Federal Court  Cour fédérale

Date: 20180706

Docket: IMM-5351-17

Citation: 2018 FC 704

Vancouver, British Columbia, July 6, 2018

PRESENT: The Honourable Mr. Justice Southcott

BETWEEN:

PAWAN KUMAR BADHAN

Applicant

and

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] This is an application for judicial review of a decision dated December 1, 2017, by a visa officer [the Officer] refusing the Applicant's application for restoration of his visitor status [the Decision].

[2] As explained in greater detail below, this application is dismissed, because I have found that the Officer did not err in the test applied in assessing the Applicant's application and I have found that the Decision itself is reasonable.

II. Background

[3] The Applicant, Pawan Kumar Badhan, is a citizen of India and a permanent resident of Greece. He came to Canada as a foreign worker in March 2015 and, following the expiration of his work permit, obtained a visitor visa in March 2016. The visitor visa was valid until May 2017. On August 22, 2017, Mr. Badhan applied to restore his visitor status under s 182 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [IRPR].

[4] On September 6, 2017, Mr. Badhan also applied for a work permit, which application was refused on October 13, 2017. He has brought a separate application for leave and judicial review related to that refusal.

[5] On December 1, 2017, the Officer issued to Mr. Badhan a letter conveying the Decision to refuse his restoration application. As reasons for the Decision, the letter stated as follows (emphasis in original):

> Persons wishing to extend temporary resident status in Canada must satisfy an officer that they will leave Canada by the end of the period authorized for their stay, that they will not contravene the conditions of entry and that they do not belong in a category of persons inadmissible to Canada under the Immigration and Refugee Protection Act.
>
> In reaching a decision, an officer considers several factors, which include the applicant's:

> 1. Reason for original entry and reason for requested extension;
>
> 2. Ties to country of permanent residence, including:
>
> - employment and study commitments;
>
> - family ties and responsibilities;
>
> - status (citizenship or immigration status);
>
> 3. Financial means for the extended stay and return home;
>
> 4. Travel and identity documents;
>
> 5. Probability to leave Canada at the end of authorized stay.
>
> After considering all the circumstances of your case, I am not satisfied that you meet the requirements of the Act and Regulations.

[6] An entry dated December 1, 2017, in the Global Case Management System [GCMS] notes maintained by Citizenship and Immigration Canada records the following additional reasons for the Decision:

> Client is requesting restoration of temporary resident status and a Visitor Record. Client last held status Canada until February 01, 2017. Client was on implied status until May 25, 2017. As per A47(a) temporary resident status has been lost. Has applied for and is eligible for restoration consideration under R182. Restoration eligibility period ends on August 23, 2017. Application rec'd 2017/08/22. Client is requesting till February 15, 2018 on a Visitor Record. Application rec'd August 22, 2017. Client's letter of support from former Canadian employer states that client is applying for a Visitor Record in order to obtain a Work Permit. Letter of Support, March 20, 2017, contains approved LMIA. Client applied for a Work Permit on September 06, 2017 and was refused on October 13, 2017. Based on the evidence submitted, I am satisfied that Client's original purpose of visit has been fulfilled. I am not satisfied client will leave at the end of the authorized stay. After considering all the circumstances of this case, I am not satisfied client is a bonafide visitor and meets the requirements of the Act and Regulations. Application refused, client is no longer restorable. Client advised status expired – must leave Canada.

[7] In the present application for judicial review, Mr. Badhan seeks to set aside the Decision and return his restoration application for redetermination.

III. Issues and Standard of Review

[8] After hearing the parties' oral submissions, I would characterize the issues raised for the Court's consideration as follows:

A. Did the Officer err in the test employed, or in interpreting the IRPR, in assessing the Applicant's application for restoration?

B. Is the Decision reasonable?

[9] Mr. Badhan raises several arguments, canvassed below, challenging the Officer's assessment of the likelihood he would leave Canada at the end of his authorized stay. The parties agree that the issues raised by these arguments are subject to review on a standard of reasonableness. However, Mr. Badhan also argues that the Officer erred in the test employed, or in interpreting the IRPR, and submits that these arguments raise a question of law to which the standard of correctness applies. The Respondent takes the position that the standard of reasonableness applies to these arguments as well.

[10] I agree with the Respondent's position. Mr. Badhan refers the Court to *Canada (Minister of Citizenship and Immigration) v Chen*, 2014 FC 262 [*Chen*] at paragraph 10, where Justice Phelan stated that the issue of whether a visa officer committed an error of law by applying the wrong test has been held to be subject to the correctness standard of review. However, *Chen* was not decided in the context of a restoration application. Another recent decision of this Court cited

by both parties, *Udodong v Canada (Minister of Citizenship and Immigration)*, 2018 FC 234 [*Udodong*], was decided in this context. Justice LeBlanc applied the standard of reasonableness to the Court's review of a restoration decision, including the conclusions reached by the visa officer in interpreting and applying the relevant statutory and regulatory provisions (see paragraph 5). My conclusion is that the standard of reasonableness applies to all the arguments raised by Mr. Badhan.

IV. Analysis

A. *Did the Officer err in the test employed, or in interpreting the IRPR, in assessing the Applicant's application for restoration?*

[11] Mr. Badhan identifies sections 179 and 182(1) as provisions of the IRPR relevant to his restoration application:

Issuance	**Délivrance**
179 An officer shall issue a temporary resident visa to a foreign national if, following an examination, it is established that the foreign national	**179** L'agent délivre un visa de résident temporaire à l'étranger si, à l'issue d'un contrôle, les éléments suivants sont établis :
(a) has applied in accordance with these Regulations for a temporary resident visa as a member of the visitor, worker or student class;	**a)** l'étranger en a fait, conformément au présent règlement, la demande au titre de la catégorie des visiteurs, des travailleurs ou des étudiants;
(b) will leave Canada by the end of the period authorized for their stay under Division 2;	**b)** il quittera le Canada à la fin de la période de séjour autorisée qui lui est applicable au titre de la section 2;

(c) holds a passport or other document that they may use to enter the country that issued it or another country;

c) il est titulaire d'un passeport ou autre document qui lui permet d'entrer dans le pays qui l'a délivré ou dans un autre pays;

(d) meets the requirements applicable to that class;

d) il se conforme aux exigences applicables à cette catégorie;

(e) is not inadmissible;

e) il n'est pas interdit de territoire;

(f) meets the requirements of subsections 30(2) and (3), if they must submit to a medical examination under paragraph 16(2)(b) of the Act; and

f) s'il est tenu de se soumettre à une visite médicale en application du paragraphe 16(2) de la Loi, il satisfait aux exigences prévues aux paragraphes 30(2) et (3);

(g) is not the subject of a declaration made under subsection 22.1(1) of the Act.

g) il ne fait pas l'objet d'une déclaration visée au paragraphe 22.1(1) de la Loi.

[…]

[…]

Restoration

Rétablissement

182 (1) On application made by a visitor, worker or student within 90 days after losing temporary resident status as a result of failing to comply with a condition imposed under paragraph 185(a), any of subparagraphs 185(b)(i) to (iii) or paragraph 185(c), an officer shall restore that status if, following an examination, it is established that the visitor, worker or student meets the initial requirements for their stay, has not failed to comply

182 (1) Sur demande faite par le visiteur, le travailleur ou l'étudiant dans les quatre-vingt-dix jours suivant la perte de son statut de résident temporaire parce qu'il ne s'est pas conformé à l'une des conditions prévues à l'alinéa 185a), aux sous-alinéas 185b)(i) à (iii) ou à l'alinéa 185c), l'agent rétablit ce statut si, à l'issue d'un contrôle, il est établi que l'intéressé satisfait aux exigences initiales de sa période de séjour, qu'il s'est conformé à toute autre

with any other conditions imposed and is not the subject of a declaration made under subsection 22.1(1) of the Act.	condition imposée à cette occasion et qu'il ne fait pas l'objet d'une déclaration visée au paragraphe 22.1(1) de la Loi.

[12] Mr. Badhan notes that s 182(1) requires a visa officer to restore an applicant's status if, among other things, it is established that the applicant meets "the initial requirements for their stay". This in turn requires the Officer to consider, as prescribed by s 179(b), whether it is established that the applicant will leave Canada by the end of the period authorized for their stay. The Respondent submits the same interpretation of these provisions. However, Mr. Badhan argues that the Officer erred by failing to assess whether he would leave Canada at the end of his authorized stay and by instead focusing upon the fact that he had not been issued the work permit for which he had separately applied.

[13] I see no error by the Officer in interpreting these provisions of the IRPR. Both parties agree that the Officer was required to assess whether Mr. Badhan established that he would leave Canada at the end of his authorized stay. Both parties also agree that the Officer's decision turned significantly (indeed, Mr. Badhan submits it turned entirely) on the fact that his work permit application was unsuccessful. The significance of this factor to the Decision does not suggest that the Officer misunderstood the obligation to assess whether Mr. Badhan would depart Canada when required. Indeed, the GCMS notes expressly refer to the Officer not being satisfied that Mr. Badhan will leave at the end of the authorized stay. It is clear that the Officer considered this question which both parties submit, and I agree, the Officer was required to determine.

[14] In my view, Mr. Badhan's submissions amount to an argument that the Officer reached an unreasonable decision on the question of whether he would leave at the end of his authorized stay, either because the Officer unreasonably based that decision on the unsuccessful work permit application or because the Officer unreasonably failed to consider other factors. Those arguments are assessed in the next section of this analysis.

B. *Is the Decision reasonable?*

[15] The Respondent describes the reasoning in the Decision as follows. Mr. Badhan originally came to Canada under a work permit and then remained as a visitor. After expiration of his temporary resident status as a visitor, he sought restoration of that status, and the materials submitted in support of his restoration application indicated that visitor status was being sought so that he could remain in Canada while he sought a work permit. Mr. Badhan's application for a work permit had, however, been refused by the time the Officer was considering the restoration application. The purpose for seeking visitor status had therefore already been fulfilled, because the work permit application had been, negatively, adjudicated. Faced with an applicant who had come to Canada as a foreign worker, remained as a visitor, and then applied for an extension as a visitor with a stated purpose which was no longer applicable, the Officer was not satisfied that Mr. Badhan would depart Canada when required if the application was granted.

[16] I agree with this interpretation of the Officer's reasoning. It is supported by the refusal letter, which lists factors underlying the decision but highlights Mr. Badhan's "reasons for original entry and reason for requested extension" and "probability to leave Canada at the end of

authorized stay". The Respondent's interpretation is also supported by the more detailed reasons provided in the GCMS notes. I find the reasoning intelligible.

[17] I also find nothing otherwise unreasonable in the Officer's analysis based on the failed work permit application. Mr. Badhan submits that the Decision represents an improper fettering of the Officer's discretion, by reliance on the decision of another officer, of the sort found by Justice Diner to be unreasonable in *Ma v Canada (Citizenship and Immigration)*, 2016 FC 1245. However, in that case, the tribunal's error was in relying on a previous decision without considering the facts and circumstances of the particular case before it. The analysis by the Officer in the present case cannot be characterized in the same manner. The Officer did not adopt the finding of the officer who rejected the work permit application. Rather, the fact that the work permit had been rejected led the Officer to conclude that the stated purpose of the restoration application had already been met, resulting in the Officer's concerns about whether Mr. Badhan would depart Canada at the end of a further authorized stay as a visitor.

[18] Mr. Badhan also argues that the Officer failed to consider other factors relevant to the question whether he would depart Canada when required. He submits that the materials provided to the Officer indicate that he has a positive travel history, that he has ties to his home country through his spouse, two minor children, and real property, and that he has assets to support himself while in Canada.

[19] An administrative decision-maker is presumed to have considered all the evidence before it unless the contrary is shown (see, e.g., *Rahman v Canada (Minister of Citizenship and*

Immigration), 2016 FC 793 [*Rahman*] at para 17). A visa officer is under no obligation to refer to every piece of evidence, although the more significant a piece of evidence that is inconsistent with a decision-maker's conclusion, the more willing a court may be to conclude that the absence of a reference to that evidence in the decision means that it was overlooked (*Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)* (1998), 157 FTR 35 at para 16).

[20] In the present case, while ties to country of permanent residence and financial means are referenced as factors in the refusal letter, they are not among the underlined factors, and they are not referenced in the GCMS notes. Nevertheless, the presumption identified in *Rahman* applies. In the context of the Officer's reasoning, surrounding the stated purpose for the restoration of visitor status no longer being applicable, I cannot conclude that the evidence to which Mr. Badhan refers is sufficiently significant to the determination the Officer was to make, or so inconsistent with that determination, to find that this evidence was ignored.

[21] I also note the decision by Chief Justice Crampton in *Singh v Canada (Minister of Citizenship and Immigration)*, 2017 FC 894 at para 24, finding that, absent other shortcomings in a decision, a visa officer's failure to consider an applicant's favourable history of compliance with immigration law does not provide grounds for finding the decision to be unreasonable.

[22] Finally, Mr. Badhan points out that the GCMS notes refer to his application being supported by a letter from his former Canadian employer. Mr. Badhan argues that this is a factual error, as the letter was from his prospective employer, not an employer for whom he had worked in the past. He submits that the reference to a former employer suggests the Officer may have

thought that he worked for this employer without authorization and that this error factored into the Officer's conclusion that he would not leave Canada when required.

[23] In my view, the Decision is not capable of this interpretation. I accept that it was a factual error for the Officer to refer to the support letter as being from a former employer rather than a prospective employer. However, the Officer described the significance of the letter in the GCMS notes as stating that Mr. Badhan is applying for a visitor record in order to obtain a work permit. The Decision does not demonstrate that the Officer thought Mr. Badhan had worked illegally or otherwise demonstrate the factual error being in any way material to the Officer's analysis.

[24] Having found no basis to conclude that the Decision is unreasonable, this application for judicial review must be dismissed. Neither party proposed any question for certification for appeal, and none is stated.

JUDGMENT IN IMM-5351-17

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

No question is certified for appeal.

"Richard F. Southcott"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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