Federal Court Cour fédérale

Date: 20171205

Docket: IMM-2687-17

Citation: 2017 FC 1105

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Ottawa, Ontario, December 5, 2017

PRESENT: The Honourable Mr. Justice Martineau

BETWEEN:

GUSTAVO DE JESUS GONZALEZ ZULUAGA
OFELIA ROSA GONZALEZ DIAZ

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

<u>JUDGMENT AND REASONS</u>

[1] This is an application to review the reasonableness of an immigration officer's refusal to issue super visas to the applicants. For the reasons that follow, this application for judicial review is dismissed.

[2] The applicants—husband and wife—are citizens of Colombia. On March 30, 2017, they each applied for a temporary resident visa [TRV] in the super visa category (parents and grandparents). The super visa allows parents or grandparents of a Canadian citizen or permanent resident to obtain a multiple entry visitor's visa for a 10-year period and to stay in Canada for a two-year period for the first visit, without having to renew their status. That is the main difference from a "regular" visitor's visa, which allows only one six-month visit at a time (see "Determine your eligibility – Visit your children or grandchildren" (October 30, 2015), online: Government of Canada <https://www.canada.ca/en/immigration-refugees-citizenship/services/visit-canada/parent-grandparent-super-visa/eligibility.html> [Determine your eligibility]).

[3] Note that for a regular TRV application, the officer must assess whether the applicant has a bona fide intention to visit temporarily and will leave at the end of the visit (see paragraph 179(b) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [Regulations]). The officer might consider the applicant's ties with his or her country of origin; the purpose of the visit; the applicant's family and financial situation; the country of origin's overall economic and political stability; invitations from the Canadian hosts, etc. These factors are consistent with this Court's jurisprudence (see, for example, *Duong v. Canada (Minister of Citizenship and Immigration)*, 2003 FC 834 [*Duong*]).

[4] In principle, applicants (parents or grandparents) are eligible for a super visa if they satisfy the requirements for temporary residence in Canada as a visitor <u>and</u> if they provide the additional documents required (see "Temporary residents: Super visa" (September 21, 2017),

online: Government of Canada <https://www.canada.ca/en/immigration-refugees-citizenship/corporate/publications-manuals/operational-bulletins-manuals/temporary-residents/visitors/super-visa.html> [Temporary residents: Super visa]). A super visa applicant must satisfy certain specific requirements, namely: prove that the child or grandchild in Canada meets a minimum income threshold; provide a written statement confirming financial support from the child or grandchild; provide proof of valid Canadian medical insurance coverage for at least one year; and undergo an immigration medical examination (see: Determine your eligibility; Temporary residents: Super visa).

[5] On April 20, 2017, both super visa applications were refused. According to the standard form, the factors the officer considered were the applicants' family ties in Canada and in Colombia, as well as their personal property and financial situation. For Ms. Gonzalez Diaz, the officer also considered travel history. In addition, according to the notes in the GCMS, the officer did not believe that the applicants were bona fide visitors who would leave Canada at the end of their authorized stay.

[6] The officer bases his refusal on the following factors:

- The applicants have a daughter in Canada who arrived here in an irregular manner;

- The applicants made various applications for authorization to enter Canada and the United States, in addition to their sponsorship application in Canada. All these applications were refused. The officer notes in

passing that Ms. Gonzalez Diaz has a history of misrepresentation. She now reports having a criminal record in the United States;

- The applicants did not submit any banking information or evidence of their financial establishment in Colombia;

- They have weak family ties in Colombia: all their children apparently live in Canada or the United States. They made no attempt to meet in another country where a visa would not be required;

- The family has a history of irregular immigration to Canada, and we can infer from the refusals that this is also the case in the United States; and

- In terms of travel history, Mr. Gonzalez Zuluaga has made only one international trip in the last decade, and Ms. Gonzalez Diaz has made none.

[7] It is not disputed that the information on the form and the GCMS notes make it possible to understand the officer's reasoning. However, the applicants submit that the officer based his refusal on irrelevant considerations. They argue that he should have considered the super visa eligibility criteria stipulated in the Ministerial Instructions available on the Immigration, Refugees and Citizenship Canada website and in subsection 15(4) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA]). The applicants provided the required documentation attesting that they satisfy all the eligibility criteria: a promise of financial support from their daughter; proof of the financial means of their daughter and her husband; proof of

relationship; proof of the family members' Canadian citizenship; and proof of insurance. Proof of family ties and their financial situation in Colombia is not required under the Ministerial Instructions. The references to Ms. Gonzalez Diaz's criminal record and to the family's history of immigration and irregular arrival in Canada are also irrelevant considerations and amount to imposing [TRANSLATION] "double punishment" on her, since the inadmissibility period has ended. Furthermore, the officer made errors of fact. In particular, he states that all the children are in Canada or the United States, when in reality, two of the applicants' six children live in Colombia. He also fails to mention the property titles included in the file. Counsel for the applicants submits that these documents could be filed in Spanish with the embassy and should have been considered. Finally, they submit that the refusal is contrary to the spirit of the super visa regime. It is to be expected that applicants in this category would have children and grandchildren in Canada, as well as limited ties to their country of origin because of their age. They argue that the refusal to issue super visas is not an acceptable outcome.

[8] The respondent submits that, in addition to the published Ministerial Instructions, the applicants had to satisfy the other eligibility requirements of the IRPA and the Regulations. In particular, the officer had to be satisfied that they would leave Canada at the end of the authorized period (paragraph 20(1)(b) and subsection 22(1) of the IRPA; paragraph 179(b) of the Regulations). The evidence in the file was insufficient to persuade the officer of the applicants' intention to return to Colombia at the end of the authorized period. The reasons for the refusal are intelligible and transparent: all the applicants' children are in Canada or the United States; they have already filed numerous applications that were refused; they provided no financial information demonstrating their establishment in Colombia; the officer had no obligation to

consider documents in Spanish that were not translated; and, finally, the applicants have virtually no recent travel history. Although independent proof of financial means is not required for a super visa, the applicants' financial situation could be considered to establish their ties to Colombia and, therefore, whether or not they intended to leave Canada at the end of the authorized period. As for the misrepresentation and the criminal record, the respondent submits that the officer was free to consider these facts in the overall assessment of the applicants' profile. Finally, with respect to the error regarding the number of children, counsel for the respondent defers to the discretion of this Court.

[9] There is no cause to intervene in this case.

[10] The refusal to issue super visas to the applicants is based on the evidence on file and is justified by intelligible and transparent reasons. It is an acceptable outcome in light of the applicable law and the evidence on record. The burden was on the applicants to persuade the officer that they would leave Canada at the end of the authorized stay (see paragraph 20(1)(b) of the IRPA). Bear in mind that any person who seeks to enter Canada is presumed to be an immigrant (see, for example, *Danioko v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 479 at paragraph 15). The officer could reasonably find that the applicants would not leave Canada at the end of the authorized period based on their family ties and their financial situation (see, for example, *Duong* at paragraphs 9–10).

[11] The officer determined that the applicants had limited family ties in Colombia, considering that all their children and family members are in Canada or the United States. It must

be recognized that the officer erred in fact on this point, since the applicants have two children (and also several brothers and sisters) in Colombia. However, I do not consider this error to be determinative. The officer also mentions that the applicants did not provide banking information and finds that they failed to prove that they had any financial establishment in Colombia. In this case, the officer was entitled not to consider the property titles written in Spanish. In fact, the super visa application guide clearly indicates that documents in a foreign language must be translated into one of Canada's official languages (see "Applying for Visitor Visa" (August 31, 2017), online: Government of Canada <https://www.canada.ca/en/immigration-refugees-citizenship/services/application/application-forms-guides/guide-5256-applying-visitor-visa-temporary-resident-visa.html>).

[12] For Ms. Gonzalez Diaz, the officer also checked off the "travel history" factor. A lack of travel history can at most be considered a neutral factor and should not in itself negatively affect the application (see *Dhanoa v. Canada (Citizenship and Immigration)*, 2009 FC 729 at paragraph 12). The officer therefore did seemingly err in considering this as a negative factor. However, I do not consider this factor to have played a decisive role in his assessment of the file. This is therefore insufficient to render the decision unreasonable.

[13] Finally, and more generally, the GCMS notes indicate that the officer had various concerns about whether the applicants were bona fide visitors. The applicants filed a number of other visa applications in the United States and Canada, including a sponsorship application. All these applications were refused. The officer also notes a misrepresentation by Ms. Gonzalez Diaz and a family history of irregular immigration to Canada. It seems reasonable to me to infer from

these undisputed facts that the applicants could intend to establish themselves in Canada rather than come for a simple visit.

[14] In closing, even if a different outcome seemed possible, it is not for this Court to take the place of the administrative decision-maker. Even though the officer's decision is discretionary, the fact remains that the presence of two children and a number of siblings and personal property in Colombia certainly plays in the applicants' favour. Nothing is preventing them from filing a new visa application, insisting this time on these positive factors and submitting admissible evidence of personal property and cash in Colombia. While the Court understands the applicants' frustration at being unable to come to Canada themselves to see their children and grandchildren, this application for judicial review cannot succeed.

[15] Counsel did not raise any question of law of general importance.

JUDGMENT in IMM-2687-17

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

There is no question to be certified.

"Luc Martineau"

Judge

Certified true translation
This 19th day of September 2019

Lionbridge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-2687-17
STYLE OF CAUSE:	GUSTAVO DE JESUS GONZALEZ ZULUAGA, OFELIA ROSA GONZALEZ DIAZ v. THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	MONTRÉAL, QUEBEC
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