

Federal Court



Cour fédérale

Date: 20120228

Docket: IMM-258-11

Citation: 2012 FC 264

Toronto, Ontario, February 28, 2012

PRESENT: The Honourable Mr. Justice Zinn

BETWEEN:

FE VILLANEUVA DIONGSON

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] For the reasons that follow, this application is allowed and the decision of a Non-Immigrant Officer of the Consulate General of Canada in Buffalo, New York (the officer), dated November 10, 2010, refusing the applicant's application for a work permit under the live-in caregiver program (LCP), is set aside.

[2] The applicant, a citizen of the Philippines, was the victim of a fraud. In 2005, she was recruited by Ms. Fe Malab, to whom she ended up paying US\$6,000 to apply under the LCP and obtain a Labour Market Opinion (LMO). When her LCP application was approved, she met with Ms. Malab and asked about her employer in Canada, but was told by her that she did not know who the employer would be yet, and if the immigration asked her she should make up answers. The applicant tried to call the employer listed on her LMO, but there was no answer.

[3] The applicant arrived in Canada on June 14, 2007. She traveled by taxi to the address listed for her employer and discovered that it was Ms. Malab's home, and there were more than 20 other Filipino women living there. The applicant asked Ms. Malab the following day about her employer, and Ms. Malab told her to relax, and it was not time to start her job yet, and eventually told her she had been 'released on arrival' and would need to find another position.

[4] The applicant states that Ms. Malab evaded all her requests to place her with an employer as a live-in caregiver once she arrived in Canada. Instead, she repeatedly lied to the applicant, telling her that she could obtain her permanent residence in other ways, and work in part-time jobs Ms. Malab found for her, such as in factories or cleaning. Ms. Malab began to charge her \$300 a month to live in her house. Each time she asked for a legitimate work placement, Ms. Malab extorted more money from her. Eventually, the applicant refused to pay Ms. Malab any more money.

[5] Through the Caregivers' Action Center, the applicant eventually met with a lawyer and immigration consultant, and learned that what Ms. Malab had been doing, and encouraging the

applicant to do, was illegal. In September 2009, the applicant made a complaint to the Canada Border Services Agency about Ms. Malab and others. A warrant was subsequently issued for Ms. Malab, and her house was raided.

[6] In November 2009, the applicant was interviewed in relation to her application for a temporary resident permit (TRP) on the basis that she was a victim of trafficking. That application was refused at the end of the interview (TRP decision). The Field Operation Support System notes (FOSS notes) for the TRP decision were relied on by the officer in this case.

[7] The applicant found a position as a live-in caregiver with another family. She obtained a new LMO, and applied for a work permit under the LCP. In a decision letter dated November 10, 2010, the officer stated that the applicant did not meet the requirements for a work permit and provided the following reasons for the refusal:

You arrived to Canada in June 2007 with a work permit issued to you pursuant to the Live-in Caregiver Program. Since your initial arrival, you have continued to remain in Canada, have applied for extensions of the work permits, changing employers on at least one occasion. No mention or proof has been provided to indicate or explain the reason(s) for your change/termination of employers or duration of any employment in Canada. Insufficient evidence has been presented to satisfy me of any efforts made to locate employment in Canada. I am not satisfied that you are a bona fide temporary worker. You have not satisfied me that you will leave Canada by the end of the period authorized for your stay.

The officer recorded the following in the Computer Assisted Immigration Processing System (CAIPS) notes, dated November 10, 2010:

THE APPLICANT HAS FAILED TO PROVIDE EVIDENCE OF ANY LCP RELATED EMPLOY IN CDA. SHE HAS ADMITTED IN PREVIOUS FOSS NOTES TO

INTENTIONALLY MISREPRESENTING [sic] HERSELF (ENCOURAGED BY HER RECRUITER). SHE HAS ACKNOWLEDGED THAT SHE WAS AWARE SHE NEEDED TO WORK IN CDA TO MEET THE REQUIREMENTS FOR THE WORK PERMIT⁷ [sic] LIVE IN CAREGIVER PROGRAM. SHE HAS FAILED TO SATISFY ME THAT SHE HAS BEEN A BOANFIDE [sic] WORKER IN CDA SINCE JUN2007. I HAVE TAKEN INTO CONSIDERATION THE TREATMENT SHE HAS DESCRIBED FROM HER RECRUITER. HOWEVER, THE APPLICANT HAS INDICATED IN FORMAL INTERVIEW WITH ETOBICOKE THAT SHE WAS AWARE OF THE PROGRAM REQUIREMENTS REGARDING EMPLOYMENT. SHE HAS NOT PROVIDED EVIDENCE TO SATISFY ME THAT SHE MADE ANY EFFORTS TO FIND EMPLOYMENT ON [sic] CDA.

[8] The applicant challenges the decision on a number of grounds; however, in my view, it is necessary to deal only with whether the officer's decision was reasonable and I agree with the applicant that it was not.

[9] In *Nazir v Canada (Minister of Citizenship and Immigration)*, 2010 FC 553, Justice de Montigny stated at paragraph 20: "Visa officers assessing live-in caregiver permits have a duty to take into consideration an applicant's explanation and to explain why they reject such explanations." In this case, the officer paid no more than lip-service to the applicant's explanations for the irregularities in her work history since arriving in Canada, namely, that she had been a victim of a fraud.

[10] The officer acknowledged in cross-examination that in making her decision she relied heavily on the FOSS notes; however, I find that most of the findings upon which the officer based her decision were made without regard to that evidence. The officer found in her decision

that: (i) there was no explanation for the applicant's change and termination of employers or duration of employment in Canada; (ii) there was insufficient evidence to satisfy the officer of any efforts she made to locate employment in Canada; and (iii) the applicant had not proven that she was a *bona fide* worker in Canada since June 2007.

[11] The FOSS notes contain a detailed account of the applicant's story, including: her arrival in Canada; her discovery that she did not have the position she was promised; her efforts to find other employment; and a list of all her places of employment since arriving in Canada. The first two findings listed above are directly contradicted by a review of the record.

[12] The officer's finding that the applicant had not proven that she was a *bona fide* worker since June 2007 is especially puzzling as the applicant did not claim to have been a *bona fide* worker since 2007. She explained that the job for which she received her initial work permit turned out not to exist. She also explained that she had been continually misled by Ms. Malab about the legality of working outside her permit, and about the proper process to obtain permanent residence. I can only conclude from the officer's reasons that she failed to consider the applicant's explanations that were in the FOSS notes she consulted. As a consequence, I find that the officer's findings were made without regard to the material before her, and the decision must be set aside.

[13] Neither party proposed a question for certification. There is none on the facts of this application.

JUDGMENT

THIS COURT'S JUDGMENT is that this application is allowed, the decision of the Non-Immigrant Officer of the Consulate General of Canada in Buffalo, New York, dated November 10, 2010, refusing the applicant's application for a work permit under the live-in caregiver program is set aside, and her application is referred to another officer for a redetermination. No question is certified.

"Russel W. Zinn"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-258-11

STYLE OF CAUSE: FE VILLANEUVA DIONGSON v. THE MINISTER
OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: February 22, 2012

**REASONS FOR JUDGMENT
AND JUDGMENT:** ZINN J.

DATED: February 28, 2012

APPEARANCES:

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Prathima Prashad FOR THE RESPONDENT

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