Date: 20080130

Docket: IMM-2290-07

Citation: 2008 FC 90

BETWEEN:

TAHEREH Fargoodarzi

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT

Pinard J.

[1] This is an application for judicial review of the decision of Athena Chan, Designated Immigration Officer (the "Officer"), who refused the applicant's application for permanent residence as a member of the economic class because she had not satisfied the Officer that she was not inadmissible to Canada.

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[2] The applicant is an Iranian national who submitted an application at the Canadian Consulate in Hong Kong for permanent residence in Canada, in 1999. The applicant included her husband and children in her application.

[3] Receipt of the application was confirmed by letter sent on February 11, 2000, which stated that an initial assessment would be conducted within six months.

[4] On May 11, 2004, a letter was sent stating that the initial assessment had been completed and that the application would likely be finalized, without the necessity of an interview, within six months. The applicant was also requested to provide certain documents, including FBI certificates for herself and her husband.

[5] It would appear from the Computer Assisted Immigration Processing System (CAIPS) notes that some FBI documents were received in August 2004. However, outstanding documents remained. When the security admissibility review was completed on September 15, 2006, the applicant's husband's FBI certificate had expired, and a request for an updated FBI certificate was sent, on October 4, 2006.

[6] On December 13, 2006, new documents were received, which included a State of California police certificate. On February 26, 2007, a letter was sent to the applicant stating that the California state certificate was not acceptable and that her husband's FBI certificate was still outstanding, and giving the applicant 30 days to provide the outstanding document.

[7] According to the applicant's affidavit, this letter was received in the middle of March, 2007. As the applicant did not have enough time to acquire the FBI certificate before the deadline, she asked her sister in Canada to contact her Member of Parliament. She affirms that Mélanie Houle, assistant to the Member of Parliament, sent an email to Hong Kong stating that the FBI certificates would be forwarded as soon as they were received. However, there is no record of this email in the CAIPS notes, although they do include some communication between Ms. Houle and the Officer, notably an email sent to Ms. Houle on February 23, 2007 stating that the applicant's husband's FBI certificate was still outstanding.

[8] On March 28, 2007, after no further communication had been received from the applicant, the Officer decided to refuse the application.

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[9] The Officer's decision is brief. After noting that the applicant had been requested by letter on October 4, 2006, and reminded on February 26, 2007, to provide the updated FBI certificate for her husband, the visa officer determined that the applicant had not satisfied her that "you are not inadmissible and that you meet the requirements of the *Immigration and Refugee Protection Act*." The visa officer concluded as follows: "I am therefore refusing your application pursuant to subsection 11(1) of this Act."

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[10] The following provisions of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the "Act") are relevant:

11. (1) A foreign national must, before entering Canada, apply to an officer for a visa or for any other document required by the regulations. The visa or document shall be issued if, following an examination, the officer is satisfied that the foreign national is not inadmissible and meets the requirements of this Act.	**11.** (1) L'étranger doit, préalablement à son entrée au Canada, demander à l'agent les visa et autres documents requis par règlement, lesquels sont délivrés sur preuve, à la suite d'un contrôle, qu'il n'est pas interdit de territoire et se conforme à la présente loi.
16. (1) A person who makes an application must answer truthfully all questions put to them for the purpose of the examination and must produce a visa and all relevant evidence and documents that the officer reasonably requires.	**16.** (1) L'auteur d'une demande au titre de la présente loi doit répondre véridiquement aux questions qui lui sont posées lors du contrôle, donner les renseignements et tous éléments de preuve pertinents et présenter les visa et documents requis.

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[11] The applicant submits that the Officer's reasons provide no basis to determine why the FBI certificates she had already sent were inadequate to establish that the applicant was not inadmissible, or why the applicant's efforts to obtain the requested documents were tantamount to the abandonment of the application.

[12] Although all administrative decision-makers have a duty of fairness toward those who are directly affected by their decisions, the content of this duty will vary depending on the context of the decision (*Knight v. Indian Head School Division No. 19*, [1990] 1 S.C.R. 653). If the Court finds that this duty has been breached, the decision must be quashed and the issue sent back to a new decision-maker (*Li v. Minister of Citizenship and Immigration*, 2006 FC 1109, [2006] F.C.J. No.

1409 (T.D.) (QL)). In this case, the decision in question is a visa officer's decision on an application for permanent residence, and the duty of fairness has been determined to be at the relatively low end of the spectrum in this context, due to the absence of a legal right to permanent residence, the fact that the burden is on the applicant to establish her eligibility, the less serious impact on the applicant that the decision typically has, compared with the removal of a benefit, and the public interest in containing administrative costs (*Khan v. Canada (Minister of Citizenship and Immigration)*, [2002] 2 F.C. 413 (C.A.)).

[13] In my opinion, this case is closely analogous to *Vellanki v. Minister of Citizenship and Immigration*, 2007 FC 247, [2007] F.C.J. No. 315 (T.D.) (QL), where, after a five-year delay in the processing of an application as a Skilled Worker and following a failure to provide the required documents, the application was denied, using similar language to the decision in question here. In that case, Mr. Vellanki's admissibility on medical and security grounds was all that remained to be verified:

> [9] . . . Section 11(1) of the IRPA indicates that a foreign national must establish to the satisfaction of the Visa Officer that he is not inadmissible. This must be read together with section 16 of the IRPA which requires a visa applicant to produce all relevant evidence and documents that the officer reasonably requires, including photographs. The refusal decision in this case turns precisely on Mr. Vellanki's failure to provide the information requested by the Visa Officer and the decision letter clearly conveys that rationale. I take the language used by the Visa Officer in the earlier "final reminder" letter to be merely an informal expression of the same underlying point and it gave clear notice that a failure to respond would lead to a refusal decision. In simple terms the Visa Officer was "not satisfied" of Mr. Vellanki's admissibility because he had not provided the information the officer reasonably required to be satisfied and to complete the remainder of her assessment.

[14] In my opinion, the foregoing analysis applies equally to this case. The applicant submits that this case is distinguishable because Mr. Vellanki had six months to complete a small task while the applicant "had a few days to complete a task that required 16-18 weeks!" However, I would not find this difference to be relevant to the adequacy of the Officer's reasons, which, in my opinion, are sufficiently clear.

[15] The applicant further submits that the time frame to acquire the FBI certificate was unreasonable, in reliance on *Li*, *supra*, in which the visa officer was found to have violated the rules of natural justice because she did not provide the applicant with the opportunity to obtain a requested document before she made her decision. According to the applicant, the Officer should at least have considered the email sent in March 2007 by Ms. Houle, which indicated that the requested documents would be forwarded as soon as they were received.

[16] In response, relying on *Madan v. Canada (Minister of Citizenship and Immigration)* (1999), 172 F.T.R. 262, the respondent submits that a visa officer is under no obligation to seek clarification of insufficient material and, considering that the applicant had already been given an opportunity to provide the requested information and had failed to do so, the Officer was entitled to give the applicant a shorter time frame within which to reply. The respondent also notes that there is no affidavit from Ms. Houle, nor is there evidence that the email was ever received by the consulate in Hong Kong. Furthermore, the email was apparently sent on March 28, 2007, which, considering the time difference between Canada and Hong Kong, was actually after the decision had been made.

[17] According to the applicant, Exhibit D to her affidavit demonstrates that the email had already been sent on March 20, 2007. However, in examining Exhibit D, the date on the email appears to be March 28, 2007. Furthermore, this is not the email that was sent to the consulate, but is an email from Ms. Houle to the applicant's sister, stating that an email had already been sent to the consulate.

[18] Regardless of the date the email was sent to Hong Kong, however, there is no evidence that the email was ever received by the consulate. It does not form part of the Tribunal Record and is not mentioned in the CAIPS notes.

[19] In my opinion, the applicant has not shown that the Officer breached the rules of natural justice when she gave the applicant 30 days to provide the required documents. My conclusion may have been different had the applicant contacted the consulate herself to request more time, or at least followed up on the email sent by Ms. Houle to make sure that it had been received. This case is distinguishable from *Li, supra*, because the Officer gave the applicant an opportunity to provide the documents before she came to her decision. In this case, the applicant was given an ultimate delay of 30 days to provide the documents, and the Officer was given no indication that the applicant needed more time. When the Officer did not receive any communications from the applicant within that time frame, she was entitled to make her decision based on the evidence that the applicant had provided to that point. I would note that, contrary to the applicant's assertion, the Officer did not decide that the applicant had abandoned her application, but rather that she was not satisfied that the applicant was not inadmissible.

[20] The applicant also submits that there is no indication that the Officer considered the existing evidence when she rendered her decision.

[21] On questions which are within the discretion of a visa officer, the standard of review has been found to be that of patent unreasonableness (*Shi v. Minister of Citizenship and Immigration*, 2005 FC 1224, [2005] F.C.J. No. 1490 (T.D.) (QL)). The burden is on the applicants to demonstrate to the visa officer that they meet the requirements of the Act and are not inadmissible (*Farzam v. Minister of Citizenship and Immigration*, 2005 FC 1659, [2005] F.C.J. No. 2035 (T.D.) (QL)). While the Court may intervene if it can be shown that the visa officer disregarded evidence in coming to a decision, the visa officer is presumed to have considered all the evidence unless the contrary can be shown, and the failure to mention evidence is not, in itself, fatal to the decision (see *Woolaston v. Canada (Minister of Manpower and Immigration)*, [1973] S.C.R. 102, and *Florea v. Canada (Minister of Employment and Immigration)*, [1993] F.C.J. No. 598 (C.A.) (QL)).

[22] In my opinion, the applicant has not demonstrated that the Officer failed to consider the evidence in coming to her decision. The Officer's reasons state that she examined the material available on the file. The material on the file did not include updated information with regard to the applicant's criminal admissibility, and so supports the Officer's conclusion. I do not find the Officer's decision to be patently unreasonable.

[23] The applicant finally submits that, having been informed that her application would be processed without the requirement of an interview, and having gone through eight years of processing, she had a legitimate expectation that she would be provided with a reasonable time in

which to provide the required documents. In the light of my conclusion that the time frame was not unreasonable, I am of the opinion that, even if the doctrine of legitimate expectations applies, it is of no assistance to the applicant in the present case.

[24] Furthermore, even if the time frame was unreasonable, the applicant has not demonstrated how the doctrine of legitimate expectations is engaged in this case. The doctrine of legitimate expectations applies to provide enhanced procedural rights in situations where an individual was led to believe that a certain practice would be followed or a certain result would be achieved (*Baker v. Canada (Minister of Citizenship and Immigration),* [1999] 2 S.C.R. 817). However, the applicant seems to base her submissions on this issue on her own conduct, as well as the letter from May 2004 which stated that her application would be processed within six months. The applicant's own conduct cannot create a legitimate expectation as to the process that the decision-maker will follow, and I do not see how a statement that her application would be processed within a certain time frame would create a legitimate expectation that the applicant would be given a certain time frame to provide required documents.

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[25] For all the above reasons, the intervention of the Court is not warranted and the application for judicial review is dismissed.

"Yvon Pinard"

Judge

Ottawa, Ontario
January 30, 2008

FEDERAL COURT

NAME OF COUNSEL AND SOLICITORS OF RECORD

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