

Federal Court



Cour fédérale

Date: 20190502

Docket: IMM-5000-18

Citation: 2019 FC 564

Vancouver, British Columbia, May 2, 2019

PRESENT: The Honourable Mr. Justice Zinn

BETWEEN:

TERESA MOURATO LOPES

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] Ms. Mourato Lopes applied for a permanent resident visa as a member of the Start-Up Business Class. The Officer determined that she was participating in the arrangement primarily for the purpose of acquiring a status or privilege under the *Immigration and Refugee Protection Act*, SC 2001, c 27, and not for the purpose of engaging in the business activity.

[2] Ms. Mourato Lopes submits that this decision breached procedural fairness and is unreasonable. For the reasons below, I am not persuaded the decision was made in a procedurally unfair manner or that it is unreasonable.

[3] Ms. Mourato Lopes' permanent residence application indicated that she had partnered with Empowered Startups Ltd. [Empowered] to develop a mobile software application that acts as a clearing house/better business bureau of corporate responsibility certificates and green labels. Empowered is listed in the Schedule I of Ministerial Instructions 7 (MI7): Start-Up Visa Program. The Officer asked for an independent peer review to see whether due diligence was completed by Empowered when accepting her proposal. The peer review was completed by the National Angel Capital Organization [NACO].

[4] That review stated, in part, that the venture was not incorporated, and that Ms. Mourato Lopes had agreed to pay Empowered \$500,000, which the review said was not normal. It appears that both statements are incorrect.

[5] The peer review was not put to Ms. Mourato Lopes prior to the decision being reached, which she submits breaches her right to procedural fairness. I note that although the peer review was not put to her, she was aware of the independent review pre-decision because she mentioned it in her submissions. However, she did not know its conclusions.

[6] Regardless, the decision under review does not appear to rely on the peer review assessment at all. The Officer writes: "I did not convey concerns in relation to the peer review to

the applicant in my PFL because the results of the peer review did not affect my assessment.” Indeed, the Officer correctly noted, contrary to the peer review, that the business was incorporated.

[7] Counsel submitted that the timing of the peer review and the request for status update suggests that the review was a factor in the decision under review. I do not accept that submission. There were several weeks between the peer review and the request for status update, and there is no other evidence in the record that supports counsel’s submission. In any case, if the peer review influenced a status update request, that is very different from it influencing the ultimate decision.

[8] I agree with the observation of Justice Barnes in *Kwan v Canada (The Minister of Citizenship and Immigration)*, 2019 FC 92 at paragraph 23, a case also involving a refusal for a permanent resident visa as a member of the Start-Up Business Class, that in the absence of evidence that the concerns raised in the peer review were a factor in the decision, there is no requirement to bring it to an applicant’s attention. Accordingly, there was no breach of procedural fairness made in rendering the decision under review.

[9] Ms. Mourato Lopes submits that the decision is unreasonable because (i) it failed to acknowledge her adherence to a program operated by a designated institution (Empowered), and (ii) it was internally inconsistent with and ignored evidence of her intention to pursue her business venture.

[10] With respect to program adherence, she submits that the decision is unreasonable because it faults her for lack of “significant progress” when she has been working under the supervision of Empowered, an incubator listed on the Schedule. She says that there is no evidence to suggest that Empowered was concerned about her progress, and its view was entitled to deference.

[11] I agree with the Respondent that the Minister is responsible for maintaining the integrity of the program, not Empowered. While its view is entitled to consideration, it does not make the decision mandated to be made by the Minister. The application for permanent residence required Ms. Mourato Lopes to provide documentation to demonstrate her progress. The Officer’s concerns on insufficiency in evidence were connected directly to her statements on her essential role in the company. The Officer requested that she provide objective evidence of her successes relating to her stated roles. This evidence was not provided. The decision was thus not unreasonable on this basis.

[12] With respect to ignoring evidence, she submits that the Officer, in focusing on her achievements in the period when she was entitled to work in Canada, ignored that she had attempted to renew her work permit. She acknowledges that it was appropriate for the decision-maker to consider a lack of evidence of direct involvement by her in the progress or development of her business. However, she says that this “is not the only factor the Officer ought to have considered, especially given the mitigating factors involving [her] inability to extend her work permit despite her best efforts.”

[13] I agree with the Respondent that it was appropriate for the Officer to focus on her progress, or lack thereof, during the time period she was lawfully authorized to work. Her submission ignores the fact that her inability to work after December 2018, in Canada was of her own making. She chose to leave Canada to vacation when, had she remained here, she could have maintained her status as a worker as is provided for in paragraph 186(u) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227. I agree with the Minister that the fact that she lost her ability to work through her own actions is inconsistent with the submission that she took “reasonable efforts” to maintain her status.

[14] A decision-maker does not need to comment on every piece of evidence, only those which clearly point to the opposite conclusion. While the Officer did not have to look outside the period, she did, but there was nothing which pointed the opposite way for the Officer to consider. I find nothing unreasonable in the Officer focusing on Ms. Mourato Lopes’ efforts in the period she was actually entitled to work in Canada.

[15] The Applicant filed two affidavits that were not before the decision-maker. I have considered them only to the extent they relate to the procedural fairness issue that was raised.

[16] Neither party proposes a question for certification. There is none on these facts.

JUDGMENT IN IMM-5000-18

THIS COURT'S JUDGMENT is that this application is dismissed and no question is certified.

"Russel W. Zinn"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-5000-18

STYLE OF CAUSE: TERESA MOURATO LOPES v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: VANCOUVER, BRITISH COLUMBIA

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APPEARANCES:

Steven Meurrens

FOR THE APPLICANT

Hilla Aharon

FOR THE RESPONDENT

SOLICITORS OF RECORD:

Larlee Rosenberg LLP
Barristers & Solicitors
Vancouver, British Columbia

FOR THE APPLICANT

Attorney General of Canada
Department of Justice Canada
Vancouver, British Columbia

FOR THE RESPONDENT