

Date: 20090916

Docket: IMM-97-09

Citation: 2009 FC 925

Calgary, Alberta, September 16, 2009

PRESENT: The Honourable Mr. Justice Barnes

BETWEEN:

ISSAM AMRI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

ORDER AND REASONS FOR ORDER

UPON hearing this application for judicial review of a decision of a Visa Officer (Officer) dated November 18, 2008 wherein the Applicant's request for a temporary work visa was denied;

AND UPON reviewing the materials filed and upon hearing counsel for the parties at Calgary, Alberta on September 15, 2009;

AND UPON reserving decision;

AND UPON concluding that this application be dismissed for the following reasons:

[1] The evidence indicates that Mr. Amri was the subject of a positive Labour Market Opinion issued by Service Canada. This was the first step in obtaining a temporary work permit which would have allowed him to work for his brother as a commercial cleaner. That Opinion indicated that the position required no formal education or English language skills.

[2] I agree with Mr. Amri's counsel that the Officer's reliance on a lack of English and the absence of prior related work experience are somewhat disingenuous. This was, after all, a cleaning position which the employer presumably had difficulty filling with a Canadian employee. The expectation that this type of work should require previous experience or minimal language skills is inconsistent with the Labour Market Opinion and seems to me to be perverse.

[3] The problem for Mr. Amri is that the Officer declined a work permit for a second reason, that being a concern that Mr. Amri would not return to Tunisia when his authorization expired. That part of the decision was based on evidence elicited during an interview indicating that Mr. Amri had insufficient ties to Tunisia to motivate his return. He was single with no dependants and

he worked on the family farm for no income. He had limited education. He also had no savings and no assets in Tunisia. The Officer fairly described Mr. Amri's economic situation at home as "precarious". Mr. Amri's counsel argued that the Officer made no mention of Mr. Amri's Tunisian fiancé. While that is true I am not satisfied that this was an issue of such significance that it required comment or could have led to a different outcome. Mr. Amri was also leaving his parents and several siblings behind for at least two years. If the Officer did not accept those family connections to be sufficient to ensure a return to Tunisia it is safe to assume that the presence of a fiancé would not have altered that conclusion.

[4] The decision taken here was highly fact-dependant and it involved the conferral of a discretionary privilege. It involved, therefore, the exercise of judgment for which considerable deference is owed. As stated in *Canada v. Khosa*, [2009] S.C.J. No. 12, 2009 S.C.C. 12 it is not the role of the Court on judicial review to substitute its views of the evidence or to select a "preferable outcome", provided that the decision falls within a range of possible, acceptable outcomes which are defensible in fact and law. There is nothing about the Officer's conclusion that he was not satisfied that Mr. Amri would leave Canada after two years that falls outside of these legal parameters and the decision must therefore be upheld.

[5] Neither party proposed a certified question and no issue of general importance arises on this record.

ORDER

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

“R. L. Barnes”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-97-09

STYLE OF CAUSE: ISSAM AMRI
and
THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: Calgary, Alberta

DATE OF HEARING: September 15, 2009

**ORDER AND REASONS
FOR JUDGMENT BY:** Mr. Justice Barnes

DATED: September 16, 2009

APPEARANCES:

Ram Sankaran FOR THE APPLICANT

Rick Garvin FOR THE RESPONDENT

SOLICITORS OF RECORD:

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Deputy Attorney General of Canada FOR THE RESPONDENT