional Office	FOR THE RESPONDENT