

Federal Court



Cour fédérale

Date: 20160712

Docket: IMM-5402-15

Citation: 2016 FC 793

Ottawa, Ontario, July 12, 2016

PRESENT: The Honourable Madam Justice Strickland

BETWEEN:

FAHMIDA RAHMAN

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] This is an application for judicial review of a decision by a Senior Immigration Officer (“Officer”) of Citizenship and Immigration Canada (“CIC”) dated November 24, 2015 denying the Applicant’s request for a Temporary Resident Visa (“TRV”). This application is brought pursuant to s 72 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (“IRPA”).

Background

[2] The Applicant is a national of Bangladesh. She is married to Anwar Shahadat Shatil, a citizen of Bangladesh who holds a Canadian TRV and study permit allowing him to pursue a Master of Science degree in Biomedical Engineering at the University of Manitoba. He arrived in Canada in September 2014 while the Applicant remained in Bangladesh. The Applicant made her first application for a TRV in May 2015, which was refused as were two subsequent applications. With the assistance of her lawyer, the Applicant made her fourth application in November 2015, which was also denied. That decision is the subject of this application for judicial review.

Decision Under Review

[3] By letter dated November 24, 2015, the Applicant was informed that her TRV application was refused on the basis that the Officer was not satisfied that she would leave Canada at the end of her stay as a temporary resident (“Refusal Letter”). In reaching this decision, the Officer stated that he or she had considered several factors, including the Applicant’s travel history, her family ties in Canada and in her country of residence, her current employment situation, and, her personal assets and financial status.

[4] Subsequently, the Applicant was provided with further reasons for the refusal of her TRV application in the form of entries of visa officers’ notes in the Global Case Management System (“GCMS”). These included an entry by the Officer dated November 24, 2015 recording that the Applicant had been a senior observer for the Bangladesh meteorological department since

January 2014, that she reports to the assistant meteorologist and that she has a very modest annual salary of taka 136k (about \$2300 Canadian, or less than \$200 Canadian per month). The entry states that the financial documents for the Applicant and her spouse had been seen, a travel itinerary had been provided and a 108 page submission by the Applicant's representative had been carefully reviewed. The Officer noted there was no indication that the Applicant's spouse visited Bangladesh since coming to Canada, the couple has no children, and the Applicant is young and started working recently, less than 2 years ago. Further, it was noted that she has a modest income and no travel history. The entry also stated that despite having her direct family in Bangladesh, her strongest tie was to her husband in Canada. Her representative had commented on the possibility of settling in Canada, also mentioning that dual intent is allowed. The Officer concluded that, based on the documents provided and despite the analysis of the Applicant's representative, he or she was not satisfied, on a balance of probabilities, that the evidence submitted with the application demonstrated the Applicant is well-established, professionally and financially, and constituted sufficient ties to Bangladesh to ensure that she would comply with the terms and conditions of her stay and depart Canada when required. On that basis, the application was refused.

Issues and Standard of Review

[5] There is only one matter at issue and that is whether the Officer's decision was reasonable.

[6] The Applicant submits that the applicable standard of review for a visa officer's decision to issue or refuse a TRV is reasonableness (*Tavakoli Dinani v Canada (Citizenship and*

Immigration), 2012 FC 1063 at para 18 [*Tavakoli*]) as does the Respondent (*Loveridge v Canada (Citizenship and Immigration)*, 2011 FC 694 at para 10; *Singh v Canada (Citizenship and Immigration)*, 2012 FC 526; *Dunsmuir v New Brunswick*, 2008 SCC 9 [*Dunsmuir*]). I agree. This Court has previously held that a visa officer's decision to deny a TRV application based on the belief that the applicant would not leave Canada at the end of their stay is a question of mixed fact and law. Accordingly, the decision attracts the reasonableness standard of review (*Utenkova v Canada (Citizenship and Immigration)*, 2012 FC 959 at para 5).

Was the Officer's decision reasonable?

Applicant's Submissions

[7] The Applicant submits the Officer's decision should be set aside as it ignored relevant evidence. In support of this position, the Applicant submits that a visa officer cannot "systematically immunize" a decision from judicial review where relevant evidence is submitted by the applicant and not discussed (*Tavakoli* at para 25). The Applicant points out that this Court, in *Girn v Canada (Citizenship and Immigration)*, 2015 FC 1222, recently said that a visa officer's decision to refuse a TRV application was unreasonable because the officer ignored evidence contrary to his or her conclusion (at para 31). The Applicant also notes that it is unreasonable for a visa officer to be dismissive of an applicant's evidence (*Kokareva v Canada (Citizenship and Immigration)*, 2015 FC 451 at para 12 [*Kokareva*]).

[8] With respect to the facts in the present case, the Applicant says the GCMS notes do not mention the support letters from the Applicant's parents and sister; the Applicant's paid return

airline ticket and flight itinerary; evidence of a Bangladeshi bank account in the Applicant's name; a bank statement for the Applicant from that bank; a confirmation of shares registered in the Applicant's name in Bangladesh; and, relevant information contained in an employment letter written by the Applicant's immediate supervisor at the Bangladesh Meteorological Department. All of which are said to demonstrate her ties to Bangladesh and her intent to return.

[9] The Applicant also submits that the Officer's decision is unreasonable as it contradicts relevant evidence without any evidentiary basis for doing so and makes arbitrary inferences that are not supported by the evidence or the relevant jurisprudence. In support of this position, the Applicant submits that a visa officer must not rely on speculation without adequate consideration given to countervailing factors. If a visa officer does so, he or she must provide further reasons; if no further reasons are provided, the court may characterize the officer's decision as one that does not meet the standard of reasonableness articulated in *Dunsmuir (Momi v Canada (Citizenship and Immigration))*, 2013 FC 162 at para 23). In particular, the Applicant says the following with respect to the Officer's decision:

- The Officer's statement in the GCMS notes that the "Applicant is young and started working recently (less than 2 years ago)" is incorrect and vague;
- The terms "modest" and "very modest" in relation to the Applicant's income were contradicted by the letter from the Applicant's employer and are also vague. If the references to the Applicant's income are references to the Applicant's greater earning potential in Canada, then the decision is unreasonable (*Dhanoa v Canada (Citizenship and Immigration)*, 2009 FC 729 at para 18 [*Dhanoa*]). Moreover, references to the Applicant's earning power are made "sterile" by the absence of a cost of living analysis, the absence of references to the Applicant's living and working conditions in her home country and similar conditions in Canada (*Dhanoa* at para 14);
- If, however, the Officer is implying an issue of credibility with the Applicant or her evidence, then there is no justification or evidentiary basis for the Officer to do so, especially considering the Applicant voluntarily indicated her previous TRV refusals in her current application (*Kokareva* at para 12);

- The issue of the Applicant's spouse not having visited Bangladesh since arriving in Canada is an irrelevant consideration (*Khatoon v Canada (Citizenship and Immigration)*, 2008 FC 276 at para 12). Additionally, the Applicant's supporting materials indicate why her spouse has not been able to visit Bangladesh but the Officer's GCMS notes ignore this evidence;
- Refusing the TRV application because the Applicant does not have a child in Bangladesh is "hardly sufficient to amount to a reasonable exercise of discretion when other factors are taken into account" (*Onyeka v Canada (Citizenship and Immigration)*, 2009 FC 336 at para 48); and
- The Officer incorrectly drew a negative inference on the basis of the Applicant's lack of travel history. As stated by this Court in *Dhanoa* at para 12: "[I]ack of previous travel can only at most be a neutral factor".

Respondent's Submissions

[10] In response to the Applicant's submission that the Officer ignored evidence, the Respondent submits that the Officer is presumed to have weighed and considered all the evidence unless the contrary is shown. Further, the Officer was not required to make an explicit finding on each constituent element leading to the final decision. The reviewing court must simply be able to understand why the decision was made, looking to the entire record to determine the adequacy of the reasons (*Wang v Canada (Citizenship and Immigration)*, 2010 FC 201 at para 19; *Florea v Canada (Employment and Immigration)*, [1993] FCJ No 598 (FCA) at para 1 [*Florea*]; *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at paras 15-16 [*Newfoundland Nurses*]). In any event, the GCMS notes indicate that the Officer carefully considered all of the evidence.

[11] The Respondent also submits that the Officer clearly outlined the grounds for refusal in the Refusal Letter and the GCMS notes. These demonstrate that the Officer was primarily concerned with the Applicant's limited financial and professional ties to Bangladesh, and the

stronger familial pull of her husband in Canada compared to her direct family in Bangladesh.

The Respondent says these concerns are unambiguous and are based on the evidence submitted by the Applicant.

[12] The Respondent submits that the Officer's conclusion was not a negative credibility finding nor did it involve arbitrary inferences. There was an explicit statutory onus on the Applicant to satisfy the Officer that she would depart Canada at the end of the period authorized for temporary residence in Canada. Further, it is well-established that an officer must weigh the extent of an applicant's economic incentives and family ties in Canada and their home country. The weight to be assigned to these factors is a matter for the officer's discretion and is not a basis for judicial review (*Wang v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1298 at paras 9-10; *Chhetri v Canada (Citizenship and Immigration)*, 2011 FC 872 [*Chhetri*]).

[13] The Respondent states that a visa officer is not obliged to conduct a cost of living analysis when considering an applicant's financial incentive to overstay in circumstances, like these, where the officer's decision includes an assessment of a number of different factors (*Huang v Canada (Citizenship and Immigration)*, 2012 FC 145 at paras 8-9 [*Huang*]; *Sadiq v Canada (Citizenship and Immigration)*, 2015 FC 955 at paras 19-23 [*Sadiq*]). It was also reasonable for the Officer to consider income of less than \$200 Canadian a month to be a very modest salary compared to the draw of a Canadian salary (*Calaunan v Canada (Citizenship and Immigration)*, 2011 FC 1494 at paras 29-30).

[14] The Respondent also submits it was not irrelevant for the Officer to have considered the Applicant's lack of travel history when assessing her TRV application. This Court has held that an applicant's lack of travel history is a relevant consideration on a visa application (*Dhillon v Canada (Citizenship and Immigration)*, 2009 FC 614 at para 43 [*Dhillon*]; *Obeng v Canada (Citizenship and Immigration)*, 2008 FC 754 at paras 13, 20 [*Obeng*]). In the present case, the Applicant had no prior travel history which could be relied on as a positive factor to satisfy the Officer that the Applicant would leave Canada at the end of her authorized stay.

[15] The Respondent submits that the Applicant is asking the Court to reweigh the evidence, which is not the proper function of the Court on judicial review (*Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 61; *Pei v Canada (Citizenship and Immigration)*, 2007 FC 391 at para 14).

Analysis

[16] The IRPA requires that a foreign national, before entering Canada, apply for a visa (s 11(1)), establish that they hold such a visa and that they will leave Canada by the end of the period authorized for their stay (s 20(1)(b)). With respect to TRV's, s 7(1) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 ("*IRP Regulations*") states that a foreign national may not enter Canada to remain on a temporary basis without first obtaining a TRV. Section 179 of the *IRP Regulations* sets out the requirements that must be met before a visa officer will issue a TRV. Among these is the requirement that the visa officer be satisfied that the foreign national will leave Canada at the end of the period authorized for his or her stay. There is a legal presumption that a foreign national seeking to enter Canada is an immigrant, and

it is up to him or her to rebut this presumption (*Obeng* at para 20). Therefore, in the present case, the onus was on the Applicant to prove to the Officer that she is not an immigrant and that she would leave Canada at the end of the requested period of stay (*Chhetri* at para 9).

[17] With respect to the Applicant's allegation that the Officer ignored relevant evidence, the Officer is assumed to have weighed and considered all the evidence presented unless the contrary is shown, and that is not the case here (*Florea* at para 1; *Ahmed v Canada (Citizenship and Immigration)*, 2013 FC 1083 at para 34). The GCMS notes state that counsel for the Applicant submitted a 108 page submission, including a 12 page analysis, which was carefully reviewed by the Officer. As can be seen from the Certified Tribunal Record, attached to the 108 page submission were the two family support letters, the Applicant's return airline ticket and flight itinerary, the letter from the Applicant's employer, evidence of a Bangladeshi bank account in the Applicant's name, a bank statement for the Applicant from that bank, and, a letter of allotment of shares registered in the Applicant's name in Bangladesh.

[18] Further, most of the documents the Applicant asserts were ignored by the Officer were referenced in the GCMS notes. The November 24, 2015 entry by the Officer who refused the application refers to the Applicant's travel itinerary, her employment information, the financial documentation of her and her husband and, as noted above, her counsel's submissions. A prior entry by another officer on November 19, 2015 specifically addresses the "proof on file" including her employer's letter and setting out the information contained in that letter; her income of BDT 135,780, which is stated in her employer's letter; her savings of BDT 224,306.56 which comes from the certificate confirming her bank account; and, an investment in shares in

the amount of BDT 500,000, which comes from the letter of allocation of shares, as well as other financial information.

[19] The Applicant takes issue with the fact that the GCMS notes were made by two different officers and submits that there is no indication in the GCMS notes that the Officer responsible for determining her TRV application considered the notes of the other visa officer. I would note first that the jurisprudence is clear that the GCMS notes form part of the reasons for the decision (*Rezaeiazar v Canada (Citizenship and Immigration)*, 2013 FC 761 at paras 58-59; *Veryamani v Canada (Citizenship and Immigration)*, 2010 FC 1268). Furthermore, in the absence of evidence to the contrary, it is reasonable to infer that the deciding Officer considered all the notes in the GCMS system when deciding on the Applicant's TRV application. In any event, as noted above, the Officer who made the determination did, directly and indirectly, refer to the Applicant's supporting documentation.

[20] In regard to the Applicant's submission that the Officer ignored relevant information contained in the employment letter, the letter is explicitly referred to in the earlier GCMS entry which records that the Applicant has been a senior observer with the Bangladesh Meteorological Department since January 2014 and, as indicated by her employer, she is currently on a temporary probationary period and will be eligible for full-time employment on January 1, 2016, conditional upon her returning from Canada. As noted above, the employment letter is also attached to the 108 page submission of counsel considered by the Officer who issued the refusal.

[21] While it is true the Officer did not specifically refer to the two family support letters in his or her notes, the support letters were also attached to the 108 page submission, which the Officer stated was carefully reviewed. The Officer also noted that the Applicant had direct family in Bangladesh but found that her strongest tie was to her husband in Canada. This indicates that the Officer weighed the Applicant's family ties to Bangladesh and to Canada in reaching his or her decision. In any event, the Officer was not required to explicitly mention each and every piece of evidence considered (*Newfoundland Nurses* at para 16).

[22] In short, I do not agree with the Applicant that the Officer ignored evidence.

[23] The Applicant also raised numerous arguments to support her position that the Officer contradicted the evidence, without an evidentiary basis for doing so, and that the Officer made arbitrary inferences.

[24] In this regard, I do not share the Applicant's concern with respect to the alleged vagueness of the Officer's statement that the "Applicant is young and started working recently (less than 2 years ago)". The Officer need not define words such as "young" and "recent", their meaning is clear and self-evident in the context of his or her decision.

[25] The Officer's reference to the Applicant's salary as very modest is more problematic. While her employer's letter described her income as "competitive", it appears that the Officer reached the conclusion that it is modest based on his conversion of her salary to Canadian dollars, being less than \$200.00 per month. This raises the question of whether the Officer's

assessment of her financial status was given undue weight and improperly conducted in absence of a cost of living analysis. However, the Officer's description of her income was only one aspect of the evidence that was considered, but failed to establish, that the Applicant is well-established professionally and financially. Similarly, even if the "modest" nature of her salary was considered by the Officer in the context of the Applicant's greater earning potential in Canada, because it was not the sole factor considered and was not given inordinate weight in refusing the application, it is not a reviewable error (*Huang* at paras 8-9; *Sadiq* at para 23).

[26] Finally, the Applicant suggests that, by referring to her modest salary, the Officer may have been implying that he or she had an issue with credibility. However, the Applicant has failed to fully develop this submission and, in my view, it is of no merit.

[27] The Applicant correctly states that the Officer observed that the Applicant's spouse had not visited Bangladesh since coming to Canada, without reference to the spouse's explanation contained in his submission made in support of her application that, because of his work obligations, it was not possible for him to visit Bangladesh during the 2015 holiday season. In my view, the relevance of the Officer's observation is questionable, however, it was also peripheral to his or her main findings with respect to the Applicant's financial and familial ties to Bangladesh.

[28] With respect to the GCMS notes indicating that the Applicant has no children and no travel history, the issue of whether or not the Applicant had any children was directly relevant to the Officer's assessment of the strength of the Applicant's familial ties to Bangladesh.

[29] The Applicant's lack of a travel history is also a relevant consideration on a visa application (*Dhillon* at para 43; *Obeng* at para 13; *Huang* at para 11). However, as the Applicant submits, a lack of previous travel is, at most, a neutral factor (*Dhanoa* at para 12). The Officer referred to her travel history both in the GCMS notes and in the Refusal Letter. The latter stated that the Applicant had not satisfied the Officer that she would leave Canada at the end of her stay as a temporary resident and, in reaching that conclusion, the Officer considered four factors, including her travel history. While I agree that the Officer erred in treating the Applicant's lack of travel history as a negative factor, given the consideration also afforded to the Applicant's familial, financial and professional ties, that error alone is not sufficient to render the decision unreasonable.

[30] The Officer concluded, having considered the totality of the evidence, that the Applicant had not met her onus of satisfying the Officer that she would depart Canada at the end of her authorized stay. In my view, that decision was within the range of possible, acceptable outcomes.

JUDGMENT

THIS COURT'S JUDGMENT is that

1. The application for judicial review is dismissed.
2. There shall be no order as to costs.
3. No question of general importance for certification was proposed or arises.

“Cecily Y. Strickland”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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