Federal Court Cour fédérale

Date: 20200114

Docket: IMM-3479-19

Citation: 2020 FC 41

Ottawa, Ontario, January 14, 2020

PRESENT: Mr. Justice Boswell

BETWEEN:

RANIA MOHAMED ABDELMONEIM MOHAMED HASHEM

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The applicant, Mrs. Rania Hashem, applied for a study permit in April 2019 in order to attend a three-year Computer Programming and Analysis program at Seneca College in Toronto, Ontario. The visa section of the Embassy of Canada in Abu Dhabi, United Arab Emirates, refused the application in a letter dated May 27, 2019. The two officers who assessed the application were not satisfied Mrs. Hashem would leave Canada at the end of the proposed study period.

[2] Mrs. Hashem has now applied under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*], for judicial review of the decision by the visa section. She asks the Court to set aside the decision and return the matter to be reconsidered by a different officer in accordance with the Court's directions, with the option for her to file new evidence. The issue, therefore, is whether this relief should be granted.

I. Background

[3] Mrs. Hashem's application for a study permit was accompanied by applications for study permits for her two minor-aged children since her husband would remain in the United Arab Emirates, where he currently works. Mrs. Hashem is a temporary resident of the United Arab Emirates and her visa to stay there will expire later this year.

[4] Mrs. Hashem has a Bachelor of Arts degree in Political Science and has been working as a research manager at the Middle East Broadcasting Centre [MBC] in Abu Dhabi since 2007. As part of her application for a study permit, she submitted a study plan in which she stated her desire to obtain a Diploma in Computer Programming and Analysis at Seneca College to broaden her knowledge in data analytics and to advance in her career. According to Mrs. Hashem, the program she chose was unavailable in the United Arab Emirates.

[5] Aside from the study plan, Mrs. Hashem's application included an email from her employer, stating that MBC encouraged her to travel and pursue a degree in data science and analytics so that she would be in a better position to lead the research department upon her return

to MBC. Mrs. Hashem indicated in her application that while studying she would continue to work remotely for MBC on a part-time basis.

[6] Mrs. Hashem's application also contained ownership documentation for the property she owns in Egypt. The offer of admission letter from Seneca College indicated that her program fees and health insurance fee would be approximately CAD $17,952.00 per year. A copy of Mrs. Hashem's bank statement, showing over CAD $92,000.00 to fund her studies, was included with her study permit application.

II. The Visa Section's Decision

[7] The officer who issued the refusal letter was not satisfied Mrs. Hashem would leave Canada at the end of her stay, based on the following grounds: her family ties in Canada and in her country of residence; the purpose of her visit; her current employment situation; her travel history; and her limited employment prospects in her country of residence. The refusal letter invited Mrs. Hashem to reapply if she could respond to these concerns and demonstrate that her situation meets the requirements.

[8] The Global Case Management System [GCMS] notes, which form part of the decision (*Thedchanamoorthy v Canada (Citizenship and Immigration)*, 2018 FC 690 at para 17), reflect the concerns outlined in the refusal letter.

[9] The first officer (GK03499) who reviewed Mrs. Hashem's application for a study permit was not satisfied that study was the true purpose of the application. The officer also was not

satisfied that the proposed studies would improve Mrs. Hashem's career prospects to a degree that would offset the costs of studying abroad. This officer considered Mrs. Hashem's academic and professional history, her financial situation, and her planned studies and the reasons for such studies. The officer was not satisfied that Mrs. Hashem was a genuine student who would pursue studies in Canada. The officer added that the stated benefits of the intended studies did not warrant the costs and difficulty of undertaking a foreign education. This officer was not satisfied that Mrs. Hashem would leave Canada at the end of the period authorized for her stay and refused the application.

[10] The second officer (AK25910) who reviewed Mrs. Hashem's application noted her family ties and economic motives to remain in Canada might outweigh her ties to her home country. In this officer's view, the study plan appeared vague and poorly documented. The officer accorded less weight to Mrs. Hashem's employment ties to her country of residence given her current or future employment prospects. Mrs. Hashem's prior travel history was insufficient to count as a positive factor in the officer's assessment. This second officer concluded by stating: "Weighing the factors in this application, I am not satisfied that the applicant will depart Canada at the end of the period authorized for their stay".

III. The Parties' Submissions

A. *The Applicant's Submissions*

[11] Mrs. Hashem says the decision was unreasonable because it ignored or disregarded the evidence concerning her leaving Canada after completing her studies, including evidence of her

plan of studies, her ties to the United Arab Emirates and Egypt, her job, her properties in Egypt, and her travel history.

[12] According to Mrs. Hashem, her plan of study was well documented. She notes that she provided proof of her current work and previous education, as well as justification for undertaking her studies in Canada. She also notes she provided proof of her employer's support of her studies abroad so that she could be in a better position to lead her department.

[13] Mrs. Hashem acknowledges that it is accepted law this Court will presume that all evidence before a decision-maker was considered unless the contrary can be established. According to Mrs. Hashem, the more important the evidence that is not mentioned and specifically analyzed in the reasons, the more willing the Court may be to infer from the silence that the decision-maker made an erroneous finding of fact without regard to the evidence.

[14] Mrs. Hashem says a blanket statement that the decision-maker has considered all evidence is insufficient when the evidence omitted from any discussion in the reasons squarely contradicts the decision-maker's finding of fact. She further says the need to address specific evidence will increase if the evidence is central to the success of the claim.

[15] In Mrs. Hashem's view, the officers ignored or misconstrued her study plan, her employer's email of support for her studies, her extensive ties to the United Arab Emirates and Egypt, her travel history, and previous compliance with immigration laws. Mrs. Hashem says the

officer who found her travel history was insufficient to count as a positive factor erred because travel history should have been considered as a neutral factor.

[16] Mrs. Hashem submits that the decision is neither justified nor intelligible. First, the GCMS notes describe her as a 40-year old male who would be accompanied by his wife and kids. Second, the officers did not justify their reasons for concluding that she will not leave Canada following completion of her studies based on the evidence before them.

B. *The Respondent's Submissions*

[17] The respondent notes that subsection 11(1) of the *IRPA* enables an officer to issue a temporary resident visa if she or he is satisfied that the applicant meets the requirements of the *IRPA*. The respondent also notes that paragraph 20(1) (b) of the *IRPA* stipulates that foreign nationals seeking to enter Canada must establish that they intend to leave Canada by the end of the period authorized for their stay. According to the respondent, section 179 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [*Regulations*] reiterates that foreign nationals applying for a temporary resident visa must establish that they will leave Canada by the end of the period authorized for their stay, and this requirement is specifically applied to study permits in section 216 of the *Regulations.*

[18] In the respondent's view, the officers did not ignore or misconstrue evidence and Mrs. Hashem essentially disagrees with the officers' weighing of the evidence, which is not a ground for judicial review. According to the respondent, decision-makers are presumed to have considered all the evidence before them unless the contrary is shown, which Mrs. Hashem has

failed to do. The respondent says the officers were not obliged to mention every piece of evidence and that Mrs. Hashem's failure to show the officers ignored evidence amounts to mere disagreement with the factors they found to be determinative.

[19] The respondent further says the officers did not ignore or misconstrue the facts regarding Mrs. Hashem's study plan and how it relates to her future career prospects. In the respondent's view, Mrs. Hashem provided unclear information about her employment as a research manager and how it relates to her proposed program of study in Canada and made general statements without supporting the connection to her career.

[20] According to the respondent, it is unclear how the Seneca College Computer Programming and Analysis program relates to her job. In the respondent's view, the email provided by Mrs. Hashem's employer is vague and fails to connect the courses in the program to her current job or future career prospects. The respondent says the potential total costs for tuition, travel, and living expenses would affect the entire savings of Mrs. Hashem's family without any clear indication as to how the educational program would benefit her future job prospects.

[21] The respondent further says the determinative factor in the officers' decision was that they were not satisfied that Mrs. Hashem would leave Canada at the end of her stay. According to the respondent, Mrs. Hashem failed to demonstrate that she would depart at the end of her authorized stay because she did not show enough connection to Egypt or her place of residence.

The respondent notes that Mrs. Hashem has not resided in Egypt since 2006, and her status in the United Arab Emirates will expire in 2020.

IV. Analysis

[22] The primary issue raised by this application for judicial review is whether the decision by the visa section was reasonable.

A. *What is the Standard of Review?*

[23] I agree with the parties that the standard of reasonableness applies to a decision on a study permit application (*Patel v Canada (Citizenship and Immigration)*, 2009 FC 602 at para 28).

[24] The reasonableness standard of review tasks the Court with reviewing an administrative decision for the existence of justification, transparency, and intelligibility within the decision-making process. It also requires the Court to determine whether the decision falls within a range of possible, acceptable, outcomes which are defensible in respect of the facts and law (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 86 [*Vavilov*]; *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47).

[25] These criteria are met if the reasons allow the Court to understand why the decision-maker made their decision and enable the Court to determine whether the decision falls within

the range of acceptable outcomes (*Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para 16).

[26] If the process and the outcome fit comfortably with the principles of justification, transparency, and intelligibility, it is not open to the Court to substitute its own view of a preferable outcome; nor is it the function of the reviewing court to reweigh the evidence (*Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at paras 59 and 61).

B. *Is the Decision Reasonable?*

[27] It is not for the Court to reweigh the evidence before the visa section. I agree with the respondent that Mrs. Hashem is essentially asking the Court to reweigh the evidence and to substitute its view for that of the visa section officers.

[28] A decision-maker is not obliged to refer explicitly to all the evidence. It is presumed that the decision-maker considered all the evidence in making the decision unless the contrary can be established (*Hassan v Canada (Minister of Employment & Immigration)*, [1992] FCJ No 946 at para 3; *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, [1998] 157 FCJ No 1425 at para 16).

[29] Mrs. Hashem's failure to show that the visa section officers ignored evidence amounts to a mere disagreement with the factors they found to be determinative (*Boughus v Canada (Minister of Citizenship and Immigration)*, 2010 FC 210 at paras 56 and 57). There is no reason to intervene and set the decision aside.

[30] I agree with the respondent that the determinative factor in the decision was that the visa section officers were not satisfied that Mrs. Hashem would leave Canada at the end of her stay. Mrs. Hashem failed to demonstrate to them that she would depart at the end of her authorized stay because she did not show enough connection to her home country or place of residence.

[31] A visa officer must be satisfied that an individual is not inadmissible and that they will leave Canada upon expiration of their visa. As the Court in *Chhetri v Canada (Minister of Citizenship and Immigration)*, 2011 FC 872, observed:

> [9] … The combined effect of section 11(1) of the *Immigration and Refugee Protection Act*, 2001, c. 27 (*IRPA*) and Division 3 of Part 11 of the *Immigration and Refugee Protection Regulations* (SOR/2002-227) (the *Regulations*) is to require visa officers to be satisfied that the individuals are not inadmissible and that they will leave Canada on expiry of their visa. It is often over-looked that it must be "established" that the foreign national will leave at the end of their visa. The combined effect of the *IRPA* and the *Regulations* does not leave much room for officers to give the applicant the benefit of the doubt; rather there is a positive obligation that it be *established* that the foreign national will leave before the visa be issue. [Emphasis in original]

[32] It is true, as Mrs. Hashem points out, that the GCMS notes state, "Accompanied by wife & kids". This note, however, when read in the context of all the GCMS notes, is immaterial because the notes otherwise make it clear that it was Mrs. Hashem who had applied for the study permit and not her husband. It is also incorrect, in that her application form for the study permit clearly indicates that her husband would not accompany her to Canada. This statement in the GCMS notes is not sufficiently central or significant to render the decision unintelligible or unreasonable (*Vavilov* at para 100).

V. Conclusion

[33] The reasons for the decision made by the visa section at the Embassy of Canada in Abu Dhabi are justifiable, intelligible, and transparent; they allow the Court to know the factors considered in making the decision. The decision falls well within the range of acceptable outcomes based on the facts and the law.

[34] Mrs. Hashem's application for judicial review is, therefore, dismissed.

[35] Neither party proposed a serious question of general importance to be certified under paragraph 74(d) of the *IRPA*; so, no such question is certified.

JUDGMENT in IMM-3469-19

THIS COURT'S JUDGMENT is that: the application for judicial review is dismissed; and there is no order as to costs.

"Keith M. Boswell"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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