Federal Court Cour fédérale

Date: 20140623

Docket: IMM-5706-13

Citation: 2014 FC 606

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Ottawa, Ontario, June 23, 2014

PRESENT: The Honourable Mr. Justice Roy

BETWEEN:

RACHEL RUNNATH

Applicant

and

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] An application for judicial review was brought with respect to a decision made by an immigration officer at the Canadian Embassy in Bangkok on August 5, 2013.

[2] This is an application for judicial review under section 72 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the Act].

[3] After hearing the parties' arguments and reviewing the record, the Court has concluded that the application for judicial review should be allowed for the following reasons.

[4] The applicant is a citizen of Cambodia. She applied for a visa to study in Canada. She was admitted to CDI College in Montréal in a financial management program requiring 12 to 14 months of studies. Her family and her future spouse in Cambodia supported her plan. Her uncle in Montréal had signed a declaration of financial support and, with her aunt, undertook to provide lodging and food and to cover expenses during her stay in Canada. She had obtained a Quebec certificate of acceptance as well as insurance for medical expenses.

[5] The officer rejected the application for a student visa. The decision letter states: "You have not satisfied me that you would leave Canada at the end of your stay." The factors cited in support are indicated by checked boxes on a form that accompanied the letter and that is part of the reasons for decision: "length of proposed stay in Canada", "purpose of visit", and "your personal assets and financial status".

[6] The issue is whether the visa officer's conclusion that the applicant would not return to Cambodia was reasonable given the evidence in the record. Indeed, a similar decision was the subject of judicial review on the basis of the reasonableness standard (*Hussain v Canada (Citizenship and Immigration)*, 2012 FC 900).

[7] The applicant obtained the notes from the Computer-Assisted Immigration Processing System [CAIPS]. In them, the officer made the following comments: "… Ap has registered for 12 weeks Financial Management Program at College CDI in Montreal. ... Ap has no proof of her

personal fund. Ap was recently refused trv to visit her Cdn husb. Based on the submitted info, I am not satisfied that ap is fully well established and that he [*sic*] has sufficient ties and motivaiton [*sic*] to leave Cda once her vist [*sic*] is ended. refused."

[8] The role of judges on judicial review is not to substitute their view of the facts but to see that the decision rendered was lawful. Since the standard of review is reasonableness, reviewing judges must be able to satisfy themselves that the decision is reasonable. Accordingly, the decision must have the hallmarks of reasonability within the meaning of *Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190 [*Dunsmuir*]:

> [47] ... 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.

[9] Here, the reasons given do not appear to me to meet this minimum justification. It is well known that the adequacy of reasons is not a basis for quashing a decision (*Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, [2011] 3 SCR 708 [*Newfoundland Nurses*]). Reviewing judges are invited to look to the record for the purpose of assessing the reasonableness of the outcome, but they must not substitute their reasons for the decision-maker's. The test is articulated at the end of paragraph 16 of *Newfoundland Nurses:*

> 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.

[10] It is certainly not necessary to provide extensive reasons. But to provide only conclusions by way of reasons did not satisfy the minimum conditions for understanding why the decision was made. The insufficient reasons for decision in this case prevent us from understanding what the officer was dissatisfied with. The clarity of the decision must not be confused with understanding why the decision was made. Here, there is no doubt about the decision that was made. What is lacking is an understanding of the basis for the decision.

[11] The officer had to ensure that the applicant had adequate financial resources to pay her expenses and support herself and that she had sufficient ties to her country of origin. Here, one would have hoped that the decision would consider that one of the persons who sponsored the applicant was her uncle, an official with the Department of Citizenship and Immigration for 24 years. Counsel for the respondent submits that [TRANSLATION] "the officer did not find that the applicant did not have sufficient funds to study in Canada" and instead concluded that [TRANSLATION] "the applicant's lack of personal funds resulted in a lack of proof of attachment to Cambodia". Indeed, reading only the [TRANSLATION] "decision", it would take a clever person to be able to state for what purpose the notation "Ap has no proof of her personal fund" was made and what the officer's reasoning was. Instead there is a terse, cryptic sentence: "Based on the submitted info, I am not satisfied that ap is fully well established and that he [*sic*] has sufficient ties and motivaiton [*sic*] to leave Cda once her vist [*sic*] is ended. refused." A decision without reasons smacks of arbitrariness. When it is not possible to know why a decision was made, reviewing its legality becomes impossible. The attributes of rationality cannot be discerned.

[12] At the hearing, counsel for the respondent valiantly defended her client's position that a heavy burden cannot be imposed in these cases. The Minister claims that considerable deference is owed to his decisions.

[13] The Minister is not wrong. But deference is not an abdication of the need to consider the reasons. Moreover, the Supreme Court specifically noted this in *Dunsmuir* at paragraph 48:

> It does not mean that courts are subservient to the determinations of decision makers, or that courts must show blind reverence to their interpretations, or that they may be content to pay lip service to the concept of reasonableness review while in fact imposing their own view....

[14] Just as so-called administrative constraints cannot be used to justify not complying with what is required as a minimum, these visa applications cannot be transformed into exercises in rhetoric. This is not a matter of requiring visa officers to produce a thesis every time a visa is refused. Soon, visas that should be validly refused would be granted rather than having to provide lengthy reasons. Blaise Pascal said one day, [TRANSLATION] "Man is neither angel nor beast, and the misfortune is that he who would act the angel acts the beast."

[15] In my view, the minimum test set out in paragraph 16 of *Newfoundland Nurses* was not satisfied in this case, despite the efforts of counsel for the respondent to paint a more complete picture from the short remarks provided by the decision-maker. Counsel argued that the decision clearly said what it consisted of. I agree. However, that it is not the test; rather, the test is to understand the basis of the decision not just what it consists of.

[16] The Act provides that the person requesting a visa must establish that they will leave Canada at the end of their stay (section 20 of the Act). But simply not being satisfied that the person will leave provides no indication for the basis of the decision. In my view, stating that the person is not well established in her country of origin where she lives and works on the basis that she "has no proof of her personal fund" does not meet the reasonability requirements under *Dunsmuir*.

[17] It is understandable that the decision-maker was suspicious of the applicant. But he did not attempt to explain his suspicions or relate them to the reasons for refusing the visa. A brief explanation that will satisfy the minimum test of reasonability, which "is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process" (para 47, *Dunsmuir*), is what is required. With respect, I do not believe that the decision-maker can avoid this minimum obligation for so-called administrative reasons or volume.

[18] It is certainly possible that it is not appropriate to issue a visa. But considering the record that was submitted, the refusal decision deserved better. A minimum justification is required, without which it is the reviewing judge's opinion, in one direction or the other, that will prevail. That would be interfering in an area that is not the Court's domain.

[19] Accordingly, the application for judicial review is allowed. The case is remitted to another decision-maker for reassessment. The parties did not suggest a serious question of general importance, and there is no question to certify.

JUDGMENT

THE COURT ORDERS that the application for judicial review is allowed. The case is remitted to another decision-maker for review and redetermination. The parties have agreed that there is no question for certification. I concur.

"Yvan Roy"
Judge

Certified true translation
Mary Jo Egan, LLB

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-5706-13
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APPEARANCES:

Jacques Beauchemin	FOR THE APPLICANT
Sherry Rafai Far	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Beauchemin, Brisson Counsel Montréal, Quebec	FOR THE APPLICANT
William F. Pentney Deputy Attorney General of Canada Montréal, Quebec	FOR THE RESPONDENT