

Date: 20080229

Docket: IMM-2599-07

Citation: 2008 FC 276

Montréal, Quebec, February 29, 2008

PRESENT: The Honourable Madam Justice Tremblay-Lamer

BETWEEN:

GHAZI KHATOON

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

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 (the Act), for judicial review of a decision of a visa officer (the “officer”), dated June 1, 2007, wherein the officer refused the applicant’s application for a temporary resident visa in the visitor class (a “visitor’s permit”).

BACKGROUND

[2] The applicant is a citizen of Pakistan. She applied for a visitor's permit in order to attend her granddaughter's wedding. The application was received along with a letter of invitation from the applicant's grandson at the Canadian High Commission in Islamabad, Pakistan on May 22, 2007.

[3] The officer refused the application, checking off the boxes corresponding to the following two reasons on the standard refusal letter:

- You have not satisfied me that you meet the requirements of Regulation 179: that you would leave Canada at the end of the temporary period if you were authorized to stay. In reaching this decision I considered your ties to your country of residence/citizenship balanced against factors which might motivate you to stay in Canada.
- You have not provided sufficient documentation to support your/your host's income and assets.

[4] In the present case, the applicant challenges the officer's findings that she would not leave Canada at the end of an authorized stay, and that she had not provided sufficient documentation to support her or her host's income and assets. As these findings are highly fact-based, the standard of review applicable is that of patent unreasonableness (*Danioko v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 479, [2006] F.C.J. No. 578 (QL), at para.1; *Zhang v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 427, [2005] F.C.J. No. 529 (QL), at para. 6).

[5] Accordingly, the officer's findings will remain undisturbed unless they are "clearly irrational" or "evidently not in accordance with reason" (*Canada (Attorney General) v. Public Service Alliance of Canada*, [1993] 1 S.C.R. 941, at pp. 963-64).

[6] At the outset I find it useful to examine the scope of discretion within which the factual findings at issue were made. An indication of the scope of discretion can be found in the objectives of the Act and the ministerial guidelines (*Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817 (QL), at para. 67).

[7] The objectives of the Act suggest that family reunification is an important consideration. Particularly, section 3.(1)(d) stipulates that one of the objectives of the Act is “to see that families are reunited in Canada”. Instructively, in *Gupta v. Canada (Minister of Citizenship and Immigration)*, [2000] F.C.J. No. 1099 (QL), at para. 11, in the context of the previous Act, Gibson J. held that “the wording of this paragraph is broad enough to encompass the reunion in Canada of Canadian citizens and permanent residents [...] with their close relatives from abroad.” Moreover, in *Zhang, supra*, at paras. 8-9, Pinard J. cited these comments with approval in the context of the current Act.

[8] On the issue of the importance of family reunification in the discretionary decision-making context, the applicant has drawn to the Court’s attention to the associated ministerial guidelines. Specifically, section 5.13 of Chapter 11 of the Overseas Processing Manual, (the “OP 11 manual”):

Parents and grandparents

In April 2005, the Minister of Citizenship and Immigration made a policy decision to encourage visa officers to be more flexible in issuing temporary resident visas (TRVs), including multiple entry visas, to parents and grandparents:

- who have applications for permanent residence in process, and
- who wish to visit but do not intend to immigrate to Canada.

[9] A review of the CAIPs notes indicate that the visa officer was conscious of the fact that the applicant had 4 children in Pakistan, had travelled abroad previously to Saudi Arabia, had a son in Canada who was out of status, and a grandson who was a Canadian citizen. Further, the officer noted that the tax documentation from the grandson and his wife indicated a “decent income”, but no proof was provided of the grandson’s or his wife’s employment and/or savings, or proof of the applicant’s funds.

[10] The affidavit submitted by the visa officer, dated September 24, 2007 expands upon the CAIPs notes. Particularly, the officer indicates at para. 9, that because the applicant’s son had remained in Canada without status, she might be willing to do the same. Further, at para. 10, he asserts that based on his knowledge of certain cultural practices in Pakistan, specifically that widowed elderly women normally live with their sons and not daughters, the fact that the applicant’s only son was living in Canada was a concern. He also indicates at para. 13, that the applicant’s trip to Saudi Arabia is not usually considered to be major international travel.

[11] With respect to the first finding, that the officer was not convinced that the applicant would leave Canada upon expiry of the relevant period, I find the officer’s conclusion to be patently unreasonable.

[12] First, the fact that her son was in Canada out of status cannot be used to impute similar conduct to the applicant. People are to be judged according to their own behaviour, not on that of their family members.

[13] Second, while I appreciate the insights that the officer may have gained through his time in Pakistan, the mere fact that elderly widowed women normally, in the view of the officer, live with sons and not daughters, cannot be used to attack the bona fides of the applicant's application. This type of gross generalization is patently unreasonable.

[14] Third, the officer disregarded the applicant's previous trip to Saudi Arabia, stating that "a trip to Saudi Arabia is not usually considered to be major international travel in the context in which I assess applications for temporary residence". With respect, a trip from Pakistan to Saudi Arabia is international travel.

[15] With regards to the officer's findings relating to the documentation of funds. The tax returns of the applicant's grandson and his wife were submitted. The officer was satisfied that the income of the host and his wife was decent. I note that in the context of determining whether sufficient funds are available, section 7 of Chapter 11 of the Overseas Processing Manual, (the "OP 11 manual") indicates:

When warranted, officers may consider a combination of any of the following documents as evidence of ability to support an intended visit. The list is not exhaustive but demonstrates various resource documents that may be presented:

- ◆ bank statement(s) or deposit book(s) of applicant (and spouse) that show accumulated savings;

- ◆ applicant's (and spouse's) letter of employment or employment book, providing name of employer, applicant's position/occupation, date employment commenced and annual earnings;
- ◆ host's or family member in Canada (and spouse's) evidence of income: previous year Revenue Canada Notice of Assessment indicating annual income; or alternately, letter from employer(s) showing position, date employment commenced and annual earnings;
- ◆ evidence of size of family for host or family member in Canada (to equate earnings with size of family to ensure ability to support long-term visit); [Emphasis added.]

While the officer is free to consider a combination of any of the listed documents, given that the he was satisfied that the income from the host and spouse was decent, it was patently unreasonable to require that the applicant, a woman in her 80s, produce evidence of her personal funds as well.

[16] For these reasons, the application for judicial review of the visa officer's decision is granted.

The decision of the visa officer is quashed. The matter is remitted back for re-determination by a different visa officer.

JUDGMENT

THIS COURT ORDERS that the application for judicial review of the visa officer's decision is granted. The decision of the visa officer is quashed. The matter is remitted back for re-determination by a different visa officer.

“Danièle Tremblay-Lamer”

Judge

ANNEX A

Immigration and Refugee Protection Act S.C. 2001, c. 27

Loi sur l'immigration et la *protection des réfugiés, L.C. 2001, ch. 27*

Application before entering Canada

Visa et documents

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.

[...]

[...]

Obligation on entry

Obligation à l'entrée au Canada

20. (1) Every foreign national, other than a foreign national referred to in section 19, who seeks to enter or remain in Canada must establish,

20. (1) L'étranger non visé à l'article 19 qui cherche à entrer au Canada ou à y séjourner est tenu de prouver :

(a) to become a permanent resident, that they hold the visa or other document required under the regulations and have come to Canada in order to establish permanent residence; and

a) pour devenir un résident permanent, qu'il détient les visa ou autres documents réglementaires et vient s'y établir en permanence;

(b) to become a temporary resident, that they hold the visa or other document required under the regulations and will leave Canada by the end of the period authorized for their stay.

b) pour devenir un résident temporaire, qu'il détient les visa ou autres documents requis par règlement et aura quitté le Canada à la fin de la période de séjour autorisée.

[...]

[...]

Temporary resident

Résident temporaire

22. (1) A foreign national becomes a temporary resident if an officer is satisfied that the foreign national has applied for that status, has met the obligations set out in paragraph 20(1)(b) and is not inadmissible.

22. (1) Devient résident temporaire l'étranger dont l'agent constate qu'il a demandé ce statut, s'est déchargé des obligations prévues à l'alinéa 20(1)b) et n'est pas interdit de territoire.

***Immigration and Refugee Protection
Regulations, SOR/2002-227***

***Règlement sur l'immigration et la
protection des réfugiés, DORS/2002-227***

Issuance

Délivrance

179. An officer shall issue a temporary resident visa to a foreign national if, following an examination, it is established that the foreign national

179. L'agent délivre un visa de résident temporaire à l'étranger si, à l'issue d'un contrôle, les éléments suivants sont établis :

(a) has applied in accordance with these Regulations for a temporary resident visa as a member of the visitor, worker or student class;

a) l'étranger en a fait, conformément au présent règlement, la demande au titre de la catégorie des visiteurs, des travailleurs ou des étudiants;

(b) will leave Canada by the end of the period authorized for their stay under Division 2;

b) il quittera le Canada à la fin de la période de séjour autorisée qui lui est applicable au titre de la section 2;

(c) holds a passport or other document that they may use to enter the country that issued it or another country;

c) il est titulaire d'un passeport ou autre document qui lui permet d'entrer dans le pays qui l'a délivré ou dans un autre pays;

(d) meets the requirements applicable to that class;

d) il se conforme aux exigences applicables à cette catégorie;

(e) is not inadmissible; and

e) il n'est pas interdit de territoire;

(f) meets the requirements of section 30.

f) il satisfait aux exigences prévues à l'article 30.

[...]

[...]

Class

Catégorie

191. The visitor class is prescribed as a class of persons who may become temporary residents.

191. La catégorie des visiteurs est une catégorie réglementaire de personnes qui peuvent devenir résidents temporaires.

[...]

[...]

Conditions

Conditions

193. A visitor is subject to the conditions imposed under Part 9.

193. Les visiteurs sont assujettis aux conditions prévues à la partie 9.

FEDERAL COURT
SOLICITORS OF RECORD

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