Federal Court  Cour fédérale

Date: 20190305

Docket: IMM-1912-18

Citation: 2019 FC 268

Ottawa, Ontario, March 5, 2019

PRESENT: The Honourable Madam Justice McDonald

BETWEEN:

FEIFEI BAO

Applicant

and

THE MINISTER OF IMMIGRATION, REFUGEES AND CITIZENSHIP

Respondent

JUDGMENT AND REASONS

[1] The Applicant, a citizen of China, was offered a job as a chef under the Saskatchewan Immigrant Nominee Program (SINP). Her application for a permanent resident (PR) visa was denied on the grounds of misrepresentation pursuant to paragraph 40(1)(a) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*]. For the reasons that follow, this judicial review is granted as the Visa Officer's decision is unreasonable.

Background

[2] The Applicant was accepted into the SINP based on her work experience as a chef at the Steaming Fresh Restaurant ("Steaming Fresh") in Qingdao, China. In May 2017, she received a job offer from Go for Sushi Buffet ("Go for Sushi") in Saskatoon, Saskatchewan, and in June 2017 she applied for a PR visa.

[3] In September 2017, the Applicant provided additional information for her visa application, including an updated offer of employment from Go for Sushi and employment letters from the past jobs she had declared on her application forms.

[4] By this time, the Applicant started working for Qingdao Wuxin Restaurant ("Wuxin"), for which she also provided updated employment information.

[5] On January 10, 2018, the Applicant was advised that the Visa Officer conducted a site visit at Wuxin and she was asked to explain the reasons for her not being at work during that visit. She was also asked to provide details about her work at Wuxin, including her work location, pay, hours, job description, and staff names. The Applicant advised the Officer over the phone that the reason for her absence on that day was that her child was sick. She also explained that in her role with Wuxin she was responsible for the development of food dishes.

[6] The Applicant arrived in Canada mid-January 2018 on a work permit and started working at Go for Sushi.

[7] On February 5, 2018, the Applicant received a procedural fairness letter (PFL) alleging she misrepresented her employment with Wuxin.

[8] The Applicant submitted a response to the PFL, which included a medical record from the children's hospital, a letter from the restaurant's general manager confirming her employment, and payslips for the period of October 2017 to January 2018.

[9] On April 10, 2018, she was advised by letter that her PR application was refused and she was inadmissible to Canada for misrepresentation.

Decision Under Review

[10] In the April 10, 2018 decision, the Visa Officer determined that the Applicant misrepresented or withheld material facts of her employment at Wuxin. The Visa Officer reached this conclusion following the site visit to Wuxin on January 10, 2018. The concerns were outlined in the PFL to the Applicant, but the responses provided by the Applicant did not overcome the Visa Officer's concerns.

[11] On a balance of probabilities, the Visa Officer determined that the Applicant was inadmissible and her PR application was refused.

Issues

[12] The determinative issue on this judicial review is the reasonableness of the Visa Officer's treatment of the Applicant's response to the PFL. Although the Applicant also raises procedural fairness arguments, in the circumstances it is not necessary to address those arguments.

Standard of Review

[13] The standard of review of a visa officer's finding of material misrepresentation as described in paragraph 40(1)(a) of the *IRPA* is reasonableness (*Singh v Canada*, 2015 FC 377 at para 12).

[14] A reasonable decision is one that has the hallmarks of "justification, transparency and intelligibility" and falls into a range of possible, acceptable outcomes (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47).

Analysis

Is the Visa Officer's analysis reasonable?

[15] The Applicant argues that the Officer overlooked her relevant experience at Steaming Fresh when conducting the site verification and in determining the materiality of the alleged misrepresentations of her work at Wuxin.

[16] Her SINP application was submitted in May 2017 and her nomination was confirmed that same month. At that time, her application indicated that she had approximately two and a half

years of experience working with Steaming Fresh in Qingdao, and on this basis she obtained a job offer from Go for Sushi in Saskatchewan. It was this work experience that qualified the Applicant for the SINP nomination. She argues that the Officer unnecessarily focused on her work at Wuxin in Qingdao, which is not the work that qualified her for the SINP nor did it affect her overall eligibility to be nominated.

[17] In *Lamsen v Canada (Citizenship and Immigration)*, 2016 FC 815 [*Lamsen*], the Court stated as follows at paragraph 24:

> A visa application must be considered in its totality (*Koo v Canada (Citizenship and Immigration)*, 2008 FC 931 (CanLII) at para 29). It cannot be compartmentalized, particularly when making a finding of misrepresentation carries such serious consequences (*Xu v Canada (Citizenship and Immigration)*, 2011 FC 784 (CanLII) at para 16). [emphasis added]

[18] Here the Officer focused on the inconsistencies that arose from the on-site visit and failed to reconcile those with the Applicant's PFL response. Furthermore, no concerns were put to the Applicant regarding her job offer at Go for Sushi or her work experience at Steaming Fresh, which were the facts material to her visa application. The Officer effectively compartmentalized her application contrary to what *Lamsen* warned against.

[19] This case parallels that of *Chhetry v Canada (Citizenship and Immigration)*, 2016 FC 513 where the inconsistencies or omission in the work experience were not material misrepresentations such that they could have affected the visa process (at para 31).

[20] Likewise, the inconsistencies identified by the Visa Officer regarding the Applicant's work at Wuxin did not constitute material misrepresentations such that they could have led to an error in the administration of the *IRPA*.

[21] Even if the work experience at Wuxin is considered material for the SINP program, had the Visa Officer any credibility concerns regarding the information provided by the Applicant in her PFL response, then the Officer should have raised those concerns directly with the Applicant. However, the Officer appears to have doubted her Wuxin employment because her husband is a close friend with the general manager of that Wuxin branch.

[22] Although the duty owed by visa officers is on the low end of the spectrum, this case is similar to *Ge v Canada (Citizenship and Immigration)*, 2017 FC 594, where the Court states at paragraph 30 as follows:

> There was certainly no obligation upon the Officer to inform the Applicants of the need to be truthful in responding to the procedural fairness letters. However, once the Officer developed the concern that the Applicants had not been truthful in these responses, she had an obligation to put this concern to them and give them opportunity to comment before denying their applications and finding them inadmissible based on that concern.

[23] Here the Officer also failed to put the credibility concerns regarding the PFL response to the Applicant.

[24] Overall, the Visa Officer's decision is unreasonable for failing to actually consider the responses provided by the Applicant in the PFL, and then by failing to allow the Applicant to respond to the credibility concerns raised by the Visa Officer.

[25] This judicial review is therefore granted.

JUDGMENT in IMM-1912-18

THIS COURT'S JUDGMENT is that this application for judicial review is granted.

There is no question for certification.

"Ann Marie McDonald"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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