

Federal Court



Cour fédérale

Date: 20200316

Docket: IMM-4626-19

Citation: 2020 FC 385

Ottawa, Ontario, March 16, 2020

PRESENT: The Honourable Madam Justice Heneghan

BETWEEN:

SALTANAT JUMALIEVA

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] Ms. Saltanat Jumalieva (the “Applicant”) seeks judicial review of the decision of a Visa Officer (the “Officer”), dated May 25, 2019. In that decision, the Officer refused the Applicant’s application for permanent residence in Canada as a member of the self-employed persons class, as defined in section 88(1) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 (the “Regulations”).

[2] The Applicant, a citizen of Kyrgyzstan, applied for permanent residence as a member of the self-employed persons class in the capacity of an interior designer. The Officer denied the application on the grounds that there was insufficient evidence to establish she met the definition of “self-employed person” described in subsection 88(1) of the Regulations.

[3] The Applicant now argues that the Officer breached the duty of procedural fairness. Specifically, she submits that the breach arises from the Officer’s failure to give her the opportunity to respond to concerns regarding her eligibility and requiring that she submit a business plan. The Applicant argues that this failure offends the doctrine of legitimate expectations.

[4] The Applicant relies on sections 5.14 and 11 of the Immigration, Refugees and Citizenship Canada (“IRCC”) “Overseas Processing Manual 8: Entrepreneur and Self-Employed” (the “Manual”) and argues that she had an expectation that the Officer would raise any concerns with her application and that the Officer would not require a business plan without a specific request.

[5] The Applicant also argues that the decision was based on unreasonable findings of fact. She submits that the Officer failed to explain why her evidence was insufficient, did not consider all of the evidence including a list of clients and portfolio, and unreasonably assessed her business plan.

[6] The Minister of Citizenship and Immigration (the “Respondent”) submits that no breach of procedural fairness occurred and that the decision is reasonable.

[7] The Respondent filed the affidavits of Ms. Tracy Burt and of Ms. Hailey Dang in response to the Applicant’s arguments.

[8] Ms. Burt is the Assistant Director of the Express Entry and Economic Programs Unit in the Immigration Program Guidance Branch of IRCC.

[9] Ms. Dang is a Legal Assistant in the Immigration Section of the Ontario Regional Office of the Department of Justice.

[10] Ms. Burt deposed that the IRCC’s “Program Delivery Instructions: Self-employed persons class” (the “PDI”) replaced section 11 of the Manual in August 2016. She attached the Program Delivery Update that explains this change and a copy of the PDI as exhibits to her affidavit.

[11] Ms. Dang attached a copy of excerpts from the Manual and the PDI as exhibits to her affidavit.

[12] Any issue of procedural fairness is reviewable on the standard of correctness; see the decision in *Canadian Pacific Railway Company v. Canada (Attorney General)*, [2019] 1 F.C.R. 121.

[13] Pursuant to the recent decision in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, the factual findings and ultimate conclusion of the Officer are reviewable on the standard of reasonableness.

[14] According to the decision in *Dunsmuir v. New Brunswick*, [2008] 1 S.C.R. 190, the standard of reasonableness requires that a decision be justifiable, transparent and intelligible, falling within a range of possible, acceptable outcomes that are defensible on the law and the facts.

[15] Upon review and consideration of the materials in the Certified Tribunal Record, the Application Records filed by the parties and the arguments, both written and oral, I am not persuaded that any breach of procedural fairness occurred.

[16] The Applicant grounds her arguments about breach of legitimate expectations, as an aspect of procedural fairness, on sections 5.14 and 11 of the Manual.

[17] Section 5.14 of the Manual provides as follows:

When the officer has concerns about eligibility or admissibility, the applicant must be given a fair opportunity to correct or contradict those concerns. The applicant must be given an opportunity to rebut the content of any negative provincial assessment that may influence the final decision.

The officer has an obligation to provide a thorough and fair assessment in compliance with the terms and spirit of the legislation and procedural fairness requirements.

[18] Section 11 of the Manual read, in part, as follows:

...

Documentation should provide evidence of the applicant's financial position and previous self-employment or experience. It should provide reasonable evidence that the applicant merits consideration under the program.

Officers may request that self-employed applicants show evidence of having researched the Canadian labour market and adopted a realistic plan that would reasonably be expected to lead to self-employment.

However, a formal business plan that would entail unnecessary expense and administrative burden is discouraged.

...

[19] The Respondent argues that the Applicant relied on an outdated manual. The affidavit of Ms. Burt makes it clear that section 11 was replaced by something else, that is the PDI, for applications filed after August 2, 2016.

[20] The Applicant submitted her application on January 23, 2019.

[21] There was no breach of the doctrine of legitimate expectations or any other breach of procedural fairness.

[22] The Officer was dissatisfied with the sufficiency of evidence presented by the Applicant to show that she met the requirements under the Regulations. The credibility of the Applicant was not at issue. There was no obligation for the Officer to notify the Applicant of concerns

arising from the legislative requirements or to provide an opportunity for her to respond to a deficient application.

[23] I turn now to the Applicant's arguments about alleged unreasonable findings of fact.

[24] The Applicant carries the burden of establishing she meets the definition of "self-employed person."

[25] Those arguments attract review on the reasonableness standard.

[26] I am not persuaded that the Officer failed to consider all the evidence submitted by the Applicant. I am not persuaded that the Officer's conclusion he was not satisfied that the evidence was sufficient to meet the statutory requirement is unreasonable.

[27] The Officer did not require the Applicant to submit a business plan and simply assessed the plan she submitted with her application. The Officer was mandated to assess the material submitted by the Applicant and he did so. The decision meets the standard of reasonableness.

[28] In the result, the application for judicial review is dismissed.

[29] There is no question for certification arising.

JUDGMENT in IMM-4626-19

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

There is no question for certification arising.

"E. Heneghan"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4626-19

STYLE OF CAUSE: SALTANAT JUMALIEVA v. THE MINISTER OF
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PLACE OF HEARING: TORONTO, ONTARIO

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