Federal Court  Cour fédérale

Date: 20120522

Docket: IMM-871-11

Citation: 2012 FC 614

Ottawa, Ontario, May 22, 2012

PRESENT: The Honourable Mr. Justice Near

BETWEEN:

IRINA GRISCENKO

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION CANADA

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The Applicant, Irina Griscenko, contests the refusal of her application for a permanent resident visa in the self-employed person class by a Visa Officer (the Officer) at the Canadian Embassy in Warsaw, Poland in a letter dated January 13, 2011. The Officer found she did not meet the definition of a "self-employed person" under subsection 88(1) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 (the *Regulations*).

[2] For the reasons set out below, the application for judicial review is dismissed.

I. Background

[3] A citizen of Latvia, the Applicant has resided in Canada since September 28, 2010. She holds a temporary work permit and is employed as a full-time Russian drama teacher at Discovery Academy in Toronto.

[4] On October 5, 2010, the Applicant completed an updated application for permanent residence under the self-employed category. She based her application on ten years experience related to Russian and Latvian drama choreography, stage management, acting, directing and theatre education. She submitted that this experience was world class and internationally recognized based on her involvement with festivals and the receipt of various diplomas and acknowledgments.

[5] Following a preliminary review of her application, the Officer requested additional information related to her intention and ability to make a significant contribution to cultural life in Canada. More specifically, there was no information as to her hours of work, teaching methods, number of children per group or the arrangements with her employer to use school facilities for classes and workshops.

[6] In response, the Applicant submitted, among other things, a letter from Discovery Academy indicating that she would be able to use facilities to offer lessons during non-business hours with an arrangement to split fees.

[7] The Officer nonetheless concluded that she did not meet the definition of a "self-employed person" under the *Regulations* because she was employed by the Ventspils House of Arts, Latvia as a Russian drama teacher from 1993 to 2010 and in Canada as a full-time employee of the Discovery Academy.

[8] In addition, her experience organising theatrical events and cultural festivals in Latvia was not considered to be at the world-class level as this refers to "persons who are known internationally and who performed at the highest level of their discipline." By contrast, the Applicant's experience was seen as having only local importance. The Officer's Computer Assisted Immigration Processing System (CAIPS) notes reference a Google search that showed one entry on the Applicant's name in a Toronto discussion forum.

II. Issue

[9] The sole issue before the Court is as follows:

> Did the Officer err in refusing permanent residence to the Applicant as a member of the self-employed person class?

III. Standard of Review

[10] The Officer's decision on an application for permanent residence as a member of the self-employed class is reviewed according to reasonableness (*Kim v Canada (Minister of Citizenship and Immigration)*, 2008 FC 1291, [2008] FCJ no 1644 at para 18; *Ding v Canada (Minister of Citizenship and Immigration)*, 2010 FC 764, [2010] FCJ no 934 at para 8).

[11] Applying that standard, the Court should only intervene where the Officer's decision does not demonstrate justification, transparency and intelligibility or falls outside the range of acceptable outcomes (*Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190 at para 47). It is not up to a reviewing court to substitute its own view of a preferable outcome (*Canada (Minister of Citizenship and Immigration) v Khosa*, 2009 SCC 12, [2009] SCJ no 12 at para 59).

IV. Analysis

[12] Under subsection 100(2) of the *Regulations*, a foreign national applying as a member of the self-employed class must meet the definition in subsection 88(1). A "self-employed person" is a foreign national with "relevant experience" and the intention and ability to be self employed and make a significant contribution to specified economic activities in Canada. According to the *Regulations*, relevant experience consists of the following:

"relevant experience", in respect of	« expérience utile »
(a) a self-employed person, other than a self-employed person selected by a	a) S'agissant d'un travailleur autonome autre qu'un travailleur autonome

province, means a minimum of two years of experience, during the period beginning five years before the date of application for a permanent resident visa and ending on the day a determination is made in respect of the application, consisting of	sélectionné par une province, s'entend de l'expérience d'une durée d'au moins deux ans au cours de la période commençant cinq ans avant la date où la demande de visa de résident permanent est faite et prenant fin à la date où il est statué sur celle-ci, composée :
(i) in respect of cultural activities,	(i) relativement à des activités culturelles :
(A) two one-year periods of experience in self-employment in cultural activities,	(A) soit de deux périodes d'un an d'expérience dans un travail autonome relatif à des activités culturelles,
(B) two one-year periods of experience in participation at a world class level in cultural activities, or	(B) soit de deux périodes d'un an d'expérience dans la participation à des activités culturelles à l'échelle internationale,
(C) a combination of a one-year period of experience described in clause (A) and a one-year period of experience described in clause (B),	(C) soit d'un an d'expérience au titre de la division (A) et d'un an d'expérience au titre de la division (B),
[…]	[…]

[13] The Applicant contends that the Officer erred by faulting her for not having previous self-employment experience. She demonstrated her ability to use the school where she was working,

earn an hourly amount and previous experience employed in the field. Relying on prior jurisprudence relevant to the definition of self-employed, the Applicant suggests that the Officer placed "undue emphasis" on her lack of experience as a self-employed drama teacher (see for example *Yang v Canada (Minister of Employment and Immigration)* (1989), 27 FTR 74, [1989] FCJ no 218; *Grube v Canada (Minister of Citizenship and Immigration)* (1996), 118 FTR 163, [1996] FCJ no 1089 at para 25; *Leung v Canada (Minister of Citizenship and Immigration)*, 2001 FCT 1293, [2001] FCJ no 1789 at paras 10-11).

[14] The Respondent maintains that the Officer considered the totality of the evidence, noting that the Applicant gave no information concerning the anticipated number of students she would attract or the number required to make the business profitable. It is suggested that the Applicant's situation resembles that of *Kim*, above, where Justice Michel Beaudry upheld a decision of an officer concluding that the applicant had not provided a sufficient business plan.

[15] While I acknowledge that the Applicant's business plan was somewhat more developed than that in *Kim*, above; it remained reasonably open to the Officer to comment on her experience as a full-time employee as opposed to an individual who is self-employed. This reflected not only the evidence before the Officer but also the definition of "relevant experience" as in the current *Regulations*.

[16] Moreover, this finding cannot be viewed in isolation. The Officer also took issue with the Applicant's lack of experience at a "world-class level" because it was of local importance.

[17] The Applicant asserts that there is nothing in the definition of relevant experience or related policy materials that distinguishes “world-class” from international recognition as the Officer implied. She participated in various international festivals and her name can be found in similar Google searches in the Russian and Latvian languages.

[18] However, I see nothing in the Officer’s interpretation that lacks justification, transparency and intelligibility. I accept the Respondent’s submission that the term “world-class level” would logically imply some comparison between those recognized as world leaders in a given discipline in relation to the Applicant. While she may have experience that crosses borders or results in local recognition, it does not necessarily follow that this constitutes performance at a “world-class level” as required by the *Regulations*. The Officer is entitled to weigh the evidence in this manner.

V. Conclusion

[19] The Officer reasonably concluded that the Applicant did not meet the definition of a self-employed person so as to qualify for permanent resident status.

[20] Accordingly, the application for judicial review is dismissed.

JUDGMENT

THIS COURT'S JUDGMENT is that this application for judicial review is dismissed.

" D. G. Near "

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	**IMM-871-11**
STYLE OF CAUSE:	**GRISCENKO v MCI**
PLACE OF HEARING:	**TORONTO**
DATE OF HEARING:	**APRIL 5, 2012**
REASONS FOR JUDGMENT AND JUDGMENT BY:	**NEAR J.**
DATED:	**MAY 22, 2012**

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