Federal Court  Cour fédérale

Date: 20170220

Docket: IMM-3086-16

Citation: 2017 FC 200

Ottawa (Ontario), February 20, 2017

PRESENT: The Honourable Mr. Justice Martineau

BETWEEN:

KARINA RIOS MATA

Applicant

and

THE MINISTER OF PUBLIC SECURITY AND EMERGENCY PREPAREDNESS

Respondent

JUDGMENT AND REASONS

[1] This is an application for judicial review of the decision rendered by an Immigration officer [officer], ordering the exclusion of the applicant from Canada, pursuant to subparagraph 228(1)(c)(iii) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [Regulations], by failing to establish that she was holding a visa or other documents as required by subsection 20(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [Act].

[2] The applicant, a citizen of the United States of America [US], challenges the reasonableness of the exclusion order, claiming that the visa officer erred in the consideration of her dual intent (which would otherwise allow her to obtain temporary residence in Canada), while she contests the officer's finding that she had limited ties with her declared country of residence. In response, the respondent submits that despite any legitimate disagreement that the applicant may have with the result or analysis of the officer, she failed to demonstrate that the exclusion order is unreasonable.

[3] The Minister of Public Security and Emergency Preparedness [Minister] is responsible for the issuance and execution of removal order, as well as exclusion order, for which the applicant is seeking judicial review. Consequently, at the hearing this Court has ordered that the Minister be substituted to the Minister of Citizenship and Immigration as the sole respondent in the present application.

[4] Since August 1, 2016, the applicant is married to a resident of Montreal [fiancé] that she met in January 2015. On July 13, 2016, the applicant presented herself at the Saint-Bernard-de-Lacolle border, but was referred to a secondary questioning at the border. She was interviewed by an officer of the Canada Border Services Agency [CSBA], which questioned the purpose of her visit in Canada. The CSBA officer then contacted the applicant's fiancé in order to confirm all the relevant information.

[5] At the conclusion of his investigation, the officer issued an exclusion order against the applicant on the ground that she was not a *bona fide* visitor and that she was seeking admission

to Canada in order to establish herself as a permanent resident with her fiancé in contravention of the Act and the Regulations.

[6] This Court has already recognized that such an exclusion order is an administrative decision made in the exercise of a discretionary power. Consequently, it is entitled to considerable deference in view of the visa officer's special expertise and experience on the matter (*Ouedraogo v Canada (Public Safety and Emergency Preparedness)*, 2016 FC 810, [2016] FCJ No 803 at paras 21-23 referring to *Cha v Canada (Minister of Citizenship and Immigration)*, 2006 FCA 126, [2007] 1 FCR 409 at paras 18-22, 33 and 38). The applicant is essentially attacking the merit of the officer's decision. Consequently, the applicable standard of review is one of reasonableness (*Sibomana v Canada (Citizenship and Immigration)*, 2012 FC 853, [2012] FCJ No 950 at para 18; *Barua v Canada (Public Safety and Emergency Preparedness)*, 2015 FC 172, [2015] FCJ No 152 at para 15).

[7] The applicant argues that persons such as her may enter Canada as temporary residents and then apply for the status of permanent resident. Furthermore, her past travels in Canada reveal a positive history of abiding by immigration rules. This shows that the applicant had a genuine dual intent which is permitted by the Act. Therefore, the officer's decision is unreasonable. In turn, the respondent submits that the officer did not act unreasonably with respect to the applicant's alleged dual intent. However, the evidence on record strongly suggested that, at the time of the purported entry at the border crossing on July 13, 2016, the applicant's only intent was to remain in Canada (*Wang v Canada (Citizenship and Immigration)*, 2009 FC 619, [2009] FCJ No 796 at para 14). It was within the Minister's delegate purview to

rely on the evidence that he considered most consistent with reality and to prefer this evidence over the applicant's various explanations (*Solopova v Canada (Citizenship and Immigration)*, 2016 FC 690, [2016] FCJ No 662 at para 25 [*Solopava*]). As such, it was reasonable for the officer to give more weight to all the factors listed in his report.

[8] As appears from the ICES traveller history (Certified record at page 27), the applicant had previously come to Canada as a visitor with a valid US passport in 2014, 2015 and 2016. The applicant has never had a valid temporary resident visa. While I have considered the applicant's affidavit, there is no indication whatsoever in the record that the applicant specifically mentioned to the officer that she was getting married on August 1, 2016 in California and that she had family ties out there. Accordingly, any extrinsic evidence submitted by the applicant in her affidavit to that effect must be excluded. In any event, even if I assume that these new facts were mentioned to the officer, I find that the issuance of an exclusion order was still a reasonable outcome in this case.

[9] Firstly, subsection 11(1) of the Act provides that an immigration officer has a discretionary power to issue a visa, provided that the foreign national is not inadmissible and meets the requirements of the Act and the Regulations. Furthermore, paragraph 20(1)(b) of the Act indicates that the foreign national, seeking to enter Canada as a temporary resident, has to hold the visa or document required under the Act or the Regulations, but more importantly, that he or she will leave the Canada by the end of the period authorized for his or her stay. Upon this demonstration of all those elements, the officer will deliver a temporary resident visa to the foreign national, as long as he or she respect all the requirements provided at section 179 of the

Act. If the foreign national is declared inadmissible pursuant section 41 of the Act, the officer may issue an exclusion or a removal order pursuant subparagraph 228(1)(c)(iii) of the Regulations and paragraph 20(1)(a) of the Act.

[10] Secondly, it is clear from subsection 22(2) of the Act that an intention by the foreign national to become a permanent resident does not preclude him or her from becoming a temporary resident if the officer is satisfied that he or she will leave Canada by the end of the period authorized for their stay. This disposition reflects the principle of "dual intent" developed in the case law, upon which the applicant has based her application for judicial review. Indeed, this Court has generally recognized that a person "may have the dual intent of immigrating and of abiding by the immigration law respecting temporary entry" (*Kachmazov v Canada (Citizenship and Immigration)*, 2009 FC 53, [2009] FCJ No 88 at para 15 referring to *Bondoc v Canada (Minister of Citizenship and Immigration)*, 2008 FC 842, [2008] FCJ No 1063 at para 28).

[11] In the present case, I am satisfied that the officer did consider the applicant's dual intent even though he did not expressly mention it in his report. While the applicant submits that she would have eventually left the country for her wedding, still there was sufficient evidence on record to let the officer to believe that she would have overstayed her authorized period. In the case at bar, it is apparent that the officer considered numerous factors in the applicant's declaration, such as the fact that she had limited or no ties to her declared country of residence, the US. Indeed, the applicant had no employment since January 2016 and had no declared home or residence in Georgia where she had previously lived. Furthermore, the applicant had limited

funds to support her and was mainly financially supported by her fiancé. Upon questioning, the applicant revealed that she had sold her vehicle and what little possessions she had left in Georgia were stored at a friend's house. The applicant indicated that her fiancé was living in Montreal at their common address and that she was looking forward to live with him. The evidence also showed that in 2016 the applicant had been away from Georgia, as she was in Canada for 6 months and in Mexico for the rest of the time. Finally, the applicant had no return ticket back to the US, which led the officer to believe that she had no compelling reason to return to the US, but was rather intending to stay in Canada with her fiancé. The officer also considered the statements made by her fiancé, who confirmed that the applicant was living in Montreal with him, and that she had no residence and no current employment in the US. The applicant's fiancé also stated that she intended to stay in Canada with him, and that she was only returning to the US for short family visits.

[12] Although the applicant does not contest that she had limited ties in the State of Georgia at that time, she maintains that she still had significant family ties in California, where she is currently residing. As a matter of fact, this is the reason why the applicant and her fiancé had decided to celebrate their wedding in California in order for her close family to be present. The applicant submits that the officer erred by drawing negative inference from her lack of employment and home in Georgia. The officer has failed to recognize that she was undergoing a period of transition, prior to her wedding. The respondent retorts that the applicant only attempts to better her evidence by either offering *ex post facto* explanations which were not provided to the officer or by repeating explanations that were dismissed by the officer. Indeed, the applicant

invited the Court to substitute its own opinion in alleging that different conclusions could have been drawn from the evidence which is lacking on the record.

[13] I agree with the defendant. It was reasonable for the officer to conclude that the applicant had provided insufficient evidence of ties with her country of residence that would have motivated her to leave Canada when required. Essentially, the applicant is trying to put forth alternative explanations for the officer's findings. Moreover, the role of this Court is not to reweigh the evidence on record and substitute its own conclusions to those of visa officers (*Solopava* at para 33 referring to *Babu v Canada (Citizenship and Immigration)*, 2013 FC 690, [2013] FCJ No 744 at paras 20-21). As long as the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law, the Court should not intervene to overturn the officer's decision. This is certainly the case here.

[14] In the light of the foregoing, this application for judicial review is dismissed. Counsels have proposed no question for certification.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed.

No question is certified.

"Luc Martineau"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-3086-16
STYLE OF CAUSE:	KARINA RIOS MATA v THE MINISTER OF PUBLIC SECURITY AND EMERGENCY PREPAREDNESS
PLACE OF HEARING:	MONTRÉAL (QUÉBEC)
DATE OF HEARING:	18 JANVIER 2017
JUDGMENT AND REASONS:	MARTINEAU J.
DATED:	20 FÉVRIER 2017

APPEARANCES:

Me Ingrid E. Mazzola	FOR THE APPLICANT
Me Evan Liosis	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Rochefort & Associates Attorneys at Law Montréal (Québec)	FOR THE APPLICANT
William F. Pentney Deputy Attorney General of Canada Montréal, Quebec	FOR THE RESPONDENT