Federal Court  Cour fédérale

Date: 20181207

Docket: IMM-990-18

Citation: 2018 FC 1230

Ottawa, Ontario, December 7, 2018

PRESENT: The Honourable Mr. Justice Favel

BETWEEN:

LISHAN PENG

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] This is an application for judicial review under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c-27 [IRPA] of a decision of a visa officer from the Embassy of Canada, Visa Section in Beijing [the Officer] dated January 3, 2018. The Officer refused the Applicant's application for a temporary resident visa [TRV application] under subsection 11(1)

of the IRPA and section 179 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [IRPR]. For the reasons below, the application is dismissed.

I. Background

[2] The Applicant, aged 37, is a citizen of China. She is divorced since 2012. The Applicant's child lives in Beijing with her parents, while the Applicant's sister resides in Australia.

[3] The Applicant works at Universal Skyline (Beijing) Business Service Co., Ltd. and Tianjin Universal Skyline Business Services Co., Ltd as a General Manager, and she is one of the shareholders of both enterprises.

[4] Dissatisfied by the lack of opportunities in the United States of America [USA] for her clientele, the Applicant allegedly met a person by the name of Mr. Li, who told her about Canada's business opportunities, and offered to drive her to Canada in exchange for $100.00. The Applicant arrived in Canada without a valid visa with Mr. Li on August 26, 2016. In her Statutory Declaration dated March 26, 2018, the Applicant admitted having "mistakenly" and "unknowingly" entered Canada without a visa. The Applicant explained that she travelled to New York to explore investment opportunities for her clients.

[5] Upon arrival into Canada, the Applicant was advised by her friends to leave Canada immediately as she had no valid visa. Therefore, the Applicant returned to the USA by bus and

departed to Beijing three days later. Since this incident, the Applicant alleges that she has not reached out to Mr. Li in any way.

[6] Following her unauthorized visit to Canada, the Applicant applied for a TRV application to Canada in October of 2016, which was refused on April 27, 2017. The Applicant's second TRV application filed on November 2, 2017, was also refused on November 30, 2017. On December 15, 2017, the Applicant submitted a third TRV application.

II. Impugned Decision

[7] On January 3, 2018, under subsection 11(1) of the IRPA, the Officer refused the Applicant's TRV application dated December 15, 2017, because the Applicant did not meet the legislative requirements to obtain a temporary visa. The Officer was not satisfied that the Applicant would leave Canada at the end of her authorized stay. In the refusal letter, the Officer checked off the factors that applied to the refusal of the application:

> Purpose of visit
>
> Other reasons ("The full circumstances regarding your previous unauthorized entry into Canada in August 2016 remain unexplained and raises credibility concerns regarding your true intentions of travel to Canada")

[8] The Global Case Management System notes [GCMS notes] served as reasons for the Officer's decision. The GCMS notes read as follows:

> File reviewed. Previous refusals notes. Noted that the applicant(*sic*) had an unauthorized entry into Canada from the USA. Applicant presented a letter from her consultant dated November 5, 2017 inviting her to visit Saskatchewan for a business exploratory visit. No doc's to suggest this is an invitation

> from the Government of Saskatchewan. PA's prior immigration history has undermined her overall credibility. Based on the foregoing, I am not satisfied that PA is a bona fide temporary resident who will leave Canada by the end of the period authorized for their stay. Application refused.

[9] It is this decision that is the subject of the present application for judicial review.

III. Issue

[10] In her written submissions, the Applicant raised the following issues:

1. Did the Officer fail to have proper regard for all materials presented in the Applicant's application?
2. Did the Officer make an erroneous finding of fact without regard to the material before him/her?

[11] After reviewing both parties' submissions, the Court is of the view that the sole issue to be determined in the present application for judicial review is whether the Officer erred in refusing the Applicant's TRV application, based on the evidence on file.

[12] The parties agree, and the Court concurs, that the applicable standard of review is reasonableness, as the assessment of a TRV application by a visa officer raises a question of mixed fact and law. Given the discretionary nature of a visa officer's decision, the Court should only intervene if the decision falls outside "a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 59; *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47 [*Dunsmuir*]).

IV. Relevant Provisions

[13] The following provisions of the IRPA are relevant in this proceeding:

Application before entering Canada	**Visa et documents**
11 (1) A foreign national must, before entering Canada, apply to an officer for a visa or for any other document required by the regulations. The visa or document may be issued if, following an examination, the officer is satisfied that the foreign national is not inadmissible and meets the requirements of this Act.	11 (1) L'étranger doit, préalablement à son entrée au Canada, demander à l'agent les visa et autres documents requis par règlement. L'agent peut les délivrer sur preuve, à la suite d'un contrôle, que l'étranger n'est pas interdit de territoire et se conforme à la présente loi.
Obligation on entry	**Obligation à l'entrée au Canada**
20 (1) Every foreign national, other than a foreign national referred to in section 19, who seeks to enter or remain in Canada must establish, (a) to become a permanent resident, that they hold the visa or other document required under the regulations and have come to Canada in order to establish permanent residence; and (b) to become a temporary resident, that they hold the visa or other document required under the regulations and will leave Canada by the end of the period authorized for their stay.	20 (1) L'étranger non visé à l'article 19 qui cherche à entrer au Canada ou à y séjourner est tenu de prouver : a) pour devenir un résident permanent, qu'il détient les visa ou autres documents réglementaires et vient s'y établir en permanence; b) pour devenir un résident temporaire, qu'il détient les visa ou autres documents requis par règlement et aura quitté le Canada à la fin de la période de séjour autorisée.

[14] Rule 179 of the IRPR states:

Issuance	**Délivrance**
179 An officer shall issue a temporary resident visa to a foreign national if, following an examination, it is established that the foreign national	179 L'agent délivre un visa de résident temporaire à l'étranger si, à l'issue d'un contrôle, les éléments suivants sont établis :
(a) has applied in accordance with these Regulations for a temporary resident visa as a member of the visitor, worker or student class;	a) l'étranger en a fait, conformément au présent règlement, la demande au titre de la catégorie des visiteurs, des travailleurs ou des étudiants;
(b) will leave Canada by the end of the period authorized for their stay under Division 2;	b) il quittera le Canada à la fin de la période de séjour autorisée qui lui est applicable au titre de la section 2;
(c) holds a passport or other document that they may use to enter the country that issued it or another country;	c) il est titulaire d'un passeport ou autre document qui lui permet d'entrer dans le pays qui l'a délivré ou dans un autre pays;
(d) meets the requirements applicable to that class;	d) il se conforme aux exigences applicables à cette catégorie;
(e) is not inadmissible;	e) il n'est pas interdit de territoire;
(f) meets the requirements of subsections 30(2) and (3), if they must submit to a medical examination under paragraph 16(2)(b) of the Act; and	f) s'il est tenu de se soumettre à une visite médicale en application du paragraphe 16(2) de la Loi, il satisfait aux exigences prévues aux paragraphes 30(2) et (3);
(g) is not the subject of a declaration made under subsection 22.1(1) of the Act.	g) il ne fait pas l'objet d'une déclaration visée au paragraphe 22.1(1) de la Loi.

V. Submissions of the Parties

A. *Submissions of the Applicant*

[15] According to the Applicant, the Officer's decision is unreasonable. The Applicant argued that the Officer failed to consider the Applicant's travels to countries such as Japan and USA. The Applicant submits that she has been truthful and honest to the immigration authorities throughout this whole process and it was never her intention to travel to Canada in an illegal manner.

[16] Based on the GCMS notes dated April 27, 2017, the Applicant stated in her third TRV application through affidavit evidence that she received a letter of invitation from the Saskatchewan Immigrant Nominee Program. The Applicant submits that in her previous TRV application she had previously provided a letter of support from the Government of Saskatchewan for her business trip to Saskatchewan, which was denied. The Applicant argues that the Officer failed to consider the entire evidence submitted before him and that it was unreasonable for the Officer to find that there were no documents to suggest that the Applicant had received an invitation from the Government of Saskatchewan.

[17] The Applicant further submits that, notwithstanding the purpose of her visit, and the letter of support from the Province of Saskatchewan, the Applicant's TRV applications were still denied.

[18] The Applicant submits that it would have been reasonable for the Officer to deny her TRV application if she had lied to the immigration authorities about her unauthorized entry to Canada. According to the Applicant, the Officer mainly refused her TRV application because of her previous refusals. The Applicant argues that she provided all the requested documentation regarding her unauthorized trip to Canada.

B. *Submissions of the Respondent*

[19] The Respondent, on the other hand, argues that the decision is reasonable, as the Applicant was unable to meet her burden of proof. It was reasonable for the Officer to conclude that the Applicant was not a genuine visitor who would depart Canada at the end of her authorized stay.

[20] The Respondent further submits that the Officer's decision was based on evidence that was submitted by the Applicant. Based on the Statutory Declaration presented by the Applicant, herself, the Respondent argues that it was reasonable for the Officer to raise concerns on the Applicant's unauthorized entry to Canada from the USA, as well as her overall credibility.

[21] The Respondent explains that the Applicant admitted that she did not "believe we [the Applicant and Mr. Li] crossed at a border crossing as there was no inspection or investigation when we crossed the Border". When asked to provide additional information regarding Mr. Li and the unauthorized entry to Canada, the Applicant responded that she did not have Mr. Li's contact information and that she would not be able to identify which border they had crossed.

[22] The Respondent further submits that the letter of invitation from the Saskatchewan Immigrant Nominee Program was not attached to the Applicant's third TRV application dated December 15, 2017. The GCMS notes also mention that such evidence was not provided by the Applicant. The Respondent notes that the Applicant did not swear to the evidence in her Statutory Declaration dated March 26, 2018, pursuant to Rule 10(2)(d) of the *Federal Courts Citizenship, Immigration and Refugee Protection Rules*, SOR/93-22. It is argued that "[a]n application for leave not supported by an affidavit is incomplete and cannot be granted by this Court" (*Dhillon v Canada (Citizenship and Immigration)*, 2009 FC 614 at para 9).

[23] The Respondent argues that there was no duty on the Officer to point out every piece of evidence in the Applicant's file regarding her travel history, her family and her businesses in Beijing. The Respondent submits that "a visa officer is presumed to have weighed and considered all the evidence presented to him or her unless the contrary is proven" (*Ahmed v Canada (Citizenship and Immigration)*, 2013 FC 1083 at para 34 [*Ahmed*]).

[24] Finally, the Respondent submits that the Officer was only concerned about two factors that were clearly indicated in his Decision: (i) the Applicant's purpose of the visit and (ii) her unauthorized entry to Canada. The Applicant failed to establish, on a balance of probabilities, that she would leave Canada at the end of her authorized stay (*Ahmed* at para 34). The Respondent cites *Singh v Canada (Citizenship and Immigration)*, 2012 FC 526, at paragraph 56, where the Court concluded that it is not its "role to step in and second-guess the Officer" and that "the Court cannot intervene, even if it would have come to a different conclusion".

C. *Reply*

[25] The Applicant submits that the GCMS notes are incomplete for the following reasons: (i) the Officer needed to explain in detail how the Applicant's third TRV application dated December 15, 2017, was no different than her previous refusals; and (ii) nowhere in the Officer's notes is it mentioned that the Applicant provided a letter of invitation from the Saskatchewan Immigrant Nominee Program outlining her proposed visit to Canada.

[26] The Applicant also submits that the Officer simply did not provide sufficient reasons as to why it was determined that the Applicant lacked overall credibility.

[27] Contrary to the Respondent's argument, the Applicant submits that her case differs from *Dhillon* in that she did in fact file a sworn affidavit. It is her personal sworn affidavit that is attached to the present application for judicial review.

[28] The Applicant relies on a case that is similar to hers. In *Kokareva v Canada (Citizenship and Immigration)*, 2015 FC 451 [*Kokareva*], the Court allowed the application for judicial review on the basis that the visa officer failed to consider evidence that was relevant to the applicant's situation, i.e., failing to recognize the applicant's honest intentions by disclosing the earlier refusals of her applications for temporary resident visas (*Kokareva* at para 12). The Applicant submits that she was honest about her unauthorized entry to Canada during her interview with the visa office in Beijing.

[29] The Applicant further argues that the Officer's decision is not reasonable as he failed to consider the Applicant's multiple entry visas for Singapore, Japan, the United Kingdom and the USA, as well as the Applicant's family situation (including her minor child) and business management in Beijing.

VI. Analysis

A. *Did the Officer err in refusing the TRV application, based on the evidence presented on file?*

[30] For the following reasons, the application for judicial review is dismissed. There is no reviewable error for this Court to intervene in the present application for judicial review.

[31] In her submissions, the Applicant argued that the Officer failed to consider all the evidence on file, such as the Applicant's minor child who still lives in Beijing. The Court disagrees. In *Sekhon v Canada (Minister of Citizenship and Immigration)*, 2018 FC 700, at paragraph 13, the Court made the following finding:

> [13]… [I]t is trite law that an administrative decision-maker is presumed to have considered all the evidence before it unless the contrary is shown (see, e.g., *Rahman v Canada (Minister of Citizenship and Immigration)*, 2016 FC 793 at para 17). A visa officer is under no obligation to refer to every piece of evidence, although the more significant a piece of evidence that is inconsistent with a decision-maker's conclusion, the more willing a court may be to conclude that the absence of a reference to that evidence in the decision means that it was overlooked (*Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)* (1998), 157 FTR 35 at para 16).

[32] The Court is of the view that the Officer's findings regarding the Applicant's unauthorized entry to Canada and her overall credibility are reasonable as they do not contradict the evidence that was before the Officer. As the Respondent pointed out in written submissions, the Officer only raised concerns regarding the Applicant's purpose for the visit and her unauthorized trip to Canada from the USA. The remaining factors assessed by the Officer were not an issue. The Court finds that the Decision clearly mentions the two grounds that justified the refusal of the Applicant's TRV application.

[33] The Applicant further argued that the Officer needed to explain why the third TRV application was no different than the previous two refusals. The Court concludes that "[a] decision-maker is not required to make an explicit finding on each constituent element, however subordinate, leading to its final conclusion". The Officer's reasons allow this Court to connect the dots and to understand why the Officer rendered a negative decision (Newfoun*dland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para 16 [*Newfoundland*]). As determined by the Supreme Court of Canada in *Newfoundland* at para 14, the adequacy of reasons is not a stand-alone basis for quashing a decision.

[34] The Applicant also argued that she abided by the immigration Rules, presented the visa office with all the requested documentation, and stayed truthful and honest throughout the duration of her interview. The Court does not accept this argument. Under subsection 16(1) of the IRPA, a person who makes an application must answer all questions truthfully and present all documents that the officer reasonably requires. The Court reminds the Applicant that she had the burden of establishing, on a balance of probabilities, that she would leave Canada at the end of

her authorized period (*Ahmed* at para 34). The Officer relied on the evidence that was provided by the Applicant in support of her TRV application dated December 15, 2017, to assess all the evidence and render a decision.

[35] It is acknowledged by this Court that a visa officer's decision is highly discretionary because of his or her "unique and localized expertise" (*Samuel v Canada (Citizenship and Immigration)*, 2010 FC 223 at para 26). In the context of a judicial review, it is not up to this Court to reweigh the evidence that was before the Officer to come to a different conclusion, in favour of the Applicant (C*anada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 61).

[36] It is also not this Court's role to assess the decision and reasons of the previous visa officer regarding the Applicant's previous refusals. The decision that is under review in the present matter is the one dated January 3, 2018.

[37] Moreover, the Court notes that the Applicant's letter of support from the Government of Saskatchewan was not filed with her third TRV application; and therefore, the letter was not before the Officer. Consequently, the Officer was not bound nor fettered by the previous decisions, and reasons, for which the previous visa officer noted having considered the Applicant's letter of support from the Government of Saskatchewan.

> For guidance of the visa officer, I would make the following observations on some of the other arguments of the applicant before this Court. There is nothing wrong with a visa officer having regard to information in prior applications and interviews of the applicant provided the visa officer decides the case on the

> basis of the evidence before him or her and does not consider himself or herself bound or fettered by previous decisions.
>
> (*Jie v Canada (Minister of Citizenship and Immigration)*, [1998] FCJ No 1733 at para 7)

[38] While the Officer's reasons may not be perfect, the Court finds that the decision, as well as the reasons, is reasonable and falls within "a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir* at para 47).

VII. Conclusion

[39] The application for judicial review is dismissed. No question of general importance is certified.

JUDGMENT in IMM-990-18

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed.

There is no question of general importance for certification.

"Paul Favel"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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