Federal Court  Cour fédérale

Date: 20140722

Docket: IMM-5305-13

Citation: 2014 FC 727

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Ottawa, Ottawa, July 22, 2014

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

ABBAS HASSAN GHADDAR
AND THE MEMBERS OF HIS FAMILY,
FATEN ALI JAWAD
FADL ABBAS GHADDAR
DANA ABBAS GHADDAR

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Preliminary remarks

[1] In the absence of sufficient and demonstrable diligence in ensuring that an application is presented in a complete and timely manner, an applicant fails to meet the threshold for absolving either themselves or their representative of a mistake.

II. Introduction

[2] This is an application for judicial review of a decision dated June 12, 2013, by a visa officer, in which the officer refused to reconsider an application for permanent residence as an investor under the *Immigration and Refugee Protection Act*, SC 2001, c 27 (IRPA).

III. Facts

[3] The applicants are citizens of the United Arab Emirates. On October 20, 2009, the principal applicant, Abbas Hassan Ghaddar, his wife, Faten Ali Jawad, and his two children, Fadl Abbas Ghaddar and Dana Abbas Ghaddar, filed an application for permanent residence in the Business (investor) class, following the issuance of a Quebec Certificate of Selection.

[4] In June 2012, a visa officer at the Canadian Embassy in Abu Dhabi, United Arab Emirates, requested further documentation from their representative, Jacques Beauchemin, in order to establish the eligibility of their application.

[5] On July 23, 2012, Mr. Beauchemin purportedly prepared a letter and a number of other documents and asked his assistant to send all of this documentation by facsimile and by courier to the embassy.

[6] On August 9, 2012, Mr. Beauchemin contacted the visa officer for an update on the progress of his clients' file and the officer informed him that he was still awaiting the requested additional documentation.

[7] On September 12, 2012, a letter regarding procedural fairness was sent to Mr. Beauchemin, specifically indicating that a failure to send the requested documentation would lead to the rejection of the permanent residence application. The applicants were given 30 days to produce the requested documentation.

[8] On December 11, 2012, a second letter with respect to procedural fairness was sent to Mr. Beauchemin, granting him a further 30 days to submit the requested documentation. After having received this letter, Mr. Beauchemin reportedly asked his assistant to ensure that [TRANSLATION] "everything was in order".

[9] On March 13, 2013, nearly one year after the initial request for further documentation, the visa officer rejected the application for permanent residence on the ground that he could not establish the applicants' eligibility without the requested documentation.

[10] On May 15, 2013, Mr. Beauchemin sent a request for reconsideration of the decision to the embassy, accompanied by the additional documentation. The visa officer refused this request for reconsideration on June 12, 2013.

[11] On August 12, 2013, the applicants filed the present application for judicial review against that decision.

IV. Decision under review

[12] On June 12, 2013, the visa officer refused to reconsider the applicants' permanent residence application on the following grounds (Notes CAIPS (Computer Assisted Immigration Processing System), Exhibit A from the Affidavit of Hélène Exantus):

> Consultant is confirming having received original requests and PFL but for reasons he does not explain, nothing was sent to us. Consultant says client is not responsible. Authorized representative act on behalf of clients and are responsible for their actions, or lack of, on behalf of clients. No grounds for reopening case.

V. Issues

[13] The issues are as follows:

1) Did the officer err by failing to reopen the matter for reconsideration?
2) Did the officer breach the principles of natural justice by refusing to reconsider the permanent residence application?

VI. Relevant statutory provisions

[14] The following provisions of the IRPA are applicable in these proceedings:

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'agente les visas et autres documents requis par règlement. L'agente 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.
…	[…]
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.	16. (1) 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 visas et documents requis.

VII. Standard of review

[15] The question as to whether a visa officer has fettered his or her discretion to reopen a file and the question of the application of the rules of natural justice are both reviewable on a correctness standard (*Canada (Minister of Citizenship and Immigration) v Khosa*, 2009 SCC 12, [2009] 1 SCR 339; *Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190).

VIII. Analysis

A. *Did the officer err by failing to reopen the matter for reconsideration?*

[16] The applicants' primary position is that the visa officer failed to recognize his discretion to reconsider the decision dated March 13, 2013, with regard to their permanent residence application. The applicants argue that there are no reasons in the visa officer's decision or in his CAIPS notes to explain why he refused to reconsider the matter.

[17] For the reasons that follow, the Court disagrees with this claim. The fact that the officer did not provide more detailed reasons to justify his decision not to reopen the file cannot serve as the sole basis for setting aside the decision (*Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, [2011] 3 SCR 708). The reasons must simply allow the Cour to understand the basis of the decision and establish that the conclusion falls within the range of possible, acceptable outcomes (*Newfoundland Nurses' Union* at para 16).

[18] In this case, the evidence in the record clearly shows that the officer was aware of his discretion to reconsider the application for permanent residence; he simply chose not to exercise that discretion. In his CAIPS notes, the officer explained that he was rejecting the request for reconsideration because the applicants' counsel had provided no valid reason for failing to provide the requested documents on time, in spite of having received notices requesting additional documentation. The explanation of his refusal to exercise his discretion to reopen the file was entirely reasonable in the circumstances.

[19] Thus, contrary to the applicants' arguments, the Court notes that there is no general obligation to reconsider an application for permanent residence upon receipt of new information (*Trivedi v Canada (Minister of Citizenship and Immigration)*, 2010 FC 422, 2010 CF 422 at para 30; *Grigaliunas v Canada (Minister of Citizenship and Immigration)*, 2012 FC 87, at para 18; *Veryamani v Canada (Minister of Citizenship and Immigration)*, 2010 FC 1268, 379 FTR 153). It is rather up to the applicants to show that circumstances warrant the exercise of the visa officer's discretion in "the interest of justice" and "in unusual circumstances" (*Kheiri v Canada (Minister of Citizenship and Immigration)* (2000), 193 FTR 112, 99 ACWS (3d) 828 at para 8; *Moumivand v Canada (Minister of Citizenship and Immigration)*, 2011 FC 157 at para 18).

[20] It was made abundantly clear to the applicants, in the letter dated September 12, 2012, as well as the one dated December 11, 2012, that the onus was on them to provide sufficient documentation to show that they were admissible to Canada. The letters gave fair and reasonable warning to the applicants of the consequences of failing to provide that documentation. In their request for reconsideration, the applicants offered no reasonable justification to explain why the requested documents had not been produced during the original review of the file. Indeed, the applicants' counsel simply indicated that "for unexplained reasons, the documents received from our client were not sent to you" (applicants' record, page 78).

[21] Given these circumstances, the Court cannot find that it was unreasonable for the visa officer to decide not to reopen the matter for reconsideration. The applicants were simply unable to show how the exercise of discretion was in the interests of justice, or in what way their circumstances were unusual.

B. *Did the officer breach the principles of natural justice by refusing to reconsider the permanent residence application?*

[22] The Court finds that the applicants also failed to demonstrate how the officer's refusal to reconsider their application raises an issue of natural justice. The applicants contend that the visa officer breached a principle of natural justice by holding them responsible for their representative's failure to provide the documentation requested by the visa officer. Yet the applicants and their representative had several opportunities to remedy their omission. Nearly one year had passed between the first request for documentation and the final decision. The Court does not find that the applicants showed sufficient diligence during this period so as to ensure that their application was presented in a complete and timely manner. As this Court concluded in *Moumivand*, above, the applicants have therefore failed to meet the threshold that would have absolved them of their representative's omission.

[23] The Court notes that it is only in certain extraordinary circumstances that a counsel's competence (or lack thereof) may give rise to a natural justice issue; however, there is a heavy burden on an applicant to come within this exception (*Radji v Canada (Minister of Citizenship and Immigration)*, 2007 FC 100, 308 FTR 175; *Muhammed v Canada (Minister of Citizenship and Immigration)*, 2003 FC 828, 237 FTR 8; *Shirwa v Canada (Minister of Employment and Immigration)*, [1994] 2 FC 51, 23 Imm LR (2d) 123 (FCTD)). The applicants' circumstances in this case do not come within this exception.

IX. Conclusion

[24] For all of the foregoing reasons, the applicants' application for judicial review is dismissed.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that the applicants' application for judicial review be dismissed, with no question of general importance to be certified.

"Michel M.J. Shore"

Judge

Certified true translation
Sebastian Desbarats, Translator

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-5305-13
STYLE OF CAUSE:	ABBAS HASSAN GHADDAR AND THE MEMBERS OF HIS FAMILY, FATEN ALI JAWAD, FADL ABBAS GHADDAR, DANA ABBAS GHADDAR v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
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