

Federal Court



Cour fédérale

Date: 20150702

Docket: IMM-6109-14

Citation: 2015 FC 819

Ottawa, Ontario, July 2, 2015

PRESENT: The Honourable Mr. Justice Zinn

BETWEEN:

MARYNA KHODCHENKO

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The applicant challenges a decision of a visa officer at the Embassy in Ukraine who refused her a study permit. For the reasons that follow this application is allowed.

[2] The applicant lives with her mother and brother in Kyiv, Ukraine. She has a Bachelor of Philology, specializing in the English language. Since graduation, she has been employed by a travel agency in Kyiv, Ukraine.

[3] In April 2014, the applicant was accepted by Centennial College in Toronto for study in Business Administration – Accounting, starting in September 2014. A family friend, Mr. Alann Nazarevich, a lawyer in Edmonton, offered to provide her with full financial support for her Canadian studies.

[4] In order to take on this educational opportunity, the applicant applied for a study permit. A first application was refused by letter dated April 30, 2014. The visa officer was not satisfied that the applicant had sufficient and available financial resources to pay for her studies and maintain herself in Canada, notwithstanding the letter from Mr. Nazarevich that provided his declaration of intention to provide financial support. Additionally, the officer was not satisfied that she would leave Canada at the conclusion of her stay, and checked the phrases “purpose of visit” and “personal assets and financial status” on the form letter as the reasons for his decision.

[5] The Global Case Management Notes [GCMS notes] with regards to the refusal state:

Given the PA does not appear to have any funds herself and given the lack of reasoning behind the third party providing funds I am not satisfied that the purpose is entirely as stated, that the PA has sufficient funds and that the PA is a bona fide temporary resident. Application refused.

...

PA going to take a one year accounting course. Graduated with degree in philology and is currently employed as a manager at a travel agency. PA’s representative states that he will cover all costs, no proof of funds provided. No explanation as to why a third party would cover costs. [emphasis added].

[6] A second application was submitted on June 14, 2014, accompanied with additional new documents intended to address the officer’s concerns. These documents included proof that Mr.

Nazarevich opened a \$40,000 Guaranteed Investment Certificate in the applicant's name and had paid the first semester's tuition; copies of foreign visas (including the U.S.), showing that the applicant had previously traveled abroad and returned to Ukraine; a study plan; and a letter from her employer stating she could return to employment.

[7] Also included was a letter from Mr. Nazarevich setting out why he was undertaking this support:

I have known the Khodchenko family – Maryna, her mother Natalia and her brother Bohdan, for almost 4 ½ years.

...

I have three grown children of my own who I have helped and continue to help through school and who are now, so to speak, well on their way. It is with the sincere desire to help still one more young person improve their career prospects that I have offered to pay Maryna Khodchenko's costs of pursuing a diploma in business Administration – Accounting at Centennial College in Toronto. I have therefore deposited the sum of \$40,000.00 in the form of a GIC with CIBC to cover Marina's costs for the 3-semester course. [emphasis added]

[8] Again, the officer refused the study permit. In the rejection letter the officer stated that he or she was not satisfied that the applicant would leave Canada at the conclusion of her stay, and checked the phrases “purpose of visit” and “limited employment prospects in your country of residence” as the basis for that decision. The court notes that the concern relating to limited employment prospects had not been raised in the first decision.

[9] The GCMS notes with regards to the second refusal letter state:

REVIEWED INFO SUBMITTED FOR THE FILE. PI'S EXPENCES WILL BE PAID BY MR. NAZAREVICH – FAMILY FRIEND. IT IS NOT CLEAR WHY HE WOULD PAY SUCH AMOUNT OF MONEY FOR PI. NOT SATISFIED PI IS FORTHCOMING ABOUT THE PURPOSE OF THE TRIP. TIES TO UKRAINE ARE WEAK. REFUSED. (*sic*) [emphasis added]

[10] The letter from Mr. Nazarevich did clearly state why he was funding the applicant's education in Canada. The court is satisfied that the officer's concern, in reality, was a suspicion that there were strings tied to this generous gift. This suspicion meant that the officer must have had doubts about the veracity of the statement from Mr. Nazarevich that his motivation was his "sincere desire to help still one more young person improve their career prospects." In short, the officer was making a veiled credibility assessment of the benefactor and the applicant in questioning that the arrangement was what they said. In such a circumstance, the officer owes a duty of fairness to an applicant to put his concerns directly and explicitly and give her an opportunity to respond. It may be that a denial by the applicant and the solicitor who was her benefactor that there were no strings attached to the gift would not have satisfied the officer – although I cannot think of why – but that determination can only be made after appraising them of the suspicion and seeking a response.

[11] This breach of fairness requires that the application be allowed.

[12] The respondent submits that even if there was a breach of the sort I have found, that the decision should not be set aside if the court is satisfied with the officer's conclusion that he or she was not satisfied that the applicant would return to the Ukraine after her stay. I am unable to make that finding. The officer fails to address the evidence provided as to four previous trips

outside Ukraine and her timely return in each case. What impact that evidence would have on the officer's assessment is not clear.

[13] Neither party proposed a question for certification, nor is there one on these facts.

JUDGMENT

THIS COURT'S JUDGMENT is that the application is allowed, the decision is set aside, and the applicant request for a study permit is to be determined by a different officer in accordance with these reasons.

"Russel W. Zinn"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-6109-14

STYLE OF CAUSE: MARYNA KHODCHENKO v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: JUNE 29, 2015

JUDGMENT AND REASONS: ZINN J.

DATED: JULY 2, 2015

APPEARANCES:

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