Federal Court  Cour fédérale

Date: 20171114

Docket: IMM-1906-17

Citation: 2017 FC 1039

Toronto, Ontario, November 14, 2017

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

TABATHA CLAIRE JOANNA HENRY

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS
(Rendered from the Bench at Toronto, Ontario, on November 14, 2017)

I. Nature of the Matter

[1] This is an Application for judicial review filed pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c-27 [IRPA] of a decision by a visa officer at the High Commission of Canada in Trinidad and Tobago [the Officer] dated February 24, 2017, denying the Applicant's temporary resident visa application [TRV application].

II. Facts

[2] The Applicant, aged 33, is a citizen of Jamaica.

[3] The Applicant is married since 2005 and has two sons, aged 16 and 11. The Applicant's husband, children, parents and three siblings are also citizens of Jamaica and currently reside in said country. The Applicant works at a company as a marketing manager and also owns a business in Jamaica selling healthy foods and shakes.

[4] In 2010, the Applicant applied for a temporary resident visa in Canada which was denied.

[5] On March 9, 2011, upon arrival at the Miami International Airport, the Applicant's B1/B2 visa had been revoked. After interrogation, the Applicant was found criminally inadmissible to the United States [US] because of trafficking concerns by the American officials. The Applicant then withdrew her application to enter the United States and returned to Jamaica.

[6] In May 2012, she arrived in Canada to enter as a student for two years. She was detained upon arrival in Canada for non-declaration of her US record at the Miami International Airport. She was also recommended for an admissibility hearing for misrepresentation. The Applicant then left Canada on June 11, 2013, although the exclusion order issued against her by the Immigration Division was set aside by this Court in 2013, with the consent of both parties. The Applicant had in fact not misrepresented.

[7] On November 3, 2014, the Applicant's best friend gave birth to a boy and named the Applicant as the godmother of her son.

[8] In August 2015, the Applicant applied for a temporary resident visa for herself in order to visit her best friend and her newborn in Canada for two weeks.

[9] However, on September 7, 2015, the Applicant's TRV application was refused because the officer was not satisfied that the Applicant would leave Canada at the end of her stay as a temporary resident. The officer had based her decision on the Applicant's current employment status as well as her personal assets and financial status.

[10] The Applicant then filed an Application for Leave and Judicial Review to challenge the decision of the visa officer, dated September 7, 2015 in front of this Court.

[11] On April 5, 2016, this Court ordered that the application for judicial review be allowed, after the parties decided to settle the litigation without hearing. The Court also ordered to set aside the decision of the visa officer, to remit the matter back to a different visa officer for re-determination, and to provide the Applicant a reasonable opportunity to submit updated documentation in support of her TRV application.

III. The Decision

[12] On February 24, 2017, under subsection 11(1) of the IRPA, the Officer refused the Applicant's TRV application dated February 22, 2017, because the Applicant did not meet the

legislative requirements to obtain a temporary visa. First, the Officer was not convinced that the Applicant would leave Canada at the end of the authorized stay period. Several factors were checked off as having been considered in that regard: the Applicant's travel history, her current employment situation and her personal assets and financial status. Second, the Officer was not satisfied that the Applicant had sufficient funds to maintain herself while in Canada and to effectuate her departure. Finally, the Applicant failed to provide sufficient documentation to support her host's income and assets.

[13] The Global Case Management System records [the GCMS notes] served as reasons for the Officer's decision.

[14] On April 27, 2017, the Applicant filed an Application for Leave and for Judicial Review of the Officer's decision.

IV. Issues

[15] This matter raises the following issues:

1) Did the Officer make a discriminatory finding in refusing the TRV application?

2) Did the Officer err in refusing the TRV application?

[16] The Court finds that the applicable standard of review to be applied to the first issue on breach of natural justice is correctness (*Sketchley v Canada (Attorney General)*, 2005 FCA 404 at para 46; *Ozawa v Canada (Citizenship and Immigration)*, 2010 FC 444 at para 11; *Olson v Canada (Public Safety and Emergency Preparedness)*, 2007 FC 458 at para 27). As for the

second issue, the decision to refuse a temporary resident visa involves a determination of mixed fact and law and it is to be reviewed on the reasonableness standard. Given the expertise of the visa officers and the discretionary nature of the decisions, the Court should show deference in reviewing such decisions (*Obeng v Canada (Citizenship and Immigration)*, 2008 FC 754 at para 21; *Ngalamulume v Canada (Citizenship and Immigration)*, 2009 FC 1268 at paras 15-16).

V. Relevant Provisions

[17] Subsection 11(1) of the IRPA states:

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.

VI. Submissions of the Parties

A. *Submissions of the Applicant*

[18] According to the Applicant, the Officer erred in law by rendering his decision. The Officer noted the Applicant's strong ties in Jamaica: her husband and two sons. However, the Officer made a discriminatory finding by assuming that it is "common in this clientele for one parent to work in [Canada] and send money to family overseas" (Tribunal Record, GCMS notes, p 6). The Officer's decision violated subsection 3(1) of the *Canadian Human Rights Act* [CHRA]

since it was discriminatory for the Officer to rely on the Applicant's national origin. Moreover, the Officer's conclusion that the Applicant had worked in Canada during her previous stay in 2012 as a visitor was not founded on any evidence in the record.

> However, common in this clientele for one parent to work in Cda and send money to family overseas. PA has strong econ incentive to remain in Cda as her total income of 14000CAD annually is low to support a family of 4. In Cda even working under the table she could earn more to send home.
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> Tribunal Record, GCMS notes, p 6.

[19] The Applicant also argues that the Officer's decision is unreasonable. First, in the GCMS notes, it is stated the following reasons by the Officer: "[…] it is very unclear why PA would have savings in CAD and indicates an ongoing desire to remain in Cda" (Tribunal Record, GCMS notes, p 6). The Applicant submits that the Officer should have considered the savings in her bank account as funds put aside for her visit to Canada. Second, the Officer failed to consider statutory declarations from the Applicant's best friend in Canada as well as from the best friend's father. Both statutory declarations mention that room and board would be provided for the Applicant during her authorized stay in Canada. Third, the Officer ignored the evidence of employment of the Applicant's best friend. The Applicant's best friend earned enough money to take care of the Applicant, if need be.

[20] The Applicant further argues that the Officer erred by concluding that the Applicant "shows a history of wanting to stay in [Canada]" (Tribunal Record, GCMS notes, p 6). First, the Officer contradicted himself by stating that the Applicant no longer wished to study in Canada, but wanted to study in a different program. Second, the Officer was aware of the fact that the Applicant had been detained upon arrival to Canada to study. The Officer even noted that the

exclusion order issued against the Applicant was set aside by this Court in 2013. According to the Applicant, the Officer thus knew that the Applicant was not able to study in Canada for this specific matter, and not otherwise. The Applicant was simply not issued a study permit upon her arrival in Canada. It was unreasonable for the Officer to draw a negative inference from the fact that the Applicant did not study during her time in Canada.

[21] The Applicant finally states that there was no evidence before the Officer to substantiate his finding that the Applicant shows a history of wanting to remain in Canada. On the contrary, there was even evidence before the Officer pointing out the Applicant's several trips to the United States, always leaving the country at the end of the authorized stay. According to the Applicant, the Officer failed to address said evidence.

B. *Submissions of the Respondent*

[22] The Respondent, on the other hand, argues that the CHRA is inapplicable in the case at bar. The CHRA allows victims to make a complaint and allege discrimination in certain cases only, in accordance with subsection 40(5) of the CHRA. The Respondent submits that the Applicant, a foreign national living in Jamaica, does not satisfy any of the cases in which a complaint may be brought to the Canadian Human Rights Commission. Also, according to the Respondent, the CHRA cannot be used as vehicle to impugn an immigration officer's decision and/or reasons.

[23] The Respondent further submits that it is acceptable for visa officers to consider local or regional characteristics or conditions without necessarily veering into discrimination on the basis

of nationality (*Skoruk v Canada (Minister of Citizenship and Immigration)*, 2001 FCT 1220 at paras 14-15). The Respondent also reminds this Court that the onus is upon the applicants to make a convincing case "and that, in assessing their applications, visa officers will use their general experience and knowledge of local conditions to draw inferences and reach conclusions on the basis of the information and documents provided by the applicant without necessarily putting any concerns that may arise to the applicant" (*Bahr v Canada (Citizenship and Immigration)*, 2012 FC 527 at para 42).

[24] In response to the Applicant's argument that the Officer did not take into account the Applicant's several travels in the United States, the Respondent submits that: (i) there is no evidence that the Applicant left the US of her own volition, (ii) there is no evidence that the Applicant refrained from working while in Canada for a year in 2012, and (iii) there is no evidence that the Applicant refrained from working in the US while there. The Respondent argues that the Officer was only interested in the Applicant's situation in Canada; otherwise, the Officer could have considered the Federal Bureau of Investigation's trafficking concerns towards the Applicant. According to the Respondent, the Officer did not ignore any evidence before him nor did he ignore the host's financial information. The Officer's decision is reasonable.

[25] Finally, with regard to the sufficiency of funds, the Respondent submits that it was reasonable for the Officer to view the Applicant's current savings account as insufficient for the purposes of her visit, especially in light of the weak financial evidence submitted by the Applicant.

VII. Analysis

[26] For the following reasons, the Application for Judicial Review is granted.

A. *Did the Officer make a discriminatory finding in refusing the TRV application?*

[27] The Court agrees with the Respondent's arguments regarding the applicability of the CHRA to a decision rendered by a visa officer, in accordance with subsection 40(5) of the CHRA. Although the Officer should not have generalized without evidence before him that the Applicant was or could have been working in Canada, yet, his findings were not discriminatory. The Court concludes that the Officer did not breach a principle of natural justice by rendering his decision.

B. *Did the Officer err in refusing the TRV application?*

[28] As recorded in the GCMS, the Court concludes that the Officer's reasons do not fulfill the standard of reasonableness.

[29] The Officer's decision may very well be the same if it is reassessed by another officer; however, it is necessary to give reasons, even if briefly, to explain why the Applicant's financial and family situation were not convincing enough, even after the Officer recognized the strong family ties in Jamaica.

> At this point not satisfied that PA has funds to support travel, has sufficient ties to COR to motivate return, nor that she would be a genuine visitor who would depart Cda at the end of her authorized period of stay. Application refused.
>
> (Tribunal Record, GCMS notes, p 6)

The Officer failed to elaborate this finding and his reasons required additional amplification in respect to both financial resources and family ties in Jamaica. The Court finds that the Officer may have had legitimate reasons for deciding not to consider the strong ties with the family. However, the record is silent about this matter, making it difficult for this Court to see this finding as reasonable.

[30] "While the Visa Officer had broad discretion to assess and weigh the relevant factors and the duty to provide reasons was low, this Court has consistently held that discretion has its limits and that reasons, at a minimum, must demonstrate a clear reasoning process. Here, however, the Visa Officer failed to reasonably exercise his or her discretion by failing to provide any indication of the required balancing that led to the imputed refusal" (*Mousa v Canada (Immigration, Refugees and Citizenship)*, 2016 FC 1358 at para 10).

[31] As for the Applicant's sufficient funds to visit Canada, the Court finds that the Officer's finding is also unreasonable, given that the Applicant had submitted proof of her best friend's annual income, as well as statutory declarations from her best friend and her best friend's father. By ignoring important evidence, the Officer erred in rendering his decision. Given the Officer's reasons, the Court cannot conclude that the decision rendered "falls within a range of possible,

acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47).

[32] Finally, the Respondent informed this Court that he intends to commence a motion under S87 of the IRPA to deal with the redacted portions in the GCMS record. The Respondent argues that the redacted portions should not be provided in the interests of national security. Given the fact that the Officer did not consider the Applicant's US criminal record in order to render his decision, this Court finds it is unnecessary in the case at bar to allow the specified redacted information to be disclosed.

> PA does not appear to have any convictions in the USA at this time. As such, she is not criminally inadmissible. In order to continue review of TRV application, updated docs are required.
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> (Tribunal Record, GCMS notes dated February 2, 2017, p 5)

VIII. Conclusion

[33] The Application for judicial review is granted. The matter is returned for determination anew by a different visa officer. No question of general importance will be certified.

JUDGMENT in IMM-1906-17

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is granted. The matter is returned for determination anew by a different visa officer.
2. No question of general importance will be certified.

"Michel M.J. Shore"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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