

Federal Court



Cour fédérale

Date: 20190408

Docket: IMM-3171-18

Citation: 2019 FC 423

Ottawa, Ontario, April 8, 2019

PRESENT: The Honourable Mr. Justice Russell

BETWEEN:

LEENABEN KIRITBHAI MAHIDA

Applicant

and

**THE MINISTER OF CITIZENSHIP &
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. INTRODUCTION

[1] This is an application for judicial review under s 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 to review the decision of an immigration officer of the Consulate General of Canada in Bangalore, India [Officer] dated June 6, 2018 [Decision] which refused the Applicant's application for a study permit.

II. BACKGROUND

[2] The Applicant, Leenaben Kiritbhai Mahida, is a citizen of India.

[3] The Applicant has a Master of Business Administration degree which she obtained from the Sikkim Manipal University in India. She applied and was accepted to the University of Northern British Columbia [UNBC] for a Master of Business Administration program for the August 2018 intake. She has applied for a Canadian study permit three times and has been denied on each occasion. It is the final rejection which forms the basis for this application for judicial review.

III. DECISION UNDER REVIEW

[4] The Officer refused the Applicant's application for a study permit on June 6, 2018. Based on the purpose of her visit, her personal assets and financial status, the Officer was not satisfied that the Applicant would leave Canada at the end of her stay. Additionally, the Officer determined that the Applicant's proposed studies were not reasonable.

[5] In brief reasons, the Officer noted that the Applicant has recently obtained a management job and already has a degree in business administration. The Officer considered the Applicant's contention that her first degree was done online and is insufficient to obtain high-level employment in India but noted that the UNBC program appears to be similar in content. The Officer decided it would be illogical for the Applicant to pursue an expensive program in Canada when similar programs are available in India. This is underscored by the fact that the Applicant

would need to leave her job in order to study in Canada. The Officer thought there was a discrepancy between the Applicant's claim that she wishes to live in Canada, but would also like to work in real estate in India.

[6] The Officer considered the money that the Applicant had paid to UNBC and determined that she had only made a deposit and had not yet paid tuition fees. Additionally, the Officer noted that the Applicant supports her parents. Her father is retired and receives a pension while her mother does not work outside of the home. While recognizing that the Applicant appears to meet the language requirements, the Officer noted that the Applicant has relatively low grades.

[7] The Officer concluded that the Applicant had not demonstrated that she is a *bona fide* student. Further, the Officer found that the incentive to stay in Canada may outweigh the incentive to return to India. The Officer concluded that the purpose of the application did not appear genuine and was not satisfied that the Applicant would leave at the end of the study period. The application for a study permit was refused.

IV. ISSUES

[8] The issues to be determined in the present matter are the following:

1. What is the applicable standard of review?
2. Was the Decision reasonable?

V. STANDARD OF REVIEW

[9] The Supreme Court of Canada in *Dunsmuir v New Brunswick*, 2008 SCC 9 [*Dunsmuir*], held that a standard of review analysis need not be conducted in every instance. Instead, where the standard of review applicable to a particular question before the court is settled in a satisfactory manner by past jurisprudence, the reviewing court may adopt that standard of review. Only where this search proves fruitless, or where the relevant precedents appear to be inconsistent with new developments in the common law principles of judicial review, must the reviewing court undertake a consideration of the four factors comprising the standard of review analysis: *Agraira v Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36 at para 48.

[10] The assessment of a study permit application is subject to a standard of reasonableness (*Patel v Canada (Citizenship and Immigration)*, 2009 FC 602 at para 28). An officer's analysis of a study permit application is a highly discretionary decision which is afforded a significant degree of deference by reviewing courts (*Akomolafe v Canada (Citizenship and Immigration)*, 2016 FC 472 at para 12 [*Akomolafe*]; *Omijie v Canada (Citizenship and Immigration)*, 2018 FC 878 at para 10 [*Omijie*]).

[11] When reviewing a decision on the standard of reasonableness, the analysis will be concerned with “the existence of justification, transparency and intelligibility within the decision-making process [and also with] whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law.” See *Dunsmuir*, above,

at para 47, and *Canada (Minister of Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 59. Put another way, the Court should intervene only if the Decision was unreasonable in the sense that it falls outside the “range of possible, acceptable outcomes which are defensible in respect of the facts and law.”

VI. STATUTORY PROVISIONS

[12] The following provisions of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 are relevant to this application for judicial review:

Study permits	Permis d'études
216 (1) Subject to subsections (2) and (3), an officer shall issue a study permit to a foreign national if, following an examination, it is established that the foreign national	216 (1) Sous réserve des paragraphes (2) et (3), l'agent délivre un permis d'études à l'étranger si, à l'issue d'un contrôle, les éléments suivants sont établis :
(a) applied for it in accordance with this Part;	a) l'étranger a demandé un permis d'études conformément à la présente partie;
(b) will leave Canada by the end of the period authorized for their stay under Division 2 of Part 9;	b) il quittera le Canada à la fin de la période de séjour qui lui est applicable au titre de la section 2 de la partie 9;
(c) meets the requirements of this Part;	c) il remplit les exigences prévues à la présente partie;
(d) 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	d) il satisfait aux exigences prévues aux paragraphes 30(2) et (3); s'il est tenu de se soumettre à une visite médicale en application du paragraphe 16(2) de la Loi,
(e) has been accepted to	e) il a été admis à un

undertake a program of study
at a designated learning
institution.

programme d'études par un
établissement d'enseignement
désigné.

VII. ARGUMENT

A. *Applicant*

[13] The Applicant argues that the Decision is unreasonable because the Officer failed to consider the totality of the information provided. Specifically, the Officer failed to fully assess sections of the detailed letter written by the Applicant. This letter explained why the Applicant's first MBA was insufficient for the types of employment that she wishes to pursue. An international MBA would enable the Applicant to attain higher-level positions. Additionally, job advertisements submitted by the Applicant demonstrated that certain positions require a degree from a full-time MBA program. It was unreasonable for the Officer to fail to consider this evidence. Documentation from the UNBC demonstrated that the MBA program is designed for individuals such as the Applicant who have extensive work experience. The Officer failed to consider this information.

[14] The Applicant says that it was also unreasonable for the Officer to impugn the Applicant's ability to finish the full-time program based on her grades. This finding is illogical in light of the Applicant's strong English language results and acceptance into the highly competitive UNBC MBA program.

[15] The Applicant argues further that the Officer misconstrued the concept of dual intent. Specifically, it was unreasonable for the Officer to find it problematic that the Applicant would

like to live in Canada on a permanent basis but also wishes to work in the real estate industry in India. It is acceptable for a study permit applicant to hold two intents. The Officer, however, treated the Applicant's two intents as a reason for refusal.

B. *Respondent*

[16] The Respondent emphasizes that a decision in a study permit application attracts a high degree of deference from a reviewing court.

[17] The Respondent argues that it was open to the Officer to find that the proposed course of study was not logical. While the Applicant disagrees with this conclusion, she has not demonstrated why it is unreasonable.

[18] The Respondent says that the Officer did, in fact, consider the Applicant's letter. The Applicant merely disagrees with the manner in which the Officer weighed this evidence. The Officer also considered the Applicant's explanation for pursuing an MBA at UNBC, but found no evidence to support the explanation. Furthermore, the Officer considered the educational requirements contained in the job postings. The Applicant did not, however, demonstrate that these educational requirements could not be fulfilled by pursuing programs in a closer geographical area than British Columbia.

[19] The Respondent says that it was open to the Officer to consider the Applicant's likelihood of success in the UNBC program based on her grades. Similarly, it was open to the

Officer to consider the incentive for the Applicant to remain in Canada and the incentive to return to India.

[20] The Respondent notes that the Applicant bears the onus of establishing that she would leave Canada upon the expiry of her study visa. The Applicant failed to meet this onus.

VIII. ANALYSIS

[21] This Court has accepted that an officer's analysis of a study permit application is highly discretionary and should be afforded a significant degree of deference on review. See *Akomolafe* and *Omijie*, both above.

[22] Notwithstanding the degree of deference that is owed to the Officer's Decision in this case, I have to agree with the Applicant that it is unreasonable. The reason for this is that, given the evidence before the Officer, the Decision is often inaccurate and incomprehensible.

[23] For example, the Officer reasons that

There is no evidence to substantiate her claim that a degree obtained online is not relevant, nor does she provide an adequate explanation of why she has decided to pursue another MBA at this time as opposed to several years ago.

[24] The Applicant, in fact, addressed these issues fully and coherently in her application and also provided supporting documentation in the form of current job advertisements for the positions she seeks. Several of these advertisements make it clear that at least some of the senior level positions to which the Applicant aspires within the real estate industry require extensive

work experience (which the Applicant has) but also an MBA from a Tier-1 Business School and the completion of a full-time MBA.

[25] The Applicant never alleged that her online MBA (obtained in 2006), was not relevant.

And she provides a full and entirely coherent explanation as to why she needs to pursue another MBA at this time as opposed to several years ago:

The reason behind resuming study after 12 years is that in the initial years of my work (8 to 12 years back) it was not very hard to find a job as for the junior positions international or full-time degrees were not highly demanded. But now for the senior level position the international degree holders are given more recognition and preference. The present handicap I suffer is that I have done my masters-MBA through distance education and not the full-time regular college. My graduation-BBA is a regular full time degree. For a senior position regular full time MBA is demanded. In India a foreign master's degree and study exposure is given much weightage.

...

Since 12 years I have been learning new ideas, strategies to make myself strong in my professional field. But at this stage, though having enough amount of work experience with me because of the distance education degree I am having problem even finding a job with reputed organizations and salary hike I deserve. My main difficulty is getting promotion as many colleagues and candidates are already holding an international degree. People who are international MBA degree holders and having 10+ years of experience in my field and profile are General Manager or Sales Head level earning double salary than I do, whereas I am sales manager. Also, Indian real estate caters to very high net worth and Non-resident Indian clientele where having an international exposure is an added advantage. This proves that international degrees are highly in demand as compared to a domestic degree. To support this I have attached job postings which demand full time MBA from reputed or international institutions only.

[26] The Officer simply does not engage with this evidence or explain what is inadequate about the explanation. The application makes it very clear that her current MBA helped her to gain entry into the field where she wants to work but it is not sufficient to allow her to progress. This is why she is pursuing further education now and not earlier. The explanation is detailed and entirely logical and the Officer's response lacks any kind of justification, transparency or intelligibility.

[27] Equally incomprehensible is the Officer's assertion that the Applicant has not shown that she has "the academic skills to study successfully in Canada." This conclusion appears to be based upon "previous marksheets [that] show average to marginal grades." The Officer does concede that the Applicant "appears to have met minimum language requirements." This latter acknowledgment may be accurate but it ignores and fails to credit the Applicant for having language skills above the minimum requirement. But the egregious error here is that the Officer only reviews grades obtained in her previously completed education which took place more than 10 years ago. The Officer totally ignores the supporting documentation submitted on this issue which includes relevant website printouts and a letter from the UNBC MBA Director, Cheryl Wallace.

[28] I agree with the Applicant's assessment of the relevance and importance of this evidence:

25. It is submitted that amongst the documentation the Officer failed to properly consider were website printouts from the University of Northern BC, in which the University clearly states that the UNBC MBA program has competitive admission and candidates are subject to comprehensive admission requirements including possession of "a minimum of three years of full-time work experience in a managerial or professional position", as well as "evidence of post-secondary education including official

transcripts from all post-secondary institutions attended”. The website printouts further state that the job duties held at the above employment positions must be at “a medium level of people and informational complexity or higher, e.g. analyzing budget data, coordination of the activities of subordinates [*sic*].”

26. In addition to the above, it is submitted that the Officer failed to properly consider a letter from the UNBC MBA Program Director Cheryl Wallace, in which the Program Director states:

“This is to confirm Leenaben Mahida has been granted admission to the UNBC MBA program for the August 2018 intake. Our assessment of her admission did take into account her previous MBA degree. We felt that our MBA program would provide Leenaben with credentials from a highly rated research Canadian University that would support her career progress and success into higher-level management positions.”

The letter from Ms. Wallace furthermore notes that the majority of students that attend the program are working professionals and the program is designed to attract professional, mature students. Ms. Wallace continues in her letter to state:

“Our program requires a significant amount of experience to ensure the classroom has rich conversation between the students. Students from many industries are attracted to our program, which ensures the discussions have many different Viewpoints that support and change the thinking of each student.”

27. Given the competitive nature of the above program, the University clearly had fully considered the Applicant’s previous grades, degrees completed, work experience, and English language capabilities, prior to accepting the Applicant into the program of study. Clearly, only grades from education completed over 10 years ago would not have been the deciding factor. As is explained in the University’s website printouts, admission into this advanced MBA program required at least 3 years of full-time work experience in a managerial or professional position. The program as such targets mature professionals and the Applicant, having met these requirements, was granted permission into the program. In addition to this, the Applicant’s English language results were above the minimum level required, and it is therefore illogical for the Officer to point to these test results as a reason for her

conclusion that the Applicant does not have sufficient academic skills to pursue MBA studies in Canada. It is therefore respectfully submitted that it was unintelligible of the Officer to conclude that the Applicant would likely be unable to complete the program of study in Canada and was therefore not a *bona fide* student. It is additionally submitted that the Officer failed to properly consider information provided in the form of website printouts and a letter from the UNBC MBA Program Director, which discussed the competitiveness nature and requirements of the Canadian program of study. As such, it is submitted the Officer failed to reach a logical conclusion regarding whether the Applicant would succeed in her proposed studies in Canada.

[Emphasis in original, references omitted.]

[29] In the present application, the Respondent has provided no adequate or convincing response on this point.

[30] The Officer also makes the following important assertion:

PA has failed to adequately demonstrate that proposed course of studies is logical or beneficial to their education or professional advancement as she states that she would like to live in Canada yet also intends to work in real estate in India.

[31] There is nothing inherently illogical about the Applicant wanting to eventually live in Canada (a goal that she may or may not achieve at some point in the future) and her intent to work in real estate in India until that goal is achieved, and indefinitely if that goal is not achieved.

[32] Consequently, I simply fail to see how this supports the Officer's conclusion that the Applicant may not leave Canada at the end of her period of authorized stay.

[33] Other reasons are given in the Decision for a negative conclusion but, as the Officer makes clear, he is weighing the incentive to remain in Canada against the Applicant's ties to India. The errors I have mentioned are extremely material to this weighing process and hence render it unreasonable. The matter must be returned for reconsideration by a different officer.

[34] Counsel agree there is no question for certification and the Court concurs.

JUDGMENT IN IMM-3171-18

THIS COURT'S JUDGMENT is that

1. The application is granted. The Decision is quashed and the matter is returned for reconsideration by a different officer.
2. There is no question for certification.

“James Russell”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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