Federal Court  Cour fédérale

Date: 20190731

Docket: IMM-5247-18

Citation: 2019 FC 1027

[UNREVISED CERTIFIED ENGLISH TRANSLATION]

Ottawa, Ontario, July 31, 2019

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

MUWEI LI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Nature of the matter

[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 by a visa officer (officer) from the Consulate General of Canada in Hong Kong, dated August 31, 2018, rejecting the applicant's application for permanent residence in the "self-employed persons class".

II. Facts

[2] The applicant is a 39-year-old citizen of the People's Republic of China. She applied for permanent residence in the "self-employed persons class", in respect of cultural activities, as a translator and interpreter.

[3] The applicant claims that she has been working as an interpreter and translator since 2004 and that she has obtained contracts as a self-employed worker in this field since 2013.

[4] The evidence provided by the applicant confirms that she holds a Bachelor of Arts degree in "English Language and Literature" and that she obtained a certificate in simultaneous interpretation from the Directorate-General for Interpretation of the European Commission in Brussels.

[5] On August 28, 2018, the officer interviewed the applicant and rendered an initial negative decision at the end of the interview. However, the officer issued an amended decision three days later; the officer had originally determined that the work of a translator and interpreter could not be considered a cultural activity within the meaning of the IRPA, but subsequently acknowledged that such work would in fact qualify as a cultural activity according to Immigration, Refugees and Citizenship Canada. Nevertheless, the officer upheld his negative decision, and it is this decision that is the subject of this judicial review.

III. Impugned decision

[6] On August 31, 2018, the officer found that the applicant had the required expertise to meet the definition of a "self-employed person". However, the officer stated that the applicant did not satisfy him that she had the required intention and ability to be self-employed and that she would make a significant contribution to the cultural activities of Canada. The officer based this negative finding on the fact that the applicant did not demonstrate that she had made efforts to establish contacts with companies, organizations and professional associations in her field in Canada. The officer therefore determined that the applicant did not meet the definition of a self-employed person within the meaning of subsection 88(1) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [IRPR].

IV. Position of the parties

A. *Applicant's position*

[7] The applicant highlights two elements of the officer's decision that, in her opinion, constitute reviewable errors.

[8] First, in the analysis that led him to conclude that the applicant did not have the intention and ability to be self-employed in Canada and to make significant contributions to economic activities in Canada, the officer considered factors that are not included in either the IRPA or the IRPR.

[9] According to the applicant, the IRPR considers only the following criteria: [TRANSLATION] “relevant experience and the applicant’s intention and ability to be self-employed and to make a significant contribution to economic activities in Canada” (Applicant’s Memorandum at paragraph 32). With respect to the first criterion, the applicant notes that the officer acknowledged that she had the required experience. With respect to the second criterion, the applicant refers the Court to *Ying v Canada (Minister of Citizenship and Immigration)*, 1997 CanLII 5613 (FC), to demonstrate that the case law has established that the applicant’s intention and ability be self-employed in Canada includes (1) the intention and ability to establish a business, and (2) the likelihood of this business providing a significant contribution to Canada’s economy.

[10] The applicant also refers to Operational Manual OP 8, which indicates the following at item 11.3: “The officer must consider the following in assessing an applicant's experience, intent and ability to create their own employment in Canada: [s]elf-employed experience in cultural activities or athletics … [and] financial assets”. According to the applicant’s interpretation of the case law, once she has demonstrated that she would likely be able to support her needs and the needs of her family by working as a translator and interpreter in Canada, the “significant contribution” test becomes relative.

[11] The applicant believes that, by requiring her to demonstrate that she will make a significant contribution to cultural activities in Canada, the officer elevated her applicable burden of proof.

[12] The applicant also submits that the officer failed to consider documents that demonstrate some of the elements that the officer claimed had been missing from the evidence filed by the applicant, such as her research concerning demand in her field of employment in Toronto.

[13] In short, the applicant claims that the officer's decision was contradictory, unintelligible and unreasonable.

B. *Respondent's position*

[14] The respondent first refers to subsection 12(2) of the IRPA, which states that "[a] foreign national may be selected as a member of the economic class on the basis of their ability to become economically established in Canada". According to the respondent, the applicant did not discharge her burden of proving that she had the [TRANSLATION] "ability and intention to be self-employed in Canada and to make a significant contribution to cultural activities in Canada". He also argues that the officer is presumed to have considered all the evidence on file unless proven otherwise (*Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, [2011] 3 SCR 708, 2011 SCC 62 at paras 12–17).

[15] According to the respondent, in order to discharge her burden of proof, the applicant should have conducted market studies and produced a business plan and included them in her file. She should also have taken steps to establish contact with companies or organizations working in her field in Canada.

[16] The respondent also addresses the applicant's claim that the test concerning a significant contribution to economic activities in Canada becomes relative once she has demonstrated that she has the relevant experience as well as the intention and ability to be self-employed. According to the respondent, since the officer found that the applicant did not demonstrate that she had the intention and ability to be self-employed, paragraph 11.4 of the OP 8 Manual does not apply to her situation.

[17] In closing, the respondent notes that the guidelines contained in the manual are not binding on the Minister or his delegates (*Kanthasamy v Canada (Citizenship and Immigration)*, [2015] 3 SCR 909, 2015 SCC 61 at para 32) and that the assessment of visa applications is subject to the officer's discretion.

C. *Applicant's reply*

[18] With respect to the respondent's claim that the applicant should have produced a business plan, the applicant refutes the application of the decisions cited by the respondent, indicating that they relate to very different fields. Therefore, translators and interpreters should not be required to create business plans.

V. Issues

[19] The Court must answer the following question: Did the officer err in concluding that the applicant failed to meet the conditions for obtaining a visa in the "self-employed persons class"?

[20] When a visa officer is required to decide on an application for permanent residence for members of the self-employed persons class, the applicable standard of review is that of reasonableness (*Griscenko v Canada (Citizenship and Immigration)*, 2012 FC 614 at paras 10–11). The Court will therefore show deference and will intervene only if the officer's decision lacks justification, transparency and intelligibility or does not fall within the range of possible acceptable outcomes which are defensible in respect of the facts and law (*Dunsmuir v New-Brunswick*, 2008 SCC 9 at para 47).

VI. Relevant provisions

[21] The following provisions of the IRPR are relevant:

Definitions	**Définitions**
88 (1) The definitions in this subsection apply in this Division.	**88** (1) Les définitions qui suivent s'appliquent à la présente section.
relevant experience, in respect of	**expérience utile**
(a) a self-employed person, other than a self-employed person selected by a province, means a minimum of two years of experience, during the period beginning five years before the date of application for a permanent resident visa and ending on the day a determination is made in respect of the application, consisting of	a) S'agissant d'un travailleur autonome autre qu'un travailleur autonome sélectionné par une province, s'entend de l'expérience d'une durée d'au moins deux ans au cours de la période commençant cinq ans avant la date où la demande de visa de résident permanent est faite et prenant fin à la date où il est statué sur celle-ci, composée :
(i) in respect of cultural activities,	(i) relativement à des activités culturelles :
(A) two one-year periods of experience in self-employment in cultural	(A) soit de deux périodes d'un an d'expérience dans un travail autonome relatif à

activities,	des activités culturelles,
(B) two one-year periods of experience in participation at a world class level in cultural activities, or	(B) soit de deux périodes d'un an d'expérience dans la participation à des activités culturelles à l'échelle internationale,
(C) a combination of a one-year period of experience described in clause (A) and a one-year period of experience described in clause (B),	(C) soit d'un an d'expérience au titre de la division (A) et d'un an d'expérience au titre de la division (B),
(ii) in respect of athletics,	(ii) relativement à des activités sportives :
(A) two one-year periods of experience in self-employment in athletics,	(A) soit de deux périodes d'un an d'expérience dans un travail autonome relatif à des activités sportives,
(B) two one-year periods of experience in participation at a world class level in athletics, or	(B) soit de deux périodes d'un an d'expérience dans la participation à des activités sportives à l'échelle internationale,
(C) a combination of a one-year period of experience described in clause (A) and a one-year period of experience described in clause (B), and	(C) soit d'un an d'expérience au titre de la division (A) et d'un an d'expérience au titre de la division (B),
(iii) in respect of the purchase and management of a farm, two one-year periods of experience in the management of a farm; and	(iii) relativement à l'achat et à la gestion d'une ferme, de deux périodes d'un an d'expérience dans la gestion d'une ferme;
(b) a self-employed person selected by a province, has the meaning provided by the laws of the province.	b) s'agissant d'un travailleur autonome sélectionné par une province, s'entend de l'expérience évaluée conformément au droit provincial.
self-employed person	**travailleur autonome**
means a foreign national who	Étranger qui a l'expérience

has relevant experience and has the intention and ability to be self-employed in Canada and to make a significant contribution to specified economic activities in Canada.	utile et qui a l'intention et est en mesure de créer son propre emploi au Canada et de contribuer de manière importante à des activités économiques déterminées au Canada.

VII. Analysis

[22] The applicant did not discharge the burden of proving that she had "the ability and intention to be self-employed in Canada and to make a significant contribution to cultural activities in Canada".

[23] A person may be talented and may even have in-depth knowledge, but that does not necessarily mean that the person has the ability to be self-employed; this must be linked to the intention and ability to create his or her own employment.

[24] The assessment of visa applications is subject to the officer's authority, based on the standard of reasonableness (*Griscenko*, above).

[25] The affidavit filed in evidence by the applicant demonstrates that she "has been working as accompanying interpreter for important political figures such as Mr. Xi Jinping, Mr. Yu Zheng Sheng and Mr. Han Zheng. She has also worked as English Editor for the Magazine – Great Arts."

[26] Thinking about something and doing something are two different things: “She also has checked some translation company, she thinks she will contact them and cooperate with them”! This is very vague and unrealistic (see exhibit F of the affidavit of Olga Andreyeva and the decision rendered in *Singh v Canada (Immigration, Refugees and Citizenship)*, 2018 FC 84 at paras 36–38).

[27] The applicant did not demonstrate the intention and ability to create her own employment.

VIII. Conclusion

[28] Further to a review of the case and an analysis of the documents on the record, the Court dismisses the application for judicial review.

JUDGMENT in Docket IMM-5247-18

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

There is no question of general importance to certify.

"Michel M.J. Shore"
Judge

Certified true translation
This 16th day of August 2019

Margarita Gorbounova, Reviser

FEDERAL COURT

SOLICITORS OF RECORD

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