Federal Court  Cour fédérale

Date: 20171103

Docket: IMM-1438-17

Citation: 2017 FC 992

Ottawa, Ontario, November 3, 2017

PRESENT: The Honourable Mr. Justice Pentney

BETWEEN:

SALAH AZIZ MOHAMMED

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] This is an application for judicial review of a decision by a Visa Officer (Officer) denying the Applicant's request for a Temporary Resident Visa (TRV). This application is brought pursuant to s 72 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*].

I. Background

[2] The Applicant is a citizen of Iraq who applied for a TRV on March 15, 2017. His application stated that the purpose of the trip was "visiting Canada to conduct Business Opportunities", and a cover letter prepared by the Applicant's counsel added that this was to be "an exploratory visit to Canada to see business opportunities since he is interested in applying for an investment program in the near future." The application states that the Applicant owns a successful business in Iraq, and that he had previously travelled to other countries, including Canada. Further, the application states that while most of his immediate family lives in Iraq, he has one brother located in Sweden and another living in Canada. He also provided information regarding his business as well as a letter from a bank.

II. Decision Under Review

[3] On April 11, 2017, the Officer rejected the application on the basis that the Applicant had not satisfied the statutory requirements of *IRPA* and the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [*IRPR*] which put the onus on the applicant for a TRV to establish that they "will leave Canada by the end of the period authorized for their stay" (see s 20(1)(b), *IRPA* and s 179(b), *IRPR*). The Officer notes three concerns as the basis for the refusal: the Applicant's family ties in Canada and Iraq, the purpose of the proposed visit, and whether the Applicant had sufficient funds for the trip. In the Global Case Management System (GCMS) notes, the Officer states: "Given the current economic and security environment in country of residence strong push pull factors to remain in Canada. I am not satisfied applicant is a bona fide visitor who will leave Canada at end of authorized stay. Refused."

III. Issues and Standard of Review

[4] There are only two issues here:

A. Was there a denial of procedural fairness because the Officer relied on extrinsic evidence but did not provide the Applicant with an opportunity to rebut that evidence?

B. Is the decision reasonable, or did the Officer simply pay "lip service" to the evidence and the legal requirements?

[5] The standard of review regarding procedural fairness is correctness (*Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 43), and the standard of review regarding the decision is reasonableness (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 53 [*Dunsmuir*]; *Shakeri v Canada (Citizenship and Immigration)*, 2016 FC 1327 at para 10; *Singh v Canada (Citizenship and Immigration)*, 2017 FC 894 at para 15). Previous decisions have found that, in light of the volume of applications considered by visa officers abroad and the nature of the interests affected by these decisions, the duty to provide reasons is "at the lower end of detail and formality": *Wang v Canada (Citizenship and Immigration)*, 2006 FC 1298 at para 20; *Bahr v Canada (Citizenship and Immigration)*, 2012 FC 527 at paras 32-33 [*Bahr*]; *AloOmari v Canada (Citizenship and Immigration)*, 2017 FC 727 at para 26.

IV. Analysis

A. *Was there a denial of procedural fairness?*

[6] The Applicant submits that the Officer's comments in the GCMS notes about the "push/pull" factors indicates that there was a reliance on extrinsic evidence, and that the failure to advise the Applicant of this evidence and to provide an opportunity to comment on it amounts to a denial of procedural fairness. The Applicant refers to the case of *Rukmangathan v Canada (Citizenship and Immigration)*, 2004 FC 284 [*Rukmangathan*] in support of this argument.

[7] It is settled law that visa officers are entitled to rely on their personal knowledge of the local conditions in assessing evidence and documents provided in support of visa applications. In *Bahr* Justice James Russell stated:

> [42] So it seems to me that what applicants should expect is that the onus is upon them to make a convincing case and that, in assessing their applications, visa officers will use their general experience and knowledge of local conditions to draw inferences and reach conclusions on the basis of the information and documents provided by the applicant without necessarily putting any concerns that may arise to the applicant. The onus is upon the applicant to ensure that the application is comprehensive and contains all that is needed to make a convincing case.

[8] Furthermore, in *Rukmangathan* Justice Richard Mosley found that a visa officer has a duty to advise an applicant of "concerns about the credibility, accuracy, or genuine nature of the information he submitted" (para 22). This was elaborated upon in *Hassani v Canada (Citizenship and Immigration)*, 2006 FC 1283 at para 24:

> Having reviewed the factual context of the cases cited above, it is clear that where a concern arises directly from the requirements of

> the legislation or related regulations, a visa officer will not be under a duty to provide an opportunity for the applicant to address his or her concerns. Where however the issue is not one that arises in this context, such a duty may arise. This is often the case where the credibility, accuracy or genuine nature of information submitted by the applicant in support of their application is the basis of the visa officer's concern, as was the case in *Rukmangathan*, and in *John* and *Cornea* cited by the Court in *Rukmangathan*, above.

[9] More recent decisions confirm this approach: *Madadi v Canada (Citizenship and Immigration)*, 2013 FC 716 at para 6 citing *Perez Enriquez v Canada (Citizenship and Immigration)*, 2012 FC 1091 at para 26; *Lazar v Canada (Citizenship and Immigration)*, 2017 FC 16 at para 21.

[10] There is no evidence that the Officer relied on extrinsic evidence other than generally available information about the situation in Iraq at the time of the application, a matter which falls within the core of the expertise of a visa officer. In this case, in light of the recent situation in Iraq, it was entirely reasonable to expect an applicant for a TRV to anticipate this sort of concern. The Applicant here cannot claim to have been taken by surprise that the Officer would take into consideration the economic and security situation in Iraq.

[11] I find that there was no denial of procedural fairness because the Officer did not refer to extrinsic evidence of the sort that might have given rise to the obligation to provide a fairness letter to the Applicant.

B. *Is the decision reasonable?*

[12] The Applicant argues that there are several flaws in the Officer's decision: it focuses on only a few of the relevant factors; it appears to ignore or misconstrue the relevant evidence in regard to the factors that were considered; and it is so short and vague that it indicates that the Officer was only paying "lip service" to the relevant criteria and considerations.

[13] There are several guideposts for this analysis which are clearly established: (1) there is a legal presumption according to which any person seeking to enter Canada is presumed to be an immigrant; it is up to the applicant to rebut this presumption: *Danioko v Canada (Citizenship and Immigration)*, 2006 FC 479 at para 15; (2) it is not for the Court to re-weigh the evidence; (3) the Officer is presumed to have reviewed all of the evidence unless the contrary is shown (*Florea v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 598 (QL) (FCA)) and is not required to make reference to every document submitted (*Hassan v Canada (Minister of Employment and Immigration)* (1992), 147 NR 317, [1992] FCJ No 946 (QL) (FCA); *Zhou v Canada (Citizenship and Immigration)*, 2013 FC 465 at para 20; (4) the Officer's reasons for decision include the form and the letter, as well as the GCMS notes prepared for the case.

[14] In assessing the adequacy of these reasons I must be guided by the teachings of the Supreme Court of Canada on the subject: reasons demonstrate the "justification, transparency and intelligibility" of the decision (*Dunsmuir*, para 47), and "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, the *Dunsmuir* criteria are met"

(*Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para 16 [*Newfoundland Nurses*]).

[15] Here, the Applicant points to the form which accompanied the decision letter, in which the Officer notes only three concerns (out of the nine areas listed on the form), together with the "push/pull" factors from the GCMS notes. The Applicant argues that the evidence submitted on the three areas of concern to the Officer actually should have been found to support the application.

[16] In regard to family ties in Canada and Iraq, the Applicant points to the fact that the majority of immediate family members currently reside in Iraq, while one brother lives in Sweden and another in Canada. The Applicant argues that this evidence does not support a conclusion that he will not depart from Canada at the end of the time permitted by the TRV, and seeks to bolster this conclusion by referring to other information that was before the Officer, including the Applicant's prior travel history of travel outside of Iraq. This history demonstrates that the Applicant has left Iraq and returned, including a recent trip to Canada.

[17] In relation to the concern about the purpose of the visit, the Applicant points to the letter of invitation that was before the Officer, which makes clear that the trip was planned, in part, as an opportunity to explore business opportunities. The Applicant points out that both *IRPA* and prior case-law indicate that dual purposes for trips are permissible; indeed, otherwise it would be difficult for many proposed investors or business professionals to establish the ties to Canada that they need to support applications under other immigration streams.

[18] Finally, the Applicant says that the Officer's doubts about whether he had sufficient funds for this visit are not reasonable because evidence provided in support of the application included a letter from a bank, corporate information about the registration and operation of the company he owns in Iraq, as well as the documents which showed that the flight and hotel room had already been paid for by the Applicant.

[19] The Respondent argues that the decision of a visa officer deserves great deference, and that what the Applicant is asking for here is essentially a re-weighing of the evidence. In relation to the argument about the form, the Respondent notes that the decision documents from the Officer indicate that a number of factors may have been considered in making the decision, including travel history, purpose of the trip, ties to country of residence, ability to pay for the trip and whether the person would likely leave Canada at the end of the trip. As to the fact that only three of the nine boxes on the form were marked, the Respondent notes that the form itself states: "Please note that only the grounds that are checked off apply to the refusal of your application." Thus the other factors were not the basis for the refusal. The fact that the Officer only checked three boxes is not an indication that the others were not considered.

[20] Here, the reasons provided by the Officer are "reasonable, intelligible and justifiable" in regard to the evidence and the law. Although the reasons provided by the Officer are not extensive, they provide a clear indication of the basis for the decision: *Newfoundland Nurses*, para 16. There is no indication that relevant evidence was ignored and the fact that another decision-maker might have reached a different conclusion is not a basis to overturn the decision.

[21] The record indicates that the Officer reviewed the information provided by the Applicant which gave rise to a number of concerns which the Officer points to as a basis for the denial of the TRV. The general economic and security context in Iraq at the time of the application is obviously a relevant consideration and within the general knowledge of the Officer. The financial information provided was a letter from a bank, but no account statement was included to substantiate the Applicant's financial situation. At the time of the application, the Applicant was a single unmarried individual, with family members in Iraq, Sweden and Canada. The stated purpose of the trip was to explore business opportunities, but there is no supporting information regarding the nature of these opportunities.

[22] Overall, it is evident that there was information which could have supported the granting or the denial of the TRV. The onus was on the Applicant to provide information to support the application. The decision was made based on the Officer's review of the information and the application of the expertise and judgment of the Officer. That decision was not unreasonable.

V. Conclusion

[23] Having considered the record and the arguments of the parties, I find no basis to overturn the decision of the Officer.

[24] The Applicant submitted that a question of general importance should be certified, regarding whether officers dealing with TRV applications have an obligation to provide specific reasons demonstrating how economic or security conditions in the country affect the situation of the applicant. The Respondent objected, on the basis that this case does not raise new issues

which have not already been fully canvassed in prior cases. I agree with the Respondent – no question for certification arises here.

JUDGMENT in IMM-1438-17

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed;

2. No question of general importance arises from this matter.

"William F. Pentney"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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