Federal Court Cour fédérale

Date: 20161024

Docket: IMM-5728-15

Citation: 2016 FC 1171

Ottawa, Ontario, October 24, 2016

PRESENT: The Honourable Mr. Justice Diner

BETWEEN:

ARTI WALIA

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Background

[1] This is an application for judicial review under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c-27 [the Act] to review the refusal of a work permit for a live-in-caregiver. The Visa Officer [Officer] further found that the Applicant had misrepresented her work experience contrary to paragraph 40(1)(a) of the Act. For the reasons explained below, I am dismissing this judicial review application.

[1] The Applicant, a 37-year old citizen of India, in her initial (2013) work permit application, provided documentation outlining her education and training, including a six month nanny training course and a Nursey Teachers' Training Certificate, and a letter from her purported employer, a school, which indicated that she had worked there as a teacher.

[2] On March 11, 2015, the application was denied because the Applicant failed to satisfy the language requirement. The Applicant challenged this decision on judicial review and, on consent from the Minister, the matter was returned to the visa office for reconsideration. That reconsideration took place before this Officer, who ultimately interviewed the Applicant on May 26, 2015. Prior to the interview, the Officer requested that the Applicant bring certain documents to the interview.

[3] While the Applicant provided certain of the requested information, she failed to bring two specific documents requested by the Officer, namely transcripts from her nanny training and salary slips from her employer. The Officer questioned the Applicant about her education, work experience, and training. When asked why she did not produce pay stubs, the Applicant responded that her employer paid her in cash, and that she did not deposit any money into the bank.

[4] After the interview, the Officer attempted to contact the employer using the number provided by the Applicant, but these attempts proved futile. On June 19, 2015, the Applicant was sent a procedural fairness letter [PFL] alleging that she failed to provide truthful information, contrary to subsection 16(1) of the Act. The Officer noted the Applicant's failure to

provide the requested documents at her interview, and questioned the validity of both her education and employment. The Officer stated that the employment documents appeared fraudulent and noted that she was unable to contact the employer. The Officer gave the Applicant an additional 30 days to respond.

[5] The Applicant responded with an affidavit, providing background regarding her employment: while she could not explain why the Officer was unable to contact the school via telephone, she provided telephone bills purporting to show the telephone number associated with the school was in use. Furthermore, the Applicant reiterated that no pay stubs were available since she was paid in cash. Instead, she provided other employment documentation, such as the school's register of employees, photographs of her teaching, and a document purporting to prove the principal's status. Finally, the Applicant invited the Officer to visit the school and provided contact information for the parents of two of its students.

[6] In response to the Applicant's affidavit, two visa office representatives (including the Officer) conducted a site visit to the purported employer early in the morning of October 16, 2016. The address provided for the employer (school) was a house located in a residential neighbourhood. There was no school signage on the house – only that of a dental clinic.

[7] The visa office representatives rang the doorbell and Mr. Singh, who identified himself as the principal, answered and told them that school started at 10:00 a.m. Mr. Singh showed the visa office representatives a room and indicated that this was where the students took classes. The Officer, however, noted that the room was completely devoid of any children books, crayons,

toys or classroom furniture. Mr. Singh stated that the students bring their own materials to school.

[8] The visa office representatives also spoke to neighbours of the house. The first neighbour indicated that she knew people inside the house ran a school but did not know where this school was located, and was unaware that it was being run in the house opposite to hers. A second neighbour, located adjacent to the house, indicated the house was a dental clinic and not a school, as he never saw children attend school at the house.

[9] The relevant part of the October 28, 2015 refusal letter states:

> Following a site visit we determined you do not work at Baby Model School at House 1144, Sec44B Chandigarh… You are a member of an inadmissible class of persons described in the *Immigration and Refugee Protection Act* (IRPA). As a result, you are inadmissible to Canada pursuant to the following Section(s)… A40(1)(a): For directly or indirectly misrepresenting or withholding material facts relating to a relevant matter that induces or could induce an error in the administration of this Act

The Officer's computer [GCMS] notes further elaborate on the reasons.

[10] The Applicant's Record for this judicial review includes two affidavits from parents of children who attended the school and one affidavit from another teacher. These three affidavits are exhibits to an affidavit in support of the Notice of Motion, which was sworn by a paralegal at the law firm representing the Applicant. It does not appear that these affidavits were before the Officer. In any event, they do not change the analysis below.

II. Issues and Analysis

[11] The Applicant raises three issues. First, she claims a breach of fairness due to the Officer's failure to conduct a thorough site visit, and subsequently to provide an adequate explanation of concerns arising from the visit. Second, she argues that the misrepresentation findings are unreasonable. Third, she contends the reasons to be inadequate.

[12] The standard of review for the first issue is correctness, and reasonableness for the other two: procedural fairness attracts a correctness review (*Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 43), while reasonableness applies to challenges to material misrepresentation findings (*Seraj v Canada (Citizenship and Immigration)*, 2016 FC 38 at para 11), and adequacy of reasons (*Ahmed v Canada (Citizenship and Immigration)*, 2013 FC 1083).

A. *Procedural Unfairness*

[13] The Applicant takes issue with the fairness of the site visit due to its lack of thoroughness, including the failure to: visit the actual classroom, instead of just the purported principal's office; understand that commercial signs were prohibited per the local residential laws; review the school register; and wait until the school's start time. The Applicant further argues that there was a duty to provide an opportunity to respond to concerns raised from the site visit to the purported employer, relying primarily on the decision in *Sidhu v Canada (Citizenship and Immigration)*, 2014 FC 419.

[14] I do not find that *Sidhu* obligates the Officer to have provided yet another opportunity to meet the Act's requirements. Here, the Applicant failed to satisfy the Officer despite having two opportunities to do so – namely in her initial application, and then in the response to the PFL. These opportunities provided the necessary procedural safeguards to the Applicant. The Officer then elected to visit the school, which he did not have to do after being unsatisfied after the PFL response. The Officer evidently decided to do so in fairness to the Applicant's position. That site visit turned out to be unsatisfactory.

[15] Procedural fairness does not afford applicants endless opportunities to make their case and/or nullify doubts. Here, the Officer's site visit confirmed previously communicated concerns. Requiring further fairness input from applicants arising from each credibility concern, after having already provided various opportunities to disabuse concerns of fraud, would result in a never-ending cycle of queries and responses.

[16] There must be some finality to the immigration application process: *Khan v Canada (Minister of Citizenship and Immigration)*, [1998] FCJ No 626 at para 4, 1998 CanLII 7835 (FCTD); the Applicant has the burden to satisfy the requirements of the legislative scheme. The burden cannot be reversed, such that the officer has a never-ending duty to apprise the Applicant a new chance to respond to every lingering question or unanswered concern. As stated by Justice Russell in *Singh v Canada (Minister of Citizenship and Immigration)*, 2012 FC 526 at para 52, the "onus is upon applicants to put together applications that are convincing and that anticipate possible adverse inferences contained in the evidence and local conditions and address them."

[17] In this case, the Officer provided the Applicant with opportunities to assuage concerns, but remained unsatisfied with the results. The fairness opportunities sufficed, as they did in *Talpur v Canada (Citizenship and Immigration)*, 2012 FC 25 at para 26, and *Zhang v Canada (Citizenship and Immigration)*, 2015 FC 463.

B. *Materiality of Misrepresentations*

[18] The Applicant takes issue with the Officer's material representation finding. Subsection 40(1)(a) of the Act outlines when an applicant is inadmissible for misrepresentation:

40(1) A permanent resident or a foreign national is inadmissible for misrepresentation:	40(1) Emportent interdiction de territoire pour fausses déclarations les faits suivants:
(a) for directly or indirectly misrepresenting or withholding material facts relating to a relevant matter that induces or could induce an error in the administration of this Act.	a) directement ou indirectement, faire une présentation erronée sur un fait important quant à un objet pertinent, ou une réticence sur ce fait, ce qui entraîne ou risque d'entraîner une erreur dans l'application de la présente loi

[19] In this case, the concerns arose from a central element to the application, namely her work background. Work experience is certainly a factor considered under paragraph 112(c)(ii) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227:

12. A work permit shall not be issued to a foreign national who seeks to enter Canada as a live-in caregiver unless they	12. Le permis de travail ne peut être délivré à l'étranger qui cherche à entrer au Canada au titre de la catégorie des aides familiaux que si l'étranger se conforme aux exigences suivantes:
[…]	[…]

c) have the following training or experience, in a field or occupation related to the employment for which the work permit is sought, namely,	c) il a la formation ou l’expérience ci-après dans un domaine ou une catégorie d’emploi lié au travail pour lequel le permis de travail est demandé:
[…]	[…]
(ii) completion of one year of full-time paid employment, including at least six months of continuous employment with one employer, in such a field or occupation within the three years immediately before the day on which they submit an application for a work permit;	(ii) une année d’emploi rémunéré à temps plein — dont au moins six mois d’emploi continu auprès d’un même employeur — dans ce domaine ou cette catégorie d’emploi au cours des trois années précédant la date de présentation de la demande de permis de travail;

[20] As was stated recently in *Goburdhun v Canada (Minister of Citizenship and Immigration)*, 2013 FC 971 at para 28, “misrepresentation need not be decisive or determinative. It is material if it is important enough to affect the process” (*Goburdhun* at para 28). The Officer’s findings on materiality and misrepresentation were reasonable.

C. *The Adequacy of the Officer’s Reasons*

[21] Finally, the Officer’s reasons were adequate. In *Solopova v Canada (Citizenship and Immigration)*, 2016 FC 690, Justice Gascon discussed the reasonableness standard as it applied to visa officer decisions:

> [32] Reasonableness, not perfection, is the standard. Even where the reasons for the decision are brief, or poorly written, this Court should defer to the decision-maker’s weighing of the evidence and credibility determinations, as long as the Court is able to understand why the decision was made. I add that a visa officer’s

> duty to provide reasons when rejecting a temporary resident is minimal and falls at the low end of the spectrum.

[22] In addition to these observations, a visa officer is under no obligation to refer to every piece of evidence contrary to the ultimate finding (*Ahmed v Canada (Minister of Citizenship and Immigration)*, 2013 FC 1083 at para 34).

[23] In sum, I find the Officer's reasons to be sufficiently justifiable, transparent, and intelligible in explaining why the Officer concluded that the Applicant misrepresented her employment experience. While the Applicant correctly observes that the Officer failed to specifically mention her affidavit in the refusal letter, the GCMS notes make it clear that the Officer had done so. The GCMS notes further explain, in significant detail, why the Officer was not satisfied with the site visit, including the complete lack of evidence found at the house and confirmation of said suspicion from the neighbours. After all, GCMS notes constitute part of the reasons (*Ahmed v Canada (Citizenship and Immigration)*, 2013 FC 1083 at para 22).

[24] The Officer's reasons, in the context of the record (i.e. the Officer's initial concerns, the Applicant's responding affidavit, and the follow-up site visit) are reasonable and the outcome of a misrepresentation finding was within the range of acceptable possibilities open to the Officer.

III. Conclusion

[25] In light of all of the above, this application for judicial review is dismissed.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed;

2. There is no question for certification;

3. No costs will be issued.

"Alan S. Diner"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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