Federal Court  Cour fédérale

Date: 2011 0621

Docket: IMM-5408-10

Citation: 2011 FC 730

Ottawa, Ontario, June 21, 2011

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

MARIA ELENA PARRA ANDUJO

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Introduction

[1] This is a case involving two separate applications for judicial review pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (*IRPA*). The first decision, dated July 27, 2010, was released by the Counsellor and Operation Manager of the Immigration Section of the Embassy of Canada in Mexico, who found the Applicant inadmissible for an Authorization to Return to Canada (ARC). The second decision, also dated July 27, 2010, is by a Visa Officer of the Embassy of Canada in Mexico, denying the Applicant's application for a

Permanent Resident Visa. The second decision is contingent entirely upon the first, which is the reason why both decisions from the Federal Court are related. (Reference is therefore made to the decision in IMM-5409-10 with which this decision should be read.)

II. Judicial Procedure

[2] This is an application for judicial review of a decision, dated July 27, 2010, by a Visa Officer of the Embassy of Canada in Mexico, denying the Applicant's application for a Permanent Resident Visa, pursuant to section 11 of the *IRPA*.

III. Background

[3] The Applicant, Ms. Maria Elena Parra Andujo, was born on July 21, 1978 and is a citizen of Mexico. She lived in Canada from June 11, 2002 to April 17, 2007.

[4] On May 23, 2003, the Applicant claimed refugee protection. A departure order was issued pursuant to paragraph 20(1)(*a*) of the *IRPA* and section 6 of the *Immigration and Refugee Protection Regulations*, SORS/2002-227 (*IRPR*). Under subsection 49(2) of the *IRPA*, the departure order was conditional and could not become effective until one of the conditions provided in the subsection had occurred.

[5] Ms. Andujo's refugee claim was denied on November 27, 2003 by the Refugee Protection Division of the Immigration and Refugee Board, (Board), finding her not credible. On March 31, 2004, the Federal Court dismissed the application for leave and for judicial review of this decision.

[6] The refusal of the application for leave ended the stay of execution of the departure order (para 231(1)(*a*) of the *IRPR*); thus, the departure order became enforceable on March 31, 2004 (subsection 48(1) of the *IRPA*). The Applicant was given 30 days to leave Canada following the lifting of the stay. On April 30, 2004, the departure order became a deportation order pursuant to subsection 224(2) of the *IRPR*.

[7] The Applicant did not leave Canada and alleges that she had remained in Canada in order to benefit from a Pre-Removal Risk Assessment (PRRA). On January 2, 2007, the Canada Border Services Agency (CBSA) sent the Applicant a notice for her to meet with an Enforcement Officer in order to update her file. On January 13, 2007, the Applicant met an Enforcement Officer, who notified her of her right to file a PRRA application which resulted in a stay of execution of the deportation order pending the PRRA decision (section 232 of the *IRPR*).

[8] On January 26, 2007, the Applicant submitted a PRRA application which was denied on February 13, 2007. As provided in paragraph 232(*c*) of the *IRPR*, the stay under section 232 of the *IRPR* ended with the rejection of the PRRA application. The Applicant did not apply for leave and for judicial review against that decision and, on April 17, 2007, the Applicant was deported from Canada.

[9] On December 29, 2008, the Applicant filed an application for permanent residence in Canada in the skilled worker category. She had successfully applied for Quebec residence and

obtained a Quebec Selection Certificate (Certificate). Having obtained the Certificate, the Applicant was able to apply for a Permanent Resident Visa on the basis of Quebec provincial selection.

[10] On March 25, 2009, two letters were sent to the Applicant by the Immigration Section of the Embassy of Canada in Mexico. The first letter requested that the Applicant provide, within 60 days, the Reasons for Decision rendered by the Board in her claim for refugee protection (Respondent's Memorandum of Argument and Affidavit at p 9 – right corner). The second letter informed the Applicant that she had to apply for an ARC, with information in support of the issuance of an ARC (Applicant's Record (AR) at p 15). When asked to explain the circumstances necessitating the issuance of a removal order, the Applicant, on May 17, 2009, sent a letter referring to her application for a Permanent Resident Visa. In that letter, the Applicant explained the reasons why a written authorization from a Canadian Immigration Officer was required in order for her to return to Canada (AR at pp 29-30).

[11] On March 24, 2010, a letter was sent by email to the Applicant requesting, for the second time, that she provide the Reasons for Decision rendered by the Board in regard to her claim for refugee protection (Respondent's Memorandum of Argument and Affidavit at p 11).

[12] On July 27, 2010, the Counsellor denied the request for the issuance of an ARC. On the same day, the Visa Officer denied the Applicant's application for permanent residence as she was inadmissible due to the negative ARC decision (Decisions, dated July, 27, 2010, and CAIPS notes, AR at pp 8-9 and 11-13).

IV. Decision under Review

[13] The Visa Officer denied the Applicant's Permanent Resident Visa application on July 27, 2010:

> Votre demande pour obtenir l'autorisation pour votre retour ou entrée au Canada après la mesure d'expulsion rendue contre vous Maria Elena Parra Andujo le 23 mai 2003 relativement à une infraction aux termes de l'article 36 et l'article 49 de la même Loi, a été refusée le 23 juillet 2010. Ci-jointe, vous en trouverez l[a] copie.
>
> Le paragraphe 11(1) de la Loi stipule que : « l'étranger doit, préalablement à son entrée au Canada, demander à l'agent les visas 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. Le paragraphe 2(2) stipule que, sauf disposition contraire de la présente loi, toute mention de celle-ci vaut également mention des règlements pris sous son régime. »
>
> Après avoir étudié votre demande, je conclus que celle-ci ne répond pas aux exigences de la Loi et de son règlement d'application pour les raisons susmentionnées. Votre demande est donc rejetée.

[14] As the decision relies on a negative ARC decision, the CAIPS notes state:

> ARC IS DENIED. THEREFORE, I AM NOT SATISFIED THAT PA IS NOT INADMISSIBLE AND THAT SHE MEETS THE REQUIREMENTS OF THE ACT AS PER SUBSECTION 11(1).

V. Position of the Parties

[15] The Applicant submits that the decision reveals the following errors in the decision, which are sufficient to have the decision reconsidered:

A) The Officer failed to consider the low-level nature of the gravity concerning the *IRPA* violation and that the legislative scheme itself allows for a conditional departure order to become a deportation order but it does not necessarily have to be such;.

B) The Officer further failed to consider several other factors specifically required under the Minister's guidelines, namely:

a. that the Applicant's only violation was to remain in Canada, after the negative decision by the Board, to benefit from a PRRA;
b. that the Applicant promptly left Canada after having received a negative PRRA;
c. that the Applicant paid for her plane ticket to return to Mexico;
d. that the Applicant has no other violations with immigration authorities;
e. that the Applicant had a job offer;
f. that the Applicant is a Quebec selected immigrant;
g. that the Applicant studied while in Canada, learned both languages and was employed;
h. that the Applicant volunteered while in Canada.

C) The Officer's decision contains glaring factual errors, namely:

a. that the Counsellor refers to section 36 of the *IRPA* in his decision;
b. that the form authorizing the Canadian Embassy to send her the Right of Permanent Resident Fees has been sent to the Applicant to an erroneous addressee: "Leonardo Pantoja Munoz" (AR at p 16);
c. that the Applicant never received the alleged email of March 24, 2010.

[16] The Respondent submits that the Counsellor's decision was reasonable according to the legislative context and case law.

VI. Issue

[17] Was the Visa Officer's decision denying the Applicant's application for a Permanent Resident Visa reasonable?

VII. Relevant Legislative Provisions

[18] Section 11 of the *IRPA* is applicable in these proceedings:

Application before entering Canada	**Visa et documents**
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 may be issued if, following an examination, the officer is satisfied that the foreign national is not inadmissible and meets the requirements of this Act.	**11.** (1) L'étranger doit, préalablement à son entrée au Canada, demander à l'agent les visa et autres documents requis par règlement. L'agent peut les délivrer sur preuve, à la suite d'un contrôle, que l'étranger n'est pas interdit de territoire et se conforme à la présente loi.
If sponsor does not meet requirements	**Cas de la demande parrainée**
(2) The officer may not issue a visa or other document to a foreign national whose sponsor does not meet the sponsorship requirements of this Act.	(2) Ils ne peuvent être délivrés à l'étranger dont le répondant ne se conforme pas aux exigences applicables au parrainage

VIII. Standard of Review

[19] This Court recently held that the standard of review in the context of a Visa Officer's decision is one of reasonableness (*Pacheco v Canada (Minister of Citizenship and Immigration)*, 2010 FC 347 at paras 27-28); therefore, the Visa Officer's decision must be considered with deference (*Dunsmuir v New-Brunswick*, 2008 SCC 9, [2008] 1 SCR 190).

IX. Analysis

[20] Subsection 52(1) of the *IRPA* states that "if a removal order has been enforced, the foreign national shall not return to Canada, unless authorized by an officer or in other prescribed circumstances." By requiring an ARC, section 52 of the *IRPA* sends "a strong message to individuals to comply with enforceable departure orders":

> A permanent bar on returning to Canada is a serious consequence of non-compliance. Consequently, an Authorization to Return to Canada (ARC) should not be used as a routine way to overcome this bar, but rather in cases where an officer considers the issuance to be justifiable based on the facts of the case.
>
> Individuals applying for an ARC must demonstrate that there are compelling reasons to consider an Authorization to Return to Canada when weighed against the circumstances that necessitated the issuance of a removal order. Applicants must also demonstrate that they pose a minimal risk to Canadians and to Canadian society. Merely meeting eligibility requirements for the issuance of a visa is not sufficient to grant an ARC.

(Citizenship and Immigration Canada, Operation Manual, OP 1 Procedures, 28 August 2009 at para 6.1, AR at p 22).

[21] The decision rendered by the Visa Officer denied the Applicant's application for a Permanent Resident Visa; subsection 11(1) of the *IRPA* states that a foreign national must, before entering Canada, apply for any document which may be required by the *IRPR*. It adds that a visa may be issued only if an applicant is not inadmissible and meets the requirements of the *IRPA*. A person, who required an ARC, does not meet the requirements of the *IRPA*, unless this person obtains such an authorization.

[22] Since the Applicant did not leave Canada before a deportation order was issued, she may not return to Canada without an ARC (subsection 52(1) of the *IRPA*). As her ARC application was denied (IMM-5409-10), she remains inadmissible to Canada. The Visa Officer had no discretion to

entertain the Applicant's permanent residence application: the deportation order affecting the Applicant had been enforced and she was unsuccessful in obtaining an ARC pursuant to section 52 of the *IRPA* (*Pacheco*, above, at para 55).

[23] For all the above reasons, the Court will not intervene in respect of the Visa Officer's decision.

X. Conclusion

[24] The decision denying the Applicant's application for a Permanent Resident Visa is reasonable.

[25] The Applicant's application for judicial review is therefore dismissed.

JUDGMENT

THIS COURT'S JUDGMENT is that the Applicant's application for judicial review be dismissed with no question for certification.

"Michel M.J. Shore"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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