

Federal Court



Cour fédérale

Date: 20150928

Docket: T-2191-14

Citation: 2015 FC 1121

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Montréal, Quebec, September 28, 2015

PRESENT: The Honourable Madam Justice St-Louis

BETWEEN:

THIERNO CISSÉ

Plaintiff

and

HER MAJESTY THE QUEEN

Defendant

JUDGMENT AND REASONS

I. Introduction

[1] Thierno Cissé, the plaintiff, has brought an action in damages against Her Majesty the Queen, the defendant, alleging that agents of Citizenship and Immigration Canada [CIC] committed a fault in refusing to issue him the open work permit that he had applied for.

Mr. Cissé alleges that he suffered harm as a result of this refusal and claims \$15 million in damages.

[2] The Court finds that Mr. Cissé has not established any fault on the part of the defendant or any damage stemming from a possible fault.

[3] At the hearing, Mr. Cissé testified on his own behalf, while Ruth Anne Weisman, a senior program specialist at CIC, testified for the defendant.

[4] The Court will begin by summarizing the allegations of each party and the evidence that they filed in support of these allegations and will then turn to examining whether Mr. Cissé discharged his burden of proof.

II. Allegations of the parties

[5] In spring 2008, Mr. Cissé, a citizen of Senegal, and DMR Consulting, a division of Fujitsu Consulting (Canada) Inc. [DMR Consulting], entered into a contract of employment that provided, among other things, that Mr. Cissé would take on the position of systems delivery adviser in Canada, effective May 15, 2008, as appears from the copy of said contract filed by Mr. Cissé as Exhibit P-1.

[6] Mr. Cissé testified that he first obtained a Quebec Acceptance Certificate [QAC] through the Information Technology Worker Program and then applied to Canadian immigration authorities in Dakar, Senegal, for a temporary resident visa [TRV] and a work permit. The

processing time for this application was longer than the advertised 45 days for this sort of application, and in January 2015, DMR Consulting gave him confirmation that his new starting date would be January 19, 2009 (Exhibit P-3). On December 22, 2008, the Canadian authorities issued Mr. Cissé a TRV and an application approval letter for his work permit, which he would receive upon arrival in Canada.

[7] On January 29, 2009, DMR Consulting informed Mr. Cissé by email that his employment contract had been cancelled. A copy of this email was filed as Exhibit P-4. In his testimony, Mr. Cissé confirmed that he was in Paris when he heard the news but nevertheless chose to travel on to Canada.

[8] On February 1, 2009, Mr. Cissé thus arrived in Canada and received a work permit, valid until May 5, 2011, a copy of which was filed as Exhibit P-2. This work permit was restricted to Mr. Cissé's prospective position at DMR Consulting, and he confirmed that he therefore could not work for any employer other than the one named on his work permit without first obtaining a new work permit, which limited his options considerably.

[9] In October 2010, Mr. Cissé applied to the CIC Case Processing Centre-Vegreville for an open work permit so that he could work for an employer other than the one named on the work permit he already had. At the hearing, Mr. Cissé stated that this application was based on section 208 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [IRPR], reproduced in the appendix to these reasons. On this subject, and in response to question from the Court, he confirmed that he does not have and has never had a resident permit.

[10] Around February 2011, Mr. Cissé contacted the CIC Call Centre to inquire about his application and was told that it had been refused on January 10, 2011. He told the agent that he had not received a letter notifying him of the refusal, and he confirmed his address so that a new letter could be sent. In short, Mr. Cissé confirmed that he finally received the refusal letter in March 2011, and this letter stated that his work permit application had been refused because a favourable new labour market impact assessment was required first and none had been issued. A copy of that letter was filed as Exhibit P-6.

[11] Mr. Cissé alleged that he called the CIC Call Centre back and that an agent told him that there was no way for him to contest the refusal.

[12] Mr. Cissé testified that he continued looking for work after his application was refused, that he remained in Canada after his work permit expired in May 2011, and that on February 24, 2012, he claimed refugee protection in order to obtain an open work permit. In September 2013, at the hearing of his refugee protection claim before the Refugee Protection Division of the Immigration and Refugee Board, Mr. Cissé received a number of documents, including one that he claimed to be the basis for CIC's refusal to issue the open work permit he applied for in October 2010.

[13] According to Mr. Cissé, that document, an excerpt from electronic notes in CIC's CAIPS database (Exhibit P-9) confirmed that DMR Consulting had submitted incorrect information to CIC, and that CIC then relied on that information to refuse to issue him the open work permit

that he had applied for in October 2010. The sentence on which Mr. Cissé bases his claims reads as follows: [TRANSLATION] “His starting date at DMR was May 15, 2008”.

[14] Mr. Cissé submits that he met the requirements for receiving a work permit under section 208 of the IRPR, above, but that CIC’s agents refused his application without cause, on the basis of the information contained in Exhibit P-9, above, thereby committing a fault.

[15] The defendant called Ruth Anne Weisman as a witness. In essence, Ms. Weisman filed in evidence copies of excerpts from Mr. Cissé’s electronic file confirming information such as the dates and type of applications made by Mr. Cissé. She confirmed that Mr. Cissé had applied for an open work permit and that CIC had refused the application because he did not meet the criteria under the IRPR. She also confirmed that Mr. Cissé did not have a temporary resident permit, that he claimed refugee protection in March 2012, and that he then received three (3) open work permits—one in 2012, one in 2013 and one in 2014.

III. Issues

[16] The Court must determine whether Mr. Cissé has proven (1) that the defendant committed a fault engaging her liability, (2) that he suffered the damage he claims to have suffered, and (3) that the damage was caused by the fault of the defendant.

IV. Positions of the parties

A. *Position of Mr. Cissé*

[17] Mr. Cissé submits that the defendant committed a fault in refusing his application for an open work permit. He raises three arguments in particular.

[18] First, Mr. Cissé submits that the defendant should have granted him an open work permit when he applied for one in October 2010 because, first, he could apply for a permit to work in Canada and, second, he met the requirements for issuing one under section 208 of the IRPR. On this point, Mr. Cissé submits that the fact that he already had a work permit and a TRV when he applied for an open work permit exempted him from having to hold a temporary resident permit. Thus, CIC based its refusal on incorrect personal information that DMR Consulting had provided to it through the information contained in Exhibit P-9.

[19] Second, Mr. Cissé submits that the defendant incorrectly informed him that he had no possible recourse regarding the refusal of his application for an open work permit.

[20] Third, Mr. Cissé submits that the defendant deliberately violated his fundamental rights by sending the letter refusing his open work permit application to the wrong address, thus causing him considerable mental distress.

[21] Mr. Cissé tried to raise arguments relating to the *Canadian Charter of Rights and Freedoms*, Quebec's *Charter of human rights and freedoms*, and Ontario's *Human Rights Code*, but since the procedures for raising such arguments were not followed, the defendant objected. Having taken this objection under advisement, I allow it for the reasons raised by the defendant.

B. *Position of the defendant*

[22] In general terms, the defendant submits that her agents committed no fault in refusing the open work permit application made by Mr. Cissé in 2010, that the damage he alleges cannot be attributed to her and, what is more, that Mr. Cissé did not present any evidence of any damage whatsoever.

[23] The defendant submits that Mr. Cissé has no vested right to an open work permit; that, on the contrary, such a permit is a privilege; and that to obtain one, he had to prove to an immigration officer's satisfaction that he met the regulatory requirements, in compliance with section 11 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [Act], which he did not do.

[24] The defendant submits that Mr. Cissé chose to come to Canada knowing that he no longer had a job and that it was up to him to inquire about his rights after his application for an open work permit was refused.

V. Analysis

[25] Mr. Cissé relies on section 199 of the IRPR to submit that he could apply to the CIC Case Processing Centre-Vegreville for a new work permit in October 2010 because, at the time, he already had a work permit. The Court agrees with this statement.

[26] Mr. Cissé then relies on section 208 of the IRPR to submit that he should have received the open work permit he applied for in October 2010 and that the defendant committed a fault in not issuing it. The Court cannot accept this position.

[27] Section 208 is in Part 11 of the IRPR, which deals with workers, more specifically, in Division 3, the division related to the issuance of work permits, and this section is entitled “Humanitarian reasons”.

[28] Paragraph 208(b) of the IRPR provides that “[a] work permit may be issued . . . to a foreign national in Canada who cannot support themselves without working, if the foreign national holds a temporary resident permit issued under subsection 24(1) of the Act that is valid for at least six months” [emphasis added].

[29] However, the evidence shows that Mr. Cissé did not hold a temporary resident permit when he applied for an open work permit in October 2010; at that time, he held a work permit and a TRV.

[30] He therefore did not qualify for the issuance of an open work permit under section 208 of the IRPR.

[31] Furthermore, although Mr. Cissé did not raise section 206 of the IRPR at the hearing, his pleadings suggest that he raised it as well to support his right to the issuance of the open work permit he applied for in October 2010. However, it is clear that section 206 of the IRPR did not apply to Mr. Cissé at that time because he had not yet filed his claim for refugee protection. In any event, he obtained open work permits under that section after he filed his claim for refugee protection.

[32] The Court is therefore satisfied that Mr. Cissé did not meet the regulatory requirements that would have allowed him to obtain an open work permit in October 2010 and that CIC's agents did not commit any fault in refusing to issue one to him. Thus, the defendant committed no fault such that her civil liability was engaged.

[33] What is more, Mr. Cissé did not present any evidence relating to the damage he allegedly suffered.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that the action is dismissed with costs to the defendant.

“Martine St-Louis”

Judge

Certified true translation
Michael Palles

APPENDIX

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

208. A work permit may be issued under section 200 to a foreign national in Canada who cannot support themselves without working, if the foreign national

- (a) holds a study permit and has become temporarily destitute through circumstances beyond their control and beyond the control of any person on whom that person is dependent for the financial support to complete their term of study; or
- (b) holds a temporary resident permit issued under subsection 24(1) of the Act that is valid for at least six months.

***Règlement sur l'immigration
et la protection des réfugiés,
DORS/2002-227***

208. Un permis de travail peut être délivré à l'étranger au Canada en vertu de l'article 200 si celui-ci ne peut subvenir à ses besoins autrement qu'en travaillant et si, selon le cas :

- a) l'étranger est titulaire d'un permis d'études et est temporairement dépourvu de ressources en raison de circonstances indépendantes de sa volonté et de celle de toute personne dont il dépend pour le soutien financier nécessaire à l'achèvement de ses études;
- b) il est titulaire, aux termes du paragraphe 24(1) de la Loi, d'un permis de séjour temporaire qui est valide pour au moins six mois.

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-2191-14

STYLE OF CAUSE: THIerno CISSÉ v HER MAJESTY THE QUEEN

PLACE OF HEARING: OTTAWA, ONTARIO

DATE OF HEARING: SEPTEMBER 15, 2015

JUDGMENT AND REASONS: ST-LOUIS J.

DATED: SEPTEMBER 28, 2015

APPEARANCES:

Thierno Cissé

FOR THE PLAINTIFF
(ON HIS OWN BEHALF)

Émilie Tremblay

FOR THE DEFENDANT

SOLICITORS OF RECORD:

William F. Pentney
Deputy Attorney General of Canada
Montréal, Quebec

FOR THE DEFENDANT