Federal Court  Cour fédérale

Date: May 25, 2011

Docket: IMM-5564-10

Citation: 2011 FC 618

Ottawa, Ontario, May 25, 2011

PRESENT: The Honourable Justice Johanne Gauthier

BETWEEN:

MARIA VERONICA TINEO LUONGO

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The applicant seeks judicial review of the decision of a Citizenship and Immigration visa officer denying her application for a permanent resident visa as a Skilled Worker.

Background

[2] Ms. Maria Veronica Tineo Luongo is a 36 year old citizen of Venezuela. She applied (with her husband, Armanda Jose Acosta Batisdas) for a permanent resident visa on May 22, 2007 under the 0114 (Other Administrative Service Managers) and 1211 (Supervisors, General Office and Administrative Support Clerks) categories of the National Occupation Classification (NOC).

[3] On October 31, 2008, she received a letter stating that the respondent was ready to process her application and requesting that she forward updated immigration forms. She provided documentary evidence to support her application on February 26, 2009.

[4] In March 2010, her application had yet to be processed and she received another letter stating that due to the long processing time, she had a choice to withdraw her application and receive a full refund or to provide once again her evidence within 120 days. On July 15, 2010, the applicant submitted again a copy of the documentary evidence originally filed in support of her application. As it appears from the Certified Record, she followed the instructions received ─ i.e. to put the standard form letter she had received, and on which her file number is written, on top of her supporting documentation. The said form letter contained detailed information as to where the applicant could find the forms she was required to complete (available on the Citizenship and Immigration website). She was directed to consult the website for Visa Office Specific Instructions which applied to her application. More importantly here, in respect of her work experience documents, she was notified of the following:

> 4. Work experience documents
>
> Provide employment letters, contracts, pay-slips and job descriptions endorsed by your employer's personnel department covering the period from 10 years prior to your application date until today. Please

> make sure that the employment letters have details of your duties and clearly show the start and end dates (if relevant) of your employment. CPP-O is under no obligation to further request detailed employment letters, and your work experience review will be based solely on the documents initially provided.
>
> [emphasis added]

[5] Among the voluminous documentation provided, Ms. Tineo Luongo included, without providing any explanation as to why her employment letters did not meet the requirements set out in the instructions above, four letters from her past employers that gave no details except the date she was employed, her position title and salary. Instead, she provided the details of the duties performed for each employer in her c.v. (or resumé).

[6] On July 30, 2010, she was advised that her application was rejected because the officer was not satisfied that she met the requirements of subsections 75(2)(a), (b) and (c) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 (the Regulations) including, in particular, that she had one year of experience in a position in the Skill level and type of O, A or B described in the NOC matrix. In his recorded notes of July 30, 2010, the decision-maker mentions:

> …PA provides: own CV, 4 letters of employ – none stating more than title, dates of employ, and salary, and translated portions of own CV. Only description of job duties and responsibilities comes from client herself, nothing from places of employ. States is working as an Administrative Services Manager (0114) and previously as Supervisor, General office and Admin support (NOC 1211), however has not provided documentation, other than own CV to show has performed the actions of the lead statement or the main duties as described in the NOC descriptions for those two codes. PA was informed in request for documentation that employment letters/documents needed to include details, including job duties and responsibilities. As have no details of duties or responsibilities of PA's employment in the NOC codes declared on

> the application, I am not satisfied that she has worked for a minimum of 1 yr in a position at skill level O, A, or B of the NOC.
>
> [emphasis added]

[7] The relevant provisions of the Regulations and of the *Immigration and Refugee Protection Act*, SC 2001, c 27 are reproduced in Annex A.

Analysis

[8] The applicant submits that it is apparent from the notes reproduced above that the decision-maker based his decision on the fact that her own description of her duties was not credible. The case law indicates that when credibility concerns are at issue or where the authenticity of a document is in play,[1] the officer has a duty to give the applicant an opportunity to address his concerns either in writing or through an interview (*Liao v Canada (Minister of Citizenship and Immigration)*, [2000] FCJ No 1926 (TD); *Muliadi v Canada (Minister of Employment and Immigration)*, [1986] 2 FC 205 (CA); *Fong v Canada (Minister of Employment and Immigration)*, [1990] 3 FC 705; *Cornea v Canada (Minister of Citizenship and Immigration)*, 2003 FC 972; *Rukmangathan v Canada (Minister of Citizenship and Immigration)*, 2004 FC 284, among others).

[9] She also argues in the alternative that the decision-maker ignored the evidence he effectively had before him in respect of the duties she performed ─ the translated portion of her c.v. which described in detail the various tasks involved in the positions for which she had produced original letters from her past employers. This evidence was relevant, in her opinion, and failure to consider it vitiates the decision which can only be characterized as unreasonable. In that respect, she relies on

[1] The same would apply when the weight of the evidence produced is diminished on the basis of extrinsic evidence (*Rukmangathan*, above; *Hassani v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1283).

Gulati v Canada (Minister of Citizenship and Immigration), 2010 FC 451 where the general principle set out in *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, [1998] FCJ No 1425, 157 FTR 35 was applied in a context almost identical to the present one.

[10] There is no dispute that in respect of questions of procedural fairness, the Court will intervene if, applying the correctness standard, there is a breach (*Canada (Citizenship and Immigration) v. Khosa*, 2009 SCC 12, at para 43; *Gulati*, above, at para 20). With respect to the officer's assessment of the evidence, or lack thereof, this is a question that is reviewable on a standard of reasonableness (*Malik v. Canada (Minister of Citizenship and Immigration)*, 2009 FC 1283 at para 22; *Gulati*, above, at para 18).

[11] Despite the able submissions of her counsel, the Court simply cannot agree with the applicant's characterization of what occurred in this file. This has a direct impact on the extent of the duty of the decision-maker to give the applicant an opportunity to make further submissions or provide additional evidence.

[12] In my view, the notes referred to above clearly indicate that the officer reviewed both the c.v. and the employers' letters before declaring that he was not satisfied that, in the circumstances, he should pursue the assessment in respect of the NOC description on the basis of her own descriptions given in her c.v., taking into consideration the fact that the applicant had been advised by letter of what was required.

[13] This is a case where the decision-maker felt that the low probative value of the evidence provided was simply insufficient to warrant a further analysis. This is not a case where the officer simply ignored the evidence, as illustrated in *Gulati*, above. In that case, Justice Richard Mosley had to determine whether the visa officer in similar circumstances had failed to consider relevant evidence, particularly an "Arranged Employment Offer" (AEO) signed by the prospective employer, and a resumé. The officer had admitted in her affidavit that she had not considered the AEO to assess the applicant's past work experience as this would normally not be relevant to this particular issue. She had not realized that this offer was for the exact same job the applicant had held during the three years preceding his application for residency. The AEO thus described a substantial number of duties which the applicant had performed. It was objective evidence that was clearly relevant. This constituted a reviewable error.

[14] That said, the officer did not say in her affidavit whether she had looked at the resumé or not. Applying the general principle that the decision-maker is presumed to have considered the evidence before him or her, which had clearly not been rebutted in respect of this document, the Court assumed that the officer did look at the resumé.

[15] The learned judge went on to conclude that the officer "appropriately" found that the resumé was not satisfactory proof of the duties performed. There was no reviewable error in that respect.

[16] When documentation submitted by an applicant is considered insufficient, does it necessarily mean that, as argued by the applicant, her or his credibility is at issue? Justice Russel Zinn's comments in *Ferguson v MCI*, 2008 FC 1067 deal with this question albeit in a slightly

different context where the decision maker was looking at a Pre-Removal Risk Assessment application. The same principles apply to the weighing of evidence in the present context. Among other things, the learned judge notes that a trier of fact may give little probative value to documentary evidence which is found to be unreliable because its author is not credible or simply because it falls into a category such as self-serving reports, to which lesser weight is given in the absence of corroborative evidence. In that respect, he says at paragraph 27:

> Evidence tendered by a witness with a personal interest in the matter may also be examined for its weight before considering its credibility because typically this sort of evidence requires corroboration if it is to have probative value. If there is no corroboration then it may be unnecessary to assess its credibility as its weight will not meet the legal burden of proving the fact on the balance of probabilities. When the trier of fact assesses the evidence in this manner he or she is not making a determination based on the credibility of the person providing the evidence; rather, the trier of fact is simply saying the evidence that has been tendered does not have sufficient probative value, either on its own or coupled with the other tendered evidence, to establish on the balance of probability, the fact for which it has been tendered. That, in my view, is the assessment the officer made in this case.

[17] In my view, this is exactly what happened here. Ms. Tineo Luongo should not be surprised by this given that she was expressly warned that immigration officials were under no obligation to further request documentation such that she would not be given an opportunity to cure her failure to provide objective evidence in the respect of the employment duties she performed in the past.

[18] When an applicant produces insufficient evidence to meet the requirements set out in the Regulations, there is no further duty on the officer to communicate with the applicant. In that

respect, it is sufficient to refer to the decision of Justice Robert Mainville (then with this Court) in *Malik*, above. In that case, an applicant for a permanent resident's visa as a skilled worker had submitted his own affidavit to establish that he had a brother residing in Canada, despite the fact that he had been warned in a form letter, similar to the one in the present case, that this type of evidence would not be satisfactory evidence and that the officer would not request further documentation to support his application. Justice Mainville first noted that although this approach appears to be, at first glance, harsh on visa applicants, "it is necessary to ensure the administrative efficiency of a burdened system and to ensure finality of the decision-making process related to visa applications." He further said at paragraph 19:

> Fairness to all visa applicants requires that all applicants conform to the instructions they receive as to the type and quality of documentation required in support of their applications, thus ensuring a minimum of efficiency and equity in the system.

Then, at paragraph 26 he noted that "no undertakings are made to applicants as to an interview or as to additional notification if documentation is missing or insufficient, thus considerably limiting expectations of applicants in such matters."

[19] As in *Malik*, above, I find that the duty of fairness owed to the applicant in this case was low and, in any event, was met through the prior notice provided to her specifying clearly the process that would be followed and the documentation required in order to support the application (see *Malik*, above, at para 29). In this case, the applicant did not raise the fact that through the issuance of instructions the visa officer had fettered his discretion. She was wise not to do so given that this argument was rejected in *Malik*, above, and that it is clearly evident from the information on the website, to which the applicant was directed, that if it was impossible for her to obtain the kind of

detailed letters required from her employers, she should give an explanation in that respect and attempt to file different objective evidence, such as copies of past work assessments, etc.

[20] In light of the foregoing, the applicant has not established a breach of procedural fairness, nor has she established that the decision did not fall within the range of possible, acceptable outcomes that are supported on the law and the facts of this case. The application is dismissed.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed.

"Johanne Gauthier"

Judge

ANNEX A

- ***Immigration and Refugee Protection Regulations***, SOR/2002-227

Federal Skilled Worker Class Class 75. (1) For the purposes of subsection 12(2) of the Act, the federal skilled worker class is hereby prescribed as a class of persons who are skilled workers and who may become permanent residents on the basis of their ability to become economically established in Canada and who intend to reside in a province other than the Province of Quebec. Skilled workers (2) A foreign national is a skilled worker if (a) within the 10 years preceding the date of their application for a permanent resident visa, they have at least one year of continuous full-time employment experience, as described in subsection 80(7), or the equivalent in continuous part-time employment in one or more occupations, other than a restricted occupation, that are listed in Skill Type 0 Management Occupations or Skill Level A or B of the National Occupational Classification matrix; (b) during that period of employment they performed the actions described in the lead	Travailleurs qualifiés (fédéral) Catégorie 75. (1) Pour l'application du paragraphe 12(2) de la Loi, la catégorie des travailleurs qualifiés (fédéral) est une catégorie réglementaire de personnes qui peuvent devenir résidents permanents du fait de leur capacité à réussir leur établissement économique au Canada, qui sont des travailleurs qualifiés et qui cherchent à s'établir dans une province autre que le Québec. Qualité (2) Est un travailleur qualifié l'étranger qui satisfait aux exigences suivantes : a) il a accumulé au moins une année continue d'expérience de travail à temps plein au sens du paragraphe 80(7), ou l'équivalent s'il travaille à temps partiel de façon continue, au cours des dix années qui ont précédé la date de présentation de la demande de visa de résident permanent, dans au moins une des professions appartenant aux genre de compétence 0 Gestion ou niveaux de compétences A ou B de la matrice de la Classification nationale des professions — exception faite des professions d'accès limité; b) pendant cette période d'emploi, il a accompli l'ensemble des tâches figurant

statement for the occupation as set out in the occupational descriptions of the National Occupational Classification; and	dans l'énoncé principal établi pour la profession dans les descriptions des professions de cette classification;
(c) during that period of employment they performed a substantial number of the main duties of the occupation as set out in the occupational descriptions of the National Occupational Classification, including all of the essential duties.	c) pendant cette période d'emploi, il a exercé une partie appréciable des fonctions principales de la profession figurant dans les descriptions des professions de cette classification, notamment toutes les fonctions essentielles.
Minimal requirements (3) If the foreign national fails to meet the requirements of subsection (2), the application for a permanent resident visa shall be refused and no further assessment is required.	Exigences (3) Si l'étranger ne satisfait pas aux exigences prévues au paragraphe (2), l'agent met fin à l'examen de la demande de visa de résident permanent et la refuse.

- ***Immigration and Refugee Protection Act,*** **SC 2001, c 27**

Application before entering Canada 11. (1) A foreign national must, before entering Canada, apply to an officer for a visa or for any other document required by the regulations. The visa or document may be issued if, following an examination, the officer is satisfied that the foreign national is not inadmissible and meets the requirements of this Act.	Visa et documents 11. (1) L'étranger doit, préalablement à son entrée au Canada, demander à l'agent les visa et autres documents requis par règlement. L'agent peut les délivrer sur preuve, à la suite d'un contrôle, que l'étranger n'est pas interdit de territoire et se conforme à la présente loi.

FEDERAL COURT

SOLICITORS OF RECORD

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