

Federal Court



Cour fédérale

Date: 20161021

Docket: IMM-1861-16

Citation: 2016 FC 1176

[ENGLISH TRANSLATION]

Ottawa, Ontario, October 21, 2016

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

RIMA CHARARA

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Background

[1] Under the constitution, immigration is an area of shared jurisdiction between the federal government and the provinces. In Quebec, the Certificat d'acceptation du Québec (CAQ) is an essential tool of the Ministère de l'Immigration, de la Diversité et de l'Inclusion for selecting immigrants eligible to settle in the province. In exercising its constitutional power, Quebec uses

the CAQ to achieve its provincial immigration objectives. Thus, Quebec's prior consent is required for an international student to be admitted by Canada and to have a visa issued. However, admitting individuals into the province is within the jurisdiction of the federal government, which defines and enforces the conditions and criteria to be met to obtain authorization to enter and remain in Canada. It is essential that each level of government fulfill its role, i.e. concurrent jurisdictions.

II. Nature of the matter

[2] This is an application for judicial review under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (IRPA) of a decision rendered by a Citizenship and Immigration Canada (CIC) officer on April 16, 2016, to deny the applicant a study permit under subsection 11(1) of the IRPA.

[3] The application for judicial review is dismissed for the following reasons.

III. Facts

[4] The applicant, age 36, is a Lebanese citizen and a permanent resident of the United Arab Emirates. She is married and the mother of a three-year-old boy. One of the applicant's sisters lives in Montréal, Canada.

[5] The applicant has a master of science degree from the Université Libanaise, which she obtained in 2002. She worked as an assistant pharmacist from 2003 to 2005. She studied at the Dubai Pharmacy College from 2007 to 2010.

[6] On February 3, 2016, the applicant was admitted to the “Health, Assistance and Nursing care” diplôme d’études professionnelles (DEP) program at the Competency Development Centre Vimont (Laval) operated by the Sir Wilfrid Laurier School Board. The tuition fees for this program were \$32,500.

[7] On February 5, 2016, the applicant obtained a CAQ issued by the Ministère de l’Immigration, de la Diversité et de l’Inclusion certifying that she met the Quebec requirements for temporary residents in the student category.

[8] On February 22, 2016, the applicant submitted the Application for a Study Permit form to the Immigration Division of the Canadian Embassy in Abu Dhabi. This application was accompanied by banking information and documentation certifying her husband’s employment and salary.

[9] On April 16, 2016, this application was denied, and the applicant filed an appeal from the decision before our Court on May 2, 2016.

IV. Decision

[10] In a letter dated April 16, 2016, a CIC officer in the Immigration Division of the Canadian Embassy in Abu Dhabi denied the applicant's application for a study permit. The officer explained in writing that after having reviewed the applicant's file, he was not satisfied that she met the criteria set out in the IRPA.

[11] The officer was not convinced that the applicant had the necessary financial resources to cover the tuition fees for her course of study or that she would leave Canada by the end of [the period authorized for] her stay. The officer also cited the absence of a study plan and the apparent inconsistency between the project submitted and the applicant's academic profile. He also noted that the applicant had not provided consent from the father of the minor child accompanying the applicant.

[12] The officer's notes, given to the applicant on May 17, 2016, also outlined the officer's doubts regarding the financial capacity of the applicant's spouse: "Although spouse appears to have adequate income, bank statement shows loan repayments and modest overall balance. Balance appears insufficient to cover both tuition and living expenses for his wife and child in Canada." Doubting the consistency of the proposed sequence of studies, the officer questioned the applicant's ability to study full-time and be the sole care provider for the minor child who was to accompany her.

V. Issues

[13] The issues raised in this case are:

1. Did the officer breach his duty of procedural fairness by failing to seek clarification from the applicant before refusing her case?
2. Did the officer render his decision based on erroneous findings of fact, namely insufficient funds and the applicant's intention to remain in Canada after the end of [the period authorized for] her stay?

[14] The first issue involves natural justice and must be reviewed on the standard of correctness (*Singh v Canada (Citizenship and Immigration)*, 2012 FC 526 at paragraph 31 [*Singh*]).

[15] The second issue is one of fact, which falls within the officer's discretion and must therefore be reviewed on the standard of reasonableness. As has been pointed out repeatedly, this Court should give great deference to decisions rendered by visa officers, given their expertise in analyzing and assessing student visa applications (*Singh*, above, at paragraph 14).

VI. Relevant provisions

[16] In this case, subsection 11(1) of the IRPA provides that foreign nationals must apply to an officer for a visa in order to obtain a permit to study in Canada.

Application before entering Canada	Visa et documents
11 (1) A foreign national must,	11 (1) L'étranger doit,

before entering Canada, apply to an officer for a visa or for any other document required by the regulations. The visa or document may be issued if, following an examination, the officer is satisfied that the foreign national is not inadmissible and meets the requirements of this Act.

préalablement à son entrée au Canada, demander à l'agent les visa et autres documents requis par règlement. L'agent peut les délivrer sur preuve, à la suite d'un contrôle, que l'étranger n'est pas interdit de territoire et se conforme à la présente loi.

[17] The student permit is granted by the officer if the applicant proves that he meets the criteria set out in sections 216(1) and 220 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227. These provisions require applicants to demonstrate that they will leave Canada upon the expiry of the resident permit and that they have sufficient funds to cover their tuition fees and living expenses.

Study permits

216 (1) Subject to subsections (2) and (3), an officer shall issue a study permit to a foreign national if, following an examination, it is established that the foreign national

(a) applied for it in accordance with this Part;

(b) will leave Canada by the end of the period authorized for their stay under Division 2 of Part 9;

...

Financial resources

220 An officer shall not issue a study permit to a foreign national, other than one described in paragraph

Permis d'études

216 (1) Sous réserve des paragraphes (2) et (3), l'agent délivre un permis d'études à l'étranger si, à l'issue d'un contrôle, les éléments suivants sont établis :

a) l'étranger a demandé un permis d'études conformément à la présente partie;

b) il quittera le Canada à la fin de la période de séjour qui lui est applicable au titre de la section 2 de la partie 9;

[...]

Ressources financières

220 À l'exception des personnes visées aux sous-alinéas 215(1)d) ou e), l'agent ne délivre pas de permis

215(1)(d) or (e), unless they have sufficient and available financial resources, without working in Canada, to

d'études à l'étranger à moins que celui-ci ne dispose, sans qu'il lui soit nécessaire d'exercer un emploi au Canada, de ressources financières suffisantes pour :

(a) pay the tuition fees for the course or program of studies that they intend to pursue;

a) acquitter les frais de scolarité des cours qu'il a l'intention de suivre;

(b) maintain themselves and any family members who are accompanying them during their proposed period of study; and

b) subvenir à ses propres besoins et à ceux des membres de sa famille qui l'accompagnent durant ses études;

(c) pay the costs of transporting themselves and the family members referred to in paragraph (b) to and from Canada.

c) acquitter les frais de transport pour lui-même et les membres de sa famille visés à l'alinéa b) pour venir au Canada et en repartir.

VII. Submissions of the parties

A. *Submissions of the applicant*

[18] As submitted in her factum, the applicant argued that the officer acted unfairly by not allowing her to provide further explanations if he had any doubts with regard to her study plan (at paragraph 7.2) or her financial situation (at paragraph 8.3).

[19] With respect to the reasons given by the officer, the applicant first argued that the officer erred in assessing the funds available to pay for her studies in Canada. The applicant complained that the officer did not consider the documentary evidence submitted. The applicant alleged that the evidence provided showed that her husband earned CAD\$80,000 per year (\$6,500 per month) and had an available bank balance of nearly CAD\$14,000. Also, the fact that the

applicant had obtained a CAQ tended to show that she had the financial resources needed to pay for her studies.

[20] The applicant then argued that the officer committed an error in his assessment of the purpose of her stay in Canada. Obtaining a CAQ showed that she was serious, especially in view of the fact that none of the required forms indicated that a study plan had to be submitted. The fact that she left her husband behind should have convinced the officer that she would return to the United Arab Emirates upon completing her studies.

B. *Submissions of the respondent*

[21] The respondent countered that the officer met his duty of procedural fairness. The applicant had the burden of convincing the officer that she met the requirements of the Act by producing the best evidence. The officer did not have to put his concerns to the applicant or inform her of the importance of submitting a detailed study plan.

[22] The respondent further argued that the officer's decision fell within a range of possible outcomes and that it was reasonable in light of the factors reviewed.

[23] The respondent contended that the officer correctly assessed the funds made available to the applicant by her husband, taking into account not only the assets but also the liabilities posted in the account. While the couple's income and savings were sufficient to cover living expenses and the annual \$16,000 tuition fees, they would nevertheless be inadequate after the loan on the bank statement was deducted. The respondent also noted that a Certificat de Sélection du Québec

cannot be used as a substitute for the Canadian officer's assessment of the financial resources of an international student or guarantee that the officer will issue a visa.

[24] The respondent found the officer's decision reasonable in that the applicant failed to demonstrate that she would leave Canada at the end of the period for which she sought authorization. The respondent cited the apparent inconsistency of the plan submitted by the applicant, who although she had a master of science degree, was enrolling in a vocational program. He pointed out that she did not provide a study plan and did not explain how she could look after her son while completing her studies.

VIII. Analysis

A. *Procedural fairness*

[25] On the issue of procedural fairness, the Court agrees with the respondent's arguments and finds that the officer did not err in not seeking clarification from the applicant who did not provide a complete record.

[26] As this Court has reiterated in a number of decisions, the onus is on the person applying for a study permit to convince the visa officer that he has the financial means to complete his studies and will leave Canada after the authorized stay. As Madam Justice Snider commented in *Ayatollahi v Canada (Minister of Citizenship and Immigration)*, 2003 FCT 248, 229 FTR 98

[*Ayatollahi*]:

[21] There was not, in my view, a breach of procedural fairness as a result of the visa officer's failure to put his concerns to the

Applicant. Most importantly, the burden was on the Applicant to come forward with his best case. He did not do this; specifically, he failed to give any rationale for his proposed course of studies, other than to assist his father upon his return. Given the onus on the Applicant, I believe that it would have been reasonably open to the officer to refuse the application on that basis alone. [Emphasis of the Court]

[27] An applicant who fails to discharge his burden of proof, submits an incomplete record, or leaves doubt as to the true purpose of the desired stay in Canada, cannot expect the officer to inform him of the deficiencies in his record or give him an opportunity to explain himself (*Sharma v Canada (Citizenship and Immigration)*, 2009 FC 786 at paragraph 8 [*Sharma*]; *My Hong v Canada (Citizenship and Immigration)*, 2011 FC 463 at paragraph 31 [*My Hong*]).

[28] In this case, the onus was on the applicant to submit a clear record, justifying the objective of obtaining the diploma from the program in which she wanted to enroll. The document entitled “Study Permit – Visa Office Instructions (IMM 5814),” available on the Government of Canada website, contains clear instructions and lists all relevant documents to support this type of application for a study permit. The officer was under no obligation to provide the applicant with advice on this matter.

[29] It is surprising that the applicant chose to seek redress from the courts to defend her interests. It would have been in her interest to file a new application with the embassy, ensuring that it was complete.

B. *Reasonableness of the decision based on the evidence submitted*

(1) Financial resources

[30] The visa officer initially denied the application for a study permit because the applicant did not have the resources needed to complete her studies, given that the loan reduced the amount available in the bank account.

[31] According to the evidence provided by the applicant, the Court finds that the officer erred in his assessment of the financial resources available to the applicant for her studies. The couple's annual income (CAD\$80,000 net) and savings (CAD\$14,000) are objectively sufficient to cover the annual tuition fees (\$16,000) and living expenses of the applicant and their minor child. The loan mentioned by the officer is not the type of financial burden that would jeopardize the applicant's plan. The officer's assessment of the financial resources is therefore not consistent with the standard of reasonableness.

[32] Nevertheless, that error is not fatal to the officer's decision and does in itself provide grounds for the Court to set it aside.

[33] With respect to the CAQ submitted by the applicant (*Ramzi v Canada (Citoyenneté et Immigration)*, 2007 CF 486 [*Ramzi*]; *Biao v Canada (Minister of Citizenship and Immigration)* 2001 FCA 43), according to the CIC's instructions, the CAQ does not exempt visa applicants seeking to study in Quebec from the financial sufficiency assessment process conducted by

Canadian visa officers. The CAQ specifically states that it is not an admission document and does not exempt the holder from the authorizations required by CIC.

[34] Under the constitution, immigration is an area of shared jurisdiction between the federal government and the provinces. In Quebec, the CAQ is an essential tool of the Ministère de l'Immigration, de la Diversité et de l'Inclusion for selecting immigrants eligible to settle in the province. In exercising its constitutional power, Quebec uses the CAQ to achieve its provincial immigration objectives. Thus, Quebec's prior consent is required for an international student to be admitted by Canada and to have a visa issued. However, admitting individuals into the province is within the jurisdiction of the federal government, which alone defines and enforces the conditions and criteria to be met to obtain authorization to enter and remain in Canada. It is essential that each level of government fulfill its role, i.e. concurrent jurisdictions.

(2) Departure from Canada upon expiry of the authorized stay

[35] Secondly, the visa officer denied the application for a study permit, because he was not convinced that the applicant would leave Canada at the end of the authorized period, in particular because the true purpose of her stay had not been demonstrated. This was the officer's main concern in his review of the visa application and the main factor that justified the denial of her application.

[36] We should bear in mind that the onus of convincing the visa officer of the merits of her study plan lay with the applicant (*Ayatollahi, Sharma and My Hong*, above). However, she failed to discharge her burden.

[37] The applicant's academic program does not appear to be consistent with the studies she planned to complete in Canada. The applicant holds a master's degree in science and a diploma in pharmacy. Yet, she would now like to obtain a diplôme d'études professionnelles (DEP) [college-level diploma] in health. However, this DEP program is an undergraduate program and she has completed graduate studies. The applicant did not explain this inconsistency and therefore did not demonstrate that the purpose of her stay in Canada was actually to pursue her education. Thus, the officer was not convinced that the applicant intended to leave Canada at the end of the authorized period if she were granted a study permit.

[38] It was therefore open to the officer to deny the application for a study permit. In the absence of a study plan specifying the program's utility to the applicant in light of her background and the professional objective pursued by the applicant, the officer could reasonably refuse to grant the visa (*Hussain v Canada (Citizenship and Immigration)*, 2012 FC 900; *Ramzi*, above).

[39] Consequently, the Court concurs with the respondent's arguments regarding the officer's reasonableness based on the incoherence of her plan for further education.

[40] However, the Court stresses that the officer's assumptions about the applicant's ability to ensure her child's well-being while studying full time are inappropriate. The officer made a value judgment that belongs to the last millennium and that is unacceptable. The Court notes that a large number of women have completed their education and entered the labour market without unduly affecting their offspring.

C. *Reasonableness*

[41] For the reasons stated above, based on all the evidence presented, the Court cannot agree with the applicant's arguments and finds that the officer's denial of her application for a study permit is reasonable.

IX. Conclusion

[42] The application for judicial review is dismissed.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed.

There is no question of importance to certify.

“Michel M.J. Shore”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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