Federal Court Cour fédérale

Date: 20120801

Docket: IMM-8477-11

Citation: 2012 FC 959

Ottawa, Ontario, August 1, 2012

PRESENT: The Honourable Mr. Justice Mandamin

BETWEEN:

EKATERINA UTENKOVA

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR ORDER AND ORDER

[1] The Applicant, Ms. Ekaterina Utenkova, applies for judicial review of the September 13, 2011 decision of the Visa Officer refusing the application for a Study Permit to study English in Canada because the Officer was not satisfied that the Applicant would leave at the end of the study period if she were authorized to enter Canada;

[2] The Applicant is a 30 year old citizen of Russia who applied for a Study Permit to take an intensive English course in Canada. She worked as manager of a technology company and had a

20% share in a new company created to market Smart Home technology in Russia. She had tried to study English in Russia but was unsuccessful because of the demands of her present position. Consequently, it was decided she should undertake an intensive English study program in Canada and, while in the country, make contact with North American Smart Home technology companies.

[3] The Visa Officer refused the Study Permit because the Officer determined that the Applicant had not demonstrated that she is sufficiently well established in Russia and that her proposed studies are not reasonable in light of her previous studies and employment.

[4] The Officer noted the Applicant has a degree in psychology and is working for a computer service and repair company. She did not appear to have any technical training in the computer field other than one course she took at university. The Officer also found the fact that the Applicant is a 20% shareholder in a new company owned by her mother and is being sent to Canada to study English while also looking for a new line of business to bring back for the new company does not demonstrate that she is well established in Russia.

[5] The Supreme Court of Canada held in *Dunsmuir v New Brunswick* 2008 SCC 9 there are only two standards of review: correctness for questions of law and reasonableness involving questions of mixed fact and law and fact. The Supreme Court also held that where the standard of review has been previously determined, a standard of review analysis need not be repeated. This Court recently held that an Immigration Officer's decision based on the belief that an applicant will not leave Canada at the end of his or her stay is a question of mixed fact and law

which accordingly attracts the reasonableness standard of review (*Obot v Canada (Minister of Citizenship & Immigration)*, 2012 FC 208 at para 12).

[6] The *Immigration and Refugee Protection Act*, SC 2001, c 27 provides:

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.	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.
…	…
20. (1) Every foreign national, other than a foreign national referred to in section 19, who seeks to enter or remain in Canada must establish,	20. (1) L'étranger non visé à l'article 19 qui cherche à entrer au Canada ou à y séjourner est tenu de prouver :
…	…
(b) to become a temporary resident, that they hold the visa or other document required under the regulations and will leave Canada by the end of the period authorized for their stay.	b) pour devenir un resident temporaire, qu'il détient les visa ou autres documents requis par règlement et aura quitté le Canada à la fin de la période de séjour autorisée.

[Emphasis added]

[7] The Officer's decision is factually based and thus deserves deference. However, the Officer may not misconstrue or ignore relevant evidence submitted by the Applicant.

[8] The Officer found the letter from the Applicant's employer did not say that the company was going to pay the expenses related to her studies in Canada. On review of the letter, it is clear that the company identified the educational institution and determined to send the Applicant to study English. There is no suggestion the company was not going to pay for the studies having chosen the school and made the decision to send the Applicant there.

[9] I am satisfied the Officer misconstrued the employer's letter by failing to acknowledge the clear inference that employer, having decided to send its employee, the Applicant, abroad to study English and selected a specific educational institution in Canada, was going to pay for the Applicant's study expenses.

[10] The Officer found the Applicant was going to Canada to study something unrelated to her previous studies and current job requirements.

[11] The Officer's findings are reasonable regarding the Applicant's previous studies but the Officer misconstrues past and current employment experience of the Applicant. The evidence before the Officer is that the Applicant worked and continues to work as a manager and sales person in a technology company rather than as a technology specialist.

[12] The Officer determined that the Applicant was going to Canada to study something unrelated to her current work.

[13] The Applicant's employer clearly stated that the Applicant was responsible for developing a new venture involving Smart Home technology and the company wanted to develop business relationships with the Smart Home technology companies in Switzerland, the United States, Canada and Australia. Presumably English would be the working language for the latter three countries and hence the need for English language skills. This would be a factor the Officer ought to have considered in reviewing the application for the Study Permit to study English in Canada.

[14] The Officer found the Applicant's income in Russia was modest and her savings are unexplained given her modest income. The Officer makes this determination without referring to any evidence about income levels in Russia in the field the Applicant worked. The Officer questions the Applicant's saving of $10,000 since the means by which the savings was acquired was not identified.

[15] Even accepting the Officer would have knowledge of the local Russian economy, the Officer ignores the Applicant owns an apartment as well as a 1/3 share in another apartment in Nizhniy Novgorod and has a 20% share in a new company venture. Given the significant establishment nature of property ownership, the Officer should have considered the Applicant's property holdings in assessing the degree of the Applicant's establishment in Russia.

[16] In result, I find the Officer misconstrued relevant evidence and ignored other evidence in deciding to refuse the Applicant's visa application. The application for judicial review succeeds.

[14] Neither party submitting a serious question of general importance for certification;

ORDER

THIS COURT ORDERS that:

1. The application for judicial review is allowed. The matter is referred back for re-determination by a different visa officer.

2. No question is certified.

"Leonard S. Mandamin"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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