Federal Court  Cour fédérale

Date: 20120227

Docket: IMM-4224-11

Citation: 2012 FC 265

Ottawa, Ontario, February 27, 2012

PRESENT: The Honourable Mr. Justice Russell

BETWEEN:

VANESSA ARANGO ROMERO

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

INTRODUCTION

[1] This is an application under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c. 27 (Act) for judicial review of the decision of a visa officer (Officer) at the Canadian Embassy in Bogota, Colombia, dated 25 May 2011 (Decision) in which the Officer refused the Applicant's application for a work permit.

BACKGROUND

[2] The Applicant is a 23-year-old citizen of Colombia.

[3] In 2001, the Applicant left Colombia for the United States of America (USA), where she lived until April 2009. While she was in the USA, she requested asylum against Colombia, but her request was denied. She came to Canada on 9 April 2009 and claimed refugee status. The Applicant also applied for permanent residence on Humanitarian and Compassionate grounds in May 2009; the ultimate disposition of that application is unclear on the record. The Applicant's claim for protection was denied in October 2009 and her Pre-Removal Risk Assessment (PRRA) was later refused. On 14 April 2010 the Applicant voluntarily executed a removal order which was in place against her and returned to Colombia.

[4] On 5 May 2011, the Applicant applied for a work permit under the Live-in Caregiver Program (LCP), which would allow her to work with l'Arche London, an ecumenical, religious care home (Work Permit Application). Although a Labour Market Opinion (LMO) is required for applications under the LCP, the Applicant did not submit one with her Work Permit Application.

[5] The Officer considered the Work Permit Application on 25 May 2011. According to his affidavit, he considered the Applicant's Work Permit Application under subsection 205(d) of the *Immigration and Refugee Protection Regulations* SOR/2002-227 (Regulations) because she had not submitted an LMO. The Officer refused the Work Permit Application and notified the Applicant of the Decision by letter dated 25 May 2011.

DECISION UNDER REVIEW

[6] The Decision in this case consists of the letter sent to the Applicant on 25 May 2011 (Refusal Letter) and the Global Case Management System notes (GCMS Notes) on the file.

[7] In the Refusal Letter, the Officer wrote that he was not satisfied that the Applicant met the requirements of the Act and Regulations, so he refused her Work Permit Application. On the second page of the Refusal Letter, the Officer checked boxes next to the following statements:

- You have not satisfied me that you would leave Canada by the end of the period authorized for your stay. In reaching this decision, I considered several factors, including:
  i. your history of having contravened the conditions of admission on a previous stay in Canada;
  ii. your travel history;
  iii. limited employment prospects in your country of residence;
  iv. your current employment situation;
  v. your personal assets and financial status.

[8] In the GCMS Notes, the Officer recorded that the Applicant had claimed asylum in the USA and refugee status in Canada and had been refused on both occasions. He was not satisfied that she was a genuine worker and found that her immigration record showed that she wanted to remain in Canada permanently. Based on these findings, the Officer refused the Applicant’s application for a work permit.

ISSUES

[9] The Applicant raises the following issues in this application:

a. Whether the Officer's reasons are adequate;

b. Whether the Decision was reasonable.

STANDARD OF REVIEW

[10] The Supreme Court of Canada in *Dunsmuir v New Brunswick*, 2008 SCC 9, held that a standard of review analysis need not be conducted in every instance. Instead, where the standard of review applicable to a 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.

[11] In *Choi v Canada (Minister of Citizenship and Immigration)* 2008 FC 577, Justice Michael Kelen held at paragraph 12 that the standard of review with respect to an officer's decision to grant a work permit is reasonableness. Justice John O'Keefe made a similar finding in *Singh v Canada (Minister of Citizenship and Immigration)* 2010 FC 1306 at paragraph 35. The standard of review on the second issue is reasonableness (see also *Song v Canada (Minister of Citizenship and Immigration)* 2009 FC 349 at paragraph 17).

[12] Recently, in *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)* 2011 SCC 62, the Supreme Court of Canada held at paragraph 14 that the adequacy of reasons is not a stand-alone basis for quashing a decision. Rather, "the reasons must be

read together with the outcome and serve the purpose of showing whether the result falls within a range of possible outcomes." The first issue in this case must therefore be analysed along with the reasonableness of the Decision as a whole.

[13] 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." See *Dunsmuir*, above, at paragraph 47, and *Canada (Minister of Citizenship and Immigration) v Khosa*, 2009 SCC 12 at paragraph 59. Put another way, the Court should intervene only 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."

STATUTORY PROVISIONS

[14] The following provision of the Act is applicable in this proceeding:

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.

[15] The following provisions of the Regulations are also applicable in this proceeding:

110. The live-in caregiver class is prescribed as a class of foreign nationals who may become permanent residents on the basis of the requirements of this Division.	**110.** La catégorie des aides familiaux est une catégorie réglementaire d'étrangers qui peuvent devenir résidents permanents, sur le fondement des exigences prévues à la présente section.
…	**…**
112. A work permit shall not be issued to a foreign national who seeks to enter Canada as a live-in caregiver unless they	**112.** Le permis de travail ne peut être délivré à l'étranger qui cherche à entrer au Canada au titre de la catégorie des aides familiaux que si l'étranger se conforme aux exigences suivantes:
(*a*) applied for a work permit as a live-in caregiver before entering Canada;	*a*) il a fait une demande de permis de travail à titre d'aide familial avant d'entrer au Canada;
(*b*) have successfully completed a course of study that is equivalent to the successful completion of secondary school in Canada;	*b*) il a terminé avec succès des études d'un niveau équivalent à des études secondaires terminées avec succès au Canada;
(*c*) have the following training or experience, in a field or occupation related to the employment for which the work permit is sought, namely,	*c*) il a la formation ou l'expérience ci après dans un domaine ou une catégorie d'emploi lié au travail pour lequel le permis de travail est demandé :
(i) successful completion of six months of full-time training in a classroom setting, or	(i) une formation à temps plein de six mois en salle de classe, terminée avec succès,
(ii) completion of one year of fulltime paid employment, including at least six months of	(ii) une année d'emploi rémunéré à temps plein — dont au moins six mois

continuous employment with one employer, in such a field or occupation within the three years immediately before the day on which they submit an application for a work permit;

(*d*) have the ability to speak, read and listen to English or French at a level sufficient to communicate effectively in an unsupervised setting; and

(*e*) have an employment contract with their future employer.

…

200. (1) Subject to subsections (2) and (3) — and, in respect of a foreign national who makes an application for a work permit before entering Canada, subject to section 87.3 of the Act — an officer shall issue a work permit to a foreign national if, following an examination, it is established that

(*a*) the foreign national applied for it in accordance with Division 2;

(*b*) the foreign national will leave Canada by the end of the period authorized for their stay under Division 2 of Part 9;

(*c*) the foreign national

[…]

d'emploi continu auprès d'un même employeur — dans ce domaine ou cette catégorie d'emploi au cours des trois années précédant la date de présentation de la demande de permis de travail;

d) il peut parler, lire et écouter l'anglais ou le français suffisamment pour communiquer de façon efficace dans une situation non supervisée;

e) il a conclu un contrat d'emploi avec son futur employeur.

…

200. (1) Sous réserve des paragraphes (2) et (3), et de l'article 87.3 de la Loi dans le cas de l'étranger qui fait la demande préalablement à son entrée au Canada, l'agent délivre un permis de travail à l'étranger si, à l'issue d'un contrôle, les éléments ci-après sont établis:

a) l'étranger a demandé un permis de travail conformément à la section 2;

b) il quittera le Canada à la fin de la période de séjour qui lui est applicable au titre de la section 2 de la partie 9;

c)il se trouve dans l'une des situations suivantes :

[…]

(ii.1) intends to perform work described in section 204 or 205, has an offer of employment to perform that work and an officer has determined	(ii.1) il entend exercer un travail visé aux articles 204 ou 205, il a reçu une offre d'emploi pour un tel travail et l'agent a conclu que:
(A) that the offer is genuine under subsection (5), and	(A) l'offre était authentique conformément au paragraphe (5),
[…]	[…]
(iii) has been offered employment, and an officer has made a positive determination under paragraphs 203(1)(*a*) to (*e*); and	(iii) il a reçu une offre d'emploi et l'agent a rendu une décision positive conformément aux alinéas 203(1)*a*) à *e*);
[…]	[…]
(*e*) the requirements of section 30 are met.	*e*) il satisfait aux exigences prévues à l'article 30.
(3) An officer shall not issue a work permit to a foreign national if	(3) Le permis de travail ne peut être délivré à l'étranger dans les cas suivants:
(*d*) the foreign national seeks to enter Canada as a live-in caregiver and the foreign national does not meet the requirements of section 112;	*d*) l'étranger cherche à entrer au Canada et à faire partie de la catégorie des aides familiaux, à moins qu'il ne se conforme à l'article 112;
(*e*) the foreign national has engaged in unauthorized study or work in Canada or has failed to comply with a condition of a previous permit or authorization	e) il a poursuivi des études ou exercé un emploi au Canada sans autorisation ou permis ou a enfreint les conditions de l'autorisation ou du permis qui lui a été délivré
[…]	[…]
203. (1) On application under Division 2 for a work permit	**203.** (1) Sur demande de permis de travail présentée

made by a foreign national other than a foreign national referred to in subparagraphs 200(1)(*c*)(i) to (ii.1), an officer shall determine, on the basis of an opinion provided by the Department of Human Resources and Skills Development, if	conformément à la section 2 par tout étranger, autre que celui visé à l'un des sous-alinéas 200(1)*c*)(i) à (ii.1), l'agent décide, en se fondant sur l'avis du ministère des Ressources humaines et du Développement des compétences, si, à la fois :
[…]	[…]
(*b*) the employment of the foreign national is likely to have a neutral or positive effect on the labour market in Canada;	*b*) l'exécution du travail par l'étranger est susceptible d'avoir des effets positifs ou neutres sur le marché du travail canadien;
…	…
205. A work permit may be issued under section 200 to a foreign national who intends to perform work that	**205.** Un permis de travail peut être délivré à l'étranger en vertu de l'article 200 si le travail pour lequel le permis est demandé satisfait à l'une ou l'autre des conditions suivantes:
[…]	[…]
(*d*) is of a religious or charitable nature.	*d*) il est d'ordre religieux ou charitable.

ARGUMENTS

The Applicant

The Officer's Reasons Are Inadequate

[16] The Officer refused the Applicant's application because he found she had previously breached the conditions of her admission to Canada. The Applicant says that the Decision does not

contain any details about what she did to breach the conditions of her admission and that it is not clear what the Officer based this conclusion on. She notes that she voluntarily executed the removal order which was in place against her.

The Decision Was Unreasonable

[17] The Applicant argues that the Officer found she was not a genuine worker without any evidence for this finding. She relies on *Bondoc v Canada (Minister of Citizenship and Immigration)* 2008 FC 842 for the proposition that visa officers do not have to be satisfied that applicants under the LCP have only a temporary purpose in coming to Canada. With respect to LCP applicants, officers may be satisfied that applicants will not remain in Canada if their permanent residence application under the LCP is rejected. The Applicant says that she meets all the requirements of the LCP set out in section 112 of the Regulations so *Bondoc* applies in her case.

[18] The Applicant also says that the Officer's finding that she would remain in Canada illegally was speculative and unreasonable. The Officer concluded that she would remain in Canada illegally because she had limited employment prospects in Colombia, she was unemployed, and because she had limited assets. These factors show that she has a desire to work in Canada, but do not show that she would remain in Canada illegally.

The Respondent

[19] The Respondent says that *Kaur v Canada (Minister of Employment and Immigration),* [1995] FCJ No 756 establishes that visa applicants must provide all documents to support their applications. The Applicant's argument is based on an assertion that she meets the requirements for

admission under the Live-in Caregiver class which are set out is section 112 of the Regulations. However, she does not meet these requirements. To be a member of the Live-in Caregiver class, an applicant must show that she has a job offer which has been approved by HRSDC and must submit an LMO from HRSDC. There is no evidence in this case that the Applicant submitted an LMO. This means that she did not satisfy the requirements of the LCP and could not have been granted a work permit as a member of the Live-in Caregiver class.

[20] Because the Applicant could not and did not apply under the LCP, *Bondoc*, above, is distinguishable. That case is applicable only to applications under the LCP, so the Applicant was subject to the ordinary analysis under paragraph 200(1)(*b*). The Officer was right to determine if the Applicant was likely to leave on the expiration of her work permit. He made a reasonable finding on this question when he refused the Applicant's Work Permit Application.

ANALYSIS

[21] The record appears to show that the Applicant was not considered under the Live-in Caregiver class, pursuant to section 110 of the Regulations because she did not provide an LMO from HRSDC. Hence, her application was considered under subsection 205(d) of the Regulations, as relating to charitable or religious work, which did not require that she submit an LMO.

[22] It seems to me that, because she did not provide an LMO, the Officer was correct to conclude that the Applicant could not qualify under the Live-in Caregiver class. The Officer makes this clear in the reasons, where he says "wishes to go to Canada as Group Home Worker for L'Arche, exempt from an LMO (C50)." The Applicant has questioned this aspect of the Decision and argued at the oral hearing of this matter that the LMO requirement was not authorized by the

Act or the Regulations so that the Respondent's policy to require an LMO is inconsistent with the Act and the Regulations. However, paragraph 203(1)(*b*) of the Regulations clearly establishes that it is:

203. (1) On application under Division 2 for a work permit made by a foreign national other than a foreign national referred to in subparagraphs 200(1)(*c*)(i) to (ii.1), an officer shall determine, on the basis of an opinion provided by the Department of Human Resources and Skills Development, if	**203.** (1) Sur demande de permis de travail présentée conformément à la section 2 par tout étranger, autre que celui visé à l'un des sous-alinéas 200(1)*c*)(i) à (ii.1), l'agent décide, en se fondant sur l'avis du ministère des Ressources humaines et du Développement des compétences, si, à la fois :
…	…
(*b*) the employment of the foreign national is likely to have a neutral or positive effect on the labour market in Canada;	*b*) l'exécution du travail par l'étranger est susceptible d'avoir des effets positifs ou neutres sur le marché du travail canadien;

[23] The Applicant says that the Live-in Caregiver class was an exception to the LMO requirement and, notwithstanding subsection 203(1) of the Regulations, the policy changed the exemption. In my view, however, the need for an LMO is clearly stipulated in subsection 203(1)(*b*). The Applicant had access to the current requirements when she compiled and submitted her application, and the need for an LMO was clearly stated there. Consequently, I cannot say that the failure to consider her as a Live-in Caregiver gives rise to any reviewable error.

[24] Under paragraph 200(1)(*b*) of the Regulations, the Applicant had to establish that she would leave Canada by the end of the period authorized for her stay under Division 2 of Part 9.

[25] The Officer was not satisfied that she was a genuine worker and that she would leave Canada at the end of the authorized period because “Her past immigration record shows clear interest to remain in Canada permanently.”

[26] However, when considered as a religious or charitable worker under section 205 of the Regulations, I agree with the Applicant that the Officer committed a reviewable error. In deciding that she would not likely leave Canada at the end of her authorized stay, the Officer considered a number of factors:

a. The Applicant’s “history of having contravened the conditions of admission on a previous stay in Canada”;

b. The Applicant’s “travel history”;

c. The Applicant’s “limited employment prospects” in Colombia;

d. The Applicant’s current “employment situation”;

e. The Applicant’s “personal assets and financial status.”

[27] The Respondent concedes that the Applicant has never contravened the conditions of admission on a previous stay in Canada and that the Officer made a mistake.

[28] The issue for me, then, is whether this mistake is material and renders the Decision unreasonable. In my view, this mistake is highly material because the Applicant’s past conduct with regard to complying with past conditions says a great deal about whether she will comply with future conditions. In this case, the Applicant left Canada voluntarily when the time came for her to do so. She may wish to come to Canada on a permanent basis but she has demonstrated that this does not mean she will do anything illegal to achieve this end. Had the Officer not made this

significant mistake his final conclusion might well have been different. Hence, I think the Decision has to be returned for reconsideration on this basis. See *Li v Canada (Minister of Citizenship and Immigration)* 2008 FC 1284 at paragraph 30, *Sakibayeva v Canada (Minister of Citizenship and Immigration)* 2007 FC 1045 at paragraph 14, and *Hara v Canada (Minister of Citizenship and Immigration)* 2009 FC 263 at paragraph 53.

JUDGMENT

THIS COURT'S JUDGMENT is that

1. The application is allowed. The Decision is quashed and the matter is returned for reconsideration by a different officer.

2. There is no question for certification.

"James Russell"
Judge

FEDERAL COURT

NAME OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	IMM-4224-11
STYLE OF CAUSE:	VANESSA ARANGO ROMERO
	Applicant
	- and -
	MINISTER OF CITIZENSHIP AND IMMIGRATION
	Respondent
PLACE OF HEARING:	Toronto, Ontario
DATE OF HEARING:	January 16, 2012
REASONS FOR JUDGMENT AND JUDGMENT:	HON. MR. JUSTICE RUSSELL
DATED:	February 27, 2012

APPEARANCES:

Terry S. Guerriero	APPLICANT
Bernard Assan	RESPONDENT

SOLICITORS OF RECORD:

Terry S. Guerriero Barrister & Solicitor London, Ontario	APPLICANT
Myles J. Kirvan Deputy Attorney General of Canada	RESPONDENT