Federal Court  Cour fédérale

Date: 20180209

Docket: IMM-165-17

Citation: 2018 FC 160

Ottawa, Ontario, February 9, 2018

PRESENT: The Honourable Madam Justice Roussel

BETWEEN:

HOSSEINI, FARHAD AMIR

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The Applicant is a citizen of Iran. In January 2010, he applied for permanent residence in Canada in the Federal Skilled Worker Class. The Applicant is an accountant by profession.

[2] On December 12, 2016, a Visa Officer refused the application on the basis that the Applicant was inadmissible under paragraph 34(1)(*d*) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] as there were reasonable grounds to believe that the Applicant was a

danger to the security of Canada. Noting that activities that facilitate the Government of Iran's weapons of mass destruction [WMD] programs pose a danger to Canada, the Visa Officer found that the Applicant has worked his whole career at a senior level for entities or subsidiaries subject to sanctions for WMD financing activities. Hence, the Visa Officer considered that it was reasonable to believe that the Applicant had directly or indirectly contributed to the facilitation of Iran's WMD programs, and that he would again contribute to Iran's WMD development should he work in his field of expertise in Canada.

[3] The Applicant seeks judicial review of the Visa Officer's decision. He submits that the Visa Officer did not properly conduct the analysis required by paragraph 34(1)(*d*) of the IRPA, equating the Applicant's employment for entities designated under the *Special Economic Measures (Iran) Regulations*, SOR/2010-165 [SEMA Regulations] with inadmissibility. The Applicant argues that the question before the Visa Officer was not whether or not the Applicant had worked for entities listed in Section 2 of Schedule 1 of the SEMA Regulations, but whether the Applicant poses a danger to the security of Canada.

[4] The Applicant further submits that the Visa Officer's decision is unreasonable as he misconstrued the evidence before him. Specifically, he argues that: (1) the majority of the Applicant's career was spent working for entities that are not listed in the SEMA Regulations; (2) he did not hold senior management positions within these entities; (3) he did not have significant influence over the companies where he worked; and (4) it is unreasonable to believe that he would again contribute to Iran's WMD development if he was to work in his field of expertise in Canada.

[5] A visa officer's decision regarding inadmissibility on security grounds under paragraph 34(1)(*d*) of the IRPA involves questions of fact or of mixed fact and law and is reviewable on the standard of reasonableness (*Azizian v Canada (Citizenship and Immigration)*, 2017 FC 379 at para 16; *Hadian v Canada (Citizenship and Immigration)*, 2016 FC 1182 at para 15 [*Hadian*]; *Fallah v Canada (Citizenship and Immigration)*, 2015 FC 1094 at para 13; *SN v Canada (Citizenship and Immigration)*, 2016 FC 821 at para 27). In reviewing a decision against the reasonableness standard, the Court must consider the justification, transparency and intelligibility of the decision-making process, and whether the decision falls within a range of possible, acceptable outcomes which are defensible in light of the facts and the law (*Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 59; *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47).

[6] Pursuant to paragraph 34(1)(*d*) of the IRPA, a foreign national is inadmissible to Canada if he or she is a danger to the security of Canada. In *Suresh v Canada (Minister of Citizenship and Immigration)*, 2002 SCC 1 [*Suresh*], the Supreme Court of Canada held that in order to constitute a "danger to the security of Canada", the person must pose a "serious threat to the security of Canada" and that in order for the threat to be serious, "it must be grounded on objectively reasonable suspicion based on evidence" and "the threatened harm must be substantial rather than negligible" (*Suresh* at para 90; *Hadian* at para 16).

[7] The facts that constitute inadmissibility under paragraph 34(1)(*d*) of the IRPA are established on the "reasonable grounds to believe" standard as described in section 33 of the IRPA. This standard requires something "more than mere suspicion, but less than the standard

applicable in civil matters of proof on the balance of probabilities." Reasonable grounds to believe exist if there is an objective basis for the belief based on compelling and credible information (*Mugesera v Canada (Minister of Citizenship and Immigration)*, 2005 SCC 40 at para 114; *Hadian* at para 17).

[8] Having carefully reviewed the Visa Officer's decision and the record, I agree with the Applicant that the decision of the Visa Officer is unreasonable. The Visa Officer's conclusion that the Applicant would pose a danger to the security of Canada is flawed as he failed to conduct an objectively based assessment on whether the evidence before him would support a finding that there were reasonable grounds to believe the Applicant posed a "serious threat" to the security of Canada and secondly, that the threatened harm was substantial rather than negligible. In finding that the Applicant was inadmissible simply because he worked for SEMA listed entities or their subsidiaries, the Visa Officer improperly inferred that the Applicant constituted a danger to the security of Canada.

[9] Moreover, I find that some of the Visa Officer's findings are not based on compelling and credible evidence. For instance, the Applicant states in a letter dated October 24, 2016 that he worked for the majority of his career for a company called "Personnel's Savings Investment Company of Behshahr Industrial Development Group of Tehran" a private equity company. Its activities are limited to trading shares and securities in the stock market with the savings of the personnel, employees and workers of the Behshahr Development Group. While there is admittedly a lot of confusion regarding the names of the various companies mentioned in the record and their link with one another and to the SEMA listed companies, the Visa Officer

nevertheless determined that the Applicant worked for a company called “Savings Investment of Behshar Industries Development”, an entity that was listed in the SEMA Regulations between 2010 and 2016. The basis for the Visa Officer’s finding is nothing more than a Google search of the SEMA listed company which returned a hit on the same company as the one for which the Applicant worked. As the company for which the Applicant worked contains all the words of the SEMA listed company, it is not surprising that the Google search came up with the Applicant’s employer. The evidence on the record also shows that the company for which the Applicant worked was dissolved in 2012. However, the contentious SEMA listed company remained listed until 2016 despite amendments to the SEMA Regulations after 2012. In my view, it was unreasonable for the Visa Officer to rely on a Google search given the confusion regarding the various companies and their involvement with the SEMA listed companies. In the circumstances of this case, the Google search did not constitute credible and compelling evidence.

[10] The Visa Officer also found that it was reasonable to believe that, should the Applicant work in his field of expertise in Canada, he would again contribute to Iran’s WMD development and as a result, concluded that he was inadmissible pursuant to paragraph 34(1)(*d*) of the IRPA. I agree with the Applicant that this conclusion is unreasonable. The evidence on the record demonstrates that the Applicant’s area of expertise is accounting and financial management. He indicates in a letter dated October 24, 2016 that he intends to work as an accountant in Canada. In the absence of any further analysis by the Visa Officer, the Visa Officer’s belief implies that there are companies and banks in Canada that are contributing to the development of WMD in Iran.

[11] For the reasons stated above, I find that the Visa Officer's decision is unreasonable and must be set aside. As a result, the application for judicial review is granted.

[12] On a final note, I would like to point out that on September 13, 2017, I granted the Respondent's motion for non-disclosure of certain information in the Certified Tribunal Record pursuant to section 87 of the IRPA. The Respondent provided the assurance that he would not rely upon the withheld information in the course of this application for judicial review and he did not.

[13] I have considered the Applicant's proposed questions for certification. Since this decision is fact specific and the proposed questions are not dispositive of this matter, no question of general importance shall be certified.

JUDGMENT in IMM-165-17

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is granted;
2. The decision is set aside and the matter is remitted back to a different Visa Officer for redetermination;
3. No question of general importance is certified.

"Sylvie E. Roussel"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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