Federal Court  Cour fédérale

Date: 20150206

Docket: IMM-5403-13

Citation: 2015 FC 161

Ottawa, Ontario, February 6, 2015

PRESENT: The Honourable Mr. Justice Boswell

BETWEEN:

JING GUO

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Nature of the Matter and Background

[1] Ms. Guo [Applicant] was refused a work permit by a visa officer [Officer] in Hong Kong, and she now seeks judicial review of that decision pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*Act*]. She asks the Court to set aside the Officer's decision and return the matter to a different officer for re-determination.

[2] The Applicant is now a 28 year old Chinese citizen who has arranged employment as a cook at Big Rock Inn in Okotoks, Alberta. With that and a positive labour market opinion confirming that Big Rock Inn could hire foreign workers, she applied for a work permit in early 2013.

[3] Initially, her application was refused on the basis that there was insufficient evidence that the Applicant met the experience requirements set out in the labour market opinion. The Applicant's representative protested, however, asking for reasons and an interview, so the file was reopened and an interview convoked on June 18, 2013.

II. Decision under Review

[4] The Applicant was advised on June 18, 2013 that she would not receive a work permit.

[5] The reasons for this refusal are detailed in the Officer's notes about the interview entered into the Global Case Management System [GCMS] on June 18, 2013. Most notably, these notes state the following:

- The Officer observed that it was unusual for women to be cooks, but the Applicant said that she became a cook because she enjoyed cooking and used to watch her father cook.
- The Applicant said she studied at the Zhanjiang City Shenmei Vocational School for two months from May, 2008, to July, 2008. The Officer wrote that this contradicted her certificate from that school, which indicated that she had studied there from August, 2007, to May, 2008.

- The Applicant said that she took two other courses in 2006, but could not explain why the certificates for those courses were issued in 2011. Instead, she began to sob and said she wanted to withdraw her application, but eventually changed her mind and the interview continued.
- The Applicant said that in the autumn of 2009, she started taking courses at the Radio and TV University from 7:45 p.m. to 9:25 p.m.
- The Applicant said that she had worked at Zhanjiang Chikan Hotel since September, 2012, and that she has one shift from 9:00 a.m. to 2:00 p.m. and another shift from 4:00 p.m. to 8:00 p.m. The Officer noted that restaurants usually close much later than this, and that the timing would conflict with her university classes. The Applicant also took a long time answering questions about the seating capacity and other details of the restaurant.
- The Applicant said that she was a grade 3 cook and could not explain why she had presented a grade 4 certificate.
- The Applicant did not have any calluses or marks on her hand and it took the Applicant ten minutes to describe how to make sweet and sour pork.
- The Applicant did not know very much about her Canadian employer's restaurant.

[6] The Officer concluded with the following remarks:

> [The Applicant] does not appear to be a cook with 5 years experience. From what she described about her training and about her job as a cook, there are a lot of discrepancies in many areas. It took her 10 minutes to describe the steps to cook sweet and sour pork and the ingredients and the steps are also not similar to many sweet and sour pork recipes. There are no green pepper, onions [*sic*] use. She never said how she should make the batter and just put the meat in the corn starch. There is no mention of any eggs

> used and how many times the pork should be deep fried to make it crunchy. I am not satisfied that she has the more than 5 years experience as a cook to meet the job requirements. Application refused. [Emphasis omitted]

III. The Parties' Submissions

A. *The Applicant's Arguments*

[7] The Applicant states that the appropriate standard for reviewing the Officer's decision is correctness, because the Officer was biased and the process was unfair. The Applicant argues that this was evident from the very start of the interview, when the Officer stated that it is "unusual for women to be a cook," and doubted that she could handle heavy kitchen equipment like woks. She says this was tantamount to gender discrimination on the part of the Officer.

[8] The Applicant submits that the Officer was in no position to assess the Applicant's skills as a chef. Thus, when the Officer stated that "even I can make this dish," the Applicant argues that the Officer was inappropriately assuming that being a cook was an unskilled profession, and this comment reveals a clear bias. The decision in *Chen v Canada (Minister of Citizenship and Immigration)* (2000), 190 FTR 260, 7 Imm LR (3d) 206 (TD) [*Chen*], is dispositive of this issue, according to the Applicant.

[9] The Applicant also cites the decision in *Au v Canada (Citizenship and Immigration)*, 2001 FCT 243, 202 FTR 57 [*Au*]. Although *Au* sets a standard of fairness which is lower for visa officers, the Applicant argues that the bias evident from the very beginning of the interview set her up for failure, as she was put on her guard right from the outset of the interview.

[10] The Applicant states that any inconsistencies in her educational materials were immaterial in the face of the Officer's bias, and that in any event, it was unfair for the Officer not to give her an opportunity to address his concerns.

B. *The Respondent's Arguments*

[11] The Respondent states that the standard of review in respect of the Officer's decision is reasonableness, and that the Officer's decision met that standard.

[12] The Respondent argues that the Applicant simply failed to prove that she could perform the job, despite being given two chances to do so. In addition, the Applicant's interview was conducted in her own language and so she was comfortable and that could have worked to her advantage. As she was required to prove that she was qualified for the job by paragraph 200(3)(a) of the *Immigration and Refugee Protection Regulations*, SOR/2002-207 [the *Regulations*], the Respondent contends that the Officer's decision was reasonable.

[13] The Respondent also says that the Officer did not commit a reviewable error by asking how she could be working as a grade 3 cook when she only had a grade 4 qualification. When the Officer provided the Applicant an opportunity to address those concerns, the Applicant did not even respond. This was not the only time either, and the Respondent states that the Officer should not be faulted for prompting the Applicant to respond to questions.

[14] Although the GCMS notes dwell on preparation of sweet and sour pork, the Respondent says it was reasonable for the Officer to make inquiries about that since it was required by the

stated job duties. The Officer needed to be satisfied that the Applicant could do the work, so it was reasonable for the Officer to ask about the preparation of a Chinese food dish and to make an adverse inference from her inability to answer promptly.

[15] As to the Applicant's arguments concerning bias on the part of the Officer, the Respondent says there was none. Where the Officer had concerns, the Officer gave the Applicant a chance to address those concerns.

IV. Issues and Analysis

A. *Standard of Review*

[16] As noted by Mr. Justice Richard Mosley in *Palogan v Canada (Citizenship and Immigration)*, 2013 FC 889 at para 9: "The standard of review for assessments of applications for temporary work permits has been satisfactorily determined by the jurisprudence to be reasonableness." The reasons for that was explained well by Mr. Justice Yves de Montigny in *Maxim v Canada (Citizenship and Immigration)*, 2012 FC 1029:

> [19] A visa officer's decision to grant or to refuse a work permit to an applicant involves substantial factual findings, which are reviewable on the standard of reasonableness and require a high degree of deference. Visa officers have a recognized expertise in assessing these applications, and this Court will not intervene unless the decision challenged does not fall within a range of possible, acceptable outcomes which are defensible in respect of the facts and law: *Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190 at para 47. See also: *Ngalamulume v Canada (Minister of Citizenship and Immigration)*, 2009 FC 1268, 362 FTR 42 at paras 15-16; *Odicho v Canada (Minister of Citizenship and Immigration)*, 2008 FC 1039, 341 FTR 18 at paras 8-9; *Obeng v Canada (Minister of Citizenship and Immigration)*, 2008 FC 754, 330 FTR 196 at para 21.

[17] With respect to the Applicant's argument that there was a reasonable apprehension of bias on the part of the Officer, the standard of review is correctness, since that raises an issue of procedural fairness (*Canada (Minister of Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 43, [2009] 1 SCR 339).

B. *Was There a Reasonable Apprehension of Bias?*

[18] In *Committee for Justice and Liberty v Canada (National Energy Board)* (1976), [1978] 1 SCR 369 at 394, 68 DLR (3d) 716 [*Committee for Justice and Liberty*], Mr. Justice de Grandpré set out the general test for determining whether a reasonable apprehension of bias arises:

> …the apprehension of bias must be a reasonable one, held by reasonable and right minded persons, applying themselves to the question and obtaining thereon the required information. In the words of the Court of Appeal, that test is "what would an informed person, viewing the matter realistically and practically--and having thought the matter through--conclude. Would he think that it is more likely than not that … [the decision-maker], whether consciously or unconsciously, would not decide fairly."

[19] Furthermore, it is well established that the grounds for the apprehension of bias must be substantial (see: *Committee for Justice and Liberty* at 394-395). As Mr. Justice Cory stated in *R v S(RD)*, [1997] 3 SCR 484 at para 112, 151 DLR (4th) 193, a real likelihood of bias must be demonstrated and mere suspicion is insufficient (also see: *Bell Canada v Canadian Telephone Employees Association*, 2003 SCC 36 at paras 17-18, 50, [2003] 1 SCR 884).

[20] In *Arthur v Canada (AG)*, 2001 FCA 223 at para 8, 283 NR 346, the Federal Court of Appeal commented on what is required to establish bias:

> An allegation of bias, especially actual and not simply apprehended bias, against a tribunal is a serious allegation. It challenges the integrity of the tribunal and of its members who participated in the impugned decision. It cannot be done lightly. It cannot rest on mere suspicion, pure conjecture, insinuations or mere impressions of an applicant or his counsel. It must be supported by material evidence demonstrating conduct that derogates from the standard. It is often useful, and even necessary, in doing so, to resort to evidence extrinsic to the case. That is why such evidence is admissible in derogation of the principle that an application for judicial review must bear on the matter as it came before the court or tribunal.

[21] To use the words of Mr. Justice de Grandpré, I do not think that an informed person, viewing the Officer's GCMS notes realistically and practically--and having thought the matter through--would conclude that the Officer, consciously or unconsciously, did not decide the Applicant's request for a work permit fairly. There is no evidence on the record before the Court to suggest that the Officer prejudged the application. Moreover, the Officer's notes, entered into the GCMS on the day of the Applicant's interview, neither corroborate nor substantiate the Applicant's allegations and arguments as to bias on the part of the Officer. The Applicant has submitted no evidence that she raised any apprehension of bias before the Officer during the interview. Even if one assumes, without deciding, that the evidence offered by the Applicant in her affidavit filed as part of the application record is admissible, the matters deposed to by the Applicant do not prove that the Officer was biased.

[22] Also, the Applicant's failure to object at the interview amounts to an implied waiver of the right to raise the issue of bias at this stage of the matter: *Fletcher v Canada (Minister of Citizenship and Immigration)*, 2008 FC 909 at paras 10, 17, 74 Imm LR (3d) 78; *Maritime*

Broadcasting System Limited v Canadian Media Guild, 2014 FCA 59 at para 67, 373 DLR (4th) 167.

C. *Was the Officer's Decision Reasonable?*

[23] It is clear from the reasons in the GCMS notes that form part of the Officer's decision that he reviewed the application and the documentation submitted by the Applicant, and also interviewed her in Cantonese. The Officer refused the application for a work permit because he was "not satisfied that she has the more than 5 years experience as a cook to meet the job requirements."

[24] To get a work permit, the Applicant had to satisfy the Officer that the requirements of section 200 of the *Regulations* were met. This section provides in part as follows:

200. (1) Subject to subsections (2) and (3) — and, in respect of a foreign national who makes an application for a work permit before entering Canada, subject to section 87.3 of the Act — an officer shall issue a work permit to a foreign national if, following an examination, it is established that	**200.** (1) Sous réserve des paragraphes (2) et (3), et de l'article 87.3 de la Loi dans le cas de l'étranger qui fait la demande préalablement à son entrée au Canada, l'agent délivre un permis de travail à l'étranger si, à l'issue d'un contrôle, les éléments ci-après sont établis :
…	[…]
(c) the foreign national	*c)* il se trouve dans l'une des situations suivantes :
…	…
(iii) has been offered employment, and an officer has made a positive	(iii) il a reçu une offre d'emploi et l'agent a rendu une décision positive

determination under paragraphs 203(1)*(a)* to *(e)*; and	conformément aux alinéas 203(1)*a)* à *e)*;
…	[…]
(3) An officer shall not issue a work permit to a foreign national if	(3) Le permis de travail ne peut être délivré à l'étranger dans les cas suivants :
(a) there are reasonable grounds to believe that the foreign national is unable to perform the work sought;	*a)* l'agent a des motifs raisonnables de croire que l'étranger est incapable d'exercer l'emploi pour lequel le permis de travail est demandé;

[25] It was reasonable for the Officer in this case to consider and assess the Applicant's experience and abilities as a cook in order to comply with paragraph 200(3)(a) above. The onus was upon the Applicant to convince the Officer that she had the ability, qualifications and experience to perform the work sought. In *Masych v Canada (Citizenship and Immigration)* 2010 FC 1253, a case where a request for a temporary work permit had been refused, Mr. Justice John O'Keefe stated as follows:

> [31] The onus is on the applicant to satisfy the officer of all parts of her application. The officer is under no obligation to ask for additional information where the applicant's material is insufficient. Nor is the officer obliged to provide the applicant with several opportunities to satisfy points she may have overlooked (see *Madan v. Canada (Minister of Citizenship and Immigration)*, 172 F.T.R. 262 (F.C.T.D.), [1999] F.C.J. No. 1198 (QL) at paragraph 6).

[26] The Officer simply was not satisfied with the Applicant's ability to perform the work sought based on the documentation she provided and the responses to the Officer's questions at the interview.

[27] Moreover, despite the Applicant's argument that she was not treated fairly, it is well-established that the level of procedural fairness in this sort of case is minimal or relatively low. In *Qin v Canada (Minister of Citizenship and Immigration)*, 2002 FCT 815 at para 5, Mr. Justice Marshall Rothstein stated that: "…when there is no evidence of serious consequences to the Applicant … the requirements for procedural fairness will be relatively minimal." The Officer interviewed the Applicant and she was afforded an opportunity, unlike many such applicants, to convince him in person that she could perform the work sought. Considering her responses, it was reasonable that the Officer nevertheless concluded that she could not so perform.

[28] Accordingly, the Officer's reasons for refusing the Applicant a temporary work permit are intelligible, transparent, and justifiable and his decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law.

V. Conclusion

[29] In the result, the Applicant's application for judicial review is hereby dismissed. Neither party suggested a question for certification; so, no such question is certified.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed and that no serious question of general importance is certified.

"Keith M. Boswell"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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