Federal Court  Cour fédérale

Date: 20180628

Docket: IMM-4985-17

Citation: 2018 FC 669

Ottawa, Ontario, June 28, 2018

PRESENT: The Honourable Madam Justice Gagné

BETWEEN:

CORAZON BAUTISTA

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Background

[1] In this application for judicial review, Mrs. Corazon Bautista seeks to set aside a visa officer's decision to refuse her application for a temporary work permit. Mrs. Bautista, a citizen of the Philippines living in Hong Kong, wants to come to Canada to work as a live-out caregiver in the home of her brother, Mr. Reynaldo Lucas Marayag.

[2] This hearing was scheduled in Vancouver for June 6, 2018, but on May 31, 2018, Mr. Marayag, who is not a lawyer, filed an Entry of Appearance stating that the Applicant does not hold a visa to come to Canada, that she cannot afford to hire a lawyer and that her brother and proposed employer, Mr. Marayag, holds a special power of attorney to represent her before the Court. On June 1st, the Respondent informed the Court that he opposed this appearance and that counsel for the Respondent would be ready to make oral submissions on the issue at the hearing. The Court directed that both parties be ready to make submissions on the Applicant's oral motion on June 6, 2018.

[3] After having heard the parties' submissions, the Court advised them that the Applicant's motion was dismissed and that short written reasons would be provided. They were asked if they preferred the application for judicial review to be postponed and heard at a later date or that its merits be dealt with on the basis of their written submissions. They both acknowledged that there was not much to be added to their written submissions (neither party filed further memoranda of fact and law after leave was granted) and that the Court could dispose of the matter on the basis of the written material.

[4] The present reasons will therefore deal with the Applicant's preliminary motion and with the merits of the case.

II. Preliminary Motion

[5] No evidence was filed in support of the Applicant's motion: the Applicant did not file an affidavit stating that it was impossible for her to attend a hearing in Canada or that she could not

afford to be represented by a lawyer. Nor did the Applicant ask to be heard by the Court via conference call.

[6] Mr. Marayag informed the Court that, at one point in time, he was a lawyer in the Philippines and that he practiced law there from 2007 to 2009. He did not pursue his legal career in Canada, but in recent years he trained to become an immigration consultant.

[7] Contrary to Mr. Marayag's view, rules 119 to 121 of the *Federal Courts Rules*, SOR/98-106, are quite clear. Except for two specific exceptions, only lawyers can make representations on behalf of an individual before this Court. In special circumstances and with leave of the Court, a corporation, partnership or unincorporated association can be represented by an officer, partner or member, and a party under a legal disability or acting in a representative capacity can also depart from the general rule in special circumstances and with leave of the Court. The Applicant does not fall under either of these exceptions.

[8] It is true that in *Erdmann v Canada*, 2001 FCA 138 and *Scheuneman v Canada (Attorney General)*, 2003 FCA 439, the Federal Court of Appeal left open the possibility that, based upon its inherent jurisdiction, this Court could, in unusual circumstances, permit a person other than a lawyer to represent a litigant when the interests of justice so require. However, and in my humble view, neither of these precedents made a firm ruling on the issue.

[9] In any event, and as I so advised the parties at the hearing, I am not prepared to exercise my discretion to allow Mr. Marayag to represent the Applicant in this case.

[10] First, and as indicated above, there is no evidence before me that the Applicant could not retain counsel or that she had looked at the possibility of having her case heard by conference call (see *Doret v Canada (Citizenship and Immigration)*, 2009 FC 447 at para 12). In other words, there is no evidence as to why the Applicant's circumstances would be so exceptional as to require this Court to rule in her favour on the preliminary motion.

[11] Second, in *Scheuneman*, Justice Evans specifically stated that if it existed, the inherent jurisdiction of this Court to allow representations by non-lawyers could only properly be exercised in the context of specific facts, including the suitability of the chosen person. As a former Filipino lawyer who has not been called to the bar of any Canadian province or territory and now a trained immigration consultant, Mr. Marayag is not authorized to make representations before Canadian courts in any capacity. This Court should respect the difference between immigration consultants and immigration lawyers and refrain from encouraging the illegal practice of law by immigration consultants.

III. Issues and Standard of Review

[12] The only issue raised by this application for judicial review is whether the visa officer erred in finding that the Applicant did not discharge her burden of convincing him:

a) that her proposed employer had sufficient financial means to employ her; and

b) that she would return to her country at the end of the authorized stay.

[13] The assessment of an application for a work permit involves an exercise of statutory discretion and attracts a high degree of deference from the Court. A visa officer's decision is therefore reviewable on the reasonableness standard. So long as his or her findings are justified, transparent and intelligible, this Court will not intervene (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47; *Ansari v Canada (Citizenship and Immigration)*, 2013 FC 849 at para 12).

IV. Analysis

A. *Visa officer's assessment of employer's finances*

[14] The Applicant argues that the proper tribunal or body vested with the power and authority to determine whether or not the employer meets the financial requirements is Employment and Social Development Canada [ESDC]. She further argues that by reviewing ESDC's Labour Market Impact Assessment, i) the visa officer acted in excess of jurisdiction, and ii) at the very least, procedural fairness required that the visa officer provide the prospective employer with an opportunity to respond. She finally argues that the sole grounds for refusing a work permit application are those found in paragraph 200(3)(*a*) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [Regulations], and are limited to applicants that are unable to perform the work or that are inadmissible to Canada.

[15] I do not agree with the Applicant. ESDC is primarily tasked with assessing the impact that hiring a temporary foreign worker will have on the Canadian labour market. In so doing, it cannot usurp a visa officer's discretion and duty to assess the employer's ability to fulfill the

terms of the job offer (*Sulce v Canada (Citizenship and Immigration)*, 2015 FC 1132 at para 29; *Singh c Canada (Citizenship and Immigration)*, 2015 FC 115 at para 20).

[16] In my view, the visa officer made a reasonable analysis of the combined family income of the prospective employer and found that it was insufficient to meet the Low Income Cut-Off for the family, in addition to the Applicant's salary. The visa officer also looked at the family's savings and considered income levels for the two previous years. The visa officer was not obliged to speculate, as the Applicant suggests, and to consider the possibility that the family's income could increase with the help of a live-out caregiver. Not only is there no evidence that the family did not previously benefit from the help of a caregiver, but the assessment of the employer's capacity to pay should not be based on speculation.

[17] I also was not convinced by the Applicant's argument that the visa officer should have given the employer the opportunity to rebut his findings before denying the Applicant's work permit. The onus of satisfying the visa officer of all elements of the application lay with the Applicant. It is generally not a procedural fairness requirement that applicants for a work permit be granted an opportunity to respond to a visa officer's concerns. This is particularly so where, as in the present case, there is no evidence of serious consequences to the Applicant resulting from a refused work visa application, since she may re-apply and there is no evidence that doing so would cause hardship (*Qin v Canada (Minister of Citizenship and Immigration)*, 2002 FCT 815 (CanLII) at para 5; *Singh Grewal v Canada (Citizenship and Immigration)*, 2013 FC 627 at para 19). The onus does not shift to the visa officer to interview the Applicant and to take other steps to satisfy his concerns arising from any documentation filed by the Applicant.

[18] The visa officer's decision was based on the sufficiency of evidence adduced by the Applicant, rather than the credibility, accuracy or genuine nature of the information submitted, which is typically where procedural fairness allows for an applicant to have the opportunity to respond. In my view, the conclusions reached by the visa officer on the basis of the evidence provided by the Applicant are reasonable.

B. *Visa officer's assessment of the likelihood that the Applicant would leave at the end of her authorized stay*

[19] In my view, the visa officer's concerns about the Applicant's family ties with the Philippines and the purpose of her visit are reasonable. While the Applicant's husband and son live in the Philippines, she has worked abroad (Singapore and Hong Kong) since the early 2000s. The Applicant has no assets in the Philippines and presented no evidence of other close connections to the country. The visa officer found that, in contrast, the Applicant has close family ties in Canada and financial incentives to remain here.

[20] The onus was on the Applicant to convince the visa officer that she would leave Canada at the end of her authorized stay. I find no reason to interfere with the visa officer's assessment of the Applicant's lack of establishment in her home country that would motivate her to return from Canada.

[21] Relying on *Nazir v Canada (Citizenship and Immigration)*, 2010 FC 553, the Applicant states that it is improper for a visa officer to consider whether or not an applicant intends to return to his or her country upon a work permit's expiry. In that case, the Court set aside a visa

officer's decision, finding that the live-in caregiver program allowed for live-in caregivers to apply to remain in Canada permanently once they met the requirements for doing so, as set out in the Regulations.

[22] However, in *Nazir*, the Court reviewed a decision concerning an application for a work permit as a live-in caregiver pursuant to section 112 of the Regulations (now repealed), not one governed by section 200 of the Regulations, which is the section relevant to the Applicant's application. The normal requirement that the Applicant leave Canada by the end of her authorized stay applies, as set out in paragraph 200(1)(*b*) of the Regulations.

V. Conclusion

[23] For these reasons, the Court's intervention is not warranted and the Applicant's application for judicial review is dismissed. The parties have proposed no question of general importance for certification and none arises from this case.

JUDGMENT in IMM-4985-17

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed;

2. No question of general importance is certified.

"Jocelyne Gagné"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-4985-17
STYLE OF CAUSE:	CORAZON BAUTISTA v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
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APPEARANCES:

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