Federal Court  Cour fédérale

Date: 20160705

Docket: IMM-4955-15

Citation: 2016 FC 751

Ottawa, Ontario, July 5, 2016

PRESENT: The Honourable Mr. Justice Diner

BETWEEN:

MEHRNOUSH RAMEZANPOUR

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Nature of the Matter

[1] This is a judicial review, pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the Act], of a September 4, 2015 decision [the Decision] by a visa officer [the Officer] rejecting the Applicant's application for permanent residence as a skilled worker. The Applicant argues that the Decision was both unreasonable and unfair, but as I find neither, it shall stand.

II. Background

[2] The Applicant is a 41-year-old citizen of Iran. On February 11, 2013, she applied for permanent residence as a skilled worker under National Operation Classification [NOC] unit group 6322, or "Cooks".

[3] In her application, the Applicant alleged that she had over ten years of relevant experience at various establishments in Iran, including most recently as a cook at the Kaveh International Hotel [Kaveh] from 2008-2013. She also submitted documentation to demonstrate that, as of September 12, 2012, she had a prospective position as a cook at the Country Inns and Suites [Country Inns] in Oakville, Ontario. Her letter of employment for Country Inns was signed by a Mr. Harry Patel.

[4] On June 8, 2015, the Applicant received a procedural fairness letter [the PFL] from an Officer reviewing her application. In it, the Officer stated that they had grounds to believe that she had misrepresented herself and had not established herself as a cook. The Officer requested an updated reference letter, among other documentation.

[5] In the Global Case Management System [GCMS] notes that accompany her application and pre-date the PFL, several Officers identified various concerns and inconsistencies. On March 30, 2015, for example, one officer attempted to verify her employment at Kaveh. However, the number and address provided belonged to an unrelated company. An employee of that company advised the Officer that it had been at that address since September 2013 and the previous tenant, while a hotel, was not named Kaveh.

[6] Another reviewing Officer involved in the investigation noted that Mr. Patel, the prospective hirer in Canada, had signed letters of employment in two other applications for permanent residence. Those letters were also dated to September 2012 and used a similar format and wording, but they related to offers of employment with a different employer – the Quality Inn Airport West in Mississauga, Ontario.

[7] That same Officer then made several unsuccessful attempts to contact Mr. Patel at both the Quality Inn Airport West and the Country Inns. Eventually, the officer was given an e-mail address to contact Kevin Slean, the general manager of Country Inns. Neither Mr. Patel nor Mr. Slean, however responded to the Officer's subsequent email or phone messages.

[8] On August 6, 2015, the Applicant submitted a response to the PFL. In it, she explained that both managers at Kaveh and Country Inns had changed during the processing of her application.

[9] Along with her PFL response, the Applicant submitted further documentation, including:

1. A July 2, 2015 employment letter from Mr. Slean at Country Inns that was almost identical to the original employment letter from Mr. Patel;
2. A July 15, 2015 letter on Kaveh letterhead from a new manager saying that he had taken over in 2014;
3. A July 16, 2015 letter on non-Kaveh letterhead from an individual referring to himself as Kaveh's manager during the relevant period (2008-2013) stating that the Applicant had worked there;
4. A series of translations of fixed-term employment contracts, all signed on July 24, 2015 (i.e. post-employment), for the last three years of Kaveh employment; and
5. Documents relating to her post-application employment in Iran.

III. Decision

[10] The Officer first noted that the applicants for permanent residence as skilled workers are assessed on the basis of criteria set out in subsection 76(1) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [the Regulations] – age, education, knowledge of Canada's official languages, experience, arranged employment, and adaptability – and that the Applicant requested that she be assessed on the basis of NOC 6322. The Officer then assigned to each of these categories a point value, awarding the Applicant a total of 36 points out of a possible 100, well below the minimum threshold of 67 necessary to acquire permanent residence status. Notably, the Officer awarded the Applicant zero points in the Experience, Arranged Employment, and Adaptability categories.

[11] On the Experience and Arranged Employment categories, the Officer was not satisfied that the Applicant had been employed as a cook or that she had the requisite work experience on the basis of the documents she had submitted. The Officer also noted that both her previous work experience and her prospective work experience could not be verified. The Officer noted that concerns about the Applicant's work experience were expressed in the June 8, 2015 PFL but that her response did not alleviate these concerns. As a result, the Officer was not satisfied that the Applicant had the required work experience to perform the duties of the job offer in Canada and that she would be likely to accept and carry out that employment.

[12] In the GCMS notes that form part of the reasons (see *Rezaeiazar v Canada (Citizenship and Immigration)*, 2013 FC 761 at para 58), the Officer made the following further observations:

A. The phone number and address provided for Kaveh belong to a different company and the last occupant at that address, in 2013, was not Kaveh;

B. Neither Mr. Patel nor Mr. Slean could be reached by phone or e-mail to verify the prospective position at Country Inns. The new employment letter from Mr. Slean uses a different letterhead than the previous one from Mr. Patel but is otherwise the same – i.e., same format, same font, same typos, and generally of a quality below the usual standards of an established Canadian hotel chain. Other inconsistencies were noted regarding the Applicant's employment documents, including with regard to signatures and phone numbers. The Officer also questioned why Mr. Slean would send the Applicant a new letter, rather than simply responding to any of the various calls or e-mails from the officers;

C. Other letters of reference included in the PFL response from past employers were in English – unusual in Iran – and they did not contain any new information and/or persuasive evidence of the Applicant's work history; accompanying employment contracts, for instance, were signed after employment had ended and were missing untranslated originals;

[13] As a result, the Officer was not satisfied that the Applicant met the requirements for permanent residence as a skilled worker and refused her application.

IV. Issues

[14] The Applicant alleges that the Officer made four errors in assessing the Applicant's submissions:

A. The Officer considered irrelevant grounds on the basis of speculation and prejudice;

B. The Officer failed to consider the Applicant's evidence on work experience, arranged employment, and adaptability;

C. The Officer did not have the authority to challenge or doubt the validity of the Applicant's prospective employment in Canada; and

D. The Officer breached a duty of procedural fairness in not providing the Applicant a fair opportunity to understand and address that her credibility was at issue.

V. Standard of Review

[15] Any procedural fairness issues that arise from a visa officer's decision are reviewable on a correctness standard (*Virhia v Canada (Citizenship and Immigration)*, 2014 FC 410 at para 11). As such, the question of whether the Officer failed to properly inform the Applicant of any credibility concerns is to be assessed without deference.

[16] Issues relating to a visa officer's consideration of an applicant's eligibility, on the other hand, are reviewable on a reasonableness standard (*Al Hussain v Canada (Citizenship and Immigration)*, 2013 FC 636 at para 12). This is a deferential standard and if that assessment is an acceptable and rational solution that is justifiable, transparent and intelligible, it should not be disturbed (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47).

VI. Analysis

A. *Did the Officer err in not informing the Applicant of any credibility concerns with her documentary evidence?*

[17] The Applicant argues that the Officer erred in basing the Decision on credibility concerns that were not disclosed in the PFL. The Applicant argues that the Officer was obliged to fully inform her about any issues relating to the validity of her documentation or the credibility of her submissions. The Applicant submits that the PFL did not state that the veracity of the Applicant's arranged employment was at issue or that the Applicant's submitted documentation was suspected of being inauthentic. At most, the PFL stated that an officer had "grounds to believe" that she "misrepresented" herself and that she had not established her employment experience as a cook.

[18] Justice Gascon recently summarized the jurisprudence on procedural fairness letters in the permanent residence context in *Wijayansinghe v Canada (Citizenship and Immigration)*, 2015 FC 811 [*Wijayansinghe*]:

> [28] I agree that the duty of procedural fairness includes the duty to properly inform an applicant of the case against him or her and to give the applicant an opportunity to respond and to know about the visa officer's concerns. It requires that an applicant be provided with a meaningful opportunity to present the various types of evidence relevant to his or her case and to have it fully considered (*Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817, at para 28). However, in the context of a visa application, this duty of fairness does not require a visa officer to inform an applicant of concerns arising directly from the requirements of the legislation or regulations and to give the applicant an opportunity to disabuse himself or herself of those concerns (*Prasad v Canada (Minister of Citizenship and Immigration)*, [1996] FCJ No 453, at para 7, 34 Imm LR (2d) (FCTD)).
>
> [29] The jurisprudence in this Court has developed to specify that this duty of procedural fairness applies to concerns about credibility, veracity or authenticity of the documents rather than to the sufficiency of the evidence. There is no obligation on a visa officer to provide an applicant with an opportunity to address concerns of the officer when the supporting documents are incomplete, unclear or insufficient to satisfy the officer that the applicant meets all the requirements that stem from the Regulations (*Hamza v Canada (Minister of Citizenship and Immigration)*, 2013 FC 264 at paras 24-25 [*Hamza*]; *Gharialia* at paras 16-17; *Sharma* at para 8; *Veryamani v Canada (Minister of Citizenship and Immigration)*, 2010 FC 1268 at paras 34-36 [*Veryamani*]).

[19] In light of this jurisprudence, I do not find that there has been any breach of procedural fairness. First, implicit in the statement that the Applicant may have misrepresented herself is the idea that her submissions were not credible. If they had been credible, then the Applicant could not be said to be misrepresenting herself in her claim – her claim would have been believed as a true representation of her status. The PFL, as it was formulated, sufficiently outlined the

Officers' credibility concerns and let the Applicant know more was needed to conclude that she had not misrepresented her case.

[20] Second, as is clear from the Applicant's further submission in response to the PFL, Applicant's counsel was well aware of the concerns in the GCMS notes. As such, it cannot be said that the Applicant was unaware of the case against her, as Justice Gascon put it in *Wijayansinghe*.

[21] Third, as noted above, there is no obligation for an Officer to provide an applicant the opportunity to address concerns when the documentary evidence is insufficient or unclear. The Applicant submitted documentation, both before and after the PFL, which the Officer found insufficient. The Officer was not obliged to make the PFL more explicit or detailed than it already was. The process of the PFL was also eminently fair: when the Applicant did not submit materials in time, for example, an extension was granted.

B. *Did the Officer consider irrelevant grounds?*

[22] The Applicant argues that the Officer based the Decision on culturally insensitive speculation and thus imported irrelevant considerations and extrinsic evidence into the analysis. The Applicant focuses in particular on the suggestion, in the GCMS notes, that women in Iran may not be allowed to cook professionally. While the Officer that ultimately made the Decision stated explicitly that this suggestion had been rebutted, the Applicant nonetheless argues that this "cultural [sic] insensitive prejudice and speculation clearly tainted the mind of the Officer" (Applicant's Further Memorandum of Facts and Arguments at 7). More specifically, the Applicant contends that the Officer's preconceptions of Iranian society led to an unfounded

suspicion about the fact that her reference letters were written in English. Since there is no evidence to suggest that managers in Iran would not be able to write a letter of reference in English, the Officer either speculated or relied on extrinsic evidence. Either way, this was an unreasonable error.

[23] The Respondent argues that there is no indication that the Officer based the Decision on prejudice or speculation: as the GCMS notes make clear, the Officer who questioned whether women could cook professionally in Iran was not the Officer who ultimately made the Decision. Furthermore, there is nothing unreasonable in taking note of the fact that a reference letter was written in English considering the official language in Iran is Farsi. This Court has noted before that Officers posted abroad have considerable knowledge of the culture and situation of the regions in which they work and can rely on that knowledge in their decision-making (see, for example, *He v Canada (Citizenship and Immigration)*, 2012 FC 33 at para 31; *Uppal v Canada (Citizenship and Immigration)*, 2009 FC 445 at para 35).

[24] I agree with the Respondent that the Officer did not err on this point. As the GCMS notes make clear, a different officer raised the issue of whether a woman could work as a cook in Iran. The Officer who made the ultimate Decision took issue elsewhere, and noted that they did not take issue with the fact of a female cook. While the Applicant suggested at the hearing that extrinsic evidence was used by the Officers in their examination of this file on this point, there was simply nothing to suggest that was the case.

[25] In terms of the English letters, visa officers are permitted to draw from their experience with a given culture, and the Officer's skepticism about the language in which the letters of

reference were written was bolstered by skepticism about many other aspects of the Applicant's submissions and supporting documentation. There is nothing unreasonable in making note of this concern, particularly in light of others.

[26] The Applicant argued that the case law has only permits Officers to rely on "local" knowledge and since the Officers in this case were posted in Ankara and not Iran – and Turkey has very different cultural practices than Iran – she argued that it does not apply. I find this to be an overly narrow reading of the jurisprudence. The basic proposition is that visa officers in missions abroad develop knowledge of the areas with which their visa officers interact. The Ankara mission, in this case, is responsible for coverage of visa applicants from Iran and thereby the visa office and its Officers obtain knowledge of Iran simply by virtue of dealing with a significant number of files from that area.

C. *Did the Officer fail to consider relevant evidence?*

[27] The Officer assigned the Applicant zero points under three categories: Experience, Arranged Employment, and Adaptability. The Officer did not, however, provide any reasons as to why the Applicant should score so low in the Adaptability category. The Applicant argues that this is a reviewable error, particularly since the paragraph 83(1)(d) of the Regulations obliges Officers to award points where a family member is a permanent resident or citizen of Canada and the Applicant's brother is a Canadian citizen.

[28] The Applicant also argues that the Officer erred in drawing a negative inference from an inability to contact her previous employer in Iran. Businesses are formed and dissolved regularly and she should not be punished for that fact. The Applicant submits that she provided ample

evidence – reference letters, her work contract, and her affidavit – all of which the Officer ignored.

[29] I agree with the Applicant – and the Respondent concedes this point – that the Officer erred in assigning zero points to the Applicant under Adaptability given her brother's status in Canada. However, as noted in the Decision, a maximum of 10 points can be assigned for Adaptability, and the Applicant only scored 36 points. Even had the Applicant received a full 10 points for Adaptability, she would still be 21 points short of the 67 minimum number of points needed. This Court has repeatedly held that no purpose is served by sending an assessment back for redetermination if, after correcting the error, the application would still fail (*Persaud v Canada (Citizenship and Immigration)*, 2009 FC 206 at para 40; *Canada (Minister of Citizenship and Immigration) v Patel*, 2002 FCA 55 at para 6).

[30] As for the assessment of the Applicant's previous work experience, I find that there was nothing unreasonable in the Officer's Decision to assign the Applicant zero points in the Experience category. The Officer is entitled to weigh and assess the evidence as he or she sees fit and it is not this Court's role to intervene and re-weigh it as the Applicant wishes. The Officer raised several grounds upon which to conclude that the employment letters and contracts submitted by the Applicant were insufficient. There was, for example, contradictory and unclear information as to Kaveh's status – including the letter stating she worked at Kaveh until November, 2013, notwithstanding the fact that the current tenant took possession in September 2013 from a previous employer that was not Kaveh.

[31] Furthermore, the Applicant provided translated work contracts, ostensibly for a period from 2012-2014, but did not provide originals. It was open to the Officer to assign them, along with other letters of reference, little probative value as a result.

[32] Finally, even if the Officer had assigned a full 15 points for Experience *and* the full 10 for Adaptability, the Applicant would still be 6 points short of the 67 points needed. Again, an error on this point would not be sufficient to justify returning this application for redetermination.

D. *Did the Officer err in considering the Applicant's employment in Canada?*

[33] The Applicant argues that it is the responsibility of Employment and Social Development Canada [ESDC] to determine the validity of the employment in Canada. The visa officer is tasked only with assessing the Applicant's skills and qualifications for the position. The Applicant thus argues that it was unreasonable for the Officer to attempt to verify her prospective employer at Country Inn & Suites and then, once unsuccessful, draw a negative inference from that failure. According to the Applicant, once ESDC has confirmed the validity of the position, a visa officer cannot then disagree with that assessment.

[34] The Respondent correctly notes, however, that it is within the power of a visa officer to assess the genuineness of a prospective employer's offer, as per *Bondoc v Canada (Citizenship and Immigration)*, 2008 FC 842 at para 18 ("[i]t is within the power of a visa officer to assess the genuineness of an employer's offer, and there is no requirement for him to give deference to the HRSDC officer's assessment of the validity of the employment offer") . The Officer did not err

either in attempting to verify the prospective employment or in weighing the lack of direct communication from Mr. Slean or Mr. Patel in the ultimate assessment.

VII. Conclusion

[35] Ultimately, the Applicant had the burden to present the visa office with an application that was complete, convincing, and unambiguous (*Obeta* v *Canada (Citizenship and Immigration)*, 2012 FC 1542 at para. 25. That was not the case for this Applicant. In light of the above, this application for judicial review should be dismissed.

[36] At the hearing, the Applicant submitted that two questions should be certified:

A. When the Officer sends a fairness letter which raises concerns about the authenticity of the evidence, and the Officer requires in that fairness letter that the Applicant submit certain documents and take further action, is it reasonable to require such actions from the Applicant that are beyond the control of the Applicant?; and

B. When an Officer makes an error under an FSW application, in relation to adaptability, and the Respondent concedes that the error is made, does the Court hearing the judicial review have the discretion to go further and assess the passing marks to see whether, given the error made, the outcome would have been different?

[37] The Respondent opposes both proposed questions on both grounds that neither are (a) of general importance and/or (b) unanswered by existing jurisprudence. I agree that the proposed questions do not transcend the interests of Applicant nor contemplate issues of broad significance or general importance which have not already been answered by existing case law.

[38] This application for judicial review is dismissed. No questions are certified and no costs are ordered.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is dismissed;

2. No questions are certified; and

3. No costs are ordered.

"Alan S. Diner"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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