Federal Court  Cour fédérale

Date: 20130429

Docket: IMM-5428-12

Citation: 2013 FC 442

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Ottawa, Ontario, April 29, 2013

PRESENT: The Honourable Mr. Justice Roy

BETWEEN:

MARC DAVID JEAN

Applicant

and

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (the Act) for judicial review of a decision by a visa officer (the officer) at the Canadian Embassy in Port-au-Prince (Haiti). The officer refused to grant Marc David Jean (the applicant) a study permit with temporary resident status pursuant to sections 179, 216 and 220 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 (the Regulations).

[2] The applicant is a citizen of Haiti who requested a study permit at the Canadian Embassy in order to study computer science. The permit was refused. For the following reasons, I find that the judicial review should be allowed in this case.

Facts

[3] On April 22, 2012, the applicant sought to obtain a study permit from the Canadian Embassy in Haiti in order to continue his studies in Canada. In support of his application, the applicant submitted evidence of his admission to the bachelor of computer science and software engineering program from the University of Quebec at Montréal, obtained on January 19, 2012. In addition, a letter from the university's financial services confirmed that the applicant had paid $16,000 for tuition. That letter is dated November 9, 2011.

[4] Regarding the financial resources that he would have in Canada, the applicant submitted an accommodation and financial support certificate signed by his aunt, who is a Canadian citizen residing in Longueuil and who undertakes to house the applicant and provide for his needs for the duration of his university studies. His aunt owns a triplex and a multi-unit building, both in Longueuil. She also manages them. She states in her affidavit that she undertakes [TRANSLATION] "to lodge and provide room and board to Marc David Jean (my godson) domiciled and residing at 43 Ruelle Nord-Alexis, Port-Au-Prince, Haiti, for the duration of his university studies at the University of Quebec at Montréal (UQAM)".

[5] The applicant has received a Certificat d'acceptation du Québec, dated February 23, 2012.

Analysis

[6] Given my conclusion, it will not be necessary to examine each of the parties' arguments. The immigration officer's decision is based on very little. Indeed, that is its main problem. It is stated in a document dated May 10, 2012, that the application for a study permit is refused, using checkmarked boxes that ultimately indicate two reasons:

> [TRANSLATION]
> □ Under sections 219 and 220 of the IMPR, I am not satisfied that you:
> . . .
> □ have sufficient and available financial resources, without working in Canada, to pay your tuition fees for the program you wish to take.
>
> . . .
>
> □ I am not satisfied that you will leave Canada at the end of the period authorized for your stay for the following reasons:
> . . .
> □ Your personal property and financial situation.

[7] These notes correspond to the relevant excerpts of sections 219 and 220 of the Regulations and section 20 of the Act. They are more part of the conclusion than the reasons. There is no explanation of the reasons that could have justified the officer's conclusions. The Regulations provide for the refusal of the permit if financial resources are insufficient: it is not known why the officer reached (or made) this conclusion because only the conclusion is shown. The same is true for the conclusion that the applicant will not leave the country at the end of his stay: there is only a checkmark in the financial situation box. There is not much more in the notes that are part of the Computer Assisted Immigration Processing System (CAIPS). They read as follows:

> [TRANSLATION]
> After reading the notes and documents, I came to the conclusion that this person does not meet the requirements of the *Immigration and Refugee Protection Act* because he does not seem to be well established in his country, and he has not demonstrated in a satisfactory manner that he would return to his country once he is admitted to Canada as a student. Therefore, I refuse the application based on *bona fides* and unproven financial means.

[8] The Supreme Court of Canada case law does not require perfection in stating reasons for a decision. However, it seems to me that the Court still asks that a certain standard be satisfied.

[9] In *Dunsmuir v New Brunswick*, [2008] 1 SCR 190, the Court recognized two standards with respect to judicial review of administrative tribunals: the so-called reasonable decision and the correct decision. Regarding a decision that must be reasonable, which will be the standard of review in this case, the Court must still be able to be satisfied with it. Paragraph 47 of *Dunsmuir* reads as follows:

> . . . Tribunals have a margin of appreciation within the range of acceptable and rational solutions. A court conducting a review for reasonableness inquires into the qualities that make a decision reasonable, referring both to the process of articulating the reasons and to outcomes. In judicial review, reasonableness is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process. But it is also concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law.

[10] Of course, deference to the administrative tribunal is appropriate. Similarly, the reasons for a decision should not be examined microscopically. The Court specified the considerations to be taken into account for it to be satisfied with the adequacy of the reasons. I reproduce paragraph 14

of *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, [2011] 3 SCR 708, without the references therein. This paragraph reads as follows:

> [14] Read as a whole, I do not see *Dunsmuir* as standing for the proposition that the "adequacy" of reasons is a stand-alone basis for quashing a decision, or as advocating that a reviewing court undertake two discrete analyses — one for the reasons and a separate one for the result. It is a more organic exercise — 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. This, it seems to me, is what the Court was saying in *Dunsmuir* when it told reviewing courts to look at "the qualities that make a decision reasonable, referring both to the process of articulating the reasons and to outcomes" (para. 47).

[11] With respect, in this case, the Court finds itself unable to be satisfied that the decision made falls within a range of possible outcomes. What we have are conclusions that are not supported by evidence, or lack thereof, that could justify the refusal decision. I am not claiming that the decision should have been different. The Court instead finds itself in a situation where it is not possible to know why that decision was made, which makes it impossible to review its legality. It is the standard that the Court is bound by: "In other words, if the reasons allow the reviewing court to understand why the tribunal made its decision and permit it to determine whether the conclusion is within the range of acceptable outcomes, the *Dunsmuir* criteria are met." (*Newfoundland and Labrador Nurses' Union*, *supra*, at paragraph 16).

[12] I am obviously aware that, because of the subject matter, the decision is at the low end of the spectrum in terms of the need to articulate it. However, there must be a minimum to comply with and simply restating the requirements of the Act does not constitute reasons that could make a

judicial review possible. The decision in this case may well be reasonable, but the Court cannot assess it as it is bound to do in law, in the absence of reasons.

[13] By way of further illustration, the officer's notes, reproduced at paragraph 7 of these reasons, tell us only that the application was refused based on "*bona fides* and unproven financial means". Part of this assertion is just a repetition of what is stated in the form. The other part talks about "*bona fides*". It is quite possible that the *bona fides* in question deals in fact with the applicant's credibility. The reference to *bona fides* may also be based on the need for the applicant to prove that he will leave at the end of his stay in Canada and that he is essentially a bona fide visitor. The case law of our Court tends to recognize that not allowing an applicant to provide further explanations when the credibility of the evidence is being questioned may constitute a breach of natural justice (*Hassani v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1283, [2007] 3 FCR 501; *Obeta v Canada (Minister of Citizenship and Immigration)*, 2012 FC 1542). We are not talking here about the sufficiency of the information to be submitted, but about the credibility to be attributed to it. In addition, paragraph 5.15 of OP 12, which is a chapter that deals with how applications for a study permit should be treated, may refer to two concepts. What option did the officer use in this case? Paragraph 5.15 of the *Operational Procedural Manual*, Citizenship and Immigration Canada, filed in evidence by the applicant as Exhibit A-5 of the affidavit in support of the application reads as follows:

> *Bona fides* of all students must be assessed on an individual basis; refusals of non-bona fide students may only withstand legal challenge when the refusal is based on the information related to the specific case before the officer. Therefore, while cultural context or historical migration patterns of a client group may be a contributing factor to the decision-making process, they alone are not valid, legally tenable grounds for refusal on *bona fides*. If officers wish to take into account outside information, particularly where that

> information leads to concerns/doubts about the applicant's *bona fides*, the applicant must be made aware of the information taken into account and given an opportunity to address those concerns. This interaction should be fully documented in the CAIPS/FOSS notes. The onus, as always, remains on the applicant to establish that they are a bona fide temporary resident who will leave Canada following the completion of their studies pursuant to section R216(1)(*b*).

[14] It is impossible for a review court to determine what the officer was thinking when he stated that the *bona fides* was deficient. Because of the lack of sufficient reasons, it is impossible to establish that the decision has "the qualities that make a decision reasonable, referring both to the process of articulating the reasons and to outcomes" (*Dunsmuir*, *supra*).

[15] Accordingly, this case will be referred back to another decision-maker for redetermination.

JUDGMENT

The application for judicial review is allowed. The decision made on May 10, 2012, by a visa officer at the Canadian embassy in Port-au-Prince, Haiti, is set aside and the matter is referred back to a new visa officer for redetermination.

"Yvan Roy"
Judge

Certified true translation
Margarita Gorbounova, Translator

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-5428-12
STYLE OF CAUSE:	MARC DAVID JEAN v. MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	Montréal, Quebec
DATE OF HEARING:	April 8, 2013
REASONS FOR JUDGMENT AND JUDGMENT:	Roy, J.
DATED:	April 29, 2013

APPEARANCES:

Sabine Venturelli	FOR THE APPLICANT
Sherry Rafai Far	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Sabine Venturelli Montréal, Quebec	FOR THE APPLICANT
William F. Pentney Deputy Attorney General of Canada	FOR THE RESPONDENT