Federal Court  Cour fédérale

Date: 20160330

Docket: IMM-2563-15

Citation: 2016 FC 357

Toronto, Ontario, March 30, 2016

PRESENT: The Honourable Mr. Justice Gleeson

BETWEEN:

ZIHANG CUI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATON

Respondent

JUDGMENT AND REASONS

[1] This is an application for judicial review pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] of the May 14, 2015 decision of the Minister's Delegate to issue an exclusion order against the applicant after finding he failed to comply with subsection 29(2) of the IRPA by failing to leave Canada by the end of the period authorized for his stay.

[2] The applicant, Zihang Cui is a citizen of China born in that country on February 14, 1992. He came to Canada in July, 2007 on a study permit. After completing high school he began attending the University of Toronto from September, 2010 to January, 2014 again under a study permit. He claims that in January, 2014 he stopped attending class and in May, 2014 retained an individual who held herself out to be an immigration consultant, paying her $5,000.00 to prepare and submit a work permit application to allow him to become a partner in a friend's cosmetics business.

[3] The consultant allegedly told the applicant in January, 2015 that his application had been approved.

[4] On April 29, 2015, as the result of an identification check at the airport, the applicant was advised by a Canada Border Services Agency [CBSA] Officer that there was a problem with his status. The applicant was instructed to attend the CBSA's Greater Toronto Enforcement Centre [GTEC] on April 30, 2015.

[5] On April 30, 2015, the applicant met with a CBSA Officer who advised him that he was inadmissible to Canada because his last student authorization expired on September 1, 2014 and that extensions had not been applied for or granted. The applicant reported to that CBSA Officer that he had retained and paid an immigration consultant to submit an application for a work permit who had later informed him that the application had been approved. However, no such record of an approved work permit existed.

[6] The applicant alleges that at the April 30, 2015 meeting, the CBSA Officer advised that the applicant could voluntarily leave Canada or he would be removed. The applicant further alleges that he told the CBSA Officer he would leave voluntarily and the CBSA Officer then advised him that he had until May 27, 2015 to return to the GTEC with a purchased plane ticket.

[7] The applicant subsequently received a notice to attend a proceeding under subsection 44(2) of the IRPA at the GTEC on May 14, 2015, known as his Ministerial Delegate's Review [MDR]. That document stated the purpose of the proceeding is to determine whether "you shall be authorized to enter or remain in Canada" and if "a removal order should be issued against you" (Certified Tribunal Record at page 7).

[8] On May 14, 2015 the applicant attended the GTEC and the Minister's Delegate issued an exclusion order against the applicant after finding on a balance of probabilities that pursuant to paragraph 41(1)(a) of the IRPA there are grounds to believe the applicant is inadmissible to Canada, specifically he contravened the requirement under paragraph 29(2) of the IRPA of complying with the terms and conditions of temporary residence by failing to leave Canada at the end of the authorized period of stay.

[9] CBSA also issued a Call-In Notice on May 14, 2015 asking the applicant to report for a removal interview on June 3, 2015 and to present an airline ticket showing he would be leaving Canada by June 14, 2015. On May 14, 2015, the applicant signed a document acknowledging the Minister's Delegate's decision and indicting that he understood that he must not come into Canada without the written consent of the Minister of Citizenship and Immigration during the

one year period immediately following the date of his removal or when he otherwise leaves Canada. The applicant also signed a form stating that a CBSA Officer informed him of the possibility of applying for a Pre-Removal Risk Assessment [PRRA] and that the applicant would not present a PRRA application and that he understood that arrangements for his departure would resume without delay.

[10] On June 2, 2015 the applicant filed this application for judicial review of the exclusion order, submitting that the issuance of the exclusion order violated the agreement reached with the CBSA Officer on April 30, 2015 and breached the applicant's rights to natural justice and procedural fairness.

[11] The applicant alleges lax and incomplete record keeping on the part of the CBSA Officer for the failure to bring the alleged agreement that no action would be taken before May 27, 2015 to the attention of the Minister's Delegate. The respondent argues that there is no record of the alleged agreement because no such agreement was entered into; rather the respondent submits, the CBSA Officer on April 30, 2015 simply acknowledged that the applicant can depart voluntarily but any voluntary arrangements needed to be made quickly and before the applicant's MDR, but the applicant failed to do so in this case. The respondent submits that even if such an agreement existed with the CBSA Officer, the applicant failed to raise such an agreement with the Minister's Delegate on May 14, 2015 or with any other CBSA Officer at the time of signing the above-referenced documents, and therefore the Court cannot fault the Minister's Delegate for failing to take such an agreement into account.

[12] It is unfortunate that this matter has ended up before the Court. The affidavit evidence filed by the parties reflects opposed and entrenched views as to what transpired in the course of the applicant's meeting with the CBSA Officer on April 30, 2015. The applicant urges this Court to conclude that the failure of the CBSA Officer to complete Notes to File in accordance with CBSA policy direction is sufficient to find that the May 14, 2015 decision should be quashed.

[13] While I am sympathetic to the circumstances, I am unable to conclude that the evidence discloses a breach of natural justice or procedural fairness as the applicant alleges. While it is far from clear what transpired at the April 30, 2015 meeting between the applicant and the CBSA Officer, the undisputed facts demonstrate that the applicant was advised of the May 14, 2015 MDR and that the applicant attended that MDR. The May 14, 2015 MDR provided the applicant with the opportunity to raise the alleged agreement reached on April 30, 2015 with CBSA Officials but there is no evidence indicating that the applicant did so.

[14] The circumstances of this case highlights the wisdom of the CBSA policy direction as it relates to record keeping, but lax record keeping does not, in my view, support the quashing of the May 14, 2015 decision.

JUDGMENT

THIS COURT'S JUDGMENT is that the application is dismissed. No question is certified.

"Patrick Gleeson"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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