

Federal Court



Cour fédérale

Date: 20101117

Docket: IMM-611-10

Citation: 2010 FC 1112

Ottawa, Ontario, this 17th day of November 2010

Before: The Honourable Mr. Justice Pinard

BETWEEN:

PARAMESWARY SIVAYOGARAJA

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review of the decision of a Visa Officer of the Immigration Section of the Canadian High Commission in Colombo, Sri Lanka, pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27, (the “Act”) by Parameswary Sivayogaraja and her son Mohanathas Sivayogaraja (the “applicants”). The Visa Officer determined that there were reasonable grounds to believe that the applicants were members of the inadmissible

class of persons based on alleged misrepresentation as described in paragraph 40(1)(a) of the Act, and therefore that they do not meet the requirements for permanent residence.

[2] The applicants are Sri Lankan citizens, living in the Jaffna region in northern Sri Lanka. The principal applicant's husband left the family in 1989. The applicant has two other grown children in Jaffna, a son in the United Kingdom, and a daughter, Mathivathani Vairavanathan, who is a Canadian citizen, and who is acting as sponsor for the applicants.

[3] The principal applicant is a housewife in Jaffna. Her son attended secondary school, and has obtained certificates at various Sri Lankan technical colleges.

[4] The applicants were both interviewed by Visa Officers of the Immigration Section of the Canadian High Commission in Colombo, on July 14, 2008, and again on November 5, 2009. On December 19, 2009, the applicants received the decision letter rejecting their application for permanent residence.

* * * * *

[5] The Visa Officer found that he was unable to determine the living history of the applicants due to the inconsistency of the information provided at the interview on November 5, 2009. He found that he did not have a complete picture of the background of the applicant and her son, and was not satisfied that they were not inadmissible to Canada, as the information presented lacked credibility due to internal discrepancies in the testimonies.

[6] The misrepresentations found by the Visa Officer relate to the details of the places in which the applicants had resided, and the details of where the son had been schooled, and on which dates. The Visa Officer found that the misrepresentation or withholding of these facts could have induced incorrect decisions on the admissibility of the applicants.

* * * * *

[7] There appear to be two issues in this application:

- a. Was the Visa Officer's finding that the applicants misrepresented or withheld information unreasonable with regard to the evidence presented?
- b. Did the Visa Officer breach procedural fairness by failing to provide the applicants with an opportunity to address the credibility concerns?

[8] Both parties agree that the standard of review with respect to a Visa Officer's assessment of an application for permanent residence is reasonableness, as per Justice Michel Beaudry in *Wang et al. v. Minister of Citizenship and Immigration*, 2008 FC 798, at paragraph 11.

[9] The parties did not address the standard of review with regard to procedural fairness. *Wang*, above, states that it is trite law that the applicable standard of review is correctness (paragraph 13).

* * * * *

A. *Was the finding of misrepresentation reasonable?*

[10] The applicant acknowledges that her son struggled in the interviews with the Visa Officer, and that both applicants had areas of inconsistency in their testimonies. The Computer Assisted

Immigration Processing System (“CAIPS”) notes show that the son was inconsistent or failed to answer questions about: the length of time he spent in secondary school; when he left secondary school; the length of time he studied at ComTec; the length of time he studied at Athetheran Technical Centre of Electricity; and, the number of primary and secondary schools he attended. The principal applicant’s testimony as to the amount of time for which the family was displaced to Meesalai did not match the documentary evidence.

[11] The applicant argues that conflicting information does not automatically constitute misrepresentation, and that the Officer should have taken into account cultural differences, sophistication, education, intelligence and translation when considering the inconsistencies. The applicant argues, without being specific, that the Officer’s finding that it was implausible that the applicants could not provide the relevant information ignored the cultural background of the applicants’ situation. The applicant notes that the Officer was told that her son was forgetful and too scared to answer the questions truthfully. The applicant relies on the case of *Divsalar v. Minister of Citizenship and Immigration*, 2002 FCT 653, where Justice Edmond Blanchard stated at paragraph 24 that “it is accepted that a tribunal rendering a decision based on a lack of plausibility must proceed with caution”. In context, this statement referred to an Officer’s determination that certain events in the applicant’s narrative were implausible, rather than to the implausibility of an applicant’s failure to remember certain information.

[12] The CAIPS notes show that the Colombo Visa Officers confirmed the applicant son’s birth certificate as well as several school certificates, but were unable to locate others. The applicants allege that such extrinsic evidence should have been put to the applicants, as it formed part of the

decision-maker's decision. In my view, the Officer in this case was merely attempting to confirm the applicants' story, and was not researching truly extrinsic considerations. I agree with the respondent's contention that the only evidence on which the Officer based his decision was the applicants' own contradictory testimony.

[13] The applicants argue that the Officer failed to demonstrate how and why concerns regarding residence and schooling were relevant to potential issues of security and overall admissibility. While it is true that the Visa Officer is not very specific as to what facts he believes the applicants may be withholding, in my opinion his conclusion that he did not obtain a complete picture of the applicants' background due to the continued inconsistencies in their testimony is a reasonable one. The information that the Visa Officer states that he was trying to obtain was a complete picture of the applicants' living history and their activities, and it was on both of these points that the applicants failed to provide consistent, reliable information.

B. Did the Officer fail to provide an opportunity for the applicants to address the inconsistencies?

[14] The applicants assert that the Visa Officer breached procedural fairness by not advising them of his concerns or providing them with the opportunity to disabuse him of these concerns, and they cite in support of this argument *Rukmangathan v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 284, at paragraphs 22 and 23, per Justice Richard Mosley. However, I think that the *Rukmangathan* case is distinguishable, as it was in the context of extrinsic evidence being relied upon by a Visa Officer without allowing the applicants to comment upon it. Furthermore, as the respondent notes, the Court explicitly stated in *Rukmangathan* that the Visa Officer is not

required to “provide an applicant with a ‘running score’ of the weaknesses in their application” (paragraph 23).

[15] In *Liao v. Canada (Minister of Citizenship and Immigration)*, [2000] F.C.J. No. 1926, at paragraph 17, Justice Pierre Blais held that an Officer’s duty to inform an applicant of his or her concerns will be fulfilled if the Visa Officer adopts an appropriate line of questioning or makes reasonable inquiries that give the applicant the opportunity to respond to the Visa Officer’s concerns.

[16] I agree with the respondent that the Officer’s line of questioning in this case clearly showed his concerns with the inconsistencies in the applicants’ testimony. Each time the applicants gave inconsistent information the Officer voiced his concerns over credibility and misrepresentation, and provided a chance for the applicants to explain their testimony. In my opinion the applicants had numerous opportunities to respond to these concerns, and there was therefore no breach of procedural fairness.

C. Other considerations

[17] It should be noted that the applicants raise the argument that their sponsor should have been offered the opportunity to provide an explanation for the applicants’ contradictory testimony. I agree with the respondent that no right belonging to the sponsor was at issue in this case, and that there was no requirement that she be offered an opportunity to testify.

[18] It should also be noted that the applicants raise a concern that the CAIPS notes were not entered contemporaneously during the July 14, 2008 interview, as the notes resume after a break, under the date heading “16-OCT-2009”. However, the affidavit of Brian Hudson, the Visa Officer, explains that the date stamp on CAIPS notes is found at the bottom of the entry (in this case, “14-JUL-2008”), and that a glitch in the labeling process resulted in the break in the notes. This appears to me to be an adequate explanation for the appearance of the notes.

* * * * *

[19] For the above-mentioned reasons, the application for judicial review is dismissed.

[20] No question is certified.

JUDGMENT

The application for judicial review of the November 26, 2009 decision of Brian Hudson, a Visa Officer of the Immigration Section of the Canadian High Commission in Colombo, Sri Lanka, is dismissed.

“Yvon Pinard”

Judge

FEDERAL COURT

NAME OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: IMM-611-10

STYLE OF CAUSE: PARAMESWARAY SIVAYOGARAJA v. THE MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: October 12, 2010

REASONS FOR JUDGMENT AND JUDGMENT: Pinard J.

DATED: November 17, 2010

APPEARANCES:

Mr. Robert Blanshay FOR THE APPLICANT

Ms. Leila Jawando FOR THE RESPONDENT

SOLICITORS OF RECORD:

Robert I. Blanshay FOR THE APPLICANT
Toronto, Ontario

Myles J. Kirvan FOR THE RESPONDENT
Deputy Attorney General of Canada