

**Date: 20080122**

**Docket: IMM-3012-07**

**Citation: 2008 FC 72**

**Ottawa, Ontario, January 22, 2008**

**PRESENT: THE HONOURABLE MR. JUSTICE BEAUDRY**

**BETWEEN:**

**YANIQUE DURAND DUROSEAU**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION OF CANADA**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] This is an application pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (IRPA), for judicial review of an immigration officer's (the officer) decision, dated June 14, 2007, refusing to issue the applicant a live-in caregiver work permit.

**ISSUES**

[2] This application for judicial review raises the following questions:

- a) Did the officer commit a reviewable error by determining that the applicant could not be issued a permit under subparagraph 200(3)(e)(i) of the *Immigration and Refugee Protection Regulations*, SOR /2002-227 (the Regulations)?
- b) Did the officer commit a reviewable error by determining that the employment contract entered into between the applicant and Ms. Darius was a contract of convenience and not a genuine employment contract?

[3] For the reasons that follow, the application for judicial review is dismissed.

### **FACTUAL BACKGROUND**

[4] The applicant is a citizen of Haiti. When she arrived in Canada in September 2006, she held a visitor visa to Canada valid from August 11, 2006 to September 19, 2008.

[5] According to the sample contract for the Live-In Caregiver Program, the applicant and Ms. Darius started living together at the same address on October 6, 2006, if not earlier, and these two individuals signed a contract with one another on that date.

[6] The applicant did not apply for a work permit as a live-in caregiver until March 2007.

[7] She was called in for an interview with the officer on June 14, 2007. She admitted that she took care of Ms. Darius' children while Ms. Darius was at work.

**IMPUGNED DECISION**

[8] The officer refused to issue a work permit to her for two reasons:

- a) First, she referred to the prohibition against issuing a work permit under subparagraph 200(3)(e)(i) to persons having engaged in unauthorized work in Canada in the past six months. The officer believed that the applicant had engaged in such work since her arrival in Canada by helping Ms. Darius with her children. The notes from the Computer Assisted Immigration Processing System (CAIPS notes) indicate as follows:

I ASKED THE APPLICANT WHETHER SHE LOOKED AFTER HER FRIEND'S CHILDREN. THE APPLICANT ADMITTED TO HAVING LOOKED AFTER THE CHILDREN. SHE PROCEEDED TO TELL ME THAT SHE WAS NEVER PAID FOR HER WORK. THE PI STATED THAT THEY HAD AN "AGREEMENT".

- b) Second, the officer determined that the applicant did not meet the requirements of section 112 of the Regulations because the employment contract is not genuine and constitutes an offer of convenience aimed at facilitating the applicant's acquisition of status in Canada. The CAIPS notes state as follows:

APPLICANT HAS BEEN OFFERED A JOB AS A LIVE IN CAREGIVER FOR HER FRIEND MARTHA DARIUS. THE PI HAS KNOWN THE EMPLOYER SINCE THEY WERE BOTH LIVING IN HAITI.

[...]

DURING THE INTERVIEW THE APPLICANT WAS NOT FORTHCOMING WITH INFORMATION PERTAINING TO HER TIME THAT SHE HAS SPENT IN CANADA.

[...]

NO SUPPORTING DOCUMENTS WERE  
SUBMITTED TO SUBSTANTIATE PI'S  
STATEMENT.

## RELEVANT PROVISIONS

[9] *Immigration and Refugee Protection Regulations, SOR /2002-227.*

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|---|--|
| <p><b>2.</b> "work" means an activity for which wages are paid or commission is earned, or that is in direct competition with the activities of Canadian citizens or permanent residents in the Canadian labour market.</p> | <p><b>2.</b> «travail» Activité qui donne lieu au paiement d'un salaire ou d'une commission, ou qui est en concurrence directe avec les activités des citoyens canadiens ou des résidents permanents sur le marché du travail au Canada.</p> |
| <p><b>112.</b> A work permit shall not be issued to a foreign national who seeks to enter Canada as a live-in caregiver unless they</p>   | <p><b>112.</b> Le permis de travail ne peut être délivré à l'étranger qui cherche à entrer au Canada au titre de la catégorie des aides familiaux que si l'étranger se conforme aux exigences suivantes :</p>                                |
| <p>(a) applied for a work permit as a live-in caregiver before entering Canada;</p>   | <p>a) il a fait une demande de permis de travail à titre d'aide familial avant d'entrer au Canada;</p>   |
| <p>(b) have successfully completed a course of study that is equivalent to the successful completion of secondary school in Canada;</p>   | <p>b) il a terminé avec succès des études d'un niveau équivalent à des études secondaires terminées avec succès au Canada;</p>   |
| <p>(c) have the following training or experience, in a field or occupation related to the employment for which the work</p>   | <p>c) il a la formation ou l'expérience ci-après dans un domaine ou une catégorie d'emploi lié au travail pour</p>   |

permit is sought, namely,

lequel le permis de travail est demandé :

(i) successful completion of six months of full-time training in a classroom setting, or

(i) une formation à temps plein de six mois en salle de classe, terminée avec succès,

(ii) completion of one year of full-time paid employment, including at least six months of continuous employment with one employer, in such a field or occupation within the three years immediately before the day on which they submit an application for a work permit;

(ii) une année d'emploi rémunéré à temps plein — dont au moins six mois d'emploi continu auprès d'un même employeur — dans ce domaine ou cette catégorie d'emploi au cours des trois années précédant la date de présentation de la demande de permis de travail;

(d) have the ability to speak, read and listen to English or French at a level sufficient to communicate effectively in an unsupervised setting; and

*d)* il peut parler, lire et écouter l'anglais ou le français suffisamment pour communiquer de façon efficace dans une situation non supervisée;

(e) have an employment contract with their future employer.

*e)* il a conclu un contrat d'emploi avec son futur employeur.

**200.** (3) An officer shall not issue a work permit to a foreign national if

**200.** (3) Le permis de travail ne peut être délivré à l'étranger dans les cas suivants :

(e) the foreign national has engaged in unauthorized study or work in Canada or has failed to comply with a condition of a previous permit or authorization unless

*e)* il a poursuivi des études ou exercé un emploi au Canada sans autorisation ou permis ou a enfreint les conditions de l'autorisation ou du permis qui lui a été délivré, sauf dans les cas suivants :

(i) a period of six months has elapsed since the cessation of the unauthorized work or study or failure to comply with a condition,

(i) une période de six mois s'est écoulée depuis les faits reprochés,

## **ANALYSIS**

### *Standard of Review*

[10] I am of the opinion that the appropriate standard of review is reasonableness *simpliciter* (*Jhattu v. Canada (Minister of Citizenship and Immigration)*, [2005] F.C.J. no. 1058 (QL), 2005 FC 853, paragraph 12). The parties agree that this is the appropriate standard.

### *Work Prior to Issuance of Permit*

[11] The officer determined that the assistance provided to Ms. Darius by the applicant constitutes work. The applicant argues that it is impossible to prove on the basis of the CAIPS notes that she was engaged in work in Canada. She objects to the respondent's allegation contained in the officer's affidavit [TRANSLATION] "that she took care of Ms. Darius' children when she worked and that, in return, Ms. Darius gave her room and board."

[12] Only the reasons contained in the letter dated June 14, 2007 and the CAIPS notes can constitute grounds for the decision. Although the affidavit can clarify the facts to some extent, the additional reasons for refusal that might be included in that document cannot be used to explain the decision.

[13] Despite the foregoing, I am of the opinion that it was reasonable for the officer to determine that the applicant had worked without authorization. According to the letter dated June 14 and the

CAIPS notes, it is clear that the officer drew an inference from the information she obtained during the interview:

DURING THE INTERVIEW THE APPLICANT WAS NOT FORTHCOMING WITH INFORMATION PERTAINING TO HER TIME THAT SHE HAS SPENT IN CANADA.

[...]

I ASKED THE APPLICANT WHETHER SHE LOOKED AFTER HER FRIEND'S CHILDREN. THE APPLICANT ADMITTED TO HAVING LOOKED AFTER THE CHILDREN. SHE PROCEEDED TO TELL ME THAT SHE WAS NEVER PAID FOR HER WORK. THE PI STATED THAT THEY HAD AN "AGREEMENT".

[14] It was the officer's prerogative to infer that the applicant had received compensation in consideration for her assistance.

[15] The definition of "work" set forth in the Regulations does not require compensation to have been received in order for an activity to be considered work. The activity merely has to be "in direct competition with the activities of Canadian citizens or permanent residents in the Canadian labour market." In my view, child care meets the definition of work.

[16] For these reasons, I am of the opinion that the officer did not commit a reviewable error.

*Contract Not Entered Into in Good Faith*

[17] The officer determined that the offer of employment was not made in good faith, but rather out of convenience. Having regard to the circumstances, that was not an unreasonable conclusion. In *Vairea v. Canada (Minister of Citizenship and Immigration)*, [2006] F.C.J. no. 1563 (QL), 2006 FC 1238, at paragraph 17, Martineau J. wrote as follows in agreeing with an officer's refusal of a work permit:

In my opinion, the visa officer could base her refusal to issue a work permit simply on the concerns she had with respect to the bona fide character of the offer made by Southern Renovation. [...]

[18] According to the applicant, the officer committed a reviewable error by raising the existence of a friendship between her and her employer.

[19] In my view, the friendship between the applicant and the employer is just one fact among many justifying the officer's doubts as to the bona fide character of the contract. The fact that the applicant lived in Ms. Darius' home prior to submitting her application, the length of time before she submitted it, and the fact that the applicant was engaged in child-care activity all provide sufficient support for the officer's decision.

[20] The officer based her decision on relevant considerations supported by the evidence.



**JUDGMENT**

**THE COURT ORDERS AND ADJUDGES that** the application for judicial review be dismissed.

“Michel Beaudry”

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Judge

Certified true translation

Stefan Winfield, Translator

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-3012-07

**STYLE OF CAUSE:** **YANIQUE DURAND DUROSEAU AND  
THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION OF CANADA**

**PLACE OF HEARING:** Ottawa, Ontario

**DATE OF HEARING:** January 21, 2008

**REASONS FOR JUDGMENT  
AND JUDGMENT:** The Honourable Mr. Justice Beaudry

**DATED:** January 22, 2008

**APPEARANCES:**

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