Federal Court  Cour fédérale

Date: 20171116

Docket: IMM-840-17

Citation: 2017 FC 1046

Ottawa, Ontario, November 16, 2017

PRESENT: The Honourable Mr. Justice Boswell

BETWEEN:

JOHN PAUL IGNACIO CAYANGA

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The Applicant, John Paul Ignacio Cayanga, is a 32 year old citizen of the Philippines who applied for a study permit and temporary resident status in December 2016, intending to study Hotel Operations Management at Centennial College in Toronto, Ontario. In a letter dated February 9, 2016, an Immigration Officer at the Embassy of Canada Visa Section in Makati City, Philippines, refused the Applicant's application because the Officer was not satisfied he would leave Canada upon completion of his studies. The Applicant has now applied under subsection

72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27, for judicial review of the Officer's refusal of the Applicant's application for a study permit.

I. Background

[2] The Applicant's mother, father, and only sibling are Canadian citizens who live in Toronto. He has been married for approximately five years and has no children. In 2006, he obtained a Bachelor of Science in Hotel and Restaurant Management from the Lyceum of the Philippines University. Following his graduation, the Applicant completed a six-month internship at Raffles Hotel in Singapore. He then worked for several years as a galley utility for Costa Cruises before returning to the Philippines in 2010 to act as a caregiver for a family member. The Applicant says he wished to upgrade his credentials and level of education in order to work in the competitive hospitality industry of the Philippines.

[3] In 2011, the Applicant applied for a study permit and temporary resident status in Canada, but this application was refused. In December 2016, the Applicant applied again for a study permit and temporary resident status. He provided evidence of his acceptance to Centennial College and indicated his reasons for choosing that institution in a cover letter. The Applicant's parents and brother provided statutory declarations and documentary evidence indicating their intention and ability to provide financial support to the Applicant during his studies.

II. The Officer's Decision

[4] The Officer stated in the refusal letter of February 9, 2017, that the Applicant had "not satisfied me that you would leave Canada at the end of your stay." In making this determination, the Officer considered several factors such as the Applicant's travel history, his family ties in Canada and in the Philippines, the purpose of his visit, and his employment prospects in the Philippines. The Global Case Management System notes show the Officer's reasons for refusing the Applicant's application:

> Prev. SP refusal (2011). Applying to take Hospitality – Hotel Operations Mgt. program. LOA indicates 448-hour work practicum Parents to cover costs. Both parents and only sibling in Canada. PA is married, no dep child. I note unused US visa; travel history limited to previous overseas employment. Study plan seen. Unclear why PA is taking program at this time or why a similar program would not have been pursued until this time locally or regionally at less cost and higher convenience given the costs. While PA has related educ gained over 10 years ago, unclear how program is relevant to long-term experience (caregiver of family member since Jun 2010), galley utility (Jan 2007 to May 2010). No docs provided to support declared activity. Presents weak econ ties to home country, strong family ties in Canada. Based on info and docs on file, I am not satisfied the applicant is sufficiently established in home country, to compel departure from Canada after a period of authorized stay. Appln refused

III. Issues

[5] There is only one issue which requires the Court's consideration – that is, was the Officer's decision reasonable?

IV. Analysis

A. *Standard of Review*

[6] Absent any allegation of procedural unfairness, a visa officer's decision on a study permit application is reviewed on the reasonableness standard (see, e.g., *Patel v Canada (Citizenship and Immigration)*, 2009 FC 602 at para 28, 344 FTR 313; *Gu v Canada (Citizenship and Immigration)*, 2010 FC 522 at para 14, [2010] FCJ No 624 [*Gu*]; and *Li v. Canada (Citizenship and Immigration)*, 2008 FC 1284 at paras 14-16, 337 FTR 100 [*Li*].

[7] Under the reasonableness standard, the Court is tasked with reviewing a decision for "the existence of justification, transparency and intelligibility within the decision-making process. But it is also concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law": *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47, [2008] 1 SCR 190. Those criteria are met 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 at para 16, [2011] 3 SCR 708 [*Newfoundland Nurses*]. Additionally, "as long as the process and the outcome fit comfortably with the principles of justification, transparency and intelligibility, it is not open to a reviewing court to substitute its own view of a preferable outcome"; and it is also not "the function of the reviewing court to reweigh the evidence": *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at paras 59 and 61, [2009] 1 SCR 339.

B. *Was the Officer's decision reasonable?*

[8] The Applicant contends that, since the Officer had seen his study plan, it was unreasonable for the Officer to consider why a similar program would not have been pursued locally or regionally at less cost and higher convenience. The Applicant says, in view of *Zuo v Canada (Citizenship and Immigration)*, 2007 FC 88 at para 23, 155 ACWS (3d) 425 [*Zuo*], cost is only one of many possible motivations for choice of an educational program. According to the Applicant, the Officer relied on information not contained in his application and the Officer had an obligation to confront the Applicant with this information. The Applicant argues that the Officer was obligated to provide him with an opportunity to respond to the lack of evidence to support his declared program of study.

[9] The Applicant further contends that the Officer's conclusion that he is not sufficiently established in the Philippines "to compel departure from Canada" fails to consider that a temporary resident may extend or maintain their status in Canada and hold dual intent to become a permanent resident. In this case, the Applicant says, he stated his desire to return to the Philippines to obtain a higher degree of employment. According to the Applicant, there must be an objective reason to question an applicant's motivations, and temporary resident visas are premised on the idea that individuals may come to Canada to improve their economic situation. In the Applicant's view, the Officer's finding that he would not return to the Philippines is incomprehensible and erroneous based on the evidence submitted. The Officer's decision is unreasonable, the Applicant says, "because it relies on the very factor which would induce someone to come here temporarily in the first place as the main reason for keeping that person

out" (*Cao v Canada (Citizenship and Immigration)*, 2010 FC 941 at para 11, 193 ACWS (3d) 257).

[10] The Respondent notes that the onus is always on applicants to meet the evidentiary burden to satisfy a visa officer that they will leave Canada following their authorized stay. In the Respondent's view, there was no obligation on the Officer to grant the Applicant an opportunity to respond to the Officer's concerns. According to the Respondent, procedural protections are relaxed in the context of student visa applications. The Respondent maintains that where an officer's concerns arise from statutory requirements or an applicant's material, there is no obligation to raise those concerns with an applicant. An applicant is obligated, the Respondent says, to anticipate such concerns; the onus cannot shift to the decision-maker if there are evidentiary concerns.

[11] The Respondent maintains that the Applicant failed to displace the presumption that a foreign national seeking to enter Canada is an immigrant. The Respondent notes that the Officer considered all relevant factors, and while an applicant seeking temporary resident status may have a dual intent of subsequently applying for permanent residence status, the Officer made a reasonable determination based on the evidence submitted that the Applicant's only intent was to remain in Canada.

[12] Generally speaking, an applicant will not be granted an interview in the context of a student visa application unless an officer has relied on extrinsic evidence or otherwise forms an opinion which an applicant had no way of anticipating (see, e.g., *Gu* at paras 23-24; *Campbell*

Hara v Canada (Citizenship and Immigration), 2009 FC 263 at para 23, 341 FTR 278; *Li* at para 35). In my view, nothing in the Officer's reasons necessitated an interview or obliged the Officer to confront the Applicant with information the Applicant says was not contained in his application. The Officer in this case did not rely upon any extrinsic evidence or otherwise form an opinion which the Applicant had no way of anticipating.

[13] It is not unreasonable for a visa officer, as the Officer did in this case, to consider the availability of similar programs offered elsewhere at a lower cost; this is "simply one factor to be considered by a visa officer in assessing an applicant's motives for applying for a study permit" (see *Zuo* at para 23). Similarly, it is not unreasonable for a visa officer, as the Officer did in this case, to consider other factors such as the Applicant's family ties in Canada and his country of residence, the purpose of his visit, his employment prospects in the Philippines, and his travel history.

[14] *Newfoundland Nurses* dictates that the Officer's reasons must be sufficiently clear to allow the Court to understand why the Officer reached the decision he or she did. It is not this Court's function to reweigh the evidence that was before the Officer. The Officer is presumed to have considered all of the evidence in making his or her decision. Although the Officer's reasons for the decision in this case are brief, they are nonetheless sufficient and reasonable because they allow the Court to know what factors the Officer considered in making the decision, one which is well within the range of acceptable outcomes based on the facts and the law. The Court sees no reason to intervene and set the Officer's decision aside. This application for judicial review will be dismissed.

V. Conclusion

[15] For the reasons stated above, this application for judicial review is dismissed. The Officer's decision in this case was reasonable because it is transparent and intelligible and falls within the range of possible and acceptable outcomes defensible in respect of the facts and law.

[16] Neither party proposed a question of general importance for certification; so, no such question is certified.

JUDGMENT in IMM-840-17

THIS COURT'S JUDGMENT is that: the application for judicial review is dismissed; and no question of general importance is certified.

"Keith M. Boswell"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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