Federal Court  Cour fédérale

Date: 20200430

Docket: IMM-4670-19

Citation: 2020 FC 567

[UNREVISED CERTIFIED ENGLISH TRANSLATION]

Ottawa, Ontario, April 30, 2020

PRESENT: The Honourable Associate Chief Justice Gagné

BETWEEN:

HACIST LÉON-PAUL JUNIOR KOUASSI KAUDJHIS

Applicant

and

THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Hacist Leon-Paul Junior Kouassi Kaudjhis is seeking judicial review of an exclusion order issued against him by a delegate of the Minister of Public Safety and Emergency Preparedness [the Delegate] following the inadmissibility report issued by a Canada Border Services officer [the Officer].

[2] After reviewing the Officer's report, the Delegate concluded that the applicant, a citizen of Côte d'Ivoire, was inadmissible for failing to comply with the conditions of his study permit and for working full-time in Canada without a work permit.

[3] The applicant argues that the Delegate was not authorized to issue a removal order against him and that it was unreasonable to force him to leave the country to apply for a work permit from outside Canada. He also alleges that the Officer's report does not comply with the provisions of the *Official Languages Act*, RSC 1985, c 31 (4th Supp) since it was drafted in both official languages. Hence, according to the applicant, it must be set aside.

II. Facts

[4] The applicant came to Canada in 2012 on a study permit. He began studying at the University of Montréal and then continued his studies at Laval University in 2013.

[5] He renewed his study permit several times since his arrival in Canada; the last one was valid until August 31, 2019.

[6] The applicant alleges that, because of the death of his father, who supported him financially, he has been unable to pay his tuition fees since the fall of 2017. He was therefore unable to enroll in the 2018 winter term and chose instead to work full-time starting on May 14, 2018.

[7] The applicant's spouse, who held a work permit as a person accompanying a foreign student, had to go to Martinique for her mother's funeral in 2018. She was pregnant when she left but had a miscarriage. The applicant therefore had to continue working to pay the regular bills, trip costs and medical costs of his spouse.

[8] In November 2018, the applicant applied for a work permit for a destitute student, which was denied in February 2019, on the ground that it was not accompanied by a Labour Market Impact Assessment. The authorities' letter of refusal states that, in accordance with the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [the Regulations], his student status would be valid until its expiry date of August 31, 2019, or for 90 days after his graduation, whichever comes first.

[9] The applicant then continued to work full-time.

[10] On July 13, 2019, the applicant and his spouse went to the United States to apply for an open work permit. The applicant's spouse obtained one, but, at that point, an exclusion order was issued against the applicant.

III. Impugned decision

[11] The grounds supporting the removal order are as follows:

- The applicant is neither a Canadian citizen nor a permanent resident;
- He was admitted to Canada as a study permit holder;

- He failed to comply with the conditions associated with his study permit because he abandoned his studies at the beginning of 2018; and
- He worked full-time illegally from May 2018 until now (or at least until July 13, 2019).

IV. Issues and standard of review

[12] This application for judicial review gives rise to the following issues:

A. Does the Delegate's decision comply with the Official Languages Act*?*

B. Was the Delegate authorized to issue a removal order against the applicant?

C. Was the decision to issue an exclusion order against the applicant reasonable?

[13] The standard of review applicable to the decision of a Minister's delegate to issue an exclusion order is that of reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65; *Yang v Canada (Public Safety and Emergency Preparedness)*, 2014 FC 383).

V. Analysis

A. *Does the Delegate's decision comply with the* Official Languages Act*?*

[14] The applicant argues that the report issued by the Officer, based on which the exclusion order was made, does not comply with sections 22 and 27 of the *Official Languages Act* because it was drafted in both languages. The Officer used the English version of a pre-printed form for his 44(1) report and filled it out in French. After the applicant is identified, the report reads as follows:

is a person who is a foreign national who has been authorized to enter Canada

and who, in my opinion, is inadmissible pursuant to:

Subsection 41(a) in that, on a balance of probabilities, there are grounds to believe is a foreign national who is inadmissible for failing to comply with this Act through an act or omission which contravenes, directly or indirectly, a provision of this Act, specifically;

The requirement of subsection 29(2) of the act that a temporary resident must comply with any conditions imposed under the Regulations and with any requirements under this Act.

The requirement of Section 8 of the Regulations that a foreign national may not enter Canada to work without first obtaining a work permit.

This report is based on the following information that the above-named individual:

Sujet n'est pas citoyen Canadien

Sujet n'est pas résident permanent du Canada

Sujet a été admis au Canada avec un permis d'études le 24 mai 2017.

Le sujet n'a pas respecté les conditions de son permis d'étude. II a abandonné ses études depuis printemps 2018 et a par la suite travaillé illégalement à temps plein de juillet 2018 jusqu'à aujourd'hui

Le R220.1(1) stipule que :

Le titulaire d'un permis d'études au Canada est assujettis (sic) à des conditions :

- être inscrit dans un établissement d'enseignement désigné et demeure inscrit dans un tel établissement jusqu'à ce qu'il termine ses études.

- II doit suivre activement un cour ou son programme d'études.

Pour ces motifs, je suggère l'émission d'une mesure d'exclusion contre M. KOUASSI KAUDJHIS, en vertu des articles L41, L29(2) de la LIPR et du règlement R220.1(1)

[15] It should first be noted that that the exclusion order itself is drafted solely in French.

[16] In addition, with respect to the pre-printed form for the 44(1) report, it provides the generic grounds that give rise to an exclusion order in accordance with the *Immigration and Refugee Protection Act*, SC 2001, c. 27 [IRPA]. The portion drafted in French provides the grounds that give rise to an exclusion order in the applicant's specific case.

[17] Although the use of the English version is far from ideal, I do not believe that it amounts to a breach of the *Official Languages Act* that would justify the setting aside of the 44(1) report and thereby of the exclusion order.

[18] As long as all of the relevant information concerning the applicant as well as the grounds on which the removal order is based are drafted in French, I am of the view that the respondent's linguistic obligations are met.

[19] The *Official Languages Act* guarantees everyone the right to be served in the official language of their choice. It does not prevent communication from being bilingual, as long as the information provided in one language is also provided in the other. Rather, it is unilingual communication that is problematic, but even in such a case, a minor violation that is quickly rectified may not warrant a drastic remedy such as the one sought by the applicant. In *Leduc v Air Canada*, 2018 FC 1117, the Court stated the following:

> [71] According to sections 22 and 27 of the OLA, a federal institution's bilingual obligations in the context of communications with the public apply "in respect of oral and written communications and in respect of any documents or activities that

> relate to those communications or services." Air Canada had an obligation to ensure that Mr. Leduc, as a member of the public, could communicate with the company in the official language of his choice. By forwarding an English-only tariff to Mr. Leduc, the company did in fact violate his language rights, in principle. It had an obligation to provide him with a French version.
>
> [72] However, I believe that this was a minor violation. As soon as OCOL informed Air Canada of this violation, it promptly provided a French version of the tariff, which was appended to the affidavit provided by Mr. Fraser. In August 2010, OCOL stated that it considered the matter to be settled. Moreover, the French letter to which this tariff was appended clearly explained the contents of this tariff. Therefore, I do not believe that damages or a letter of apology would constitute just and appropriate remedies under the circumstances.
>
> [73] However, the fact remains that Air Canada violated Mr. Leduc's language rights by sending him a unilingual tariff. I am therefore rendering a declaratory judgment attesting to this violation.

[20] In the case at bar, the removal order is in French. The information specific to the applicant in the 44(1) report is in French, and the Officer's and the Delegate's notes are also in French. The applicant was questioned by the Officer in French and he was able to understand the grounds relied on, which he confirmed at the interview.

[21] I am therefore of the view that the applicant's argument must be rejected.

B. *Was the Delegate authorized to issue a removal order against the applicant?*

[22] Although this argument was not raised by the applicant in his memorandum of fact and law, he nonetheless argued before the Court that the Delegate signed the 44(1) report instead of the Officer and that the Officer signed the exclusion order instead of the Delegate. Without any

evidence to that effect—I have no proof of either of their titles and their signatures are illegible—this argument cannot be accepted to render the exclusion order legally invalid.

C. *Was the decision to issue an exclusion order against the applicant reasonable?*

[23] The applicant argues that he could not be excluded from Canada under section 220.1 of the Regulations because he falls under the exceptions in paragraphs 220.1(3)(a) and 222(2)(a), which exempt any person "who holds a study permit and is temporarily destitute, as described in paragraph 208(a)" from having to comply with section 220.1 of the Regulations.

[24] Paragraph 208(a) enables a foreign national who holds a study permit to obtain a work permit if that person "has become temporarily destitute through circumstances beyond their control and beyond the control of any person on whom that person is dependent for the financial support to complete their term of study".

[25] Although I do not have before me the documents submitted by the applicant in support of his application for a work permit for a destitute student, the death of his father seems to be a situation covered by that provision of the Regulations. However, the applicant did not dispute the unfavourable decision rendered by Immigration, Refugees and Citizenship Canada on February 19, 2019, and continued to work full-time after receiving it. The matter before me is not an application for judicial review of that decision, and I do not have before me the elements that would enable me to analyze its merits.

[26] The fact remains that the applicant worked without a work permit from February 19, 2019, to July 13, 2019, contrary to paragraphs 189(v) and (w) of the Regulations. He also failed to comply with the conditions of his study permit in abandoning his studies in the spring of 2018. In these circumstances, it was completely reasonable for the Officer to issue his report and for the Delegate to issue an exclusion order against the applicant for failing to comply with the IRPA and the Regulations.

VI. Conclusion

[27] I am therefore of the view that the Delegate's decision was made in accordance with the powers conferred upon him, that it does not violate the applicant's language rights and that it was reasonable in light of all the evidence presented to the Delegate.

[28] The application for judicial review is therefore dismissed.

[29] The parties did not submit a question of general importance for certification, and none arises from the facts in this case.

JUDGMENT in IMM-4670-19

THE COURT'S JUDGMENT is as follows:

1. The applicant's application for judicial review is dismissed.

2. No question of general importance is certified.

"Jocelyne Gagné"
Associate Chief Justice

Certified true translation
On this 7th day of May 2020

Sebastian Desbarats, Translator

FEDERAL COURT

SOLICITORS OF RECORD

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