Date: 20100204

Docket: IMM-863-09
IMM-864-09

Citation: 2010 FC 115

Ottawa, Ontario, February 4, 2010

PRESENT: The Honourable Mr. Justice Mosley

BETWEEN:

ZAHARAH SANIF,
MUSA AHMAD
and
KHAIRUL ANUAR MUSA

Applicants

and

THE MINISTER OF PUBLIC SAFETY
AND
EMERGENCY PREPAREDNESS

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondents

REASONS FOR JUDGMENT AND JUDGMENT

[1] These reasons for judgment and judgment refer to two applications for judicial review pursuant to section 72 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (IRPA) which were heard together.

[2] The application in Court file IMM-864-09 seeks judicial review of a decision made by Immigration Officer Chong of the Canadian High Commission in Singapore on December 1, 2008, refusing an application for permanent residence in Canada under the Economic Class, Skilled Worker, on the ground that the principal applicant, Ms. Zaharah Sanif, had not complied with subsections 16(1) and 11(1) of IRPA.

[3] The second application for judicial review in Court File IMM-863-09 refers to the February 20, 2009 decision of Minister's Delegate Blais issuing Exclusion Orders to the applicants pursuant to paragraphs 41(a) and 20(1)(a) of the IRPA and section 6 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 (IRPR).

[4] For the reasons that follow, the two applications are dismissed.

Background

[5] The principal applicant, Ms. Zaharah Sanif, applied for permanent residence under the Federal Skilled Worker Class in January 2008 on the basis of an offer of employment to Ms. Sanif from a Scarborough, Ontario firm called DPI Media Group Ltd., and a positive arranged employment opinion (AEO) issued by Service Canada. Ms. Sanif and her husband have three dependent children: one son and two daughters. All were included in the application. The application was approved and the applicants were issued permanent resident visas on November 3, 2008.

[6] On or about November 13, 2008, Mr. Chong, the immigration officer who was handling the file, was told by a colleague in Kuala Lumpur that Ms. Sanif's prospective employer in Canada was linked to other visa applications which were considered questionable. An applicant in one of these other cases had stated to a visa officer in Kuala Lumpur that he had paid an agent about twenty thousand Canadian dollars for a fraudulent job offer. Other cases involving that agent were under investigation.

[7] On November 26 or 27, 2008 (the evidence on the date conflicts but it is more likely to have been the 26th, a Wednesday), Mr. Chong instructed his assistant to ask Ms. Sanif to attend at the High Commission for an interview. The assistant contacted Ms. Sanif by telephone and asked her to come to the High Commission to discuss problems with her visa.

[8] There is no dispute that Ms. Sanif was asked to attend at the High Commission for an interview about the visas. The applicants have filed a transcript of the call from a recording made for business purposes by Ms. Sanif's Singapore employer. From the transcript, it appears the assistant told Ms. Sanif that she needed to come in because there was a problem with the printing of the visas. Ms. Sanif agreed to attend for an interview to discuss the problem. She said that she was unable to go before the end of the week as she was winding up her job and asked that the meeting take place on the following Monday, December 1, 2008. On Thursday, November 27, 2008, Ms. Sanif bought air tickets to Canada for herself, her husband and their son for a December 2, 2008 departure. The daughters, who were in school, were to follow later.

[9] By noon on December 1, 2008, Ms. Sanif had failed to attend at the High Commission. Mr. Chong directed the assistant to contact Ms. Sanif to find out why she had not appeared. The assistant's evidence is that she made calls to the phone numbers listed on the visa application. A call was made to Ms. Sanif's mobile phone and the person who answered indicated that Ms. Sanif was unavailable and ended the call. A second call was then made to Ms. Sanif's husband's phone. The person who answered did not want to pass the phone to Ms. Sanif or her husband. Someone in the background was heard advising the person on the phone and later the call was terminated abruptly.

[10] Because Ms. Sanif did not appear at the High Commission to respond to the concerns about her visa and that unsuccessful attempts had been made to contact her, and based on the possibility that the job offer was not genuine, Mr. Chong reached the conclusion that Ms. Sanif was inadmissible and would not return the visas to the office voluntarily, according to the notes he entered on December 1, 2008 on the Computer Assisted Immigration Processing System (CAIPS). Mr. Chong then proceeded to cancel the visas and entered a lookout on the Field Operations Support System ("FOSS") to alert immigration officers at ports of entry in Canada. He also sent a registered letter to the applicants' Singapore address advising that the visas had been cancelled. The letter was later returned marked "unclaimed".

[11] On December 2, 2008, the applicants boarded a flight for Canada. At the port of entry, they were told that their visas had been cancelled by the High Commission in Singapore. At that time, the applicants chose to withdraw their applications and signed "allowed to leave" forms. They were

granted entry for further examination. The applicants subsequently failed to appear for their scheduled departure the following day as they decided to seek legal counsel.

[12] The applicants returned to the airport for an interview on December 27, 2008, at which time the review was adjourned until January 14, 2009, to allow the applicants' legal counsel time to look into the matter. The review was again adjourned until February 20, 2009, upon request from the applicants' counsel. In the interim, it was confirmed that the job offer from DPI Media Group Inc. remained open and an investigation there on December 16, 2008 failed to produce evidence that Ms. Sanif's job offer was fraudulent. According to the report prepared by CBSA officers, Ms. Sanif had not relied upon the agent believed to have been involved in the fraudulent applications.

[13] During the interview with the Minister's Delegate, Ms. Sanif stated that she had not been told that the visas had been cancelled by the High Commission in Singapore on December 1st, 2008. Acknowledging that someone had called her indicating a problem with the visas and the need for a meeting at the High Commission, Ms. Sanif said that she had dismissed the telephone call as she had not received a letter to confirm the meeting. On prior occasions when she had been called in for an interview, she had received a confirming letter which she would show at the gate to gain entrance to the High Commission.

[14] Ms. Sanif said that she looked at the visas, did not see any problem with them and decided to use them to come to Canada. The Minister's Delegate explained that the situation before him to consider would not have arisen if Ms. Sanif had attended the scheduled interview at the High Commission in Singapore as asked.

[15] During the review, the Minister's Delegate considered the information provided by counsel. However, he considered that since the job offer was considered suspect and given the applicants' actions - that is, their failure to attend the interview at the visa office in Singapore and their decision to decline the opportunity to withdraw their applications by failing to appear for their scheduled departure - no other alternatives were available but to issue removal orders. Accordingly, Exclusion Orders were issued for the applicants on February 20, 2009.

[16] I note that the applicants have applied for Temporary Resident Permits (TRPs) since receiving the Exclusion Orders. Those applications were refused and are the subject of another application for judicial review (IMM-4289-09) that remains pending before the Court.

Decisions Under Review

Refusal of application for permanent residence (IMM-864-09)

[17] The immigration officer's *CAIPS* notes and his letter, both dated December 1, 2008 constitute his reasons for decision:

> *We received info suggesting that the employment offer may be fraudulent. This employer - DPI Media Group - is linked to other questionable cases.*
>
> *As a result we have requested PA to come into our office to clarify questions and to demonstrate that she is not inadmissible to Canada.*
>
> *On 27 Nov 2008 we (MEL on my behalf) contacted PA by phone. MEL spoke with PA) personally and explained that she was required to bring her passports and visas*

to our office. She was asked to come into our office on Friday (28 Nov). She stated that she was busy on Friday and wanted to change the date to Monday (1 Dec 2008). We accommodated.

PA was required to attend an interview at our office at 0900 hours this morning. She failed to show.

MEL called her at noon to ask for explanation for her failure to appear.
She called her HP and someone answered the phone. The person stated that her mother was not in and hung up. MEL then called PA's husband and again someone answered the call but did not want to pass the phone to PA or her husband. MEL could hear that some instructions were in the background and the person who answered the call was both rude and nervous / anxious. The person again terminated the call abruptly.

We are unable to make further contacts with PA.

Given that PA failed to appear to answer questions and to clarify our concerns, I have come to the conclusion that, on balance of probabilities, she is not inadmissible and would not likely return the PR visas to our office voluntarily.

Application is therefore refused.

PR Visas are cancelled and declared void and invalid.

Letter to advise PA not to travel to Canada with this visas.

B0531 93114 NYC 01 — DEC—2008

VISA SECTION
P O BOX 845
ROBINSON ROAD
S1NGAPORE 901645

REGISTERED

Date: 01 December 2008

File Number: B0531 9311 4

Zahara Sanif
101 Lorong Sarina

#01-01
Singapore 416729

Dear Ms Sanif

This refers to your application for permanent residence in Canada.

Under subsection 16(1) of the *Immigration and Refugee Protection Act, 2001*, you are required to provide such documentation as may be requested by a visa officer to determine your admissibility to Canada. You have not complied with the requirements of this subsection which reads:

> 16(1) A person who makes an application must answer truthfully all questions put to them for the purpose of the examination and must produce a visa and all relevant evidence and documents that the officer reasonably requires.

We have received information recently that raised some concerns about the bona fides of your employment offer. On 27 November 2008 my assistant contacted you by telephone and informed you that you were required to attend an interview with an officer on 01 December 2008. You were also requested to bring with you the passports and permanent residence visas issued by our office earlier.

Subsection 11(1) of the *Immigration and Refugee Protection Act*, provides that a foreign national must, before entering Canada, apply to an officer for a visa or any other document requited by the Regulations. The visa or document shall be issued if, following an examination, the officer is satisfied that the foreign national is not inadmissible and meets the requirements of this Act.

Without a genuine and valid employment offer you would not meet the minimum selection points. You failed to comply with our request to attend the interview and to clarify our concerns, I am on balance of probabilities not satisfied that you are not inadmissible and meet the requirements of this Act. Your application is therefore refused and the visas issued to you and your dependants on 3 November 2008 are hereby cancelled. These visas are no longer valid for travel to Canada.

Please note that the port-of entry has been informed of our decision and any attempt by you or your dependant to use the visa may result in refusal of entry to Canada and possibly be subject to removal.

Yours sincerely

M. Y. Chong
Immigration Officer

Immigration Section

The Exclusion Orders of February 20, 2009 (IMM-863-09)

[18] Minister's Delegate Blais issued the Exclusion Orders pursuant to the IRPA as he was satisfied that:

a. The principal applicant was a person described in subsection 41(a) of the Act in that, on a balance of probabilities, there are grounds to believe is a foreign national who is inadmissible for failing to comply with the Act through an act or omission which contravenes, directly or indirectly, a provision of the Act, specifically:
b. Paragraph 20(1)(a) of the Act requires that every foreign national, other than a foreign national referred to in section 19 who seeks to enter or remain in Canada must establish, to become a permanent resident, that they hold the visa or other document required under the regulations and have come to Canada in order to establish permanent residence.
c. Rule 6 of the Regulations (IRPR) requires that a foreign national may not enter Canada to remain on a permanent basis without first obtaining a permanent resident visa.

[19] The Minister's Delegate determined that the visas had not been presented within their period of validity. The visas had been cancelled as of December 1st, 2008 and the applicants arrived on December 2nd.

Issues

[20] The issues raised by the parties can be narrowed to the following:

1. What is the effect in law of the decision of the immigration officer to cancel the visas held by the applicants on December 1, 2008 (IMM-864-09)?

2. Did the Minister's Delegate make a reviewable error when he issued the Exclusion Orders based on the circumstances before him (IMM-863-09)?

Analysis

[21] Several decisions of this Court have held that *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] S.C.J. No. 9, has not changed the law in respect of factual findings subject to the limitation in paragraph 18.1(4)(d) of the *Federal Courts Act*: *De Medeiros v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 386, [2008] F.C.J. No. 509; *Obeid v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 503, [2008] F.C.J. No. 633; *Naumets v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 522, [2008] F.C.J. No. 655. It has also been held that a tribunal's decision concerning questions of fact is reviewable upon the standard of reasonableness: *Sukhu v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 427, [2008] F.C.J. No. 515, see also *Navarro v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 358, [2008] F.C.J. No. 463, at paras. 11-15.

[22] The immigration officer's factually intensive analysis and application of discretion are central to the officer's role as a trier of fact. As such, these findings are to be given significant deference by the reviewing Court. The immigration officer's factual findings should stand unless

the reasoning process was flawed and the resulting decision falls outside the range of possible, acceptable outcomes which are defensible in respect of the facts and the law: *Dunsmuir*, above, at para. 47.

[23] No deference is due if the Court determines that an administrative decision-maker has failed to adhere to the principles of procedural fairness: *Canadian Union of Public Employees v. Ontario (Minister of Labour)*, [2003] 1 S.C.R. 539, [2003] S.C.J. No. 28, at paragraph 100. Such matters continue to fall within the supervising function of the Court on judicial review: *Dunsmuir* at paragraphs 129 and 151.

[24] As I understand the legislative scheme, a foreign national wishing to enter Canada must apply to an officer for a visa (subsection 11 (1) of the IRPA). An officer is then authorized to proceed with an examination (subsection 15 (1)). The visa may be issued if, following an examination, the officer is satisfied that the foreign national is not inadmissible and meets the requirements of the Act. There is no dispute in this case that the visas held by the applicants were validly issued and remained valid until December 1, 2008.

[25] Subsection 16(1) of the IRPA provides in English: “A person who makes an application must answer truthfully all questions put to them for the purpose of the examination and must produce a visa and all relevant evidence and documents that the officer reasonably requires”. The French version reads as follows : « L’auteur d’une demande au titre de la présente loi doit répondre

véridiquement aux questions qui lui sont posées lors du contrôle, donner les renseignements et tous éléments de preuve pertinents et présenter les visa et documents requis. »

[26] As I read subsection 16(1), there is no temporal limit to the requirements to answer truthfully and to produce relevant documents, including visas, for the purpose of examination. The inclusion of the reference to visas in the enactment must be taken as an indication that the legislature contemplated that the need may arise for an officer to require the production of visas previously issued for the continuing purpose of examination. Thus the officer was acting within the intent of the legislative scheme when he required the principal applicant to re-attend at the High Commission and to produce the visas issued to the family.

[27] There is a presumption that once a visa is issued it remains valid for the duration of the term for which it is granted. There is an exception to this general principle where the visa is revoked or cancelled by a visa officer: *Canada (Minister of Citizenship and Immigration) v. Hundal*, [1995] 3 F.C. 32, [1995] F.C.J. No. 918, *(T.D.)*, at para. 19. The enactment of the IRPA has been held not to have altered that authority: *Zhang v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 593, [2007] F.C.J. No. 795.

[28] *Zhang* is a case in which a visa was revoked for misrepresentation. The applicant was informed of this by telephone but proceeded to purchase a ticket and came to Canada. The issue was whether the Immigration Appeal Division had the jurisdiction to hear her appeal under subsection 63(2) of the IRPA. Ms. Zhang argued in that case that *Hundal*, above, was no longer authoritative as

it had been decided under the former legislation and not the IRPA. Mr. Justice de Montigny disagreed and held that *Hundal* continued to apply. I am of the same opinion.

[29] Relying on the reasoning in *Zhang* at paragraph 11, regarding the legislative intent, IRPA provisions are said only to apply to an applicant "who holds" a permanent resident visa. As the applicants' visas had been cancelled by the immigration officer, they were invalid as of December 1, 2008. Consequently, the applicants did not hold permanent resident visas when they arrived in Canada on December 2, 2008.

[30] I also agree with the view expressed by Mr. Justice de Montigny in *Zhang*, at paragraph 13, that "Parliament can hardly be said to have intended that foreign nationals would be able to use visas revoked by Canadian officials in an attempt to fraudulently enter the country..." Lastly, as stated at paragraph 16 of *Zhang*, the fact that the applicants still held the physical copies of the visas did not change the legal consequence of their revocation. Nor was this consequence altered by the subsequent investigation.

[31] In *Hundal*, Mr. Justice Rothstein considered that the authority to revoke arose by necessary implication, in part because the statute in effect at the time required that the person seeking admission be in possession of a "valid immigrant visa". He concluded, at paragraph 19, that when a visa officer cancels a visa it is no longer "valid" citing *Minister of Employment and Immigration v. Rogelio Astudillo Gudino*, [1982] 2 F.C. 40 (F.C.A.). While the current legislation does not refer to validity, I think it is implicit in the obligation in paragraph 20(1) (a) of the IRPA that any foreign

national who seeks to enter Canada to become a permanent resident must establish that they hold the visa required under the regulations. I also think that the reference to validity is implicit in the obligation at section 6 of the regulations that a foreign national may not enter Canada to remain on a permanent basis without first obtaining a permanent resident visa. Revocation or cancellation of the visa requires some decision by the visa officer. As long as a decision to revoke or cancel has been made, the visa is no longer valid.

[32] In *Hundal* it was found that the visa was initially valid, as in this case, and the High Commission had only the intention to investigate (*Hundal*, at paragraph 21). Wanting to investigate the suspect job offer, the High Commission convoked Ms. Sanif to an interview. Only after the failure of Ms. Sanif to attend the interview for that purpose did the High Commission proceed to cancel the visas in light of the circumstances which included the difficulties encountered in attempting to communicate with Ms. Sanif by telephone on December 1, 2008.

[33] In this instance, the officer was acting reasonably on the basis of the information that he had before him. Questions had been raised about the validity of the job offer and the principal applicant had failed to attend an interview scheduled to address those questions. The officer had the authority to cancel or revoke the visas on December 1, 2008 if he was not satisfied that the applicants were not inadmissible. Once Officer Chong had cancelled the visas, they were no longer valid and could not be used to enter Canada.

[34] There was no denial of procedural fairness in the manner in which the officer proceeded. Ms. Sanif was informed that there was a problem with the visas and she was given an opportunity to discuss the matter in an interview with the immigration officer. The officer, through his assistant, had accommodated her schedule by deferring the interview until the following Monday.

[35] Ms. Sanif can't now complain that she was denied an opportunity to be heard before the decision was made: *Mugu v. Canada (Minister of Citizenship and Immigration)*, 2009 FC 384, [2009] F.C.J. No. 457, at para. 64; *Wayzhushk Onigum Nation v. Kakeway*, 2001 FCT 819, [2001] F.C.J. No. 1167; *Begum v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 164, [2006] F.C.J. No. 196, at para. 32.

[36] There are no unique or special circumstances justifying Ms. Sanif's failure to attend the scheduled interview: *Ghofrani v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 767, [2008] F.C.J. No. 1005, at para. 2. It was not open to her to decide she would not attend merely because she could see nothing wrong on the face of the visas. The applicants had an ongoing duty to demonstrate that they were eligible for visas: *Ghofrani*, above.

[37] In this instance, the applicants' eligibility was dependent upon the employment offer. When the officer was led to have doubts about the legitimacy of the job offer, it was open to him to conclude that the principal applicant had not satisfied him that she was admissible. The unfortunate use of the double negative in his CAIPS notes does not alter the finding more clearly expressed in the letter issued on December 1, 2008.

[38] In light of the missed interview and the resulting follow-up attempts by telephone made by the program assistant, the immigration officer had valid reasons to suspect that Ms. Sanif was evading his attempts to clarify the matter. He took steps to notify Ms. Sanif of the visa cancellation by letter that was sent out on the day of the missed interview. The principal applicant did not receive the letter because she had already left for Canada. Ms. Sanif cannot claim in those circumstances that she had not received notice that her visa had been cancelled.

[39] The immigration officer, having to choose between allowing persons who may not be eligible for permanent resident visas to enter Canada or to cancel the visas, chose the option that preserved the integrity of the immigration system. In the circumstances, the decision was reasonable.

[40] I agree with the respondent that factors beyond those considered by the immigration officer, such as the subsequent evidence relating to the allegedly fraudulent AEO and the results of the subsequent CBSA investigation cannot be used to impugn a decision that was valid at the time that it was made.

[41] Consequently, it is not open to this Court to substitute its own view of a preferable outcome now that additional factors have emerged which were not before the immigration officer at the time of his decision: *Canada (Citizenship and Immigration) v. Khosa*, 2009 SCC 12, [2009] S.C.J. No. 12, at para. 59. The application for judicial review in Court File IMM-864-09 must, therefore, be dismissed.

[42] Turning to the decision of Minister's Delegate Blais to issue the Exclusion Orders; as indicated above decisions concerning questions of fact are reviewable upon the standard of reasonableness: *Sukhu*, above, see also *Navarro*, above, at paras. 11-15.

[43] The Minister's Delegate's factual analysis is central to his role as a trier of fact. As such, these findings are to be given significant deference by the reviewing Court. The Minister's Delegate findings should stand unless his reasoning process was flawed and the resulting decision falls outside the range of possible, acceptable outcomes which are defensible in respect of the facts and the law: *Dunsmuir*, above, at para. 47.

[44] The applicants submit that the Minister's Delegate was under the false impression that a) the principal applicant had been advised of the visa cancellation over the phone prior to her departure for Canada, and b) that her application was linked to the suspect agent and the other fraudulent applications and that the visas were, therefore, cancelled on the basis of a fraudulent AEO.

[45] I agree with the applicants that contrary to an e-mail sent by Patricia Brown of the High Commission to Minister's Delegate Blais, the record indicates that at no time during the telephone calls from Mr. Chong's office was the principal applicant advised that the visas were cancelled. However, I disagree with the applicants that the telephone calls indicating "problems with the visas" had nothing to do with their validity. In my view, the record supports the inference that Ms. Sanif was put on notice that the validity of the visas was in question.

[46] Even if the Minister's Delegate had been correctly apprised of the factors referenced by the applicants, in my view, it would not have affected the outcome. On arrival in Canada, the applicants were persons who were not in possession of valid permanent residence visas. The Minister's Delegate based his decision on the relevant factors that the applicants tried to enter Canada on cancelled visas, and that when advised of this, they declined the offer to return home.

[47] The Minister's Delegate's review notes dated February 19, 2009 (the day prior to the issuance of the Exclusion Orders) indicate that the Minister's Delegate found that the visas had been cancelled as of December 1, 2008 and that the subjects arrived on December 2. It was found that the visas had not been presented within their period of validity.

[48] The review notes also indicate that the Minister's Delegate had some concerns regarding the decision of the immigration officer to cancel the visa as it would seem that there was still a job offer of sorts available. The Delegate properly recognized, however, that he did not have the authority to issue a new permanent resident visa.

[49] The Delegate had evidence that the applicants' visas were revoked before they entered Canada to take up permanent residence. It was open to him to find that the applicants failed to meet the visa requirement. Accordingly, I am of the view that both the finding of inadmissibility under paragraph 41(a) of the IRPA and the decision to issue the Exclusion Orders were reasonable.

[50] Ms. Sanif could not just assume that the visas would remain valid if the family managed to reach Canada after she was made aware of problems by the High Commission in Singapore. By stating that they had a legitimate expectation in the continuation of the visas, the applicants are essentially alleging a substantive right, which falls outside the scope of the principle as defined in *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817, [1999] S.C.J. No. 39, at para. 26.

[51] The record indicates that the requirements of procedural fairness were met. The Minister's Delegate was open-minded, he met with the applicants in order to discuss the concerns they may have had with regard to the Exclusion Orders and allowed adjournments to permit the applicants to obtain legal representation and to prepare for the interview.

[52] Based on the circumstances known to the Delegate at the time which included a "suspect" AEO, the principal applicant's decision not to attend the interview at the High Commission in Singapore, the applicants' withdrawal of their applications at the port of entry, and their failure to show up for their scheduled departure, it was reasonable for the Delegate to issue the Exclusion Orders.

[53] It was also reasonable for the Minister's Delegate to rely on the immigration officer's decision in Singapore, as the holding of a valid permanent resident visa is the basis for one's admissibility to Canada.

[54] Despite the concerns of the Delegate regarding the actual implication of Ms. Sanif in the "suspect" employment offer, I agree with his conclusion that the situation would not have arisen had she attended the scheduled interview at the High Commission in Singapore and addressed the officer's concerns.

[55] As I find the issuance of the Exclusion Orders by the Minister's Delegate to be reasonable and within the range of possible and acceptable outcomes, it is not open to this Court to substitute its own view of a preferable result now that additional factors have emerged regarding the legitimacy of the arranged employment offer: *Dunsmuir*, above, at para 47; *Khosa*, above, at para. 59. Accordingly, the application for judicial review in Court File IMM-863-09 must also be dismissed.

[56] The applicants' propose seven questions for certification as serious questions of general importance. The questions are the following:

> 1. As there is no provision under the *Immigration and Refugee Protection Act* (IRPA) or the *Immigration and Refugee Protection Regulations* (IRPR) that authorizes an officer to cancel / revoke a visa after issuance, and the Immigration Manuals speak only to cancellation / revocation where a visa is issued based on a fraud or misrepresentation, does a visa officer have the authority to revoke a permanent resident visa issued to a foreign national based on a finding of non-compliance (IRPA, section 41)?
>
> 2. In the circumstances set out in question 1, assuming the question is answered in the affirmative, is a visa officer required to make a specific admissibility finding prior to cancelling a permanent resident visa after it has been issued?
>
> 3. The *Hundal v. Canada* (1995 CanLII 3609) line of cases pre-IRPA and *Zhang v. Canada* (2007 FC 593) do not speak to the specific circumstances when a visa officer may cancel or revoke a visa beyond the four exceptions: The *De Decaro*: exception: a visa becomes ipso facto invalid where there is a frustration or impossibility of performance of a condition on which the visa was issued. (2) The *Wong* exception: a visa is invalid where there is a failure to meet a condition of the

granting of the visa itself when the visa is issued. The visa is then void *ab initio*. (3) A visa ceases to be valid when it reaches its expiry date and (4) a visa is no longer valid if revoked or cancelled by a visa officer. Where a visa officer makes a finding of non-compliance against a foreign national who has been issued a permanent resident visa, does the visa officer have the authority to cancel a permanent resident visa due to a change in circumstances that is not irrevocable and that has not been proven on a balance of probabilities pursuant to exception 4?

4. Section 16 (1) of the IRPA states an admissibility examination must be undertaken by an officer. Does this provision contemplate a Port of Entry examination or may it include an examination by a visa officer post visa issuance?

5. Must a Minister's Delegate pursuant to sections 19(2), 20(1) (a), 21(1), and 31(2) of the IRPA and section 51 of the IRPR make an independent admissibility inquiry when a foreign national presents a cancelled visa, which is still in its period of validity as listed on the permanent resident visa, or rely upon the finding of a visa officer who has cancelled the visa, in issuing an exclusion order?

6. Pursuant to question 5, must a Minister's Delegate assess the lawfulness of the cancellation of a permanent resident visa when assessing the admissibility of a foreign national holding a cancelled permanent resident visa at a port of entry or rely upon the finding of a visa officer who has cancelled the visa, in issuing an exclusion order?

7. Where the Federal Court determines that the cancellation of a visa was unlawful is the permanent resident visa automatically reinstated?

[57] The respondents' view, in brief, is that the proposed questions would merely re-argue the judicial review application in the Court of Appeal. The respondents further submit that the proposed questions do not meet the criteria for certification as they are not of broad significance, nor would they be dispositive of this matter: *Canada (Minister of Citizenship and Immigration) v. Liyanagamage* (F.C.A.), (1994), 176 N.R. 4, [1994] F.C.J. No. 1637.

[58] The test for certification appears in paragraph 74(d) of the IRPA and Rule 18(1) of the *Federal Courts Immigration and Refugee Protection Rules* / SOR 93-22, as am. In *Zazai v. Canada*

(Minister of Citizenship and Immigration), 2004 FCA 89; 318 N.R. 365 (*Zazai*), the threshold for certification was articulated as: "is there a serious question of general importance which would be dispositive of an appeal" (paragraph 11).

[59] In *Kunkel v. Canada (Minister of Citizenship and Immigration)*, 2009 FCA 347, [2009] F.C.J. No. 170, the Federal Court of Appeal determined that a certified question must lend itself to a generic approach leading to an answer of general application. That is, the question must transcend the particular context in which it arose. I find it difficult to conclude that the applicants' proposed questions transcend the particular facts of this case.

[60] The applicants argue, among other things, that the question of whether a visa can be cancelled for non-compliance with subsection 16(1) of the Act has not been settled by *Zhang*, above, as that was a case of misrepresentation and not non-compliance. I am unable to agree with that submission as the principle established in *Hundal*, and applied in *Zhang*, that there was an exception to the presumption of validity where a visa was revoked or cancelled did not turn on the reason for the revocation or cancellation. That, in my view, disposes of questions one through four.

[61] The applicants' fifth and sixth proposed questions for certification as to whether the Minister's Delegate must make an independent admissibility inquiry and must assess the lawfulness of the cancellation of a permanent resident visa would not be determinative of any appeal in this matter. The applicants arrived in Canada with cancelled visas and the Minister's Delegate had the jurisdiction to issue the Exclusion Orders based on the information before him.

[62] In *Hundal*, above, at para. 13, it is said the immigration process involves two stages, the first being an examination by a visa officer and a decision by that officer as to whether to issue a visa and, the second being an examination by an immigration officer at the port of entry and a decision by that officer to grant landing. A visa only allows an individual to present him or herself for landing at a port of entry whereupon there is a second examination to determine if he or she still meets the requirements of the Act and Regulations for the purposes of landing.

[63] In the case of Ms. Sanif, the Minister's Delegate was the officer at the second stage of the immigration process who determined that the applicants did not meet the requirements of the Act and Regulations for the purposes of landing as they did not hold valid permanent resident visas on December 2, 2008. Faced with applicants in possession of cancelled visas, the Minister's Delegate made his own independent assessment of admissibility and had the jurisdiction to consider the basis of the immigration officer's decision to cancel the visas.

[64] In *Liyanagamage*, above, at para. 4, the Federal Court of Appeal held that a certified question must be one which, in the Court's opinion, contemplates issues of broad significance and general application, transcends the interests of the immediate parties to the litigation, and is determinative of the appeal. Again, as I believe that this case turns on its particular facts, I do not think that the applicants' questions meet these criteria. I am unable, therefore, to certify them.

[65] As I have stated above, there were no unique or special circumstances justifying Ms. Sanif's failure to attend the scheduled interview and the immigration officer responded appropriately, by cancelling the visas, in order to preserve the integrity of the immigration system. The situation that is before the Court for review would not have occurred had Ms. Sanif attended the scheduled interview at the High Commission in Singapore. While the result may seem harsh to the family, it stems from their precipitous decision to purchase the tickets and leave for Canada without attempting to address the officer's concerns. If relief is to be granted, I believe it is for the Minister to consider employing the discretion accorded that office by the legislation to grant an exemption from the visa requirements.

JUDGMENT

IT IS THE JUDGMENT OF THIS COURT that the applications for judicial review in Court files IMM-863-09 and IMM-864-09 are dismissed. A copy of this judgment shall be placed on each file. There are no questions to certify.

"Richard G. Mosley"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-863-09 IMM-864-09
STYLE OF CAUSE:	ZAHARAH SANIF, MUSA AHMAD and KHAIRUL ANUAR MUSA and THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS and THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	Toronto, Ontario
DATE OF HEARING:	December 8, 2009
REASONS FOR JUDGMENT AND JUDGMENT:	MOSLEY J.
DATED:	February 4, 2010

APPEARANCES:

Mario Bellissimo Joshua Lang	FOR THE APPLICANTS
Martin Anderson Melissa Mathieu	FOR THE RESPONDENTS

SOLICITORS OF RECORD:

MARIO BELLISSIMO JOSHUA LANG Barristers and Solicitors Toronto, Ontario	FOR THE APPLICANTS
JOHN H. SIMS, Q.C. Deputy Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENTS