Federal Court  Cour fédérale

Date: 20100921

Docket: IMM-795-10

Citation: 2010 FC 941

Montréal, Quebec, September 21, 2010

PRESENT: The Honourable Mr. Justice Martineau

BETWEEN:

CAO, CHAO QIAO

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] Mr. Chao Qiao Cao, the applicant, is a 27-year-old citizen of the People's Republic of China (China). Due to his position as Head Chef in the Urumqi branch of a large chain of restaurants in China, he has been offered to work as a cook at a new Chinese restaurant in Rouyn-Noranda, Québec. He challenges the legality of a decision made by a visa officer (the officer) refusing his application for a temporary work permit.

[2] The officer is not satisfied that the applicant is a genuine visitor who will leave Canada upon the expiry of his work permit mainly because the latter has insufficient financial and personal ties to China, considering that the applicant's family is small, his salary in China is modest in light of his relatively high position, he has limited advancement opportunities in China and he would not gain experience readily bankable upon his return to China.

[3] The officer's factual assessment is to be reviewed on the reasonableness standard (*Dhillon v. Canada (Minister of Citizenship and Immigration)*, 2009 FC 614, 347 F.T.R. 24 (Eng.) at paragraph 19). For the reasons hereunder, the Court finds that the visa officer's conclusion does not fall within the range of possible, acceptable outcomes which are defensible in respect of the facts and the law.

[4] The applicant has the burden of proof to satisfy the officer that he is a *bona fide* visitor to Canada and will, indeed, leave the country once his temporary work permit has expired. One large component of this is proving sufficient ties to one's home country. It is clear, on the face of the record, that the applicant discharged himself of this burden of proof, which must not be insurmountable in the circumstances.

[5] In judicial review, reasonableness is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process. Thus, a decision that is nominally based on the facts of the case, but in reality draws on generalities and assumptions, will normally fail to meet this standard.

[6] Essentially, the officer rejected the applicant's request to obtain a temporary work permit because the pull factor to remain in Canada is strong, but in light of the evidence and case law, such an assumption is simply insufficient to justify this result. More specifically, the officer's analysis is superficial and not axed on the file at hand.

[7] As is the case with virtually all applicants for temporary work permits, there is a financial incentive to work in Canada. This fact cannot be held against an applicant, as to do so would result in the rejection of the vast majority of such applications (*Rengasamy v. Canada (Minister of Citizenship & Immigration)*, 2009 FC 1229, 86 Imm. L.R. (3d) 106 at paragraph 14). There must be objective reasons to reasonably question the motivation of an applicant. Just to cite a few examples, past immigration attempts, overstaying in other countries, a criminal past, may provide sufficient basis to doubt that an applicant will leave Canada by the end of the authorized period.

[8] In the case at bar, the officer has made no serious effort to test the strength of the applicant's ties to China, especially given that he has no family elsewhere (*Li v. Canada (Minister of Citizenship & Immigration)*, 2008 FC 1284, 76 Imm. L.R. (3d) 265 at paragraph 30), and that there is ample proof of the links that the applicant has with China, supported by the submission of all requisite documents, as well as extra documents:

a. The applicant has a wife and one child (the maximum possible, under China's one-child policy) who would both remain in China;

b. The applicant's parents and brother also remain in China;

c. The applicant's wife owns a house in China, as seen in the copy of the deed, which the officer did not comment on;

d. The applicant and his wife have also amassed fairly substantial savings, as seen in the photocopy of the bank certificate. (The officer stated that the photocopy was of poor quality with no apparent security features; however, a photocopy was all that was required and the officer made no attempt to see the original document).

[9] In *Dhanoa v. Canada (Minister of Citizenship & Immigration)*, 2009 CarswellNat 2159, 2009 FC 729 (*Dhanoa*), the Court recently set aside the refusal to grant a temporary work permit because the officer was not convinced that the applicant's family ties in India were sufficient to outweigh the socio-economic opportunities in Canada. Mr. Dhanoa was offered a job as a construction worker in Canada at a much higher salary than he was currently earning in India. On the other hand, he was married with two children, was working on his family farm and was untraveled.

[10] Specifically, my colleague Justice Harrington writes at paragraph 16:

> The thought that [the applicant] would abandon his wife and children in order to take advantage of better socioeconomic opportunities here is distasteful. It is rather sanctimonious to suggest that our society is more of a draw for him than India, where he would be in the bosom of his family, simply because he would have 30 pieces of silver in his pocket. As per Timothy 6:10 "for the love of money is the root of all evil."

[11] The impugned decision is unreasonable not simply because it is stereotypical, but also because it relies on the very factor which would induce someone to come here temporarily in the first place as the main reason for keeping that person out (*Dhanoa*, paragraph 18). But there is more to say in this case. In addition to providing all existing documentation to support the above ties to China, the applicant also submitted a declaration whose probative value and relevancy has not been seriously challenged or put into question, either by the officer or the respondent.

[12] This declaration directly addresses the question of illegally overstaying a temporary work permit. The applicant states at paragraphs 8 and 9 that both his Canadian employer and his Immigration Consultant had warned him of the perils of overstaying in Canada:

> 8. My Canadian employer also warns me that I have to behave myself according to Canadian law and regulations and that including I must leave Canada before the expiry of my Work Permit, otherwise he will immediately discharge me and take off my privileges with no compensation. I fully understand this warning.
>
> 9. My Consultant has explained to me in detail as well as warned me that if I do not fulfil my promise and leave Canada before the expiry date of my work permit, I shall become illegal and shall then lose my foreign worker status and privileges, I shall be subjected to the penalty of Canadian laws, I shall be deported and I will not be able to get back to Canada. This will also affect the opportunities for me to go to other countries. This may even deprive the members of my family of the opportunities in future to go to Canada or other countries to work, to study or to reside, etc. I fully understand this. That is why I will never overstay in Canada illegally because I will not be that stupid to spoil my own and my family's future.

[13] The decision to submit the applicant's declaration is not a banal gesture. The declaration is a clear statement that the applicant understands the consequences of overstaying his welcome in Canada, and for this reason, it will not happen. It cannot be presumed to be true, as the policy considerations of such a blanket approach would be disastrous: every applicant would simply submit a similar declaration in order to "prove" that he would not overstay his temporary permit. However, the statements made in this declaration must be weighed by the officer in light of the totality of the evidence and the personal circumstances of the applicant.

[14] Before this Court, the learned counsel of the respondent also relayed the fact that the usefulness of work experience gained in a small Chinese restaurant in Rouyn-Noranda is questionable, particularly in light of the applicant's lack of advancement opportunities at his present employer. However, no evidence was produced questioning the validity of the job offer, nor any other elements of the applicant's submissions. If credibility were an issue, this should have been stated closely by the officer.

[15] In final analysis, the Court notes that the applicant did everything in his power to satisfy the officer that he would leave Canada at the expiry of his work permit. The conclusion reached by the officer that the applicant has not met his burden of proof is unreasonable and must be set aside. The matter shall be returned to the Canadian Embassy in Beijing, China for redetermination by another officer. No question of general importance has been raised by counsel and none shall be certified.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that the application for judicial review be allowed. The decision of the officer denying a temporary work permit is set aside and the matter returned to the Canadian Embassy in Beijing, China for redetermination by another officer.

"Luc Martineau"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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