Federal Court Cour fédérale

Date: 20180706

Docket: IMM-4978-17

Citation: 2018 FC 702

Ottawa, Ontario, July 6, 2018

PRESENT: The Honourable Madam Justice Strickland

BETWEEN:

SONILA ALI
SYED NOMAN ALI
IZZAH ALI (BY HER LITIGATION GUARDIAN SONILA ALI)
SYED AARAZE ALI (BY HIS LITIGATION GUARDIAN SONILA ALI)

Applicants

and

MINISTER OF IMMIGRATION, REFUGEES AND CITIZENSHIP CANADA

Respondent

JUDGMENT AND REASONS

[1] This is an application for judicial review of the decision of an immigration officer in the Visa Section of the Embassy of Canada in Abu Dhabi, United Arab Emirates ("Officer"), which denied the application for a study permit of the Principal Applicant, Ms. Sonila Ali, together with the related applications of her immediate family.

Background

[2] The Principal Applicant and her family are citizens of Pakistan. In 2017 the Principal Applicant, aged 32, applied for a study permit, having been accepted into the two year Hospitality - Hotel and Restaurant Services Management program at Seneca College ("Seneca"), located in Markham, Ontario. Her application indicated that the Principal Applicant had previously lived in the United Arab Emirates from 1998 to 2010 and from 2012 to 2016, while accompanying her husband who was working there. In the Principal Applicant's study plan she indicated that she completed part of her secondary education in the UAE in 2003 and completed her A levels (high school) in Pakistan in 2007 which included accounting, business and economic courses. She also completed a course in interior design and two in cake decoration. She wished to complete her studies at Seneca College and use her new knowledge to open her own chain of restaurants.

[3] She explained that after her marriage in 2010, the subsequent birth of her daughter, later miscarriages, the death of her sister in 2013, the birth of her second child in 2015, and subsequent surgeries in 2016 had delayed the pursuit of her plan of coming to Canada and studying, in aim of opening her own restaurants. She stated that she chose the program at Seneca because it covers national and international markets and includes opportunities for externship placements in other countries. While she had researched programs in Pakistan, neither the quality nor diversity of skills taught there at similar schools came close to the program at Seneca. The study plan stated the family had over $100,000 available for their stay, obtained by the sale of a property, and that Seneca already received a $6,913.95 tuition payment.

Decision under Review

[4] By letter dated October 30, 2017 the Officer informed the Principal Applicant that, upon review of the study permit application and supporting documents, a determination had been made that her application did not meet the requirements of the *Immigration and Refugee Protection Act*, SC 2001, c 27 ("IRPA") and was refused. The Officer was not satisfied that the Principal Applicant would leave Canada at the end of her stay. In reaching this conclusion the Officer considered several factors which were checked off as such on a standard form, being family ties in Canada and in country of residence, employment prospects in country of residence, and, current employment situation. Under other reasons the Officer stated upon review of the application and the reasonableness of undertaking the proposed studies in Canada, he or she was not satisfied that the Principal Applicant would actively pursue the proposed program of study and that her family ties to Pakistan would diminish after travel.

[5] The notes from the Global Case Management System ("GCMS") form a part of the Officer's reasons (*Rahman v. Canada (Citizenship and Immigration*, 2016 FC 793 at para 19; *Rezaeiazar v Canada (Citizenship and Immigration)*, 2013 FC 761 at paras 58-59; *Veryamani v Canada (Citizenship and Immigration)*, 2010 FC 1268 at paras 28-31). There the Officer noted that the Principal Applicant would be accompanied by her entire family and that proof of ownership of property, the sale of property and of rented property owned by the Principal Applicant in Pakistan had been provided. However, the Officer was not satisfied that the proposed program of study would improve the Principal Applicant's career prospects enough to offset the costs of study abroad. The program was two years long and, excluding tuition, the cost

of living expenses would be $20,000 for the first year alone. While the Principal Applicant's husband was applying for a work permit, there was insufficient proof that either he had guaranteed employment in Canada or that he was a Real Estate Project Management Director of his own company in Pakistan. Therefore, the Officer was not satisfied that the proposed studies were a reasonable expense.

[6] The Officer also noted that the Principal Applicant was currently unemployed and, weighing other ties, had further weakened ties to her country of residence. Further, the family's stability would be jeopardized should all family members travel to Canada. The documents submitted by the Applicants failed to demonstrate strong socio-economic establishment in their country of residence and there would be little incentive to return to Pakistan, despite owning property there. Considering a complete review of the application, the Principal Applicant's previous academic history, employment, and the reasonableness of the proposed studies, the Officer was not satisfied that the Principal Applicant is a genuine student whose primary purpose is to study in Canada. As a result, the Officer was not satisfied that the Principal Applicant would actively pursue the proposed program of study or that she would leave Canada at the end of the authorized period.

[7] Since the applications of the Principal Applicant's husband and children were based on her application, the Officer also refused the related applications for open work and study permits and for the youngest child's temporary resident visa.

Issues and Standard of Review

[8] The sole issue in this application is whether the Officer's decision was reasonable. The parties submit, and I agree, that the standard of review applicable to a visa officer's refusal of a study permit application is reasonableness (*Thiruguanasambandamurthy v Canada (Citizenship and Immigration)*, 2012 FC 1518 at para 27 ("*Thiruguanasambandamurthy*"); *Solopova v Canada (Citizenship and Immigration)*, 2016 FC 690 at para 12 ("*Solopova*"); *Onyeka v Canada (Citizenship and Immigration)*, 2017 FC 1067 at para 9 ("*Onyeka*").

[9] The decisions of visa officers concerning study permits are discretionary and primarily fact based. Visa officers have expertise and experience in making such decisions and are to be afforded considerable deference. Their decisions do not necessarily lend themselves to one specific result and, under the reasonableness standard, the Court will not intervene unless the Officer came to a conclusion that is not transparent, justifiable or intelligible and falls outside the range of possible acceptable outcomes which are defensible based on the facts and the law (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47 ("*Dunsmuir*"); *Solopova* at paras 11, 12 and 33; *Obeng v Canada (Citizenship and Immigration)*, 2008 FC 754 at para 21 ("*Obeng*"); *Onyeka* at paras 9-10).

Analysis

[10] Section 20(1)(b) of the IRPA requires that foreign nationals seeking to become temporary residents, such as those seeking a study visa, must establish that they will leave Canada by the end of the period authorized for their stay. Similarly, s 179 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227, ("IRP Regulations") requires the issuance by an officer

of a temporary resident visa if it is established that the applicant will leave Canada at the end of the period authorized for their stay.

[11] As a foreign national seeking temporary entry into Canada, the onus was on the Principal Applicant to establish her case on a balance of probabilities and to demonstrate that she would leave Canada at the end of an authorized period. The Principal Applicant bore the burden of providing all the relevant information to satisfy the Officer that she met the statutory requirements of the IRPA and the IRP Regulations (*Patel v Canada (Citizenship and Immigration)*, 2017 FC 570 at para 12 ("*Patel*"); *Solopova* at para 22; *Obeng* at para 20).

[12] The Applicants submit that the Officer's conclusion that the Principal Applicant's studies in Canada were not a reasonable expense to incur was made without regard for the evidence. This is because her application provided a clear rationale for pursuing the proposed course of studies, which the Officer ignored or misunderstood. Given her explanations, it was simply unreasonable to reject the proposed plan.

[13] Further, that the Officer's view that the program's expense was unreasonable perversely substituted the Officer's own view of what an individual in the Principal Applicant's position should do. Since it was the Principal Applicant's long-standing goal to forge a career in the restaurant industry, the financial expense of studying abroad was a small cost to bear in achieving this aspiration. The Applicants also submit that the evaluation of the program's cost was made without regard to the Applicants' demonstrated financial means, and, the Principal Applicant's husband was seeking an open work permit which could alleviate the cost of study,

although there was no requirement for an accompanying spouse to provide an existing offer of employment. Thus, the Officer offered no rational basis or sufficient explanation for his or her conclusion that the Principal Applicant was not a bona fide student and blatantly ignored the evidence.

[14] The Applicants also submit that while the Officer provided two justifications for finding that the Principal Applicant would not leave Canada at the end of her authorized stay: that she is currently unemployed and that the family's stability would be jeopardized should they all travel to Canada, no details were provided and the Officer's reasoning therefore does not meet the standard of justification, transparency, and intelligibility required by *Dunsmuir*. The Applicants assert that the Officer made no serious effort to assess the ties to Pakistan and ignored the evidence relevant to this issue, including the Principal Applicant's positive travel history.

[15] In my view, the Applicants are essentially asserting, by way of repeatedly restating the content of the Principal Applicant's application and study plan, that because she provided a plan and put forward her allegedly long held aspiration to open a chain of restaurants, the Officer could not possibly find this to be unreasonable. Accordingly, the Officer must have ignored or failed to properly analyze the supporting evidence she provided. I do not agree with the Applicants' assertions.

[16] For example, the Applicants assert that the Officer did not assess the information concerning the Principal Applicant's family ties to Pakistan and unreasonably concluded that these ties would be weakened, which contributed to his or her finding that the Principal

Applicant would not return to Pakistan at the end of an approved study period. However, the Officer noted that the Principal Applicant is currently unemployed - in fact she has no employment history - and she had not provided sufficient proof of the claim that her husband is a real estate project manager in his own company. In the result, there was no evidence before the Officer that either of them had work to return to in Pakistan at the end of the proposed study period. The Officer did not ignore or misunderstand the evidence and noted the evidence of property held in Pakistan but found that, despite this, the family would have very little incentive to return to Pakistan. While it is true that the Officer did not mention that the Principal Applicant's parents and one of her siblings would remain in Pakistan, the record also indicated that she has another brother who lives in Canada with whom she intended to reside at least temporarily. Further, it is apparent that one of the Officer's concerns was that the Applicants were moving as an entire family, which would substantially lessen their family ties to Pakistan.

[17] On this point, in my view, the Applicants' reliance on *Zhang v Canada (Citizenship and Immigration)*, 2003 FC 1493 ("*Zhang")* does not assist them. In that case it was found that the applicant's obviously strong relationship with his father was ignored. There the applicant, an only child who knew no one in Canada other than his father's friend, had clearly stated his reasons for returning to China. His father, who was funding his studies and had recommended that the applicant study in Canada, expected him to return to help with the family business. This also demonstrated that the purpose of the applicant's studies was clearly linked to his future employment in China. Here, the Principal Applicant's application contains no evidence of the nature of the Principal Applicant's ties, strong or otherwise, with her parents or siblings in

Pakistan. And, as noted above, she would be accompanied to Canada by her entire immediate family, unlike the applicant in *Zhang*.

[18] The Applicants also submit that the Officer ignored and failed to assess their financial information, which was material to and contradicted the Officer's conclusions. While it is correct that the Officer did not specifically refer to the fact that the Applicants had $100,000 in savings available to them, I am not persuaded that this information was overlooked. The Officer is presumed to have considered and weighed all the evidence and is not required to refer to each constituent element of that evidence (*Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para 16; *Obeng* at para 35). It is only when a decision-maker is silent on evidence clearly pointing to the opposite conclusion that the Court may intervene and infer that the decision-maker overlooked the contradictory evidence when making its finding of fact *(Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)* (1998), 157 FTR 35 (FCTD) at paras 16-17; *Solopova* at para 28).

[19] Here the Officer weighed the Applicant's financial information against the fact that the cost of living alone for the family would be $20,000 per year. While the Applicant claimed to have a long held aspiration to open a chain of restaurants, she had no education other than high school and a certificate of merit in a baking course (July 6, 2009) as well what appear to be two, week long courses in cake decorating (July 15 and August 2, 2009) which seem to have been offered by a store, and a certificate of achievement in interior design, of which no other details are provided. Nor in the ten years between her high school graduation and her application for a study permit had she obtained any work experience in the restaurant business, or at all. There

was also no evidence before the Officer that the Principal Applicant had the resources to start a chain of restaurants or, other than her intention of attending Seneca College, that there was any real foundation to this alleged aspiration. Given this, and that her spouse would be giving up the only family income to accompany the Principal Applicant and, while not a requirement, had not established that he had prospective employment in Canada, it was not unreasonable for the Officer to find that he or she was not satisfied that the proposed studies would improve the Principal Applicant's career prospects to a degree that would offset the costs of studying abroad, and to find that the family's stability would be jeopardized should all of the family members move to Canada.

[20] While the Applicants assert that the evidence not mentioned by the Officer, such as the availability of $100,000 in savings and the Principal Applicant's positive travel history, contradict the Officer's conclusions and therefore amounts to a reviewable error, in reality this information is not contradictory. The Applicants are, in effect, asking the Court to reweigh the evidence, which is not its role (*Solopova* at paras 20-22; *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at paras 59 and 61; *Cayanga v Canada (Citizenship and Immigration)*, 2017 FC 1046 at para 7; *Thiruguanasambandamurthy* at para 28).

[21] Finally, I note that the study plan stated that the Principal Applicant was interested in Seneca because it covers national and international markets and provides international study placements. Further, that she had researched the College of Tourism and Hotel Management and the Pakistan Institute of Tourism and Hotel Management, both in Karachi, in discounting these options she stated only that the quality and diversity of skills they offered was not the same as

Seneca College. No other evidence or course and cost comparisons were provided. It is also unclear how her comment on the skills of similar schools applies to her next statement that in Pakistan women are implicitly prohibited from "holding such extensive restaurant business and management positions" as this relates to employment, not education. And while the Applicants also submit that the Officer stated that there were similar programs in Pakistan but did not provide any evidence of this, the Officer did not make such a statement. Moreover, the Applicants appear to misconstrue the burden of proof.

[22] Having reviewed the decision and the record, I am not persuaded that the Officer ignored or misunderstood any of the evidence. Further, while brief, the reasons were sufficiently adequate to allow me to understand why the Officer reached the conclusions that he or she did. I agree with the Respondent that the Officer's assessment of the financial cost of the intended studies, its impact on the family, and their social and economic ties in Pakistan was reasonable. Accordingly, and based on the record before the Officer, it was open to him or her to find that the Principal Applicant had not met her onus of establishing that she would leave Canada at the end of an authorized stay and that she was not a bona fide student.

[23] As to the written submissions of the parties as to dual intent, as stated by Justice Gascon in *Solopova* (at para 30) this Court has confirmed that a person may have the dual intent of immigrating and of abiding by the immigration law respecting temporary entry (*Kachmazov v Canada (Citizenship and Immigration)*, 2009 FC 53 at para 15). The two intentions are complementary, not contradictory (*Loveridge v Canada (Citizenship and Immigration)*, 2011 FC 694 at para 18 ("*Loveridge*")). However, the burden lies on the applicant to first demonstrate that

he or she will leave at the end of their study period (*Loveridge* at para 20, *Wang v Canada (Citizenship and Immigration)*, 2009 FC 619 at para 14). In *Solopova*, as here, this threshold requirement has not been met.

JUDGMENT IN IMM-4978-17

THIS COURT'S JUDGMENT is that

1. The application for judicial review is dismissed.

2. There shall be no order as to costs.

3. No question is certified.

"Cecily Y. Strickland"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-4978-17
STYLE OF CAUSE:	SONILA ALI, SYED NOMAN ALI, IZZAH ALI (BY HER LITIGATION GUARDIAN SONILA ALI), SYED AARAZE ALI (BY HIS LITIGATION GUARDIAN SONILA ALI) v MINISTER OF IMMIGRATION, REFUGEES AND CITIZENSHIP CANADA
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	JUNE 25, 2018
JUDGMENT AND REASONS:	STRICKLAND J.
DATED:	JULY 6, 2018

APPEARANCES:

Natalie Domazet	FOR THE APPLICANTS
Modupe Oluyomi	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Mamann Sandaluk & Kingwell LLP Barristers and Solicitors Toronto, Ontario	FOR THE APPLICANTS
Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT