Federal Court Cour fédérale

Date: 20090722

Docket: IMM-4667-08

Citation: 2009 FC 743

Ottawa, Ontario, July 22, 2009

PRESENT: The Honourable Mr. Justice Russell

BETWEEN:

REYNUFO BAYLON

Applicant

and

THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application pursuant to s. 72 (1) of the *Immigration and Refugee Protection Act,* S.C. 2001, c. 27 (Act) for judicial review of a decision of an Officer of Citizenship and Immigration Canada stationed at Makati City, Philippines (Officer), dated August 11, 2008 (Decision), refusing the Applicant's application for a work permit.

BACKGROUND

[2] The Applicant is a 29-year-old male who is a citizen of the Philippines. He helps support his girlfriend, Ailleen Barretto, and his parents.

[3] The Applicant has been working as a cashier at Excesspoint Internet Café in the Philippines, since January 2007. He draws a salary of 8268.00 pesos per month, which is equivalent to $206.70 CDN.

[4] The Applicant desires to come to Canada because it would allow him to build a better financial future for himself and his family. The Applicant was offered employment with Grand Hale, a fish processing plant in Richmond, British Columbia as a fish processor where he would be responsible to cut, clean and pack fish and other sea food products. The Applicant would make $12 per hour CDN, which would be 75720 pesos more then he is currently making at his present job. The Applicant also received a positive Labour Market Opinion from Service Canada.

[5] The Applicant's grandfather, grandmother and aunt live near the fish plant in Vancouver, British Columbia. His aunt has offered to let him stay with them during his time working at the fish plant.

DECISION UNDER REVIEW

[6] The Officer held that the Applicant was required to establish that he met all of the requirements under Part 11 of the *Immigration and Refugee Protection Regulations,* SOR/2002-227 (Regulations): (1) that he would not contravene the conditions of admission; (2) that he does not

belong to a category of persons inadmissible to Canada under the Act; (3) that his intentions were *bona fide*; and (4) that he would leave Canada by the end of the period authorized for his stay.

[7] The Officer concluded that the Applicant had not satisfied him that he would leave Canada by the end of the period authorized for his stay because he "h[ad] not demonstrated ties that would satisfy [the Officer] of [the Applicant's] intention to return."

[8] The Officer indicated that the Applicant did not meet the requirements of the Act and the Regulations and his application was refused.

ISSUES

[9] The Applicant submits the following issue on this application:

1) Should the Officer's Decision be quashed and the matter referred back for a fresh decision by another Officer on the basis that it is unreasonable in law?

STATUTORY PROVISIONS

[10] The following provisions of the Act are applicable in this proceeding:

<u>20.</u> (1) Every foreign national, other than a foreign national referred to in section 19, who seeks to enter or remain in Canada must establish,	**<u>20.</u>** (1) L'étranger non visé à l'article 19 qui cherche à entrer au Canada ou à y séjourner est tenu de prouver :
…	…
(*b*) to become a temporary	*b*) pour devenir un résident

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.	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.

STANDARD OF REVIEW

[11] The Applicant submits that the standard of review of a decision of a visa officer is the standard applicable to the Immigration of Refugee Board which, in the Applicant's view, is correctness: *Dunsmuir v. New Brunswick*, 2008 SCC 9 (*Dunsmuir*) and *Pushpanathan v. Canada (Minister of Citizenship and Immigration)*, [1998] 1 SCR 982.

[12] The Respondent submits that the Officer's assessment of the application for a work permit involved an exercise of statutory discretion which should be given a high degree of deference. Therefore, the appropriate standard of review is reasonableness: *Dunsmuir.* The Respondent also submits that this Court defer to an officer's decision if his or her findings are justified, transparent and intelligible, and fall within the range of possible outcomes given the evidence as a whole. See: *Dunsmuir* and *Choi v. Canada (Minister of Citizenship and Immigration)* 2008 FC 577. The Respondent says that the standard of review is not correctness as the Applicant asserts.

[13] The standard of review for decisions of a visa officer has been reasonableness *simpliciter*: *Castro v. Canada (Minister of Citizenship and Immigration)* 2005 FC 659 at paragraph 6 and *Ram v. Canada (Minister of Citizenship and Immigration)*, [2003] F.C.J. No. 855. When a visa officer

refuses a work permit solely on statutory interpretation, the standard of review is correctness: *Singh v. Canada (Minister of Citizenship and Immigration)* 2006 FC 684 at paragraph 8 and *Hamid* v. *Canada (Minister of Citizenship and Immigration)* 2005 FC 1632 at paragraph 4.

[14] In *Dunsmuir*, the Supreme Court of Canada recognized that, although the reasonableness *simpliciter* and patent unreasonableness standards are theoretically different, "the analytical problems that arise in trying to apply the different standards undercut any conceptual usefulness created by the inherently greater flexibility of having multiple standards of review": *Dunsmuir* at paragraph 44. Consequently, the Supreme Court of Canada held that the two reasonableness standards should be collapsed into a single form of "reasonableness" review.

[15] The Supreme Court of Canada in *Dunsmuir* also held that the standard of review analysis need not be conducted in every instance. Instead, where the standard of review applicable to the particular question before the court is well-settled by past jurisprudence, the reviewing court may adopt that standard of review. Only where this search proves fruitless must the reviewing court undertake a consideration of the four factors comprising the standard of review analysis.

[16] Thus, in light of the Supreme Court of Canada's decision in *Dunsmuir* and the previous jurisprudence of this Court, I find the standard of review applicable to the stated issue to be reasonableness. When reviewing a decision on the standard of reasonableness, the analysis will be concerned with "the existence of justification, transparency and intelligibility within the decision-making process [and also with] whether the decision falls within a range of possible, acceptable

outcomes which are defensible in respect of the facts and law": *Dunsmuir* at paragraph 47. Put another way, the Court should only intervene if the Decision was unreasonable in the sense that it falls outside the "range of possible, acceptable outcomes which are defensible in respect of the facts and law."

[17] In the course of his argument the Applicant also raises procedural fairness issues for which the standard of review is correctness: see *Suresh v. Canada (Minister of Citizenship and Immigration)* 2002 SCC 1.

ARGUMENTS

The Applicant

[18] The Applicant submits that the Officer's Decision be quashed and the matter referred back for a fresh decision by another officer on the basis that it is unreasonable in law. The Applicant states that he meets the requirements of section 20 of the Act and that the Officer's Decision was patently unreasonable since relevant evidence was ignored and unwarranted assumptions drawn.

[19] The Applicant submits that the Officer made assumptions that he was not economically established and would not return to the Philippines on the expiry of his work permit. The Applicant says that this is "without foundation, irrational and untenable because his fiancée lives in the Philippines, and all his siblings reside in the Philippines."

[20] As well, the Applicant says that the Officer ignored the relevant facts in front of him, including the following:

1) The Applicant has an active working history and he has an offer to resume his employment upon his return from Canada;
2) The Applicant has a fiancée living in the Philippines; they have been seeing each other for three years;
3) The Applicant will inherit property in the Philippines;
4) The Applicant's customs and traditions are consistent with him returning to his homeland upon expiration of the work permit; and
5) The Applicant deposed in his affidavit that he is aware that this employment contract is not extendable.

[21] The Applicant points out that, even in applying the most stringent standard of review, the Officer erred if he relied on a single fact to outweigh all the other relevant facts provided by the Applicant. See: *Guo v. Canada (Minister of Citizenship and Immigration)* 2001 FCT 1353; *Yuan v. Canada (Minister of Citizenship and Immigration)* 2001 FCT 1356 and *Malhi v. Canada (Minister of Citizenship and Immigration)* 2005 FC 1120.

[22] The Applicant further submits that the Officer's purported personal experiences or knowledge cannot be the primary basis of his decision. The decision must be based primarily on the merits of the case. See: *Wang v. Canada (Minister of Citizenship and Immigration)* 2003 FCT 365.

[23] The Applicant points out that he was required to go through a medical examination by the Canadian Embassy in the Philippines. He was not given an opportunity to respond to any of the concerns the Officer may have had. The Officer made unsupportable assumptions when refusing the work permit application. The Applicant must be given an opportunity to provide an explanation for perceived or apparent deficiencies and respond to an Officer's concerns. See: *Vandi v. Canada (Minister of Citizenship and Immigration)* 2002 FCT 515 and *Chow v. Canada (Minister of Citizenship and Immigration)* 2001 FCT 996.

The Respondent

[24] The Respondent submits that the Officer considered all of the evidence. The Officer's CAIPS notes indicate that the Applicant:

1) Has a two-year offer of employment in Canada;
2) Is an unmarried male with no dependants;
3) Has an aunt and grandparents in Canada;
4) Was employed as a salesman;
5) Has no present work indicated.

[25] The Respondent submits that the Officer reasonably considered the Applicant's specific circumstances.

[26] The Respondent reminds the Court that the onus was on the Applicant to satisfy the Officer that he would depart Canada at the end of the period authorized for any temporary work in Canada and that the Officer was entitled to examine the totality of circumstances relating to the Applicant's case. The Applicant's financial and other ties to the Philippines, age, family circumstances, and employment were all relevant factors for the Officer to consider. When an applicant has an incentive to remain in Canada, this is part of the "broader picture" that an officer ought to consider in assessing whether he or she will leave at the end of the period authorized for any temporary stay. The weight to be assigned to each factor is a matter for an officer's discretion and is not a basis for judicial review. See: *Wang v. Canada (Minister of Citizenship and Immigration)* 2006 FC 1298 at paragraphs 9-10; *Nguyen v. Canada (Minister of Citizenship and Immigration)* 2005 FC 1087; *Skoruk v. Canada (Minister of Citizenship and Immigration)* 2001 FCT 1220 and *Ayatollahi v. Canada (Minister of Citizenship and Immigration)* 2003 FCT 248 at paragraph 23.

[27] In relation to the Applicant's argument that he should have been granted an interview, the Respondent submits that the duty of fairness prescribes minimum standards of procedural decency and that the content of the duty varies according to context. Several factors tend to reduce the content of the duty of fairness owed to visa applicants, some of which are considered in *Chiau v. Canada (Minister of Citizenship and Immigration)*, [2001] 2 F.C. 297 (F.C.A.) at paragraphs 35-36. The factors tending to limit the content of the duty in the case at bar include: the absence of a legal right to a visa; the imposition on the applicant of the burden of establishing eligibility for a visa; and the less serious impact on the individual which the refusal of a visa typically has. See also: *Baker v.*

Canada (Minister of Citizenship and Immigration), [1999] 2 S.C.R. 817 at paragraphs 21-28 and *Ha v. Canada (Minister of Citizenship and Immigration)* 2004 FCA 49 at paragraph 37.

[28] The Respondent says that, when dealing with the duty of fairness for visa applications, the Court must guard against imposing a level of procedural formality that, given the volume of applications officers are required to process, would unduly encumber efficient administration. The public interest in containing administrative costs and in not hindering expeditious decision-making must be weighted against the benefits of participation in the process by the person directly affected. See: *Khan v. Canada (Minister of Citizenship and Immigration)*, [2002] 2 F.C. 413 (F.C.A.) and *Fargoodarzi v. Canada (Minister of Citizenship and Immigration)* 2008 FC 90.

[29] The Respondent concludes that the Applicant's application should be dismissed.

ANALYSIS

[30] The assessment of an application for a work permit involves an exercise of statutory discretion and attracts a high degree of deference from the Court. Apart from the procedural fairness issues raised, the applicable standard of review in this case is reasonableness. See *Dunsmuir* and *Choi*.

[31] The Applicant complains that the Officer's assessment was unreasonable because the Officer ignored evidence and drew unwarranted inferences. However, there is no evidence before

me to support such a conclusion. The Decision makes it clear that the Applicant's full submissions were considered and the deciding factor was that the Applicant had failed to satisfy the Officer that he would leave Canada by the end of the authorized period.

[32] The CAIPS notes reveal that the Officer noted the Applicant was unmarried, had no dependents and had an aunt and grandparents in Canada. Also, the Applicant indicated that he had been employed as a salesman from January 2007 to December 2007, but he did not indicate any present work.

[33] It is, of course, always possible to disagree with a decision and take issue with it. But I cannot say in this instance that the Officer ignored relevant evidence or drew unreasonable inferences from the evidence before him. The weight to be assigned to the various factors is a matter for the Officer's discretion. See *Wang* at paragraphs 9-10. The Decision falls within the range of possible acceptable outcomes which are defensible in respect of the facts and law.

[34] The Applicant also claims that he was not given an interview or an opportunity to respond to the Officer's concerns and that this raises a procedural fairness issue.

[35] I have reviewed this issue under a standard of correctness. The Applicant says that he should have been given an opportunity to provide an explanation for perceived or apparent deficiencies and respond to the Officer's concerns. In the present case, however, the Officer was not concerned with deficiencies. He assessed the application materials and exercised his discretion as he is required to

do by statute. If an officer is not convinced that an applicant will leave Canada at the end of the authorized stay, there is no obligation to interview the applicant and to provide an opportunity for the applicant to try and dissuade the officer from that conclusion. The onus was upon the Applicant to provide all of the information necessary for the decision and to convince the Office that he was a visitor and not an immigrant. See *Skoruk* at paragraphs 6-13.

[36] Justice Zinn recently conducted a review of the jurisprudence dealing with whether a visa officer is under an obligation to allow an applicant an interview or an opportunity to address concerns. See *Singh v. Canada (Minister of Citizenship and Immigration)*, 2009 FC 620 at paragraph 7. In the present situation, there was no obligation on the Officer to hold an interview with the Applicant or to conduct some kind of dialogue with the Applicant.

[37] It is also worth pointing out that the Officer makes it clear in his Decision that "If there is any significant new information that you would like to be considered, you are welcome to re-apply. Where possible, a different officer will be assessing the application."

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that

1. This application is dismissed.
2. There is no question for certification.

"James Russell"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-4667-08
STYLE OF CAUSE:	**REYNUFO BAYLON** **Applicant** **and** **THE MINISTER OF CITIZENSHIP AND IMMIGRATION** **Respondent**
PLACE OF HEARING:	Vancouver, British Columbia
DATE OF HEARING:	June 16, 2009
REASONS FOR JUDGMENT AND JUDGMENT:	JUSTICE RUSSELL
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APPEARANCES:

Mr. Lee Cowley Sumandeep Singh	FOR THE APPLICANT
Mr. Edward Burnet	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Cowley & Company Barristers and Solicitors Surrey, BC	FOR THE APPLICANT
JOHN H.SIMS, Q.C. DEPUTY ATTORNEY GENERAL OF CANADA	FOR THE RESPONDENT