Federal Court Cour fédérale

Date: 20170615

Docket: IMM-3482-16

Citation: 2017 FC 595

Ottawa (Ontario), June 15, 2017

PRESENT: The Honourable Mr. Justice Martineau

BETWEEN:

NDAHIMANA PASCAL

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The applicant seeks judicial review of the decision rendered on July 12, 2016, by an Immigration Officer [officer], which denied his sponsored application for permanent residence as a member of the Spouse of Common-Law Partner in Canada Class.

[2] The applicant is a 28 year old citizen of Rwanda who arrived in Canada in January 2012. Although his refugee claim and his Humanitarian and Compassionate application [H&C] were

both denied, the applicant filed, on April 15, 2015, an inland sponsorship application, marrying his wife who is a Canadian citizen. On July 7, 2016, the applicant and his wife were interviewed by the officer regarding the information provided in his application. At the conclusion of this interview, the applicant was asked to provide further documentation to complete his application, notably his lease, letters of employment, and his tax declaration for 2014/2015. However, in this particular case no specific deadline was indicated by the officer to provide said documents. The applicant provided all the required documentation by the following week, which is on Friday, July 15, 2016.

[3] By letter dated on July 12, 2016, the officer denied the applicant's application, stating that she was not satisfied that he met the requirements of the spouse or common-law partner in Canada class as provided by *Immigration and Refugee Protection Regulations*, SOR/2002-227 [Regulations]. According to paragraph 4(1) of the Regulations, a foreign national is precluded from being eligible to be considered as a spouse and sponsored for permanent residence if his or her marriage was entered into primarily for the purpose obtaining a status or benefit under the *Immigration and Refugee Protection Act*, SC 2001, c 27. Therefore, this disposition excludes bad faith relationships from the family class. Although her refusal letter is quite short, the officer wrote in her notes that there were too many discrepancies between the applicant's answers and his wife's testimony at the interview. Consequently, the officer concluded that the development of their relationship did not seem credible and found that the applicant's marriage was not authentic.

[4] As previously stated, the applicant, who was not represented by counsel, submitted the required documentation on July 15, 2016, unaware that the officer had already rejected his application, but it was not until July 19, 2016, that the applicant received the officer's final decision. However, the applicant filed an application for judicial review on August 17, 2016, beyond the prescribed delay to do so, due to his difficulties to find a bilingual lawyer to represent him in Edmonton, Alberta, where he recently moved for his job. It was only there that he learned the full extent of the reasons of his refusal with the receipt of the certified record.

[5] The extension of time for filing the application of judicial review, which is not opposed by the defendant, is granted by the Court. There is no prejudice to the other party, as the respondent as already filed its written submissions on the merit of the decision. Second, the delay can be easily explained by the fact that no information was provided to the applicant about the limitation period to exercise his right to seek judicial review, nor was he informed that he was entitled to this recourse. There was also a continuing intention to pursue the matter. Finally, the application for leave was allowed, which supposes that the judge who granted leave was satisfied that the applicant has raised an arguable case.

[6] It is not disputed by the parties that the appropriate standard of review for issues of procedural fairness and natural justice is correctness (*Canada (Mission Institution v Khela*, 2014 SCC 24, [2014] 1 SCR 502 at para 79; *Essaidi v Canada (Citizenship and Immigration)*, 2011 FC 411 at para 11; *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12, [2009] SCJ No 12 at para 43; *Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190 at para 50).

[7] For the following reasons, the present application for judicial review shall be allowed.

[8] I will immediately dispose of the subsidiary argument made by the applicant which I find unfounded. The applicant submits that the officer did not properly conduct the interview, as she failed to confront him about the inconsistencies noted in his interview. Indeed, the applicant underlines that he and his wife were both interviewed separately. He submits this failure amounts to a violation of natural justice which, alone, warrants the intervention of this Court. I disagree with the applicant that the officer erred by failing to confront him about the different discrepancies in his testimony and his wife's answers or by not explaining why his supporting evidence did not satisfy the officer's concerns (*Anabtawi v Canada (Citizenship and Immigration)*, 2012 FC 856 at para 48). In general, the case law recognizes that visa officers are under no obligation to alert applicants of concerns where they pertain to matters that arose directly from the applicant's own evidence and from statutory requirements (see *Liu v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1025, [2006] FCJ No 1289 at para 16; *Singh v Canada (Minister of Citizenship and Immigration)*, 2008 FC 673 at para 13).

[9] The determinative issue in this case is the haste taken to render the impugned decision. The applicant submits that the officer breached her duty to act fairly by rendering her decision without waiting for the additional documentation, which was provided a week after the interview. Considering that no formal deadline was provided to the applicant, it was unreasonable for the officer to deny his application only three business days after his interview. Again, the interview was held on Friday, July 7, 2016, while the officer denied the application on the next Wednesday, July 12, 2016. In response, the defendant submits that the applicant has not

demonstrated any breach of procedural fairness since an officer is under no obligation to request further information from an applicant and the onus is on the latter to present sufficient positive information to warrant a positive decision (*Pacheco Silva v Canada (Citizenship and Immigration)*, 2007 FC 733 at para 20; *Sharma v Canada (Citizenship and Immigration)*, 2009 FC 786 at para 8).

[10] In the case at bar, I am satisfied that the officer breached her duty to act fairly when she rendered her decision without waiting for the additional documentation that she required of him at his interview. The requested documentation was provided a week after the interview. This was certainly a reasonable delay. I have considered the affidavit of the officer which confirms that no specific deadline was provided for the applicant to submit his additional documentation. Although the officer says that she generally requires applicants to provide additional documents "the same day or the next day at the latest", there is no proof on record that this what the officer actually did in the present case.

[11] The respondent points out that the applicant was aware prior to the interview that the spouse had to bring a number of documents mentioned in the June 21, 2016 notice. In principle, an applicant bears the burden of supplying all of the documentation necessary to support their claim. However, in the case at bar, the officer specifically requested said documentation at the interview. Overall, I find that the officer's conduct in the present case conveyed a legitimate expectation to the applicant that he would have reasonable time to provide his documentation which would have been considered by the officer in her final decision. By failing to do so, the officer has breached the applicant's right to procedural fairness. It was arbitrary for the officer to render her

decision in only three business days after the interview without sending a notice to the applicant (*Pramauntanyath v Canada (Minister of Citizenship and Immigration)*, 2004 FC 174 at para 17).

[12] The Supreme Court of Canada confirmed that the doctrine of legitimate expectation is "an extension of the rules of natural justice and procedural fairness" (*Canadian Union of Public Employees (CUPE) v Ontario (Minister of Labour)*, 2003 SCC 29, [2003] 1 SCR 539 at para 131. The doctrine originates in the common law, and arises when either an express promise, or a reasonably implicit one, made on behalf of public authority leads a person to believe that a practice will be respected (*Araujo v Canada (Citizenship and Immigration)*, 2009 FC 515). This doctrine was given a strong foundation in Canadian administrative law in *Baker v Canada (Minister of Citizenship and Immigration)*, 1999 SCC 699, [1999] 2 SCR 817, in which it was held to be a factor to be applied in determining what is required by the common law duty of fairness (*Agraira v Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36, [2013] 2 SCR 559 at para 94 [*Agraira*]). As stated by the Supreme Court in *Agraira*, the specific conditions which must be satisfied in order for the doctrine of legitimate expectations to apply were summarized succinctly in a leading authority entitled Judicial Review of Administrative Action in Canada: "The distinguishing characteristic of a legitimate expectation is that it arises from some conduct of the decision-maker, or some other relevant actor" (*Agraira* at para 95).

[13] In light of the foregoing, the extension of time for filing the application for judicial review and the application for judicial review are allowed. The impugned decision is set aside and the applicant's application for permanent residence is sent back for reconsideration by a

different immigration officer. There is no question of law of general importance raised in this case.

JUDGMENT

THIS COURT'S JUDGMENT is that the extension of time for filing the application for judicial review and the application for judicial review are allowed. The impugned decision is set aside and the applicant's application for permanent residence is sent back for reconsideration by a different immigration officer. No question is certified.

"Luc Martineau"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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