Federal Court  Cour fédérale

Date: 20180706

Docket: IMM-5480-17

Citation: 2018 FC 701

Ottawa, Ontario, July 6, 2018

PRESENT: The Honourable Mr. Justice Roy

BETWEEN:

ALI DEMYATI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] In this judicial review application, made pursuant to section 72 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 [IRPA], the applicant challenges the decision made to deny him a study permit. In my view, the decision does not meet the basic requirements of paragraph 47 of *Dunsmuir v New Brunswick*, 2008 SCC 9; [2008] 1 SCR 190 [*Dunsmuir*] such that it is not possible to decipher the reasons why the said study permit was denied. The safe course of action is to remit the matter to a different visa officer for a new determination.

I. Facts

[2] The facts of the case are uncomplicated and do not appear to be seriously contested.

[3] The applicant is a Syrian national, who is now 19 years old and who has spent most of his life in the United Arab Emirates with his parents, his grandparents and two siblings where they hold the status of resident. Benefitting from a student permit, he had been residing in Hungary since September 2017.

[4] The applicant applied to a number of universities for the purpose of continuing his studies. One of them is Carleton University, in Ottawa. In the past, he has studied in Hungary, and, before that, at the American School of Bangkok, from 2011 to 2013. Each time, he has returned to his country of residence, the United Arab Emirates.

[5] It is on May 29, 2017 that the applicant was accepted in the Bachelor of Science honours program at Carleton University; he was awarded an academic scholarship valued at $4000.00 per year, together with an entrance award of $1000.00.

[6] However, coming from abroad, the applicant had to apply for a temporary resident visa to come to Canada as a student. The visa was refused on July 24, 2017. The new application was made on August 26, 2017 and offered additional evidence to address the grounds for the first refusal. This new application was supported by his academic record, letters from an uncle, a grandfather and the applicant’s father, confirming their financial support and proof of their

ability to offer such support, as well as a detailed plan explaining why he chose to attend Carleton University and the benefits he hopes to derive from his university studies in Canada.

II. The decision

[7] As is often the case in matters of this nature, the decision of a visa officer, dated November 8, 2017, is less than loquacious. We are advised that the application does not meet the requirements of the IRPA and its regulations. More specifically, the decision-maker ticks boxes which state that the requirement to leave Canada at the end of the stay is not satisfied because of the immigration status in the country of residence, the employment prospects in the country of residence, the current employment situation and the personal assets and financial status of the applicant. The letter further states that the visa officer is not satisfied of the provenance of funds, nor is the visa officer satisfied that the applicant would actively pursue the intended program of study such that the officer is not satisfied that the applicant is not an immigrant. We find nowhere how these conclusions are reached.

[8] The Global Case Management System [GCMS] provided some explanation for the decision. Thus, the notes indicate that the applicant does not have personal income or significant savings. His status in his country of residence is not permanent and could be lost at any time. Furthermore, the armed conflict in Syria, together with the economic and civil instability with no resolution in sight, appears to have been taken into account. The GCMS notes conclude by stating that "(o)n balance of probabilities, I am not satisfied that the PA's establishment in PA's current country of residence would outweigh the possibility of PA remaining in Canada beyond PA's authorized period of stay. Based on the submissions, and considering PA's past education

history and low funds, I am not satisfied that PA's primary purpose would be to actively pursue the intended program as required under r. 220.1 and I am not satisfied that PA is a *bona fide* student who would exit Canada at the end of the PA's stay and not an immigrant. Refused".

III. Standard of review and arguments

[9] The parties are in agreement, and the Court concurs, that the standard of review is reasonableness. It will be for the applicant to satisfy the Court that the decision made does not have the attributes of reasonableness, namely, that there exists justification, transparency and intelligibility within the decision-making process and that the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law (*Dunsmuir*, para 47, *Canada (Canadian Human Rights Commission) v Canada (Attorney General)*, 2018 SCC 31, at para 55).

[10] The applicant argues that there is nothing on this record to justify a finding that he is not a *bona fide* student. It is clear, as the argument goes, that the visa officer was influenced by sweeping generalities about the national or ethnic origin of the applicant and the political situation in Syria, his country of nationality. Thus, the uncertain status in the United Arab Emirates, which is asserted without evidence in support, together with the dire circumstances in Syria, could not justify the finding against the applicant who has the perfect profile of a student who wishes to continue his studies abroad after his years studying in Thailand and Hungary.

[11] Similarly, the evidence concerning the financial situation of the applicant is clear that he will get the support from family members. What is to be expected from an eighteen-year-old (at

the time of the application) student? It cannot be expected that he is holding on to a job or that he has accumulated significant funds. As other students, he relies on family members, summer employment and scholarship money. That, argues the applicant, has been amply demonstrated on this record. His uncle in Ottawa has pledged support to the amount of $25,000.00 USD per year; the evidence shows that his uncle's bank account allows him to make that pledge. Furthermore, the grandfather who is living in the United Arab Emirates has also pledged to support his grandson and the applicant received a scholarship award of $4,000.00 a year.

[12] The applicant also stresses that the visa officer was mistaken when he stated that "PA provided bank statements showing modest savings, with large sums not substantiated by any proof of income". No such bank statements were ever forwarded; the decision-maker would appear to have confused what he saw for the bank statements belonging to the applicant's grandfather.

[13] Finally, the visa officer is wrong to find that the applicant wants to immigrate to Canada. There is no evidence to that effect. In the past, this young student has experienced studying abroad (Thailand and Hungary) and he has returned to his country of residence prior to the expiration of the status he had in those countries; that shows a history of compliance with immigration laws in other countries.

[14] The respondent stressed that the law requires that the recipient of a temporary residence status in Canada leave the country before the period authorized for the stay has expired (sections 20 and 29 of IRPA). The obligation is made remarkably explicit with respect to study permits

through paragraph 216(1)b) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [Regulations]:

Study permits	**Permis d'études**
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	**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 :
(b) 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;

[15] The Crown's argument boils down to say that the officer is entitled to rely on common sense and rationality in making a decision. Here, it is argued that the decision is clear and that "there is a very minimal reason requirement for this type of temporary resident visa application" (memorandum of fact and law, para 17).

IV. Analysis

[16] A visa officer is certainly entitled to rely on common sense and rationality. As I have said before, we do not check common sense at the door when entering a courtroom. What is not allowed is to make a decision based on intuition or a hunch; if a decision is not sufficiently articulated, it will lack transparency and intelligibility required to meet the test of reasonableness. That, I am afraid, is what we are confronted with here.

[17] Our law is very much concerned with arbitrariness, which is the antithesis of reasonableness. Indeed, the prohibition against arbitrariness is one of the principles of fundamental justice which is at the heart of section 7 of the *Canadian Charter of Rights and Freedoms* (*Ewert v Canada*, 2018 SCC 30, para 171). In the case at bar, it remains unclear why the visa officer concluded that an 18-year-old student, who benefits from a scholarship award from a recognized university, would not be a *bona fide* student who would stay in this country beyond the expiration of the study permit. Furthermore, there is no reason that is articulated to suggest that this applicant would run afoul of section 220.1 (1) of the Regulations:

Conditions — study permit holder	**Conditions — titulaire du permis d'études**
220.1 (1) The holder of a study permit in Canada is subject to the following conditions:	**220.1 (1)** Le titulaire d'un permis d'études au Canada est assujetti aux conditions suivantes :
(a) they shall enroll at a designated learning institution and remain enrolled at a designated learning institution until they complete their studies; and	**a)** il est inscrit dans un établissement d'enseignement désigné et demeure inscrit dans un tel établissement jusqu'à ce qu'il termine ses études;
(b) they shall actively pursue their course or program of study.	**b)** il suit activement un cours ou son programme d'études.

I have not found any justification on this record for such a conclusion. If there is a justification, and there may well be, it has to be articulated for the decision to be reasonable.

[18] Similarly, the reasons given around the ability of the applicant to support his studies in Canada are lacking. This applicant was 18 years old. It is difficult to fathom how he should be

holding a job, have accumulated significant sums of money and hold against him that he has pursued studies which have been uninterrupted at this stage in his life. What is more, the visa officer seems to have misunderstood some bank statements which he wrongly attributed to the applicant when, in fact, they were his grandfather's.

[19] In *Komolafe v Canada (Citoyenneté et Immigration)*, 2013 FC 431, our Court acknowledged that reviewing courts must show a willingness to connect the dots to reach a decision on reasonableness. However, there must be dots in the first place. The Federal Court of Appeal endorsed such an approach in *Lloyd v Canada (Attorney General)*, 2016 FCA 115, at paragraph 24:

> [24] In light of the adjudicator's findings, even on a generous application of the principles in *Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, [2011] 3 S.C.R. 708, the basis upon which the 40-day suspension was justified cannot be discerned without engaging in speculation and rationalization. As I noted in *Komolafe v. Canada (Citizenship and Immigration)*, 2013 FC 431, at para. 11:
>
> > *Newfoundland Nurses* is not an open invitation to the Court to provide reasons that were not given, nor is it licence to guess what findings might have been made or to speculate as to what the tribunal might have been thinking. This is particularly so where the reasons are silent on a critical issue. It is ironic that *Newfoundland Nurses*, a case which at its core is about deference and standard of review, is urged as authority for the supervisory court to do the task that the decision maker did not do, to supply the reasons that might have been given and make findings of fact that were not made. This is to turn the jurisprudence on its head. *Newfoundland Nurses* allows reviewing courts to connect the dots on the page where the lines, and the direction they are headed, may be readily drawn. Here, there were no dots on the page.

Here, the dots do not suffice to connect them such that a clear picture emerges without filling many blanks on the basis of speculation.

[20] What appears to have been the most important factor in the refusal was the fact that the applicant is a Syrian national who has been living outside of Syria for most of his life. The decision-maker seems to have concluded that given the situation in his country of origin, he would not be inclined to go back to his country of nationality if his residence status in the United Arab Emirates were to change. Given the record as it is before the Court, this looks more like a hunch based on speculation than a justification supported by some evidence. If that could constitute some form of justification, this would lack transparency and intelligibility without a more complete articulation.

V. Conclusion

[21] It is certainly true that visa officers are owed a significant measure of deference when they make their decisions concerning applications for visas to come to Canada. There is no absolute right to come to Canada (*Canada (Minister of Employment and Immigration) v Chiarelli*, [1992] 1 SCR 711, at p 733 and *Medovarski v Canada (Minister of Citizenship and Immigration)*, 2005 SCC 51; [2005] 2 SCR 539, at para 46). Without a doubt, visa officers need to be satisfied that the applicant will return to her/his country of origin before the expiration of the visa. That requirement permeates IRPA and its Regulations. However, conversely, our law does not allow for decisions to be made on an arbitrary basis. That is why even a standard such as that of reasonableness requires justification, transparency and intelligibility such that the reviewing court can ascertain if the decision reached falls within a range of possible, acceptable outcomes.

In my view, this case lacks the kind of justification required by our law. I would therefore return the matter to a different visa officer for the purpose of conducting a new determination.

[22] The applicant sought his costs on this application. Pursuant to rule 22 of the *Federal Courts Citizenship, Immigration and Refugee Protection Rules* (SOR/93-22), costs are not awarded unless there are special reasons for doing so. None exists in this case. Accordingly, there will not be an award for costs.

[23] The parties agreed that there is no serious question of general importance that arises in this case. The Court agrees.

JUDGMENT in IMM-5480-17

THIS COURT'S JUDGMENT is that:

1. The judicial review application is granted. The matter is remitted to another visa officer for the purpose of conducting a new determination;

2. There are no costs awarded on this application;

3. There is no serious question of general importance.

"Yvan Roy"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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