

Federal Court



Cour fédérale

Date: 20141121

Docket: IMM-4837-13

Citation: 2014 FC 1104

Ottawa, Ontario, November 21, 2014

PRESENT: The Honourable Mr. Justice Mosley

BETWEEN:

ERJON DEMIRI

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The applicant, Mr Erjon Demiri, challenges the decision of an Immigration Officer who denied his application for permanent residence as a member of the Spouse or Common-Law Partner in Canada class. For the reasons that follow, the application is dismissed.

[2] The applicant is a 26 year old male citizen of Albania. He first entered Canada from the United States (where he had traveled on a student visa) on October 22, 2009. His application for

Convention refugee status was denied in July 2011. An application for leave and for judicial review of that decision was dismissed in November 2011. A month later, the applicant married a Canadian citizen. He applied for permanent residence as a member of the Spouse or Common-Law Partner in Canada class on April 5, 2012. He was found eligible to apply and has a Pre-Removal Risk Assessment pending.

[3] On September 25, 2012, the respondent sent the applicant a letter requesting that he provide the results of medical examinations and a “valid passport or travel document”. On October 24, 2012, the applicant sent the respondent the required medical information. However, instead of a passport or travel document, the applicant sent a certificate issued by the Albanian Embassy in Ottawa. This certificate explained that the Albanian government only issues passports to citizens who are physically present in Albania and that travel documents are “issued only once to travel to Albania”. The Embassy recommended that the respondent “further process Mr Demiri’s application based on the present document”.

[4] On February 18, 2013, the respondent sent the applicant a letter stating that his application would be refused if he did not provide a copy of a valid passport or travel document by May 18, 2013.

[5] On March 12, 2013, the applicant replied with a letter written by his wife. She explained that the applicant had lost his passport and that he could not obtain a new passport or travel document, as explained in the abovementioned certificate. She attached another copy of the certificate with this letter.

[6] An Immigration Officer refused the application by decision letter dated July 11, 2013.

[7] The reasons provided for refusing the application are set out succinctly in the letter:

Regulation 50 requires that all persons seeking permanent resident status in Canada must provide a valid passport or travel document issued by the Country of Citizenship. In your case you have not shown that you meet this requirement because you stated in a letter dated 12Mar2013 that you are unable to obtain a valid passport. **You were told in a letter dated 18February2013 that if you did not provide a valid passport by 18May2013 your application would be refused.**

[Emphasis in original]

I. **Issues**

[8] The applicant submits that the reasons provided by the Immigration Officer are inadequate and that this constitutes a breach of procedural fairness. As explained by the Supreme Court of Canada in *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para 14 [*NL Nurses*], even where the reasons of an administrative decision-maker are inadequate, this does not afford “a stand-alone basis for quashing a decision”. Rather, a reviewing Court takes the sufficiency of reasons into account when analysing the overall reasonableness of a decision.

[9] The sole issue to be determined in this application is whether the Officer's decision was, as a whole, reasonable.

II. Relevant Legislation

[10] Subsection 50(1) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 (the Regulations), sets out a list of documents. A foreign national seeking to become a permanent resident must hold at least one of these documents, depending on his particular circumstances.

50. (1) In addition to the permanent resident visa required of a foreign national who is a member of a class referred to in subsection 70(2), a foreign national seeking to become a permanent resident must hold

(a) a passport, other than a diplomatic, official or similar passport, that was issued by the country of which the foreign national is a citizen or national;

(b) a travel document that was issued by the country of which the foreign national is a citizen or national;

(c) an identity or travel document that was issued by a country to non-national residents, refugees or stateless persons who are unable to obtain a passport or other travel document from their country of citizenship or nationality or who have no country of citizenship or nationality;

50. (1) En plus du visa de résident permanent que doit détenir l'étranger membre d'une catégorie prévue au paragraphe 70(2), l'étranger qui entend devenir résident permanent doit détenir l'un des documents suivants :

a) un passeport — autre qu'un passeport diplomatique, officiel ou de même nature — qui lui a été délivré par le pays dont il est citoyen ou ressortissant;

b) un titre de voyage délivré par le pays dont il est citoyen ou ressortissant;

c) un titre de voyage ou une pièce d'identité délivré par un pays aux résidents non-ressortissants, aux réfugiés ou aux apatrides qui sont dans l'impossibilité d'obtenir un passeport ou autre titre de voyage auprès de leur pays de citoyenneté ou de nationalité, ou qui n'ont pas de pays de citoyenneté ou de nationalité;

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|---|---|
| (d) a travel document that was issued by the International Committee of the Red Cross in Geneva, Switzerland, to enable and facilitate emigration; | d) un titre de voyage délivré par le Comité international de la Croix-Rouge à Genève (Suisse) pour permettre et faciliter l'émigration; |
| (e) a passport or travel document that was issued by the Palestinian Authority; | e) un passeport ou un titre de voyage délivré par l'Autorité palestinienne; |
| (f) an exit visa that was issued by the Government of the Union of Soviet Socialist Republics to its citizens who were compelled to relinquish their Soviet nationality in order to emigrate from that country; | f) un visa de sortie délivré par le gouvernement de l'Union des républiques socialistes soviétiques à ses citoyens obligés de renoncer à leur nationalité afin d'émigrer de ce pays; |
| (g) a passport issued by the United Kingdom to a British National (Overseas), as a person born, naturalized or registered in Hong Kong; | g) un passeport délivré par le Royaume-Uni à un ressortissant britannique (outre-mer) (<i>British National (Overseas)</i>) à titre de personne née, naturalisée ou enregistrée à Hong Kong; |
| (h) a passport issued by the Hong Kong Special Administrative Region of the People's Republic of China; or | h) un passeport délivré par la zone administrative spéciale de Hong Kong de la République populaire de Chine; |
| (i) a passport issued by the United Kingdom to a British Subject. | i) un passeport délivré par le Royaume-Uni à un sujet britannique (<i>British Subject</i>). |

[11] Section 178 of the Regulations, found in Division 5 of the Regulations, provides an alternative to subsection 50(1) for protected persons who apply for permanent residence.

178. (1) An applicant who does not hold a document described in any of paragraphs 50(1)(a) to (h) may submit with their application

178. (1) Le demandeur qui ne détient pas l'un des documents mentionnés aux alinéas 50(1)a) à h) peut joindre à sa demande l'un ou l'autre des documents suivants :

(a) any identity document issued outside Canada before the person's entry into Canada; or

a) toute pièce d'identité qui a été délivrée hors du Canada avant son entrée au Canada;

(b) if there is a reasonable and objectively verifiable explanation related to circumstances in the applicant's country of nationality or former habitual residence for the applicant's inability to obtain any identity documents, a statutory declaration made by the applicant attesting to their identity, accompanied by

b) dans le cas où il existe une explication raisonnable et objectivement vérifiable, liée à la situation dans le pays dont il a la nationalité ou dans lequel il avait sa résidence habituelle, de son incapacité d'obtenir toute pièce d'identité, une affirmation solennelle dans laquelle il atteste de son identité et qui est accompagnée :

(i) a statutory declaration attesting to the applicant's identity made by a person who, before the applicant's entry into Canada, knew the applicant, a family member of the applicant or the applicant's father, mother, brother, sister, grandfather or grandmother, or

(i) soit d'une affirmation solennelle qui atteste l'identité du demandeur faite par une personne qui, avant l'entrée de celui-ci au Canada, a connu le demandeur, un membre de sa famille, son père, sa mère, son frère, sa soeur, son grand-père ou sa grand-mère,

(ii) a statutory declaration attesting to the applicant's identity

(ii) soit d'une affirmation solennelle qui atteste l'identité du

made by an official of an organization representing nationals of the applicant's country of nationality or former habitual residence.

demandeur faite par le représentant d'une organisation qui représente les ressortissants du pays dont le demandeur a la nationalité ou dans lequel il avait sa résidence habituelle.

(2) A document submitted under subsection (1) shall be accepted in lieu of a document described in any of paragraphs 50(1)(a) to (h) if

(2) Les documents fournis au titre du paragraphe (1) en remplacement des documents mentionnés aux alinéas 50(1)a) à h) sont acceptés si :

(a) in the case of an identity document, the identity document

a) dans le cas d'une pièce d'identité, la pièce, à la fois :

(i) is genuine,

(i) est authentique,

(ii) identifies the applicant, and

(ii) identifie le demandeur,

(iii) constitutes credible evidence of the applicant's identity;

(iii) constitue une preuve crédible de l'identité du demandeur;

[...]

[...]

III. Analysis

A. *Standard of Review*

[12] In his written representations, the applicant submitted that the standard of correctness ought to apply because the Officer allegedly misapprehended and misapplied the law. At the hearing, the applicant conceded that this case calls for the standard of reasonableness because the Officer interpreted his home legislation and applied it to the facts before him. Indeed, the

standard of reasonableness applies to questions of law within the decision-maker's expertise and to questions of mixed fact and law: *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 54; *Smith v Alliance Pipeline Ltd*, 2011 SCC 7 at para 26.

B. Did the Officer render a reasonable decision?

[13] The argument that the decision was unreasonable because the Officer did not provide adequate reasons must be dismissed. As the respondent submits, deference is to be shown to the Officer's reasons within a reasonableness analysis: *NL Nurses*, above, at paras 14, 21-22. The decision must be approached as an organic whole, "without a line-by-line treasure hunt for error": *Communications, Energy and Paperworkers Union of Canada, Local 30 v Irving Pulp & Paper, Ltd*, 2013 SCC 34 at para 54. The question is not whether the reasons are perfect; it is whether the reasons – read in light of the evidence – adequately explain the basis of the decision: *NL Nurses*, above, at paras 17-18.

[14] The applicant submits that the decision is unreasonable because the Officer failed to comment on the correspondence from the Albanian Embassy that the applicant and his wife had submitted twice. In *Agraira v Canada (Public Security and Emergency Preparedness)*, 2013 SCC 36 at paras 51-53, 63, the Supreme Court held that the mere fact that reasons do not refer to a particular issue does not remove the requirement of deference. Silence on a particular issue does not prevent the reviewing court from finding that the decision is still reasonable. Moreover, a reviewing court must pay "respectful attention to the reasons offered or which could be offered in support of a decision": *NL Nurses*, above, at para 12 [emphasis added].

[15] Here it was clear on the face of the Albanian Embassy's document that it was not a passport or travel document. Rather, it explained that a "one way" travel document could be obtained on request to the Embassy in order to travel to Albania to renew a passport. While the applicant may have had reasons for not wanting to go back to Albania, that one-way travel document may have sufficed for the purposes of paragraph 50(1)(c).

[16] The present case is analogous to *Kim v Canada (Citizenship and Immigration)*, 2012 FC 289. In that matter, the respondent had written to the applicant's solicitors to advise that it would be prepared to accept a "one way travel document from the South Korean authorities". The applicant chose not to obtain that document as he would have had to travel to Vancouver to make the application in person at the South Korean consulate and did not wish to incur the cost. Justice Hughes found that, in those circumstances, the decision to refuse the application for a permanent resident visa was reasonable.

[17] I also draw attention to *Rakheja v Canada (Citizenship and Immigration)*, 2009 FC 633, where an applicant for permanent residence under the spousal category could not obtain a valid Indian passport because there was an outstanding arrest warrant against him in India. Justice Kelen dismissed his application for judicial review.

[18] This matter is distinguishable from *Andryanov v Canada (Citizenship and Immigration)*, 2007 FC 186, relied upon by the applicant. In *Andryanov*, I found that a "Seaman's Passport", held by the applicant, could serve as a travel document and that the respondent had erred in refusing to accept it, along with a national identity card.

[19] Paragraphs 50(1)(a) and (b) of the Regulations state that a foreign national applying for permanent residence “must hold” either a passport or a travel document issued by his country of citizenship. This is a mandatory requirement. In *Diarra v Canada (Citizenship and Immigration)*, 2006 FC 1515 at para 13, Justice Pinard commented on this requirement as follows:

In my opinion, in this case, the immigration officer was entitled to require the applicant’s passport as proof of identity. First of all, as specified in paragraphs 50(1)(a) and (b) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 (the Regulations), a foreign national seeking permanent residence in Canada must hold a passport or a travel document issued by the country of which he or she is a citizen or a national. In this case, the respondent notes that the immigration officer had explained to the applicant that she could not accept a copy of a birth certificate and a school identity book because of the requirements set out in subsection 50(1) of the Regulations. In addition, the immigration officer advised the applicant on several occasions of the importance of submitting identity documents for the processing of his file.

[20] The remaining paragraphs of Regulation 50 offer alternatives. However, these alternatives are tailored to the circumstances of persons who cannot obtain the documents required by paragraphs (a) and (b). For instance, paragraph (e) provides for a passport issued by the Palestinian Authority, and paragraph (h) for a passport issued by the Hong Kong Special Administrative Region, because residents of Palestine and Hong Kong might not be able to secure a passport issued by the country of which they are “a citizen or national” due to the political status of Palestine and Hong Kong.

[21] The applicant relies on paragraph 50(1)(c) of the Regulations, which allows a foreign national to produce an “identity or travel document that was issued by a country to non-national residents, refugees or stateless persons who are unable to obtain a passport or other travel

document from their country of citizenship or nationality”. The language of the Regulations makes clear that the applicant must be unable to secure a passport or travel document from Albania in order to rely on this rule. If he is able to obtain one of those two documents, he cannot rely on paragraph 50(1)(c) for the sake of convenience.

[22] It is implicit in the Officer’s reasons that the respondent does not accept that the applicant is unable to secure an Albanian passport or travel document. The explanation now offered to the Court – that he was unable to return to Albania for the reasons rejected by the Refugee Protection Division – is inadequate. He could have obtained a travel document without, in fact, having to return to his home country, as in *Kim*, above. In any event, that explanation was not before the Officer and the Officer was under no obligation to provide the applicant with advice as to how he might satisfy the requirements of the Regulations, as the applicant now asserts.

[23] Moreover, in my view, it is not open to the applicant to rely on section 178 of the Regulations, as in *Nadesan v Canada (Citizenship and Immigration)*, 2011 FC 1325, cited by the applicant. Section 178 is found under “Part 8: Refugee Classes, Division 5: Protected Persons-Permanent Residence” of the Regulations. It appears, therefore, to apply only to protected persons who seek permanent residence. *Nadesan* involved a successful refugee claimant from Sri Lanka who applied for permanent residence. The Court found that the decision-maker had unreasonably rejected statutory declarations submitted pursuant to section 178. In contrast, section 50 is found under “Part 4: Procedures, Division 3: Conduct of Examinations” and would apply more generally to all cases of persons seeking permanent residence.

[24] I conclude that the Officer made no error and that the Court owes deference to her decision.

[25] No questions were proposed and none will be certified.

JUDGMENT

THIS COURT'S JUDGMENT is that the application is dismissed. No questions are certified.

“Richard G. Mosley”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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