Federal Court Cour fédérale

Date: 20171204

Docket: IMM-2515-17

Citation: 2017 FC 1097

[ENGLISH TRANSLATION]

Ottawa, Ontario, December 4, 2017

PRESENT: The Honourable Mr. Justice Martineau

BETWEEN:

RAJPREET KAUR

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The applicant is seeking to have an exclusion order that was issued by a delegate of the Minister at the Sarnia border crossing (Blue Water Bridge) on May 22, 2017, set aside under section 228 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [IRPR].

[2] The decision under review is reviewable according to the reasonableness standard (see for example *Koo v Canada (Minister of Citizenship and Immigration)*, 2008 FC 931 at para 20). The sufficient or insufficient nature of reasons for exclusion are an integral part of the Court's analysis of the reasonableness of the outcome (see *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para 14).

[3] The applicant is an Italian citizen. She first came to Canada in November 2015 as a visitor for two weeks. At that time, the applicant was accompanied by her husband. The couple then returned to Italy. They sold their house. They returned with their children on July 24, 2016. The applicant received an extension of her visitor's status until June 30, 2017. On May 22, 2017, she crossed the border, and then wanted to be re-admitted into Canada. It involved obtaining a work permit from an immigration officer following a job offer from Harsan Petrol Inc. A representative of her future employer was with the applicant.

[4] An immigration officer prepared two reports under subsection 44(1) of the *Immigration and Refugee Protection Act*, SC 2001, c. 27 [IRPA]. According to the first report, the applicant is inadmissible for misrepresentations. According to the second one, she is inadmissible under section 41 and paragraph 20(1)(a) of the IRPA. The Minister's delegate relied exclusively on the second report to issue an exclusion order, meaning that it is not necessary to focus on the parties' arguments regarding the misrepresentations.

[5] The applicant submits to the Court that the reasons given do not provide an understanding of the reasoning to conclude that she intended to permanently settle in Canada. Furthermore, the

evidence on record does not support that conclusion. In fact, the applicant always observed the conditions of her stay. She honestly revealed her intention to come to Canada and to obtain a work permit with Harsan Petrol. She acknowledges that she sought to see if she could live in Canada at her family's suggestion. In the meantime, the couple did not buy a new house in Italy. The officer's inferences about her intentions are contrary to the spirit of the IRPA, which allows foreign nationals to stay temporarily in Canada to work, and then obtain permanent residence. According to Canadian policy, she had the right to work temporarily in Canada as a skilled worker. In fact, a positive decision was made by Service Canada on May 10, 2017, regarding the employer's job evaluation request. That is why she crossed the border: so that she could apply for a work permit.

[6] The respondent stated that the reasons provided when the reports were drawn up and the exclusion order was issued are adequate. The reported facts are damning and speak for themselves: they clearly attest to the applicant's intention to settle in Canada as a permanent resident. In fact, the applicant returned to Italy to sell her residence; she cancelled her return ticket for Italy, and was unable to submit another return ticket; she stated her intention to find work in Canada during the interview, and affirmed at that time that she intended to permanently settle in Canada to start a business. The applicant had no vested right to remain in Canada. Neither her visitor status nor the Canadian employer's job offer can prevent an exclusion order from being issued. This is a gross violation of the IRPA, especially since the applicant is not beyond reproach.

[7] The applicant has failed to satisfy me that there is a need to intervene.

[8] On the one hand, the reasons in support of the exclusion order are clear and transparent. In passing, the Court notes that counsel draws different conclusions about the fact that the applicant signed the documents in English, attesting that she fully understood the nature and scope of the interpreted information. In this case, the questions and answers in the interview were translated from English to Punjabi, and vice-versa. I will add that the applicant signed an affidavit in this case, which is written entirely in English and which was not translated into Punjabi. The applicant failed to satisfy me that there might be a misunderstanding about her intention to permanently settle in Canada. The fact that she believed that she had the right to obtain a temporary permit is not decisive in this case. The applicant's answers to the questions asked during the interview on May 22, 2017, speak for themselves.

[9] On the other hand, it is not up to the Court to substitute its opinion for that of the administrative decision-maker. Although the applicant might believe that the evidence is insufficient to support the conclusion that she intended to permanently settle in Canada, and without going so far as to say that the evidence on record is "damning", I agree with the respondent that the many factual elements suggest that the applicant may indeed have intended to establish her permanent residence in Canada. She had sold her house in Italy, opened a bank account in Canada, began taking steps to obtain a Canadian driver's licence, gradually started bringing her property to Canada, etc. In addition, the applicant herself answered in the affirmative when the delegate asked her whether she sought to permanently settle in Canada.

[10] One final detail: issuing a temporary resident visa to a visitor does not confer any vested rights to its holder. No more so than a positive work evaluation (see sections 200 *et seq.* of the

IRPR). Moreover, a temporary work permit was denied in this case. Insofar as the Court must show deference to the delegate's assessment of the evidence, it must be concluded that it was not unreasonable to believe that the applicant sought to permanently settle in Canada. The applicant attempted to return to Canada without having first obtained a permanent resident visa, as required by paragraph 20(1)(a) of the IRPA. Consequently, she was inadmissible for having violated the IRPA, which legally justified issuing an exclusion order.

[11] For these reasons, the application for judicial review is dismissed. No questions of law of general importance have been raised by counsel.

JUDGMENT in IMM-2515-17

THE COURT ORDERS that the application for judicial review be dismissed. No questions are certified.

"Luc Martineau"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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