

**Date: 20080502**

**Docket: IMM-3320-07**

**Citation: 2008 FC 565**

**Ottawa, Ontario, May 2, 2008**

**PRESENT: The Honourable Mr. Justice Beaudry**

**BETWEEN:**

**MAZEN HAMZEH TANTASH**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] This is an application for judicial review pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the Act), of the decision of Visa Officer Ms. Sweetman-Griffin (the Officer), dated June 19, 2007, refusing the applicant's application for permanent residence in Canada under the economic skilled workers class, on the ground that he had not submitted the requested documents, and he was therefore not satisfied that he was admissible.

## **ISSUES**

[2] I would state the sole issue arising from the arguments in the case at bar as follows: did the Officer err by breaching a principle of natural justice or of procedural fairness?

[3] For the following reasons, the application for judicial review shall be dismissed.

## **FACTS**

[4] The applicant is a citizen of Jordan, born in Kuwait. He studied in the United States for five years, and currently resides in the United Arab Emirates (UAE). He made an application to immigrate to Canada as a member of the economic skilled worker class on June 9, 2004 at the Canadian Consulate in London, England.

[5] The Computer Assisted Immigration Processing System (CAIPS) notes dated April 27, 2006 indicate that the applicant received the required number of points to immigrate as a member of the economic skilled worker class. However, the application for permanent residence was denied because the Officer was not satisfied that the applicant was admissible due to his failure to submit police certificates, for all countries in which the applicant had lived for longer than six months.

[6] A brief chronology of the relevant events is helpful to understand the parties' submissions and the decision under review:

- a) January 17, 2007 – the Officer requested that Jordanian police certificates, as well as FBI clearance certificates and State police certificates be provided from Washington. The Officer gave the applicant 90 days to submit the documents.
- b) March 13, 2007 – the applicant sent a letter to the Consulate with the Jordanian certificates and requested an extension of time to submit the remaining police certificates.
- c) March 20, 2007 – the applicant sent a letter to the Consulate containing the certificates from Washington State, and again requested an extension of time in which to file the FBI clearance certificate.
- d) April 2, 2007 – the Officer indicated in the CAIPS notes that the deadline for filing the FBI clearance certificate would be extended by 30 days, until May 17, 2007.
- e) June 19, 2007 – the Officer refused the permanent resident application.

[7] A discrepancy in the parties' accounts of the facts should be noted before proceeding. The applicant contends that the letter dated March 13, 2007, clearly explained that long delays in acquiring FBI clearance certificates were due to the backlog of requests, and that a printout from the FBI website was attached to the letter as proof that delays range between 16 and 18 weeks. The respondent asserts that no expected date of receipt was provided in the letter. A careful review of the file reveals that the website printouts were not included in the list of enclosures to the March 13, 2007 letter. While all other enclosures are contained in the tribunal record, no such printouts can be found. Further, the printout included in the applicant's record at pages 16 and 17 bears the date July 17, 2007, which postdates the letter by several months.

## DECISION UNDER REVIEW

[8] The Officer refused the application for permanent residence on June 19, 2007, on the ground that the applicant failed to submit information required by the Officer. Having not received any update regarding the FBI clearance certificate, the Officer was satisfied that she had given the applicant sufficient time to submit it. Consequently, she held that she was not satisfied that the applicant was not criminally inadmissible.

## RELEVANT LEGISLATION

[9] *Immigration and Refugee Protection Act, 2001, c. 27.*

Application before entering  
Canada

**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.

Obligation — answer truthfully

**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

Visa et documents

**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 du demandeur

**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

reasonably requires.

présenter les visa et documents  
requis.

## **ANALYSIS**

*Did the Officer err by breaching a principle of natural justice or of procedural fairness?*

[10] It is trite law that questions of natural justice and procedural fairness will be reviewed on a standard of correctness.

[11] The applicant argues that the Officer breached the principles of natural justice and procedural fairness by refusing a request for an extension of time. It is submitted that the 30-day extension of the delay is capricious in light of the internet printouts which provide that FBI clearance is only processed within five to six months. The applicant notes that the Officer made her initial request on January 17, 2007, and based on the information in the printouts, it would have been reasonable to expect that the clearance certificates would not be available prior to July 2007.

[12] In support of his submissions, the applicant cites *Ching-Chu v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 855, [2007] F.C.J. No. 1117. More specifically, the applicant relies on *Ching-Chu* to argue that because an extension was sought prior to the expiry of the delay, and because an explanation for the extension was provided, that the Officer in this case breached the principles of natural justice and procedural fairness. In the above mentioned decision, Justice Kelen states at paragraphs 17 to 20:

[17] In support of this position, the applicant relies on the 2000 decision of this Court in *Gakar v. Canada (Minister of Citizenship and Immigration)* (2000), 189 F.T.R. 306. In that case, Mr. Justice Teitelbaum allowed an application for judicial review on the basis that the applicant's rights to procedural fairness were breached when the visa officer refused his request for a 30-day extension to file the documents requested. In his decision, Mr. Justice Teitelbaum states at paragraphs 36 and 39:

[36] I could well understand a refusal for an extension of time if the request was for 90 or 180 days. I cannot understand and do not understand a refusal for a 30 day extension of time when it is the first request for an extension of time and it has no adverse effect on the respondent. ...

[39] As I have said, and I repeat, a visa officer must be understanding and flexible in deciding on a request for an extension of time. To simply say no is a breach of natural justice....

[18] What the applicant does not address, however, are the factual differences between this situation and the one arising in *Gakar*. First, in *Gakar* the applicant was only given a 30-day window to collect the requested information. In this case, the applicant was given a total of 68 days to address the visa officer's invitation for additional information.

[19] Second, in *Gakar* the applicant requested an extension within the pre-established 30-day window. In this case, the applicant's request for additional time did not come until December 2, 2006 and December 13, 2006, i.e., after the visa officer's deadline and almost three months after his September 18, 2006 fairness letter inviting further submissions.

[20] Finally, in *Gakar* the applicant provided reasons as to why he was unable to satisfy the request within the pre-determined time frame. Specifically, the applicant's letter made clear that he was "unable to gather the necessary documents within the 30 day window." In this case, the applicant's counsel provided no reasons as to why the extension was sought, nor any reasons why the applicant could not satisfy the request within the original 68-day window.

[13] The respondent argues that no question of procedural fairness arises in this case; rather, the Officer's determination was based on the applicant's failure to provide her with the requisite information. The respondent cites subsection 16(1) of the Act in support of this assertion, as well as the policy on CIC's website which requires that a police certificate be presented from each country in which an applicant has resided for over six months since the age of 18.

[14] The respondent submits that the Officer's decision to reject the application over a month after the additional 30-day delay had elapsed does not amount to a breach of procedural fairness.

[15] It is my opinion that the facts of this case do not support the allegation of a breach of procedural fairness. Despite the applicant's claim that proof was offered of a five to six month delay in processing FBI clearance certificates, this is not reflected in the record. The record does not demonstrate that any internet printout was provided to the Officer, and as such the applicant's assertion that reasons for the extension were provided with the request is untenable. As in *Ching-Chu*, above, the applicant did not provide any reasons as to why the extension was required, nor did he provide reasons why the 90-day delay was insufficient.

[16] Although the applicant made his request for an extension within the 90-day delay, which was not the case in *Ching-Chu*, his request for an extension was granted, and not categorically rejected as in the aforementioned case. In fact, the Officer only rejected the application after nearly 150 days had elapsed since the date of her initial request. At no time did the applicant attempt to provide the Officer with reasons for the lengthy wait in providing the FBI clearance certificate, nor

did he provide her with any timeframe in which he anticipated receiving the documents. No communication was received by the Officer following the letter dated March 20, 2006.

[17] The refusal resulted from the applicant's failure to provide the Officer with the evidence and documents that were reasonably required. Reasonable timeframes must be respected in order to allow that applications be processed in an expeditious manner (*Ching-Chu*, above at paragraphs 22 and 23).

[18] Therefore, it is my opinion that the Officer's decision to refuse the application and refuse any further extension of time is free of any breach of procedural fairness or natural justice.

[19] The parties did not submit questions for certification and none arise.



**JUDGMENT**

**THIS COURT ORDERS** that the application for judicial review is dismissed. No question is certified.

“Michel Beaudry”

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Judge

**FEDERAL COURT**

**NAME OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** IMM-3320-07

**STYLE OF CAUSE:** MAZEN HAMZEH TANTASH  
and  
THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION

**PLACE OF HEARING:** Montreal, Quebec

**DATE OF HEARING:** April 30, 2008

**REASONS FOR JUDGMENT  
AND JUDGMENT:** Beaudry J.

**DATED:** May 2, 2008

**APPEARANCES:**

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