IMM-2720-95

BETWEEN:

TUNCER AVCI

Applicant

- and -

THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

Respondent

REASONS FOR ORDER

PINARD J.

The applicant seeks judicial review of a decision of visa officer Umit Ozguc of the Canadian Embassy in Ankara, Turkey, dated May 29, 1995, in which the visa officer refused the applicant's application for landing, including a request to extend or renew the validity of the applicant's expired immigrant visa.

The applicant's father, Mehmet Avci, was issued a Canadian immigration visa from the Immigration Section of the Canadian Embassy in Ankara, Turkey as an independent immigrant on September 28, 1993. Mr. Avci's wife and children were also granted visas as his dependents. The applicant's family members arrived in Canada on November 12, 1993, at which time they became permanent residents.

The applicant, whose date of birth is March 3, 1973, was issued his immigrant visa as a dependent of his father at the same time as the rest of his family. This visa was valid from September 28, 1993 to December 21, 1993. However, he had been conscripted in March 1993 to serve in the Turkish Armed Forces for fifteen months, and was therefore unable to join his family in Canada until he had fulfilled his legal obligation to perform his military service. His father wrote the Canadian Embassy in Ankara on October 20, 1993 to advise them of this, and to request an extension of his visa. The father states that he was left with the impression from his conversations

with Embassy officials that his son's visa could easily be extended once the time came for him to join his family.

The applicant completed his military service on October 1, 1994, and applied for permanent residence by an application filed in February or March, 1995.

The visa officer's decision reads as follows:
[TRANSLATION]

Canadian Embassy (Seal)

NENEHATUN CAD. NO: 75
GAZIOSMANPASA, ANKARA
TURKEY

May 29, 1995

Dear Tuncer Avci
The Village of Yakatarla
Gulsehir, Nevsehir

Re: File No: B 0305 14514

With regard to the application you have made to Canada, we regret to inform you that it is not possible for us to extend the visa we have previously issued to you as a dependant of your father. Unfortunately, we cannot issue new visas for those children who are conscripted and who are unable to complete their military services and use their visas within the time period in which they are valid.

On the other hand, the new application you have made has been carefully assessed in light of the skills needed for individuals such as yourself in Canada.

In the course of this assessment, your age, education, occupation, work experience, and the demand for individuals with your skills have been considered.

We regret to inform you that it has ben determined as a result of this assessment that circumstances which would allow you to immigrate to Canada do not exist.

Please accept our regrets for this negative response and we thank you for the interest you have expressed.

Our Regards,

[Signed]

UMIT OZGUC,
Immigration Section

The facts in the case at bar bear a striking similarity to those in *Canada (Minister of Citizenship and Immigration) v. Nikolova* (1995), 31 Imm.L.R. (2d) 104 (F.C.T.D.). The applicant's mother in *Nikolova* had filed a sponsored application for permanent residence for her son when he was 18 years of age. He turned 19 in March of 1992, and joined the Bulgarian military service by conscription. He received his immigration visa on June 10, 1992, and it expired on

August 26, 1992 when he was still 19. He was therefore unable to accompany his mother at that time. His mother received correspondence at a later date to the effect that she could sponsor her son once he had completed his military service. The applicant was 20 years of age when he completed his military service, and he then submitted a second sponsored application for permanent residence. The visa officer refused this second application, but the Appeal Division overturned the visa officer's decision. Mr. Justice Wetston allowed the Minister's application for judicial review, stating in part as follows, at pages 107 and 108:

> It is not the date of the sponsorship application or undertaking of assistance, but that of the application for permanent residence by the sponsored applicant, which is the relevant date in determining whether a person is a member of the family class: *Lidder v. Canada (Minister of Employment and Immigration)*, [1992] 2 F.C. 621 (C.A.). Accordingly, the relevant date upon which Mr. Kolev's age is to be assessed is the date of his sponsored application for permanent residence. At the time of his application, Mr. Kolev was clearly 20 years old. Therefore, the applicant is quite correct in asserting that Mr. Kolev did not meet the age requirements as set out in subs. 2(1) of the Immigration Regulations, supra. The respondent contended that her son was 18 years old when she submitted a sponsored application on her son's behalf. However, this evidence was related to the respondent's first sponsorship application, which was filed in 1991, when Mr. Kolev was, indeed, 18 years old. While an immigrant visa was issued to Mr. Kolev, the visa eventually expired and was not extended.
>
> According to the facts of this case, Mr. Kolev was 20 years old when the respondent submitted the undertaking of assistance in her son's regard. Thus, at either date, Mr. Kolev's age fell outside the requirements of subs. 2(1) of the Immigration Regulations, supra. Moreover, Mr. Kolev did not meet the education requirements as set out in subs. 2(1) of the Regulations, since, when he attained 19 years of age, he was not enrolled in a full-time educational program.
>
> While I recognize that Mr. Kolev had been conscripted into the Bulgarian army, the requirements of the Regulations were clearly not met. I have also considered the decision in *Mahida v. Canada (Minister of Employment and Immigration)* (1987), 5 Imm.L.R. (2d) 63 (Fed. T.D.), but my consideration of this case does not alter my view that Mr. Kolev did not meet the requirements of subs. 2(1) of the Immigration Regulations, supra.

(My emphasis.)

It is true that the applicant in the present case was under 19 years of age at the time of his first application, and that he met the requirements for his initial immigrant visa. However, unfortunately, that visa expired and was not extended. By reason of subsections 2(1)[1] and 6(6)[2] of

---

[1] **2.** (1) In these Regulations,
"dependent son" means a son who
(*a*) is less than 19 years of age and unmarried,
[. . .]

[2] **6.** (6) A visa officer shall not issue an immigrant visa to a dependent son or dependent daughter referred to in paragraph (*b*) of the definition "member of the family class" in subsection 2(1) or a dependent son or dependent daughter of a member of the family class unless
(*a*) at the time the application for an immigrant visa is received by an immigration officer, the son or daughter meets the criteria respecting age, and marital or student status set out in the definitions "dependent son" and "dependent daughter" in subsection 2(1); and

the *Immigration Regulations*, the relevant question is now whether he was under the age of 19 at the time his second sponsored application was submitted, and he was not.

As for the statement of the applicant's father that he was left with the impression from his conversations with Embassy officials that his son's visa could easily be extended once the time came for him to join his family, it is a sufficient response to restate the principle that legitimate expectations cannot create substantive rights.[3]

Finally, with respect to the applicant's subsidiary arguments, I am of the opinion that the visa officer did in fact perform an assessment on the basis of the applicant's personal characteristics, as indicated by the following:

> On the other hand, the new application you have made has been carefully assessed in light of the skills needed for individuals such as yourself in Canada.
>
> In the course of this assessment, your age, education, occupation, work experience, and the demand for individuals with your skills have been considered.
>
> We regret to inform you that it has ben determined as a result of this assessment that circumstances which would allow you to immigrate to Canada do not exist.

There is nothing to indicate that the visa officer failed to act in good faith having regard to the material before him. It is also my view that the visa officer did not refuse to exercise his discretion pursuant to subsection 11(3)[4]. Although it is not expressly set out as such in the decision, I consider that it is sufficient that the visa officer stated that "circumstances which would allow you to immigrate to Canada do not exist".

For the above reasons, the application for judicial review is dismissed.

OTTAWA, Ontario

(*b*) at the time the visa is issued, the son or daughter meets the criteria respecting marital or student status set out in those definitions.

[3] See *Reference Re Canada Assistance Plan (B.C.)*, [1991] 2 S.C.R. 525, followed in *Parmar v. Canada (M.C.I.)* (June 26, 1997), IMM-1133-96, and *Gonsalves v. Canada (M.C.I.)* (May 9, 1997), IMM-1992-96, among others.

[4] **11.** (3) A visa officer may

(*a*) issue an immigrant visa to an immigrant who is not awarded the number of units of assessment required by section 9 or 10 or who does not meet the requirements of subsection (1) or (2), or

(*b*) refuse to issue an immigrant visa to an immigrant who is awarded the number of units of assessment required by section 9 or 10,

if, in his opinion, there are good reasons why the number of units of assessment awarded do not reflect the chances of the particular immigrant and his dependants of becoming successfully established in Canada and those reasons have been submitted in writing to, and approved by, a senior immigration officer.

October 24, 1997

JUDGE