Federal Court Cour fédérale

Date: 20110708

Docket: IMM-6137-10

Citation: 2011 FC 850

Ottawa, Ontario, July 8, 2011

PRESENT: The Honourable Mr. Justice Rennie

BETWEEN:

TIRU ANIMUT KINDIE

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The applicant seeks to set aside a decision dated August 24, 2010 of a Visa Officer at the Canadian Embassy in Nairobi, Kenya, denying the applicant's application for a work permit. The visa request was denied on the basis that the Visa Officer was not satisfied that the applicant would leave Canada by the end of the period authorized due to her social and economic situation in her country of residence.

[2] The principles governing judicial review of decisions of visa officers with respect to work permits are well established. First, the officer's discretion is framed by subsection 11(1) of the *Immigration and Refugee Protection Act*, 2001, c. 27 (*IRPA*) and section 179 of the *Immigration and Refugee Protection Regulations* (SOR/2002-227) (the Regulations), which together provide that the officer shall issue a visa if it is established that the foreign national will leave Canada at the end of the period authorized by the visa.

[3] Second, the decisions are highly discretionary and the findings of fact are entitled to deference; see *Boughus v Canada (Citizenship and Immigration)*, 2010 FC 210.

[4] Third, there is an onus on a foreign national seeking to enter Canada to rebut the presumption that they are entering as an immigrant; *Danioko v Canada (Minister of Citizenship and Immigration)*, 2006 FC 479.

[5] Fourth, the degree of procedural fairness that is required in the context of a work permit application from abroad falls at the low end of the spectrum; *Arias Bravo v Canada (Citizenship and Immigration)*, 2010 FC 411.

[6] Fifth, consistent with the minimal duty of fairness, there is no obligation to provide lengthy reasons, but that the officers notes do form part of the reasons for decision; *Bravo*, above.

[7] Sixth, simply because an officer's reasons indicate factors which the officer considers determinative does not mean that the other evidence was ignored; *Boughus*, para 56. The weight to be assigned to each factor is a matter for the officer's discretion; *Baylon v Canada (Citizenship and Immigration)*, 2009 FC 743.

[8] Finally, the respondent cannot, through a supplementary affidavit, fill in the gaps in the record or the reasoning by identifying further factors or considerations. Affidavits may be required where there are allegations of unfairness but as a general rule the respondent cannot buttress the record with after the fact analysis.

[9] On August 24, 2010, the Canadian High Commission in Nairobi, Kenya issued a decision denying the applicant a work permit. She had a job offer for an eight-month period for a position as a cook at her half-brother's restaurant in Hamilton and her application was supported by a Labour Market Opinion from Service Canada.

[10] The Visa Officer refused the application without an interview on the basis that the officer was not satisfied that the applicant would leave Canada by the end of the period authorized for her stay because of the social and economic situation in her country of residence. The Computer Assisted Immigration Processing System (CAIPS) notes elaborate on the officer's reasons:

> As for PA - personal economic situation appears weak. Duration of employment is for 8 months. Given family history to Cda, have concerns for BFs. (MTR made RR claim recently). Not satisfied that PA has strong economic ties to ensure return and wld depart Cda following admission. Refused.

[11] The family history to which the Visa Officer referred was the arrival of the applicant's mother "(MTR)" to Canada on a visitor's visa to visit the applicant's half-brother. Upon arrival, the applicant's mother made a claim for refugee status.

[12] While I agree with Mr. VanderVennen that the analysis of the applicant's economic and social ties to Ethiopia is weak, there is some support for the concern given the finding that the applicant had only four years work experience and a high school education. The Visa Officer emphasized the salary differential between the applicant's position in Ethiopia and her prospective salary in Canada. This was, in and of itself, insufficient basis upon which the visa could be rejected.

[13] There must be an objective reason to question the motivation of the applicant. It is inconsistent with the purpose and object of the statutory and regulatory scheme authorizing temporary work visas to rely on the very factor that would induce someone to come to Canada in the first place as the basis for keeping them out. The scheme itself is predicated on the assumption that people will come to Canada to seek work in order to better their economic situation. It is for this reason that decisions of this Court have consistently held that economic reasons to overstay will not, in and of themselves, support a refusal; *Cao v Canada (Citizenship and Immigration)*, 2010 FC 941, per Justice Martineau J; *Khatoon v Canada (Citizenship and Immigration)*, 2008 FC 276, per Justice Temblay-Lamer; *Dhanoa v Canada (Citizenship and Immigration)*, 2009 FC 729, per Justice Harrington; and *Rengasamy v Canada (Citizenship and Immigration)*, 2009 FC 1229, per Justice O'Reilly.

[14] The Visa Officer had however, objective evidence that constituted a sufficient basis for concern about the *bona fides* of the application and the applicant's commitment to return to Ethiopia at the end of the visa. The applicant's mother had been issued a visitor's visa by the same High Commission in Nairobi and claimed refugee status on arrival. She is now residing in Hamilton, Ontario where the applicant proposes to work. This second consideration, in and of itself, supports the reasonableness of the Officer's conclusion that it had not been established that the applicant would return to her country of origin. Officers are required to situate applications in their broader context and it would be unreasonable to require the Visa Officer to turn a blind eye to the surrounding circumstances, including the recent conduct of family members.

[15] The application for judicial review is dismissed.

[16] No question for certification.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review be and is hereby dismissed. No question for certification has been proposed and none arises.

"Donald J. Rennie"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-6137-10
STYLE OF CAUSE:	TIRU ANIMUT KINDIE v. THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	Toronto
DATE OF HEARING:	June 23, 2011
REASONS FOR JUDGMENT AND JUDGMENT:	RENNIE J.
DATED:	July 8, 2011

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