Federal Court  Cour fédérale

Date: 20161208

Docket: IMM-2334-16

Citation: 2016 FC 1360

Vancouver, British Columbia, December 8, 2016

PRESENT: The Honourable Mr. Justice Roy

BETWEEN:

EVANGELINE AMAN SANTOS

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] Evangeline Aman Santos, the applicant, seeks the judicial review of a visa officer's decision to deny her a work permit. Ms. Santos has found employment as a nanny (NOC: 6474) in the Vancouver area. The judicial review application is made pursuant to section 72 of the *Immigration and Refugee Protection Act* (SC 2001 c27).

I. Facts

[2] The applicant is 39 years old, is a citizen of the Philippines and is not married.

[3] Her training is in commerce and she does not seem to have regular experience as a professional nanny other than being a part-time caregiver for an elderly woman in England between August 2012 and December 2013 (on average 4 hours per week) and as a part-time nanny (2 children) from February 2011 to December 2013 (between 2 and 6 hours per day). That employment also included being the house keeper.

[4] The employment in England is supported by 2 recommendation letters, both dated November 26, 2015.

[5] It appears that upon her return to the Philippines from the United Kingdom, she has been assisting her sister and her sister-in-law with their children. Again, two letters, both dated November 11, 2015, attest to the quality of the assistance provided.

[6] NOC 6474 lists the employment requirements as follows:

- Completion of Secondary School may be required;
- Nannies and live-in care givers may require completion of a training program in child care or a related field;
- Child care and household management experience may be required;
- Demonstrated ability to perform work is usually required;
- First aid certification and CPR training may be required.

[7] Ms. Santos also submitted evidence concerning savings of roughly $12,000.00 in the Philippines, as well as some land ownership in her country of origin. She has travelled abroad in the past and on at least 5 occasions she has returned to the Philippines. She has no family in Canada.

[8] According to the evidence before the Court, Ms. Santos expresses her desire to return to the Philippines once her employment in Canada is completed. Her current employer indicates that her position as a part-time cashier will be available upon her return.

[9] Finally, the prospective employer obtained a Labour Market Impact Assessment (LMIA) on June 5, 2015, valid for 2 years, for the purpose of hiring a worker as an "in-home caregiver". The letter is careful to note that it is Citizenship and Immigration Canada that makes a determination whether or not to issue a work permit. The contract with the applicant specifies what the responsibilities and duties would be: "Feeding, bedding, dressing, diaper changing, place supervision, transporting and accompanying to activities and appointments, light housekeeping duties to be performed like meal preparation, laundry, dusting, and vacuuming". The job is meant to be full time for a period of 2 years.

II. The Decision

[10] The refusal letter of April 4, 2016, appears to be the standard letter sent in those circumstances. We find more details about the decision to deny the work permit in the Global Case Management System (GCMS) of Citizenship and Immigration Canada. The decision is concerned with 2 issues. First, the applicant would not have been able to demonstrate that she adequately meets the job requirements of the prospective employment. Second, the Officer is not

satisfied that the applicant would leave Canada by the end of the authorized period for her stay. The 2 factors that are considered in the circumstances are the employment prospects in the country of residence, the Philippines, and the current employment situation.

[11] The GCMS notes that the employment in Vancouver requires a year in-home child care experience. It was clarified during the hearing of this case that, indeed, the employer required in-home care experience. Furthermore, the question is raised as to whether there is that experience in the employment history of the applicant as a caregiver. The gist of the decision appears to be the following:

> Only related experience gained were part-time; only docs provided to support declared part-time employment are letters from previous employers. No other docs provided to support declared part-time employment. Based on info and docs on file, I am not satisfied PA meets LMI requirement of experience. In addition, I am not satisfied PA is well established in the home country; not satisfied that the applicant would leave Canada by the end of the period of authorized stay.

III. The Standard of Review

[12] The parties agree, and the Court shares that view, that the standard of review in a case like this is that of reasonableness (*Li v Citizenship and Immigration*, 2012 FC 484). It follows that the applicant's burden is to satisfy the Court that the decision rendered does not fall within the range of acceptable possible outcomes which are defensible in respect of the facts and law. Furthermore, the process of articulating the reasons will be concerned with the existence of justification, transparency and intelligibility within the decision making process (*Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190).

IV. Analysis

[13] In my view, the applicant has failed her burden of showing that the Decision reached by the visa officer is not reasonable. The *Immigration and Refugee Protection Regulations* (SOR/2002-227) provide for the basic legal framework applicable with respect to work permits. Section 200 which is directly applicable to this case provides in part:

200 (1) Subject to subsections (2) and (3) – and, in respect of a foreign national who makes an application for a work permit before entering Canada, subject to section 87.3 of the Act – An officer shall issue a work permit to a foreign national if, falling an examination, it is established that	**200 (1)** Sous réserve des paragraphes (2) et (3), et de l'article 87.3 de la Loi dans le cas de l'étranger qui fait la demande préalablement à son entrée au Canada, l'agent délivre un permis de travail à l'étranger si, à l'issue d'un contrôle, les éléments ci-après sont établis :
...	(…)
(b) the foreign national will leave Canada by the end of the period authorized for their stay under Division 2 of part 9;	**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;
(c) the foreign national	**c)** il se trouve dans l'une des situations suivantes :
...	(…)
(iii) has been offered employment, and an officer has made a positive determination under paragraphs 203(1)(a) to (e); and	**(iii)** il a reçu une offre d'emploi et l'agent a rendu une décision positive conformément aux alinéas 203(1)a) à e);
...	(…)
(3) An officer shall not issue a work permit to a foreign	**(3)** Le permis de travail ne peut être délivré à l'étranger dans

national if	les cas suivants :
(a) there are reasonable grounds to believe that the foreign national is unable to perform the work sought;	**a)** l'agent a des motifs raisonnables de croire que l'étranger est incapable d'exercer l'emploi pour lequel le permis de travail est demandé;

[14] It does not appear that the requirement under paragraph 200 (1)(c) in challenged in this case as a positive labour market impact assessment letter has been issued (June 5, 2015). The difficulty resides rather in the Officer not being satisfied that the applicant will leave Canada once the work permit has expired and the presence of reasonable grounds to believe that the foreign national is unable to perform the work sought. In my view, it is not an insignificant difference that the regulations speak of the presence of reasonable grounds to believe when discussing the ability to perform the work sought. An obligation is made for the visa officer to refuse to issue a work permit once those reasonable grounds are found to exist.

[15] It has been said (*Chiau v MCI*, [2001] 2 FCR 297, FCA, [*Chiau*]) that this standard is located on a continuum between mere suspicions and the usual standard in civil matters of balance of probabilities (*F.H. v McDougall*, 2008 SCC 53; [2008] 3 SCR 41). As was accepted in *Chiau*, that standard connotes a good faith belief that will support a serious possibility. That belief will be based on credible evidence. The task of an applicant is therefore to satisfy the Court that it was not reasonable for the visa officer to have reasonable grounds to believe, that good faith belief in a serious possibility based on credible evidence. It would not suffice to conclude that the finding that the applicant is unable to perform the work is not reasonable. The Officer does not have to conclude that, on a balance of probabilities, the work will not be performed. Here, contrary to being satisfied that the applicant will leave Canada, the law only

calls for the reasonable grounds to believe that the work will not be performed, which is a lower standard. Thus, the applicant has the heavier burden of showing that the existence of reasonable grounds to believe is not reasonable. To put it another way, the officer is entitled to an even higher measure of deference.

[16] It this case, I am unable to reach that conclusion. The requirement for the job calls for experience as “in-home childcare”. Not only is there lacking evidence of a full year’s experience, but the evidence available suggests strongly that the applicant was operating on a part-time basis, a few hours a day as her full-time occupation was as a student in Great Britain. She was not a live-in caregiver. In-house experience is required and the applicant has not shown that she had that experience. The employment contract provides specifically for the accommodation that will be given to the in-home nanny. Nothing suggests that the applicant has any such experience. The experience with respect to the elderly woman can hardly be relevant where it is specified that what is required in this country is child care experience. Indeed, the experience with children in Great Britain, which is itself part-time, included babysitting. In my estimation, the visa officer could have had reasonable grounds to believe that the applicant is unable to perform the work sought on the basis of the limited evidence that was offered by the applicant.

[17] Indeed, one of the striking characteristics of this case is the paucity of evidence that was offered by the applicant. When the evidence considered in his entirety is examined, it is not possible to fault the visa officer for having had reservations about this application. It was open to the visa officer to have those reasonable grounds to believe, without having to reach the conclusion that there was likelihood that the applicant was unable to perform the work. At any

rate, it is for the applicant to show that it was not reasonable in the circumstances to conclude on the reasonableness of the grounds to believe. That burden has not been discharged. Having reasonable grounds to believe that the applicant is unable to perform the work sought, in view of the evidence presented, is an acceptable possible outcome. Others may disagree. However, such is not the test; deference is owed the visa officer.

[18] The applicant suggested that the future employer would be better situated than anyone to assess the suitability of an in-home nanny as they would select someone who would take good care of the children in a scrupulous manner. I do not doubt that parents are very much careful in the hiring of childcare support. However, the law requires that the visa officer "shall not issue a work permit" where reasonable grounds to believe are found to exist that the foreign national "is unable to perform the work sought." It is for the visa officer to make that determination.

[19] Given my conclusion, it is not necessary to consider fully the second ground for which the application for a visa permit was denied. Be that as it may, I am rather dubious that it is established that the applicant will not leave the country at the expiration of her work permit. It seems to me that the visa officer did not consider the evidence that was available before making such determination. The only reason invoked was that "I am not satisfied PA is well established in the home country;". It is very much unclear on what basis such a statement can be made. The applicant does not have family in Canada on which she could rely if she tried to stay beyond the expiration of the work permit while the record shows that she has extended family in the Philippines. Furthermore, she is the owner of a modest real estate asset. More importantly, this applicant has travelled abroad and has come back to the Philippines every time she did. The mere

fact that she would have found employment in Canada instead of part-time and infrequent work in the Philippines would not, in my view, be enough to conclude that she will not leave Canada when the work permit expires (*Chhetri v Canada (Citizenship and Immigration)*, 2011 FC 872). Without an explanation supported by evidence, one is hard pressed to be satisfied that there is existence of justification, transparency and intelligibility within the decision-making process.

[20] As a result, the judicial review application must be dismissed. It has not been shown that the conclusion of the visa officer on the issue that the applicant does not meet the job requirements was not reasonable.

[21] There is no serious question of general importance that should be certified.

JUDGMENT

THIS COURT'S JUDGMENT is that

1. The judicial review application is dismissed.

2. There is no serious question of general importance that should be certified.

"Yvan Roy"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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