Federal Court  Cour fédérale

Date: 20160608

Docket: IMM-4312-15

Citation: 2016 FC 636

Ottawa, Ontario, June 8, 2016

PRESENT: The Honourable Mr. Justice Boswell

BETWEEN:

VALENTINA TORRES MARTINEZ

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The Applicant, Valentina Torres Martinez, is a 19 year old citizen of Colombia. She arrived in Canada in August 2014 with a study permit to complete her last year of high school at the Sacred Heart School of Halifax. Her study permit, which was valid until September 15, 2015, stated that: "unless authorized, prohibited from engaging in employment in Canada."

[2] The Applicant graduated from the Sacred Heart School in June 2015. Prior to graduating, she had been accepted to study at Saint Mary's University in Halifax for the fall academic term starting on September 9, 2015; consequently, she applied in August 2015 to extend her stay in Canada as a student. Her application was refused though in a letter dated September 19, 2015; this letter stated that "it has been determined that you have studied in Canada without authorization, and therefore have violated a condition imposed under Regulation 183(3) of the *Immigration and Refugee Protection Regulations*" [SOR/2002-207, the *Regulations*].

[3] However, the Global Case Management System [GCMS] notes, disclosed on October 21, 2015 pursuant to Rule 9 of the *Federal Courts Citizenship, Immigration and Refugee Protection Rules*, SOR/93-22 [*Rules*], suggest in an entry dated September 20, 2015, that the Applicant's application to extend her study permit was refused not because she had studied without authorization but, rather, because she had *worked* without authorization as a supervisor at the Sacred Heart School's after school care program for its elementary students. Pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27, the Applicant now seeks judicial review of the decision of the immigration officer [Officer] dated September 19, 2015, refusing her application to extend her study permit; she asks the Court to set aside the Officer's decision and return the matter to a different officer for re-determination.

I. Issues

[4] The issues raised by this application for judicial review boil down to only one question for the Court to address: is the Officer's decision in this case reasonable?

[5] It is not necessary to determine whether the Applicant engaged in any authorized or unauthorized employment pursuant or contrary to the *Regulations*. Although the Applicant believed the Social Insurance Number she obtained authorized her to work while studying at the Sacred Heart School, the SIN was issued in error by officials at Service Canada.

II. Standard of Review

[6] The Applicant states explicitly, while the Respondent does so implicitly, that the appropriate standard of review for the Court's review of the Officer's decision is one of reasonableness. I agree reasonableness is the appropriate standard of review.

[7] This being so, the Court should not intervene if the Officer's decision is justifiable, transparent, and intelligible, and it must determine "whether the decision 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, [2008] 1 SCR 190, at para 47. Those criteria are met if "the reasons allow the reviewing court to understand why the tribunal made its decision and permit it to determine whether the conclusion is within the range of acceptable outcomes": *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, [2011] 3 S.C.R. 708, at para 16.

[8] Furthermore, the decision under review must be considered as an organic whole and the Court should not embark upon a line-by-line treasure hunt for error (*Communications, Energy and Paperworkers Union of Canada, Local 30 v Irving Pulp & Paper Ltd.*, 2013 SCC 34, [2013] 2 SCR 458, at para 54; see also *Ameni v Canada (Citizenship and Immigration)*, 2016 FC 164, at

para 35, 263 ACWS (3d) 745). Additionally, "as long as the process and the outcome fit comfortably with the principles of justification, transparency and intelligibility, it is not open to a reviewing court to substitute its own view of a preferable outcome"; and it is also not "the function of the reviewing court to reweigh the evidence": *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12, [2009] 1 SCR 339, at paras 59 and 61.

III. The Parties' Submissions

[9] The Applicant argues that it was unreasonable for the Officer to refuse her application to extend her study permit on the basis that she had studied in Canada without authorization. Since she had a valid study permit for a secondary school and had not attended any other academic institution, it was not reasonable to refuse her a study permit on this ground. The Applicant says she only received the GCMS notes after starting this application for judicial review, and those notes make no reference to any unauthorized study. According to the Applicant, this is a significant and troubling discrepancy because, if unauthorized employment was the reason for denying the study permit, she could not have learned of that reason until after commencing this proceeding. The Applicant says the reference to unauthorized study in the refusal letter of September 19th is more than just semantics or a mere clerical error.

[10] The Applicant further argues that, unlike the case in *Wang v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1298, 302 FTR 127 [*Wang*], the GCMS notes in this case do not support the decision but, instead, contain a very different reason for why the application was refused. The reason for the refusal as stated in the letter and that as stated in the GCMS notes, when taken together, make the decision inconsistent. According to the Applicant, the

GCMS notes are supposed to clarify, not replace or rewrite the decision. Furthermore, the Applicant notes that the refusal letter is dated September 19, 2015, but that the GCMS notes were created and entered on September 20, 2015, a day after the letter was sent to the Applicant. The Applicant relies on *De Azeem v Canada (Citizenship and Immigration)*, 2015 FC 1043 at para 28, 258 ACWS (3d) 171 [*De Azeem*], to argue that only those GCMS notes made prior to the decision letter can form part of the decision because to do otherwise would allow an officer to rewrite a decision after it has been communicated.

[11] The Respondent argues that all there is at issue in this case is a typographical or clerical error in the refusal letter, and that the Applicant makes no argument to challenge the refusal on the basis of unauthorized work. The Respondent asserts that the GCMS notes clearly show the application was refused on the basis of unauthorized work, and the jurisprudence holds that GCMS notes are accepted to be part of a decision. According to the Respondent, in view of *Wang*, no error is committed simply because the full reasons for the decision were not received until after the Applicant started this application.

[12] The Respondent further argues that the decision was reasonable because the fact of the matter is that the Applicant did engage in unauthorized work and she has not raised arguments that the decision on that basis would be or was unreasonable. The Court, the Respondent argues, can and should choose not to exercise its discretion to quash the decision when there would be no purpose for so doing because any decision upon a redetermination would be identical save for correction of the typographical error.

IV. Is the Officer's Decision Reasonable?

[13] The decision in this case, as communicated to the Applicant on September 19, 2015, clearly states that denial of the study permit was on the basis of unauthorized study. However, it is equally clear in the record that there was no such study. The permit issued to the Applicant for purposes of her study at the Sacred Heart School was valid until September 15, 2015, some two months after she had graduated and some five weeks before she applied to extend it so she could attend Saint Mary's University. This determination in the refusal letter dated September 19, 2015, is unintelligible and incoherent in view of these facts and cannot be justified. Consequently, the decision is unreasonable.

[14] Although the GCMS notes make it equally clear, at least to the Respondent, that the real and proper basis for denial of the permit was the Applicant's unauthorized employment, the discrepancy between the refusal letter and the GCMS notes constitutes more than a mere typographical or clerical error. Not only do the GCMS notes in this case post-date the decision letter, but they also contradict the reason for refusal of the permit as stated in that letter. These notes are unlike those which provided additional detail to the formal decision letter considered by the Court in *Wang*:

> [22] CAIPS notes [now called GCMS notes] have been accepted as a constituent part of an administrative decision: see *Kalra v. Canada (Minister of Citizenship and Immigration)*, [2003] F.C.J. No. 1199, 2003 FC 941 at para. 15, and *Toma v. Canada (Minister of Citizenship and Immigration)*, [2006] F.C.J. No. 1000, 2006 FC 779 at para. 12. In this case, the CAIPS notes provide additional detail to the formal decision letter and are clearly sufficient to inform the Applicant of the reasons for the refusal of a visa. It is not open to the Applicant to complain that the CAIPS notes were not provided in advance of the initiation of this application because

> her counsel failed to request them at an earlier stage: see *Hayama v. Canada (Minister of Citizenship and Immigration)*, [2003] F.C.J. No. 1642, 2003 FC 1305 at para. 14 and *Liang v. Canada (Minister of Citizenship and Immigration)*, [1999] F.C.J. No. 1301 at para. 31 …

[15] Like the Court in *De Azeem* (at para 28), "I am not prepared to conclude that all of the GCMS notes in this case form part of the reasons." While it is not clear from the Court's reasons in *De Azeem* whether the GCMS notes in that case post-dated the decision under review, it is clear that only those notes which predated the decision under review in *De Azeem* formed part of the reasons for the decision. It would be problematic to allow the GCMS notes in this case to form part of the reasons for denial of the study permit because, not only do they post-date the decision letter, but also because they are inconsistent with and contradict the reason stated in that letter. It is difficult to conceive how it could ever be the case that GCMS notes which post-date a decision letter could form part of that decision.

V. Conclusion

[16] The Officer's decision in this case was not reasonable. The Applicant's application for judicial review is therefore allowed. No question of general importance is certified. There is no award of costs.

JUDGMENT

THIS COURT'S JUDGMENT is that: the application for judicial review is allowed; no question of general importance is certified; and there is no award of costs.

"Keith M. Boswell"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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