Date: 20081021

Docket: IMM-628-08

Citation: 2008 FC 1186

Ottawa, Ontario, October 21, 2008

PRESENT: The Honourable Mr. Justice Martineau

BETWEEN:

RENATA RUIZ LORANCA and
ALEJANDRO GONZALEZ RIVA

Applicants

and

THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

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 a decision made by Lourdes Hernandez, visa officer of the Canadian Embassy in Mexico on December 11, 2007 (the visa officer), wherein the applicants' application for permanent resident visa was denied (the impugned decision).

[2] The principal applicant, Renata Ruiz Loranca (Ms. Ruiz Loranca), is a Mexican national who came to Canada in April 2004 under a work permit as an accountant. The applicant, Alejandro Gonzalez Riva (Mr. Gonzalez Riva), is also a Mexican national who came to Canada on April 10, 2000 and claimed Convention refugee status on September 15, 2000.

[3] On August 21, 2004, the applicants were married. In the meantime, on June 3, 2003, the Refugee Protection Division of the Immigration and Refugee Board (the Board) denied Mr. Gonzalez Riva's refugee claim. Subsequently, on September 5, 2003, the applicant's application for leave and judicial review of the Board's decision was rejected. On May 25, 2004, Mr. Gonzalez Riva applied for a Pre-Removal Risk Assessment (PRRA). On November 17, 2004, Mr. Gonzalez Riva's PRRA application was denied. Consequently, he was given a Direction to report for removal from Canada. On December 8, 2004, he departed from Canada as directed. He has not returned to Canada.

[4] On May 10, 2005, the applicants applied for permanent resident visas on the basis of Ms. Ruiz Loranca being in the federal skilled worker class as an accountant and Mr. Gonzalez Riva being her dependant. In August 2006, Ms. Ruiz Loranca was determined to have sufficient points to be awarded a permanent resident visa. On September 12, 2007, Mr. Gonzalez Riva applied for an Authorization to Return to Canada (ARC). Said application was denied on December 10, 2007. On December 11, 2007 the visa officer denied the applicants' permanent resident visa application due to their being both found inadmissible.

[5] Based on past jurisprudence of this Court, I have determined that the standard of review of a decision of a visa officer is that of reasonableness, except with pure questions of law: *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] S.C.J. No. 9 (QL). In the case at bar, the impugned decision must be allowed to stand, as it is based upon the evidence on record and is not contrary to law, and

is otherwise reasonable in the circumstances. Moreover, the visa officer did not breach the principles of procedure fairness as alleged by the applicants.

[6] First, contrary to the applicants' counsel's able submissions, I find that the visa officer could legally determine that the applicants were inadmissible to Canada by reason of Mr. Gonzalez Riva's need to apply for an authorization to enter Canada. On January 9, 2001, a conditional departure order was issued against Mr. Gonzalez Riva due to him being found eligible to make a claim for Convention Refugee status. Pursuant to sections 224(2) and 240(1) of the *Immigration and Refugee Protection Regulations,* SOR/2002-227 (the Regulations) which came into force on June 28, 2002, the conditional departure order became a deportation order 30 days after the removal order became enforceable (see *Revich v. Canada (Minister of Citizenship and Immigration),* [2005] F.C.J. No. 1057, 2005 FC 852).

[7] Mr. Gonzalez Ruiz's application for leave and judicial review of the Board's decision was rejected on September 5, 2003. Thus, the removal order that was issued against Mr. Gonzalez Riva became a deportation order on or about October 6, 2003. Thirty days after, the removal order became enforceable. In order to comply with the requirements of the Act, Mr. Gonzalez Riva was not allowed to return to Canada unless authorized by the Minister or its delegate: subsection 52(1) of the Act. In turn, in view of Mr. Gonzalez Riva's inadmissibility, Ms. Ruiz Loranca was also inadmissible: paragraphs 41(a) and 42 (a) of the Act.

[8] Second, the applicants also take issue with the rationale used to reject Mr. Gonzalez Riva's application for ARC. However, the legality of the decision concerning the ARC application is not actually before this Court. The applicants are not entitled to collaterally attack the Minister's delegate decision in submitting that the visa officer was entitled to discard same (notably on the ground that the Minister's delegate would have breached procedural fairness). The visa officer simply did not have legal authority to look behind the ARC decision and assess the rationale used in rendering that decision.

[9] Third, I also find that the visa officer did not breach the principles of procedural fairness and I dismiss the allegations made in this regard by the applicants. The visa officer was not obliged to provide to the applicants an opportunity to formulate a request under section 25 of the Act that they be exempted from the application of the requirements of the Act on humanitarian and compassionate (H & C) grounds. No such requirement exists under the Act or the Regulations, and prior jurisprudence from this Court has already established that the visa officer does not have a legal duty to inform an applicant for permanent residence of all other possible avenues. That said, I am cognizant of the fact that in some cases, an officer may consider it appropriate to grant an exemption on his or her own initiative, but the failure to do so would not amount to a reviewable error. (*Rani v. Canada (Minister of Citizenship and Immigration),* [2002] F.C.J. No. 1477, at paras. 36 to 40; *Mustafa v. Canada (Minister of Citizenship and Immigration)*, [2006] F.C.J. No. 1377 at paras. 13 to 16, 2006 FC 1092).

[10] Fourth, the applicants are not deprived of exercising any administration recourse. For example, there can be situations where the granting of a temporary resident permit (TRP) may be appropriate even when an H &C application has not been made. In this regard, the *Interim Instructions to CIC officers concerning the examination of H & C applications (in Canada)*, Citizenship and Immigration Canada, Operational Bulletin 021-June 22, 2006 provides, at paragraph 7, that “[i]f a member of the applicant’s family, who is included in the application for permanent residence, cannot be granted permanent residence along with his or her family members due to an inadmissibility, the delegated authority may decide to issue a TRP to that individual, while granting permanent residence to the principal applicant and other family members.” Perhaps this may prove to be a reasonable alternative in this instance. However, as stated by the respondent’s counsel at the hearing, “if you do not ask, you do not get”. Consequently, failing the establishment of any reviewable error, this Court should refrain from intervening with the legal exercise of the visa officer’s powers under the Act and the Regulations.

[11] In view of the above, the present application for judicial review must fail. Counsel agree that this case does not raise any questions of general importance.

JUDGMENT

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

"Luc Martineau"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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