Federal Court  Cour fédérale

Date: 20160902

Docket: IMM-5496-15

Citation: 2016 FC 999

Ottawa, Ontario, September 2, 2016

PRESENT: The Honourable Mr. Justice Bell

BETWEEN:

JACQUELIN CRUZ TATAD

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

(Delivered orally from the Bench in Montreal, Quebec on August 8, 2016)

I. Overview

[1] Jacquelin Cruz Tatad [Ms. Tatad] seeks judicial review of a decision rendered by Citizenship and Immigration Canada [CIC] dated November 5, 2015, in which a case processing officer refused Ms. Tatad's application to become a permanent resident in Canada through the Live-in Caregiver Program.

[2] For the reasons that follow, I would dismiss the application for judicial review.

I. Context and Issues

[3] M. Tatad is a forty-year-old citizen of the Philippines. She entered Canada on November 7, 2009, and was issued a work permit as a live-in caregiver. She later applied to become a permanent resident in Canada. In a letter dated October 25, 2012, CIC acknowledged receipt of her application. That same day, in a separate letter, CIC advised Ms. Tatad that further information was required in order to continue the processing of her application.

[4] The evidence before me includes, among others, allegations that (i) certain documents were misplaced by CIC; (ii) an immigration consultant engaged by Ms. Tadad failed to properly meet the requirements of her mandate; and (iii) CIC failed to afford procedural fairness to Ms. Tadad with respect to her application for permanent resident status. While a review of the file demonstrates that many events occurred between her arrival in Canada on November 7, 2009,

and the present time, I am of the view that this case falls to be decided within a very narrow time frame.

[5] First, I do not consider it helpful to determine whether documents were misplaced at CIC. The documents in question are not relevant to the issue before me. Second, I do not consider it useful to discuss whether or not the initial immigration consultant engaged by Ms. Tatad was incompetent. As will be seen, that issue is not determinative in this matter. Finally, I find it unnecessary to address the contention made by the respondent that Ms. Tatad failed to respect the requirements of the Federal Court protocol as it relates to advancing allegations of incompetency of counsel. Much time was spent in written argument on those issues.

[6] In their oral submissions, the parties focused on the only relevant issue, which can be narrowly described as follows: to what extent is CIC required to conduct follow-up enquiries with applicants for permanent residence, in order to meet its duty of procedural fairness?

II. Standard of Review

[7] The issue concerns a question of procedural fairness and attracts the correctness standard of review (*Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190 at paras 50-55; *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12; [2009] 1 SCR 339 at para 43).

III. Analysis

[8] On September 24, 2014, Ms. Tatad and her immigration consultant both received correspondence from CIC. That letter advised Ms. Tatad, in part, as follows:

> We have assessed the information you provided regarding your application for permanent residence. For your application to be processed further, we require you to submit **additional information regarding your family members who live in the Philippines**. Please refer to the guide for the definition of family member. This information will be added to your existing application at the Case Processing Centre in Vegreville, Alberta.
>
> [Emphasis in the original.]

[9] The September 24, 2014 letter went on to advise Ms. Tatad that a *Checklist of Documents for Dependants of Live-In Caregivers* is attached and that failure to provide these forms and documents may result in the refusal of Ms. Tatad's application.

[10] The letter also indicated in bold lettering that should she be unable to submit all the requested documents, she must inform CIC within 90 days of the date of the letter, subject to the refusal of her application. I understand those 90 days expired on December 23, 2014. The letter then listed the necessary documents, including various forms, medical examinations of dependant family members, police certificates for family members, and other relevant information required by CIC.

[11] While there is some dispute on the record as to the exact date Ms. Tatad's immigration consultant's mandate concluded, there is no dispute that on or around March 19, 2014, Ms. Tatad

was unhappy with the services provided. She deposed that some time after March 19, she retained an immigration lawyer.

[12] On November 5, 2015, Ms. Tatad received correspondence from visa officer MZST [the Officer], informing her that the assessment of her application to become a permanent resident was complete. The Officer concluded that she (Ms. Tatad) did not meet the requirements for immigration to Canada. The Officer informed Ms. Tatad, in part, as follows:

> A letter was sent to you on 24Sep2014, requesting evidence and/or documents in order to complete the assessment of your application. In your case you were asked to provide: IMM0008, IMM5406, IMM5569 and advisory of marriage forms. This letter informed you that if you (or your dependants) did not provide the required evidence and documents within 90 days of the date of that letter, your application would be assessed on the basis of the information that was already before the officer. To date, we have not received the requested information from you or your dependants.
>
> As a result of your failure to produce all relevant evidence and documents required by subsection 16(1) of the Immigration and Refugee Protection Act, it cannot be established that you meet the requirements for permanent residence as described in subsection 72(1) of the Immigration and Refugee Protection Regulation.
>
> Based on the information that is available, I am not satisfied that you or your family members are not inadmissible and that you meet the requirements of the Act. Your application for permanent residence in Canada as a member of the live-in caregiver class is refused.

[13] Ms. Tatad contends procedural fairness requires that, prior to sending the refusal letter of November 5, 2015, CIC should have communicated with her to remind her that some of the material requested had not been received.

[14] *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 holds that the requirements of natural justice and procedural fairness are largely driven by context and the liberty issues at stake. It is trite law that there is no legal right to enter Canada if one is not a Canadian citizen or permanent resident.

[15] I adopt the commonsensical approach set out in *Khan v Canada (Minister of Citizenship and Immigration)*, 2001 FCA 345, [2001] FCJ No 1699 at para 32, where the Court said:

> Finally, when setting the content of the duty of fairness appropriate for the determination of visa applications, the Court must guard against imposing a level of procedural formality that, given the volume of applications that visa officers are required to process, would unduly encumber efficient administration. The public interest in containing administrative costs and in not hindering expeditious decision making must be weighed against the benefits of participation in the process by the person directly affected.

[16] In this case, Ms. Tatad was the 'person directly affected'. She had very clear notice of the requirements she was expected to meet. Regardless of the steps undertaken by her previous immigration consultant, she had legal counsel as early as June 2014; at least four months prior to the decision under review.

[17] While there is no evidence of the mandate of Ms. Tatad's current counsel in relation to her application, there is no dispute that she was unhappy, as early as March, 2015, with the services provided by her then consultant. She had ample time to raise any concerns with respect to the present matter with CIC directly or through her current counsel.

IV. Conclusion

[18] In my view, the procedural fairness rights afforded to Ms. Tatad do not extend to require an officer to further inquire as to why she did not do that which was required of her. It follows that there was no obligation to follow up on the September 24, 2014 correspondence (*Dong v Canada (Citizenship and Immigration),* 2011 FC 1108, [2011] FCJ No 1370).

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed without costs. I do not consider there to be a question certifiable for consideration by the Federal Court of Appeal. As a result, no question is certified.

"B. Richard Bell"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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