

Federal Court



Cour fédérale

Date: 20130620

Docket: IMM-9106-12

Citation: 2013 FC 690

Toronto, Ontario, June 20, 2013

PRESENT: The Honourable Mr. Justice Zinn

BETWEEN:

AJAY KUMAR BABU

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] Mr. Babu is a citizen of Pakistan. He has unsuccessfully applied for a Canadian study permit three times in the past five years. His most recent application, dated May 7, 2012, was refused because the officer was not satisfied that Mr. Babu “would leave Canada at the end of [his] stay.”

[2] The standard form refusal sent to Mr. Babu outlined the officer's reasons for refusing the application, as follows:

[x] You have not satisfied me that you would leave Canada at the end of your stay. In reaching this decision, I considered several factors, including:

...

- [x] limited employment prospects in your country of residence
- [x] your current employment situation
- [x] your personal assets and financial status.

[3] The officer's Global Case Management System notes shed further light on his or her reasons:

Search: done. 22 yo single male to attend 2 yr computer systems technician program at Fanshawe College. PA [Mr. Babu] was refused SPs [study permits] in 2008 and 2009 to attend similar program at Humber College. PA is being supported his maternal CC [Canadian citizen] uncle. Sponsor has sufficient proof of funds and proof of relationship submitted. PA writes in a letter dated 09April2012 that he graduated from Karachi University has several computer diplomas, however education documents on file show PA completed higher secondary in 2008 and various certificates prior to that. There is one certificate from Zealian Coaching & Computer Centre but it does not list the year of course completion. Pas representative writes that an education in Canada would be superior to what could be obtained in Pakistan. While that may be true, it does not explain why PA has not sought any formal education in his desired field since leaving high school in 2008. PA states in his application he worked as a key account exec from 2009/01-2010/02 and an operation exec since 2010/03, but has not submitted any job letters or other proof of employment. His personal bank statements show low savings and do not show salary deposits. Based on the information on file, it appears PA has not pursued any formal education since completing high school in 2008, he has not provided any proof of employment, and has low personal savings. While Pas sponsor in Canada may have sufficient funds to support PA, I am not satisfied PA has demonstrated sufficient level of establishment or ties to Pakistan that would compel him to depart Canada within the period authorized. Application refused.

[4] It is paragraph 216(1)(b) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [*Regulations*] that makes it a requirement that a study permit applicant establish that he or she “will leave Canada by the end of the period authorized for their stay,” and under which the officer denied Mr. Babu’s application for a study permit.

Issues

[5] The applicant raises the following issues:

1. Did the visa officer commit a reviewable error by failing to consider the totality of the evidence?
2. Did the visa officer commit a reviewable error by unreasonably assessing the applicant’s ties to Pakistan?

[6] The parties are agreed that reasonableness is the standard of review.

Analysis

Ignoring Evidence

[7] The applicant submits that the officer based his or her decision on an erroneous finding of fact – that Mr. Babu did not have strong ties to Pakistan – which he or she made without regard to the material submitted in his application for a study permit. In particular, Mr. Babu says he represented in his application for a study permit that he currently resided with all of the members of his immediate family in the same home in Pakistan; that his father owns real estate in Pakistan and expects him, his only son, to return to Pakistan to care for him and his assets in his old age; that his financial sponsor in Canada, his maternal uncle, indicated that he is willing to fund his studies in the expectation that he will return to Pakistan to care for his ailing mother; and that he was primarily

responsible for supporting his parents as their only son and noted that his mother underwent a heart bypass surgery in March 2012.

[8] The officer did not mention any of this in his or her reasons or in the notes, and it therefore asserted “that the officer’s finding was made without regard to the evidence.”

[9] It would be preferable for an officer to outline the most important aspects of the application which both favour and do not favour the granting of the permit. Nonetheless, I do not share the applicant’s characterization of the officer’s decision.

[10] While the officer did not specifically mention these ties to Pakistan in his or her notes he or she did not conclude that the applicant had *no* ties to Pakistan. Rather, he or she concluded that “I am not satisfied PA has demonstrated sufficient level of establishment or ties to Pakistan that would compel him to depart Canada within the period authorized” [emphasis added]. I am therefore not convinced that the officer “ignored the evidence,” as the applicant argues. However, it remains an open question whether on the basis of all of the evidence, the officer’s finding that the applicant would not leave Canada at the end of the authorized period was reasonably made, which is the second issue raised in this application.

Reasonableness of the Finding

[11] The applicant submits that various findings made by the officer which support his or her ultimate determination under paragraph 216(1)(b) of the *Regulations* are unreasonable.

[12] First, he says that the officer made the same error as was described in *Obot v Canada (Minister of Citizenship and Immigration)*, 2012 FC 208 at para 20, wherein, it is argued, this Court “held that it was unreasonable for a visa officer to expect a 25-year old student to have a spouse, children, property,” or significant financial savings “whether in his country of nationality or elsewhere.”

[13] In my view, *Obot* is distinguishable from this case. Mr. Obot was a student right up until the time he applied for a study permit, so Justice Mosley reasoned that “it is thus normal for him to have ‘no spouse, children or property’.” See para 20. Mr. Babu on the other hand, although he is younger, had not studied in any program since 2008, which is roughly four years before he submitted his third study permit application, and stated on his application that he had been working continuously from January 2009 to the time of this third application.

[14] The officer here considered Mr. Babu’s financial establishment in Pakistan in the context of his circumstances and in my view there was nothing unreasonable about the officer reasoning that Mr. Babu’s apparent lack of savings or property in Pakistan, after allegedly working for roughly three and a half years, weighed against him because it was indicative of a low level of establishment or intention to establish in Pakistan.

[15] The applicant secondly says that “the officer’s implied finding that [he] would have sought post-secondary education in IT in Pakistan if he was a *bona fide* student is unreasonable and illogical.” This is so because the applicant’s plans to obtain post-secondary education in Canada are long-standing (as evidenced by the two prior study permit applications), and because “it is

impossible for him as a Hindu without significant wealth or political connections to obtain an academic qualification that would result in a meaningful improvement in the employment opportunities open to him [and] [c]onsequently, he was focused on Canadian opportunities for post-secondary education as opposed to Pakistani ones.”

[16] In my view, neither of these arguments is persuasive or shows that the officer’s decision is unreasonable. While the applicant argues that “given the fact that he has been consistently pursuing his dream of studying in Canada, it is not surprising that he has not pursued post-secondary education in Pakistan,” the officer was entitled to prefer another explanation – that Mr. Babu is not genuinely focused on an education in IT. The applicant’s second argument – that Mr. Babu could not obtain a worthwhile academic credential in Pakistan because he is Hindu and does not have “significant wealth or political connections” is simply an assertion not borne out by the evidence in the record. Mr. Babu did not indicate, for example, nor was there any evidence put to the officer of failed attempts at gaining admission to prestigious colleges or universities in Pakistan, much less such attempts that could be reasonably attributed to Mr. Babu’s status as a Hindu and not some other factor.

[17] There was evidence put to the officer, however, that Hindus are generally discriminated against in Pakistan, but one must wonder whether this does not itself strongly work *against* the applicant’s contention that he was likely to return there and *supports* the officer’s determination as reflected in the refusal letter that Mr. Babu’s employment prospects were not strong. In any event, if Mr. Babu was truly motivated but prevented from studying at a reputable university in Pakistan, it is not unreasonable to expect to see some evidence of failed attempts or at least evidence directly on

point about admissions showing that it would be pointless for a Hindu to apply to such an educational institution.

[18] Further still, Mr. Babu has \$45,000 available to him for a two-year program in Canada; one could reasonably expect absent evidence to the contrary that this relatively high amount of money might translate into a good educational opportunity in Pakistan. While this was not a reason specifically noted by the officer, the Supreme Court of Canada in *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, instructed reviewing courts to first seek to supplement an administrative decision before subverting it, and for that purpose to look at not only the reasons offered in support of a conclusion, but also “what *could* be offered in support of a decision” [emphasis added]: paras 11 and 12.

[19] Last, the applicant says that for two reasons the officer unreasonably discounted his family ties to Pakistan in arriving at the conclusion that he had not “demonstrated sufficient level of establishment or ties to Pakistan that would compel him to depart Canada within the period authorized.” First, as in *Zhang v Canada (Minister of Citizenship and Immigration)*, 2003 FC 1493, Mr. Babu presented evidence that he and his family intended that he return to Pakistan upon completion of his studies. Second, as in *Hara v Canada (Minister of Citizenship and Immigration)*, 2009 FC 263, all of Mr. Babu’s immediate family reside in Pakistan and he is expected to assume primary responsibility for his father’s affairs as the only son.

[20] It is not disputed that there were factors that weighed in favour of the view that he would return to Pakistan and thus ought to be granted the permit. However, one cannot point to isolated

facts or factors which favoured the applicant to argue that the officer's assessment was unreasonable; rather, the officer's determination under paragraph 216(1)(b) must be examined in light of the whole record. In this case, there were factors weighing on both sides of the equation. On the negative side, Mr. Babu had not shown he was pursuing higher education in his chosen field in Pakistan and did not provide particularly convincing reasons why not; Mr. Babu had been working for more than three years but had low savings and no property; Mr. Babu was not married and did not have children, and was thus probably relatively portable; and the situation in Pakistan was admittedly relatively bleak for Hindus like Mr. Babu. On the positive side, Mr. Babu's family expected him to return to Pakistan; Mr. Babu's immediate family was in Pakistan; and Mr. Babu stated in a letter to his immigration representative and current counsel that he intended to return to Pakistan.

[21] The task of the visa officer under paragraph 216(1)(b) of the *Regulations* is such that the Court ought to provide a wide "margin of appreciation" for the conclusions reached under that provision. Moreover, the authority and role of this Court on judicial review under the reasonableness standard of review is not to step into an officer's shoes to freshly weigh the evidence, but to ask whether the decision falls within the range of possible, acceptable outcomes based on the evidence and the law. The officer was not obliged to prefer Mr. Babu's claim and his family's expectation that he would return to Pakistan and not overstay his study permit, and was entitled to prefer the factors tending to show little incentive to return.

[22] For these reasons, this application is dismissed. No question was proposed for certification.

JUDGMENT

THIS COURT'S JUDGMENT is that the application is dismissed and no question is certified.

"Russel W. Zinn"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-9106-12

STYLE OF CAUSE: AJAY KUMAR BABU v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: June 18, 2013

**REASONS FOR JUDGMENT
AND JUDGMENT BY:** ZINN, J.

DATED: June 20, 2013

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