

Federal Court



Cour fédérale

Date: 20160912

Docket: IMM-526-16

Citation: 2016 FC 1037

[ENGLISH TRANSLATION]

Ottawa, Ontario, September 12, 2016

PRESENT: The Honourable Mr. Justice LeBlanc

BETWEEN:

CHEIKH ABDOUL KHADRE MBAYE

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

ORDER AND REASONS

[1] Through this judicial review, the applicant is contesting the exclusion order issued against him based on his failure to comply with the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 [the Act] and its regulations, the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [the Regulations] by not leaving the country at the end of his period of authorized stay.

[2] The relevant facts in this proceeding can be summarized as follows: The applicant is a citizen of Senegal. He arrived in Canada in August 2010 to pursue studies. His student visa was renewed in November 2012. It was valid until April 25, 2015. In December 2013, he obtained a work permit, which was also valid until April 25, 2015. The applicant graduated on May 8, 2015. His study and work permits had expired and he had not applied to renew either of them. He therefore had no status in Canada.

[3] On May 24, 2015, the applicant applied for, and was issued, a 30-day temporary resident permit to enable him to formalize his status in Canada or prepare to return to Senegal. On June 22, 2015, two days before his temporary resident permit expired, he decided to apply for a post-graduation work permit. He did not leave Canada when his temporary resident permit expired on June 24, 2015.

[4] In December 2015, the Sûreté du Québec handed him over to Citizenship and Immigration Canada authorities following a roadside check. On December 22, 2015, a report was prepared under subsection 44(1) of the Act. The applicant was found inadmissible on the grounds that, as he had no status in Canada after his temporary resident permit expired, he was required to leave Canada in accordance with subsection 29(2) of the Act. That report was followed by the contested exclusion order issued the same day by a delegate of the Minister of Citizenship and Immigration [the Minister] in accordance with the powers conferred on him under subsections 44(2) of the Act and 228(1) of the Regulations.

[5] The applicant's main contention is that his application for a post-graduation work permit on June 22, 2015, which he submitted while his temporary resident permit was still valid, gave him implied temporary resident status in Canada under subsection 183(5) of the Regulations that would be valid until a decision was made on his application. He alleges that as his post-graduation work permit application was still pending on December 22, 2015, a fact which the Minister did not address, an exclusion order could not be issued against him because at that point, he still had implied temporary resident status.

[6] The scheme of the Act is clear. A foreign national with temporary resident status is authorized to enter and remain in Canada on a temporary basis as a visitor or as a holder of a temporary resident permit (subsection 29(1) of the Act). However, the temporary resident must leave Canada by the end of the period of authorized stay (subsection 29(2) of the Act and paragraph 183(1)(a) of the Regulations). The Regulations state that the temporary resident's period of authorized stay ends when the permit is no longer valid, specifically, on the permit expiry date (paragraphs 183(4)(c) and 63(c)). When the foreign national has a work or study permit, as was the applicant's case until April 25, 2015, the Regulations state that the period of authorized stay ends when the permit becomes invalid (paragraph 183(4)(b)).

[7] Therefore, failure to leave the country at the end of the authorized period of stay as required under subsection 29(2) of the Act and specified by the Regulations constitutes a breach of the Act. Thus, any foreign national who directly or indirectly fails to comply with the Act is inadmissible (section 41 of the Act). In such a case, an immigration officer may prepare and forward a detailed report to the Minister. If the Minister is of the opinion that the report is well-

founded, the Minister may issue a removal order (subsection 44(2) of the Act). In the event that inadmissibility results from failure to comply with the requirement in subsection 29(2) of the Act, an exclusion order will be issued (subparagraph 228(1)(c)(iv) of the Regulations).

[8] Unfortunately for the applicant, simply filing an application for a post-graduation work permit before his temporary resident permit expired is of no help to him. In order to have the implied temporary resident status he is claiming in this case, he would have also had to apply to renew his temporary resident permit before it expired, which he did not do. Subsections 183(5) and (6), which the applicant invokes to support his case, are applicable only when the purpose of the pending application is to extend the period of stay. The text is clear in this regard:

**Extension of period
authorized for stay**

183 (5) Subject to subsection (5.1), if a temporary resident has applied for an extension of the period authorized for their stay and a decision is not made on the application by the end of the period authorized for their stay, the period is extended until

(a) the day on which a decision is made, if the application is refused; or

(b) the end of the new period authorized for their stay, if the application is allowed.

[...]

**Prolongation de la période de
séjour**

183 (5) Sous réserve du paragraphe (5.1), si le résident temporaire demande la prolongation de sa période de séjour et qu'il n'est pas statué sur la demande avant l'expiration de la période, celle-ci est prolongée :

a) jusqu'au moment de la décision, dans le cas où il est décidé de ne pas la prolonger;

b) jusqu'à l'expiration de la période de prolongation accordée.

[...]

Continuation of status and conditions

(6) If the period authorized for the stay of a temporary resident is extended by operation of paragraph (5)(a) or extended under paragraph (5)(b), the temporary resident retains their status, subject to any other conditions imposed, during the extended period.

Préservation du statut et conditions

(6) Si la période de séjour est prolongée par l'effet de l'alinéa (5)a) ou par application de l'alinéa (5)b), le résident temporaire conserve son statut, sous réserve des autres conditions qui lui sont imposées, pendant toute la prolongation.

[9] Once again, the applicant did not apply to extend his work or study visas or his temporary resident permit which, in this case, was issued under the terms of subsection 24(1) of the Act. As the Court has pointed out several times, this subsection provides an exception that does not enable the applicant to study or work in Canada (*César Nguesso v. Canada (Citizenship and Immigration)*, 2015 FC 880 at paragraph 93). However, to secure his status in Canada and, thereby, apply for a post-graduation work permit, he needed to have done one or the other. As he did neither, he had to leave Canada or face an exclusion order. Moreover, the applicant could not claim a post-graduation work permit without having a temporary resident permit of at least six (6) months (paragraph 199(d) of the Regulations). Clearly, he did not have that permit when he applied for his post-graduation work permit on June 22, 2015.

[10] The difficulties and delays that the applicant referred to with respect to Citizenship and Immigration Canada's processing of his application for a post-graduation work permit are of no help to him in this situation. The fact that this application is not mentioned in the inadmissibility report or the exclusion order issued against him does not help his case either. Although any reference to it would have provided a more comprehensive picture of the applicant's situation, it

was not essential for understanding the basis of the decision to issue the exclusion order as, ultimately, it had no bearing on the question of whether or not to issue that order, for the reasons indicated above, specifically that the applicant was not eligible for a post-graduation work permit.

[11] It is worth noting that the reasons supporting an administrative decision-maker's decision are sufficient "if the reasons allow the reviewing court to understand why the tribunal made its decision and permit it to determine whether the conclusion is within the range of acceptable outcomes" (*Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 [*Newfoundland Nurses*] at paragraph 16). To this end, the Court must avoid substituting its own reasons for those of the administrative decision-maker, but may, if necessary, look to the record for the purpose of assessing the reasonableness of the outcome (*Newfoundland Nurses*, at paragraph 15). It must also bear in mind that the administrative decision-maker "is not required to make an explicit finding on each constituent element, however subordinate, leading to its final conclusion" (*Newfoundland Nurses*, at paragraph 16).

[12] It is well established that the mandate of the immigration officers and the Minister's delegates under section 44 of the Act is to find facts indicating inadmissibility and to follow through as necessary. When fact-finding reveals that a foreign national has remained in Canada beyond the authorized period of stay, they are required to prepare a report and follow through with it, in that order. They have limited, if any, discretion here and the findings of fact that led to the report being prepared and the ensuing actions are subject to the reasonableness standard when contested before this Court. For the findings in question to be reversed, this standard

requires that it be shown that they are not within the range of acceptable outcomes that can be justified in fact and law (*Laissi v. Canada (Public Safety and Emergency Preparedness)*, 2013 FC 393, at paragraphs 18-19 [*Laissi*]).

[13] In this case, I am satisfied that no such evidence was provided. In particular, the applicant has not convinced me that the failure to mention his application for a post-graduation work permit impacted the reasonableness of the contested decision. Indeed, the facts and law show that the applicant, in spite of that application, had no status in Canada after his temporary resident permit expired at the end of June 2015. That was enough to set in motion the process that led to the exclusion order issued against him. The fact that he believed, in good faith, that he had implied temporary resident status makes no difference; the officers responsible for applying section 44 of the Act are not required to take this type of consideration into account when exercising their powers (*Lasin v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 1356, at paragraph 19). In any case, I note that the applicant does not claim that he was misled by Citizenship and Immigration Canada employees in terms of the steps he needed to take to formalize his status in Canada. The decision to apply for a post-graduation work permit, thinking that it would extend his period of authorized stay in Canada, seems to have been his idea and his alone.

[14] Finally, *Sui v. Canada (Minister of Public Safety and Emergency Preparedness)*, 2006 FC 1314 [*Sui*], on which the applicant placed considerable emphasis during the hearing, does not help his case. In *Sui*, the applicant applied for restoration of status within the prescribed time frame, i.e. within 90 days of the expiry of his status in accordance with subsection 182(1) of the

Regulations. While he was waiting for his application to be processed, he had implied status under subsections 183(5) and (6) of the Regulations, a fact the Minister ignored.

[15] In this case, given that the applicant did not apply to extend his study or work permits that expired in April 2015, or his temporary resident permit that was valid until the end of June 2015, and that he did not have a temporary resident permit of at least six (6) months, he was not entitled to the provisions of subsections 183(5) and (6) of the Regulations based on his application for a post-graduation work permit. Under the circumstances, the Minister did not commit any error by issuing the contested exclusion order.

[16] The parties did not submit any question for certification.

[17] For the sake of convenience, the provisions of the Act and Regulations to which I referred in these reasons are included as an appendix to this order.

ORDER

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed;
2. There is no question to be certified.

“René LeBlanc”

Judge

APPENDIX

[Paragraph 17]

*Immigration and Refugee
Protection Act SC 2001, c 27**Loi sur l'immigration et la
protection des réfugiés, LC
2001, ch 27***Temporary resident permit****Permis de séjour temporaire**

24 (1) A foreign national who, in the opinion of an officer, is inadmissible or does not meet the requirements of this Act becomes a temporary resident if an officer is of the opinion that it is justified in the circumstances and issues a temporary resident permit, which may be cancelled at any time.

24 (1) Devient résident temporaire l'étranger, dont l'agent estime qu'il est interdit de territoire ou ne se conforme pas à la présente loi, à qui il délivre, s'il estime que les circonstances le justifient, un permis de séjour temporaire — titre révocable en tout temps.

Right of temporary residents**Droit du résident temporaire**

29 (1) A temporary resident is, subject to the other provisions of this Act, authorized to enter and remain in Canada on a temporary basis as a visitor or as a holder of a temporary resident permit.

29 (1) Le résident temporaire a, sous réserve des autres dispositions de la présente loi, l'autorisation d'entrer au Canada et d'y séjourner à titre temporaire comme visiteur ou titulaire d'un permis de séjour temporaire.

Obligation — temporary resident**Obligation du résident temporaire**

A temporary resident must comply with any conditions imposed under the regulations and with any requirements under this Act, must leave Canada by the end of the period authorized for their stay and may re-enter Canada only if their authorization provides for re-entry.

(2) Le résident temporaire est assujéti aux conditions imposées par les règlements et doit se conformer à la présente loi et avoir quitté le pays à la fin de la période de séjour autorisée. Il ne peut y rentrer que si l'autorisation le prévoit.

Non-compliance with Act

41 A person is inadmissible for failing to comply with this Act

(a) in the case of a foreign national, through an act or omission which contravenes, directly or indirectly, a provision of this Act; and

(b) in the case of a permanent resident, through failing to comply with subsection 27(2) or section 28.

Preparation of report

44 (1) An officer who is of the opinion that a permanent resident or a foreign national who is in Canada is inadmissible may prepare a report setting out the relevant facts, which report shall be transmitted to the Minister.

Referral or removal order

(2) If the Minister is of the opinion that the report is well-founded, the Minister may refer the report to the Immigration Division for an admissibility hearing, except in the case of a permanent resident who is inadmissible solely on the grounds that they have failed to comply with the residency obligation under section 28 and except, in the circumstances prescribed by the regulations, in the case of a foreign national. In those cases, the Minister may make a removal order.

Manquement à la loi

41 S'agissant de l'étranger, emportent interdiction de territoire pour manquement à la présente loi tout fait — acte ou omission — commis directement ou indirectement en contravention avec la présente loi et, s'agissant du résident permanent, le manquement à l'obligation de résidence et aux conditions imposées.

Rapport d'interdiction de territoire

44 (1) S'il estime que le résident permanent ou l'étranger qui se trouve au Canada est interdit de territoire, l'agent peut établir un rapport circonstancié, qu'il transmet au ministre.

Suivi

(2) S'il estime le rapport bien fondé, le ministre peut déférer l'affaire à la Section de l'immigration pour enquête, sauf s'il s'agit d'un résident permanent interdit de territoire pour le seul motif qu'il n'a pas respecté l'obligation de résidence ou, dans les circonstances visées par les règlements, d'un étranger; il peut alors prendre une mesure de renvoi.

*Immigration and Refugee
Protection Regulations*
(SOR/2002-227)

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

Period of permit's validity

Période de validité du permis

63 A temporary resident permit is valid until any one of the following events occurs:

63 Le permis de séjour temporaire est valide jusqu'à ce que survienne l'un des événements suivants :

...

[...]

(c) the period of validity specified on the permit expires; or

c) il expire à la date qui y est prévue;

Restoration

Rétablissement

182 (1) On application made by a visitor, worker or student within 90 days after losing temporary resident status as a result of failing to comply with a condition imposed under paragraph 185(a), any of subparagraphs 185(b)(i) to (iii) or paragraph 185(c), an officer shall restore that status if, following an examination, it is established that the visitor, worker or student meets the initial requirements for their stay, has not failed to comply with any other conditions imposed and is not the subject of a declaration made under subsection 22.1(1) of the Act.

182 (1) Sur demande faite par le visiteur, le travailleur ou l'étudiant dans les quatre-vingt-dix jours suivant la perte de son statut de résident temporaire parce qu'il ne s'est pas conformé à l'une des conditions prévues à l'alinéa 185a), aux sous-alinéas 185b)(i) à (iii) ou à l'alinéa 185c), l'agent rétablit ce statut si, à l'issue d'un contrôle, il est établi que l'intéressé satisfait aux exigences initiales de sa période de séjour, qu'il s'est conformé à toute autre condition imposée à cette occasion et qu'il ne fait pas l'objet d'une déclaration visée au paragraphe 22.1(1) de la Loi.

General conditions

183 (1) Subject to section 185, the following conditions are imposed on all temporary residents:

(a) to leave Canada by the end of the period authorized for their stay;

[...]

Authorized period ends

(4) The period authorized for a temporary resident's stay ends on the earliest of

[...]

(b) the day on which their permit becomes invalid, in the case of a temporary resident who has been issued either a work permit or a study permit;

[...]

(c) the day on which any temporary resident permit issued to the temporary resident is no longer valid under section 63; or

Application after entry

199 A foreign national may apply for a work permit after entering Canada if they

[...]

Conditions d'application générale

183 (1) Sous réserve de l'article 185, les conditions ci-après sont imposées à tout résident temporaire :

a) il doit quitter le Canada à la fin de la période de séjour autorisée;

[...]

Période de séjour : fin

(4) La période de séjour autorisée du résident temporaire prend fin au premier en date des événements suivants :

[...]

b) dans le cas du titulaire d'un permis de travail ou d'études, son permis cesse d'être valide;

[...]

c) dans le cas du titulaire d'un permis de séjour temporaire, son permis cesse d'être valide aux termes de l'article 63;

Demande après l'entrée au Canada

199 L'étranger peut faire une demande de permis de travail après son entrée au Canada dans les cas suivants

[...]

(d) hold a temporary resident permit issued under subsection 24(1) of the Act that is valid for at least six months;

d) il détient, aux termes du paragraphe 24(1) de la Loi, un permis de séjour temporaire qui est valide pour au moins six mois;

**Subsection 44(2) of the Act
— foreign nationals**

**Application du paragraphe
44(2) de la Loi : étrangers**

228 (1) For the purposes of subsection 44(2) of the Act, and subject to subsections (3) and (4), if a report in respect of a foreign national does not include any grounds of inadmissibility other than those set out in the following circumstances, the report shall not be referred to the Immigration Division and any removal order made shall be

228 (1) Pour l'application du paragraphe 44(2) de la Loi, mais sous réserve des paragraphes (3) et (4), dans le cas où elle ne comporte pas de motif d'interdiction de territoire autre que ceux prévus dans l'une des circonstances ci-après, l'affaire n'est pas déferée à la Section de l'immigration et la mesure de renvoi à prendre est celle indiquée en regard du motif en cause :

(a) if the foreign national is inadmissible under paragraph 36(1)(a) or (2)(a) of the Act on grounds of serious criminality or criminality, a deportation order;

a) en cas d'interdiction de territoire de l'étranger pour grande criminalité ou criminalité au titre des alinéas 36(1)a) ou (2)a) de la Loi, l'expulsion;

(b) if the foreign national is inadmissible under paragraph 40(1)(c) of the Act on grounds of misrepresentation, a deportation order;

b) en cas d'interdiction de territoire de l'étranger pour fausses déclarations au titre de l'alinéa 40(1)c) de la Loi, l'expulsion;

(b.1) if the foreign national is inadmissible under subsection 40.1(1) of the Act on grounds of the cessation of refugee protection, a departure order;

b.1) en cas d'interdiction de territoire de l'étranger au titre du paragraphe 40.1(1) de la Loi pour perte de l'asile, l'interdiction de séjour;

(c) if the foreign national is inadmissible under section 41 of the Act on grounds of

c) en cas d'interdiction de territoire de l'étranger au titre de l'article 41 de la Loi pour manquement à :

- | | |
|--|---|
| <p>(i) failing to appear for further examination or an admissibility hearing under Part 1 of the Act, an exclusion order,</p> | <p>(i) l'obligation prévue à la partie 1 de la Loi de se présenter au contrôle complémentaire ou à l'enquête, l'exclusion,</p> |
| <p>(ii) failing to obtain the authorization of an officer required by subsection 52(1) of the Act, a deportation order,</p> | <p>(ii) l'obligation d'obtenir l'autorisation de l'agent aux termes du paragraphe 52(1) de la Loi, l'expulsion,</p> |
| <p>(iii) failing to establish that they hold the visa or other document as required under section 20 of the Act, an exclusion order,</p> | <p>(iii) l'obligation prévue à l'article 20 de la Loi de prouver qu'il détient les visa et autres documents réglementaires, l'exclusion,</p> |
| <p>(iv) failing to leave Canada by the end of the period authorized for their stay as required by subsection 29(2) of the Act, an exclusion order,</p> | <p>(iv) l'obligation prévue au paragraphe 29(2) de la Loi de quitter le Canada à la fin de la période de séjour autorisée, l'exclusion,</p> |
| <p>(v) failing to comply with subsection 29(2) of the Act as a result of non-compliance with any condition set out in section 184 or subsection 220.1(1), an exclusion order, or</p> | <p>(v) l'une des obligations prévues au paragraphe 29(2) de la Loi pour non-respect de toute condition prévue à l'article 184 ou au paragraphe 220.1(1), l'exclusion,</p> |
| <p>(vi) failing to comply with the requirement under subsection 20(1.1) of the Act to not seek to enter or remain in Canada as a temporary resident while being the subject of a declaration made under subsection 22.1(1) of the Act, an exclusion order;</p> | <p>(vi) l'obligation prévue au paragraphe 20(1.1) de la Loi de ne pas chercher à entrer au Canada ou à y séjourner à titre de résident temporaire pendant qu'il faisait l'objet d'une déclaration visée au paragraphe 22.1(1) de la Loi, l'exclusion;</p> |
| <p>(d) subject to paragraph (e), if the foreign national is inadmissible under section 42 of the Act on grounds of an inadmissible family member, the same removal order as was</p> | <p>d) en cas d'interdiction de territoire de l'étranger pour inadmissibilité familiale aux termes de l'article 42 de la Loi, sauf dans le cas prévu à l'alinéa e), la même mesure de</p> |

made in respect of the
inadmissible family member;
and

renvoi que celle prise à l'égard
du membre de la famille
interdit de territoire;

(e) if the foreign national is
inadmissible on grounds of an
inadmissible family member in
accordance with paragraph
42(2)(a) of the Act, a
deportation order.

e) en cas d'interdiction de
territoire de l'étranger pour
inadmissibilité familiale
conformément à l'alinéa
42(2)a) de la Loi, l'expulsion.

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-526-16

STYLE OF CAUSE: CHEIKH ABDOUL KHADRE MBAYE v. THE
MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: MONTRÉAL, QUEBEC

DATE OF HEARING: AUGUST 31, 2016

JUDGEMENT AND REASONS: LEBLANC J.

DATED: SEPTEMBER 12, 2016

APPEARANCES:

André Faye FOR THE APPLICANT

Guillaume Bigaouette FOR THE RESPONDENT

SOLICITORS OF RECORD:

André Faye FOR THE APPLICANT
Barrister-Solicitor
Montréal, Quebec

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