

Federal Court



Cour fédérale

Date: 20150420

Docket: IMM-1042-14

Citation: 2015 FC 499

Montréal, Quebec, April 20, 2015

PRESENT: The Honourable Mr. Justice Locke

BETWEEN:

MARGARITA HAKOBYAN

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Background

[1] This is an application for judicial review of a decision of a visa officer denying a work permit to the applicant, Margarita Hakobyan, a citizen of Armenia. Two grounds were cited as the basis for the officer's conclusion that the requirements of the *Immigration and Refugee Protection Act*, SC 2001, c 27 and the *Immigration and Refugee Protection Regulations*, SOR/2002-227 (the Rules) had not been met:

1. The officer was not satisfied that the employment offer in Canada from Diversified Construction Maintenance Inc. (DCM), upon which the applicant's work permit application depended, was genuine; and
2. The officer found that documentation submitted in relation to the applicant's pre-existing employment in Armenia lacked authenticity.

[2] For the reasons set out below, I have concluded that the impugned decision should stand and the present application should be dismissed.

II. Overview of the Parties' Arguments

[3] The applicant argues that the officer erred on both of the grounds for his decision. The applicant argues that the officer breached his duty of procedural fairness in relation to his findings both on the authenticity of documentation concerning the applicant's employment in Armenia, and on the genuineness of the offer of employment in Canada. The applicant asserts that the officer's decision was of considerable importance to the applicant, that an elevated duty of procedural fairness applied as a result, and that the officer should have shared his concerns with the applicant and with DCM and given them an opportunity to address those concerns. The applicant further argues that, if the officer had complied with his duty of procedural fairness, the applicant would have been able to satisfy the officer as to the authenticity of the documentation concerning the applicant's employment in Armenia, and as to the genuineness of the offer of employment in Canada.

[4] The respondent acknowledges that, as regards the assessment of the authenticity of documentation concerning the applicant's employment in Armenia, the officer breached his duty of procedural fairness. However, the respondent argues that there was no breach of procedural fairness in the assessment of the genuineness of the offer of employment in Canada. The respondent asserts that the officer requested certain relevant documents from DCM and considered the documents he received in response. The respondent also asserts that the officer's decision did not have serious consequences for the applicant since she could simply file another application for a work permit with better evidence. Accordingly, the officer's duty of procedural fairness in this regard was relatively low, and the officer was not required to express his concerns either to the applicant or to DCM after reviewing the documents he received. The respondent further argues that, despite the error in assessing the authenticity of employment documents in Armenia, the present application for judicial review should be dismissed because the finding of non-genuineness of the Canadian job offer was distinct and sufficient, by itself, to support the denial of the applicant's work permit.

[5] The applicant replies that the finding of a lack of authenticity of documentation concerning the applicant's employment in Armenia cannot be separated from the conclusion of non-genuineness of the offer of employment in Canada because doubts as to authenticity put the applicant's credibility in issue, and credibility is also important to the assessment of genuineness. The applicant asserts that findings of lack of authenticity and non-genuineness are essentially findings of misrepresentation and bad faith, and that the seriousness of such findings is a further basis for recognizing a high duty of procedural fairness in the present case. The applicant goes so far as to assert that DCM, who has employed many successful work permit applicants in the past,

is now “black-marked” because of the non-genuineness finding, and cannot expect to be successful in any future application unless the officer’s decision is set aside.

III. Analysis

[6] I am not satisfied that the officer’s finding of a lack of authenticity in the documentation relating to the applicant’s employment in Armenia had any effect on the officer’s finding of non-genuineness of the DCM job offer. There is no indication or suggestion to that effect in the documents and notes concerning the decision. Accordingly, I conclude that the issue of the genuineness of the DCM job offer can be dealt with distinctly. I also agree with the respondent that, provided I am satisfied that the issue of the genuineness of the DCM job offer was decided fairly and reasonably, the officer’s decision as a whole can stand.

[7] As regards procedural fairness, I agree with the respondent that the burden on the officer was low. The onus was on the applicant to satisfy the officer of all parts of the application (*Li v Canada (Citizenship and Immigration)*, 2012 FC 484 at para 31; *Singh Grewal v Canada (Citizenship and Immigration)*, 2013 FC 627 at para 19), and on DCM to establish that it was actively engaged in the business in respect of which the offer of employment was made (subsection 200(5) of the *Rules*). I also agree with the respondent that the officer’s negative decision does not have serious consequences for the applicant since she can simply make another application and ensure that it is supported by stronger evidence. I am not satisfied that the finding of non-genuineness suggests any misrepresentation or bad faith on the part of the applicant or DCM. I accept that the finding of non-genuineness in this case was simply a finding that the evidence was insufficient. I am not satisfied that either the applicant or DCM is likely to

suffer any negative effects in the future from the officer's decision. The applicant provided no support for her statement that DCM is now "black-marked" because of the non-genuineness finding.

[8] As regards the reasonableness of the officer's finding of non-genuineness, I note that the finding appears to be based solely on the failure of the prospective employer to provide the requested tax documentation to show that DCM was actively engaged in the business in respect of which the offer of employment was made. Specifically, the Notice of Assessment provided was not for the year the officer sought. The respondent also notes that the Notice of Assessment provided indicated zero amounts for all federal taxes and a credit for provincial tax; however, it is not clear that the officer considered this. In any case, the officer concluded that the documents provided did not show that DCM was actively engaged in the business in respect of which the job offer was made.

[9] Though the officer relied on scant evidence to conclude that the offer of employment was non-genuine, I am satisfied that the lack of evidence is the failing of the applicant and/or DCM, not of the officer. Even if DCM had provided exactly the documents the officer had requested, there was no guarantee that the officer's decision would have been favourable.

[10] The applicant cited evidence from Laurel Stevenson, Office Manager at DCM, who indicated that if the officer had expressed any doubts about the genuineness of the offer of employment, she could have provided documents that would have alleviated such doubts. I note, however, that the applicant did not actually provide any such documents, either through Ms.

Stevenson or through another affiant. I am left with no more than Ms. Stevenson's opinion that the documents she was referring to would have alleviated the officer's concerns. I am not convinced.

IV. Conclusion

[11] In the end, I conclude that the officer's finding that the evidence failed to establish that DCM was actively engaged in the business in respect of which the offer of employment was made, and therefore that the offer of employment should be considered not genuine, was reasonable.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The present application for judicial review is dismissed.
2. No serious question of general importance is certified.

“George R. Locke”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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STYLE OF CAUSE: MARGARITA HAKOBYAN v THE MINISTER OF
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