Date: 20080417

Docket: IMM-4013-07

Citation: 2008 FC 487

Ottawa, Ontario, April 17, 2008

PRESENT: The Honourable Mr. Justice O'Keefe

BETWEEN:

SI JI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

O'KEEFE J.

[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 the decision of an Immigration Officer (the officer) dated September 6, 2007, wherein the officer denied Si Ji's (the applicant) application for an extension of his study permit.

[2] The applicant requested that the decision be set aside and the matter returned to a different immigration officer for reconsideration.

Background

[3] Si Ji is a citizen of the People's Republic of China. He came to Canada on April 23, 2006 on a study permit. As expiration of the study permit approached, the applicant applied for an extension. On August 3, 2007, the applicant attended an interview with the officer. In a decision dated September 6, 2007, the officer rejected the applicant's application for an extension. This is the judicial review of the officer's decision.

Officer's Decision

[4] In her decision dated September 6, 2007, the officer was not satisfied that the applicant met all the requirements of IRPA or the *Immigration and Refugee Protection Regulations*, S.O.R./2002-227 (the Regulations). Specifically, the officer was not satisfied that the applicant would depart from Canada at the end of his authorized period of stay. Moreover, the officer had concerns regarding the authenticity of the official quiz from the applicant's college. In light of these concerns, the officer refused the applicant's request for an extension.

Issues

[5] The applicant submitted the following issues for consideration:

1. Did the officer err by committing a factual error or fail to consider the information submitted in finding that the applicant did not have authentic documents from Austin College?

2. Did the officer err by breaching the rules of procedural fairness in failing to inquire of Austin College whether the documents were authentic?

3. Did the officer properly consider whether the applicant was a genuine temporary resident?

4. Whether the officer was satisfied that the applicant would leave Canada by the end of the period authorized?

[6] I would rephrase the issues as follows:

1. What is the appropriate standard of review?

2. Did the officer make a reviewable error in finding that the documents from Austin College were not genuine?

3. Did the officer make a reviewable error in finding that the applicant would not leave Canada after his authorized period of stay?

Applicant's Submissions

[7] The applicant submitted that the question of authenticity of documents is a question of fact subject to a standard of reasonableness on review (*Zhang* v. *Canada (Minister of Citizenship and Immigration)*, 2006 FC 1381). It was submitted that the applicant correctly submitted two authentic letters from Austin College and that the officer's finding on authenticity was unreasonable.

[8] The applicant also submitted that the officer breached procedural fairness. It was submitted that as the officer was concerned by the fact that the letters were on different letterhead, she should have inquired with Austin College as to whether they used two different letterheads. The officer should have disclosed this concern during the interview and provided the applicant a fair opportunity to obtain proof from the college (*Muliadi* v. *Canada (Minister of Employment and Immigration)*, [1986] 2 F.C. 205 (F.C.A.)).

[9] It was also submitted that the officer failed to provide sufficient reasons in finding that the applicant would not leave at the end of his allowed stay. The applicant argued that there is nothing in the officer's notes that could lead to this conclusion. Sufficient reasons must be provided and they must be sufficiently clear for the applicant to understand why the application has failed (*Saha* v. *Canada (Minister of Citizenship and Immigration)*, 2003 FC 1325).

Respondent's Submissions

[10] The respondent noted that under subsection 181(2) of the Regulations, an extension is granted "if, following an examination, it is established that the foreign national continues to meet the requirements of section 179". Under section 179 of the Regulations, it must be established that the applicant will leave Canada at the end of the authorized stay. The respondent submitted that the officer was not satisfied of this and therefore the refusal of the application was reasonable.

[11] The respondent also submitted that the applicant admitted under questioning that the quiz provided from Austin College was not an authentic document. It was submitted that based on this information, the officer's finding on the authenticity of the documents was not a reviewable error. The officer was under no obligation to contact the college and make inquiries. The obligation to confront an applicant with adverse conclusions applies where the conclusions arise from material not known to the applicant whereas in this case the application provided the materials in question (*Toor* v. *Canada (Minister of Citizenship and Immigration)*, 2006 FC 573).

[12] With regards to the duty to provide reasons, the respondent submitted that in this type of application, the officer has very little discretion and as such, the duty to provide reasons is minimal. There was no obligation on the officer to provide further reasons then those provided (*daSilva* v. *Canada (Minister of Citizenship and Immigration)*, 2007 FC 1138).

Applicant's Reply

[13] In his reply, the applicant further elaborated on the unreasonableness of the officer's finding that the applicant would not leave Canada once his authorized period of stay had expired. The applicant submitted that there is no evidence on record to support this finding. In fact, when asked precisely whether or not he would leave Canada at the end of his authorized stay, the applicant responded yes and that he intended to get a new job for the 2008 Olympic Games in China.

Analysis and Decision

[14] **Issue 1**

What is the appropriate standard of review?

Very recently in *Dunsmuir* v. *New Brunswick*, 2008 SCC 9, the Supreme Court of Canada reviewed the standard of review analysis in Canada and eliminated the standard of reasonableness *simpliciter* and patent unreasonableness, opting for a standard of reasonableness. In doing so, the Supreme Court stated the following about the reformed standard of review analysis at paragraph 62 of its decision:

> [62] In summary, the process of judicial review involves two steps. First, courts ascertain whether the jurisprudence has already determined in a satisfactory manner the degree of deference to be accorded with regard to a particular category of question. Second, where the first inquiry proves unfruitful, courts must proceed to an analysis of the factors making it possible to identify the proper standard of review.

The issues raised by the applicant are challenges to the officer's findings of fact. Past jurisprudence indicates that these findings are reviewable on a standard of patent unreasonableness; however, in light of the Supreme Court's recent decision in *Dunsmuir* above, this standard deserves reconsideration.

[15] In determining the applicable standard of review, the Supreme Court at paragraphs 63 and 64 of *Dunsmuir* above, directed courts to replace the outdated pragmatic and functional approach with the following standard of review analysis:

> [63] The existing approach to determining the appropriate standard of review has commonly been referred to as "pragmatic and functional". That name is unimportant. Reviewing courts must not get fixated on the label at the expense of a proper understanding of what the inquiry actually entails. Because the phrase "pragmatic and functional approach" may have misguided courts in the past, we prefer to refer simply to the "standard of review analysis" in the future.
>
> [64] The analysis must be contextual. As mentioned above, it is dependent on the application of a number of relevant factors, including: (1) the presence or absence of a privative clause; (2) the purpose of the tribunal as determined by interpretation of enabling legislation; (3) the nature of the question at issue, and; (4) the expertise of the tribunal. In many cases, it will not be necessary to consider all of the factors, as some of them may be determinative in the application of the reasonableness standard in a specific case.

[16] In my opinion, the most relevant factors in the present case are the nature of the question and the expertise of the decision-maker. In the present case, the issues raised are questions of fact and as such, deference is owed. Moreover, the expertise of immigration officers includes making

factual findings in coming to their ultimate determination. In light of these considerations, I find that deference is owed to the officer and the appropriate standard is one of reasonableness.

[17] At paragraph 47 of *Dunsmuir* above, the Supreme Court defined reasonableness as:

> [47] Reasonableness is a deferential standard animated by the principle that underlies the development of the two previous standards of reasonableness: certain questions that come before administrative tribunals do not lend themselves to one specific, particular result. Instead, they may give rise to a number of possible, reasonable conclusions. Tribunals have a margin of appreciation within the range of acceptable and rational solutions. A court conducting a review for reasonableness inquires into the qualities that make a decision reasonable, referring both to the process of articulating the reasons and to outcomes. In judicial review, reasonableness is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process. But it is also concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law.

[18] **Issue 2**

Did the officer make a reviewable error in finding that the documents from Austin College were not genuine?

The evidence before the officer included two documents from Austin College with different letterhead. Moreover, the following exchange occurred during the applicant's interview:

> 65. You told me already that the teacher didn't mark the quizzes? Yes they didn't give me a real C they just said a C
>
> 66. How did you obtain your official transcript and official quiz? I ask my college
>
> 67. Who did you ask at the college? Jennifer
>
> 68. What is Jennifer? Counsellor

69. What is Jennifer's last name? Sorry I don't know

70. What did you ask Jennifer for? I said I wanted to renew my student permit I need some documents for me

71. Did you have to pay Jennifer any money? No

72. Why does your official transcript and official quiz look the same? Immigration asked me for a quiz paper. I didn't have a real mark now. So I Jennifer say I must do a student permit

73. So you got the quiz for immigration purpose only? Yes

74. This is not a genuine document? No its not, because next week we have real marks. The teacher said, I asked the teacher they gave me

75. Did the school give you the transcript and the quiz? Yes

76. Why is the transcript and quiz different paper? Because this paper the teacher give me I don't know why

[19] I have carefully reviewed the statements of the applicant to the officer and I am not satisfied that the officer's decision was reasonable with respect to the authenticity of the official quiz. The applicant was very candid about how he obtained the quiz with a "C" mark on it. He believed that the request for an official quiz required that the quiz have a mark on it. He explained how the school gave him an interim mark for immigration purposes. The explanation appears reasonable to me.

[20] I am of the view that the officer's decision with respect to the official quiz was unreasonable.

[21] **Issue 3**

Did the officer make a reviewable error in finding that the applicant would not leave Canada after his authorized period of stay?

Having carefully reviewed the certified tribunal record paying special attention to the officer's interview notes, I agree with the applicant that there is no evidence on the record in support of such a finding. In fact, the officer's interview notes provide the only evidence on whether or not the applicant would depart at the end of his authorized stay. The exchange was as follows:

> 95. What will you do if this application is refused? I fell sad I can't give my mom a present. My mom gave me a lot of money to go here to learn something I can't do that. I don't know how to fix my mom. Maybe I go back to China and get a job
>
> 96. Why should I issue you a study permit? I think I changed my new major I think it is good for me for finding a new job, it is good, 2008 Olympic games I think it is a good opportunity to get a new job
>
> 97. When will you finish school? September 2008
>
> 98. When will you return to China? If I finish the major I want to come back to China

[22] In my opinion, there is nothing in this exchange to suggest that the applicant would not leave at the end of his authorized stay. He clearly indicated that when he finished school he intended to take advantage of the 2008 Olympic Games in China to get a job in his field. I note that according to the officer's notes, the last question in the interview was whether everything the applicant said was truthful; the applicant responded 'yes'. In light of these findings, I believe that the officer's decision was unreasonable.

[23] The application for judicial review is therefore allowed and the matter is referred to a different officer for reconsideration.

[24] Neither party wished to submit a proposed serious question of general importance for my consideration for certification.

JUDGMENT

[25] **IT IS ORDERED that** the application for judicial review is allowed and the matter is referred to a different officer for reconsideration.

"John A. O'Keefe"
Judge

ANNEX

Relevant Statutory Provisions

The relevant statutory provisions are set out in this section.

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

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.
181.(1) A foreign national may apply for an extension of their authorization to remain in Canada as a temporary resident if	181.(1) L'étranger peut demander la prolongation de son autorisation de séjourner à titre de résident temporaire si, à la fois :
(a) the application is made by the end of the period authorized for their stay; and	a) il en fait la demande à l'intérieur de sa période de séjour autorisée;
(b) they have complied with all conditions imposed on their entry into Canada.	b) il s'est conformé aux conditions qui lui ont été imposées à son entrée au Canada.
(2) An officer shall extend the foreign national's authorization to remain in Canada as a	(2) L'agent prolonge l'autorisation de séjourner à titre de résident temporaire de l'étranger si, à

temporary resident if, following an examination, it is established that the foreign national continues to meet the requirements of section 179.

l’issue d’un contrôle, celui-ci satisfait toujours aux exigences prévues à l’article 179.

FEDERAL COURT

SOLICITORS OF RECORD

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