

Federal Court



Cour fédérale

Date: 20211020

Docket: IMM-2762-20

Citation: 2021 FC 1106

Fredericton, New Brunswick, October 20, 2021

PRESENT: Madam Justice McDonald

BETWEEN:

NATALIA BONDARENKO

Applicant

and

**THE MINISTER OF IMMIGRATION,
REFUGEES AND CITIZENSHIP**

Respondent

JUDGMENT AND REASONS

[1] In this judicial review application, the Applicant, Natalia Bondarenko, a citizen of Russia, seeks judicial review of a Visa Officer's decision denying her application for a study permit.

[2] For the reasons that follow, this judicial review is dismissed as the decision of the Visa Officer is reasonable.

Background

[3] The Applicant is a 40 year-old citizen of Russia where she resides with her 14 year-old son. She obtained a Diploma in Economics in Russia in 2003, and is currently employed as a Senior Accountant with a company in Russia.

[4] In her application for a study permit, the Applicant advised that she intended to complete an English language study program in Calgary, and then take a two-year Business Administration diploma program. She says that she wanted to improve her English and gain knowledge of “Western accounting practices.”

[5] The Applicant’s mother and brother currently reside in Canada. Her brother is a Canadian citizen. The Applicant indicated in her application that while in Canada she will reside with and be financially supported by her brother. She is separated from the father of her son who resides in Russia.

Decision Under Review

[6] In rejecting her application on April 9, 2020, the Visa Officer concluded that he was not satisfied that the Applicant would leave Canada at the end of her stay based upon her family ties in Canada and Russia, the purpose of her visit, and her employment situation.

[7] The Officer was concerned the Applicant would be terminating her employment in Russia, and would therefore have no economic ties there. In addition, the Officer considered that

all her immediate family resides in Canada. The Officer also considered her prior compliance with temporary resident visas, the refusal of two previous study permit applications, the deferral of her program of studies, and her separated spouse in Russia.

Preliminary Matter

[8] On June 25, 2021, the Applicant filed a further affidavit, which included a personal statement from her separated spouse and a letter from her employer. This information was not before the Visa Officer at the time of the decision under review.

[9] At the hearing of the judicial review, the Applicant properly confirmed she was not relying upon the contents of this affidavit. As this information was not before the Visa Officer, it was not appropriate to be filed in support of the judicial review application, and was not considered.

Issues

[10] The only issue that arises on this judicial review is whether the decision of the Visa Officer is reasonable.

[11] In her written submissions, the Applicant raised issues with respect to procedural fairness. However, procedural fairness was not argued at the hearing and nothing on the record discloses any procedural fairness gaps. I would note that the level of procedural fairness owed in

study permit applications is low (*Hamad v Canada (Citizenship and Immigration)*, 2017 FC 600 at para 21).

Standard of Review

[12] Both parties agree that the standard of review is reasonableness. As stated in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 99, “A reviewing court must develop an understanding of the decision maker’s reasoning process in order to determine whether the decision as a whole is reasonable. To make this determination, the reviewing court asks whether the decision bears the hallmarks of reasonableness - justification, transparency and intelligibility - and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision” [Citations omitted.]

Analysis

Is the Decision of the Visa Officer Reasonable?

Family Ties

[13] The Applicant argues that the Officer did not fully consider her personal circumstances in finding that she had weak ties to Russia considering that the father of her child resides there and she has not previously applied for permanent residency. The Applicant also argues the Officer should not have drawn a negative inference from her family ties in Canada.

[14] The cases relied upon by the Applicant, *Bteich v Canada (Citizenship and Immigration)*, 2019 FC 1230 [*Bteich*] and *Gauthier v Canada (Citizenship and Immigration)*, 2019 FC 1211 [*Gauthier*], involve different factual circumstances. In *Bteich*, the applicant was a 19 year-old citizen of Lebanon, and his parents and three sisters resided in Canada. Justice Shore held it was unreasonable for the Officer to draw negative inferences from these family ties, and that the Officer should have considered the financial support of his family members as a positive factor (at para 2). Similarly, in *Gauthier*, the Applicant was 22 years old and was denied a study permit based on her family ties in Canada, where both her mother and sister resided. Though Justice Shore acknowledged that “the immigration officer was entitled to consider all of the factors - including family-related factors - that could prompt the applicant to stay or not to stay in Canada at the end of her study permit.” Justice Shore ultimately held that the officer “placed an unreasonable emphasis on this personal factor” (at paras 17-18).

[15] By contrast, here the Applicant is 40 years old with a teenage son and an established career in Russia. It was reasonable for the Officer to weigh her significant family ties in Canada (mother and brother) and her limited family ties in Russia (ex-husband) and conclude they were insufficient to compel her return. The Global Case Management System (GCMS) notes indicate “SPOUSE: NO INFO/SEPARATED.” The only information provided pertaining to the Applicant’s former partner is a form dated August 31, 2015, consenting to the Applicant’s son travelling to Canada between 2015 and 2023.

[16] It was appropriate and reasonable for the Officer to consider the Applicant’s family ties in Canada. This is not a case where the Officer placed “unreasonable emphasis” on this factor.

Purpose of Visit

[17] The Applicant argues that the Officer's reasons for refusal are unresponsive to the evidence regarding the purpose of her visit, and that the prior refusal of her study permit applications were central to the rejection. I disagree. Though the reasons make note of the prior study permit refusals, there is no indication the refusals were central to the rejection.

[18] The GCMS notes show that the Applicant was applying for a study visa to attend Bow Valley College and then complete a Business Administration diploma. Though the Applicant indicated the additional studies were intended to improve her employment prospects in Russia, the GCMS notes highlight that the Applicant had already completed post-secondary education in Russia and was employed at a senior level in the relevant field. Given these facts, it was reasonable for the Officer to doubt the Applicant would leave Canada at the end of the authorized period based on the stated purpose of her visit.

Current Employment Situation

[19] The Applicant argues the Officer's conclusion with respect to her employment was unreasonable, as it ignores her steady, 17-year employment record in Russia, and her employer's confirmed intention to consider re-hiring her upon return. The Applicant argues that she intends to study to improve her employment prospects in Russia.

[20] The Applicant provided a letter from her employer which "strongly encourage[s]" her to take a course in Canada. Given the length of time the Applicant would be gone, it was

reasonable for the Officer to weigh the loss of the Applicant's job as a negative factor. A confirmed intention to consider re-hire is not the same as a promise to re-hire. In the circumstances, it was reasonable for the Officer to weigh this evidence accordingly and conclude that the Applicant had weak financial ties to Russia.

[21] Overall, it was reasonable for the Officer to conclude, based upon her employment circumstances, that she would not leave Canada upon the expiry of a study visa.

Conclusion

[22] In sum, the submissions made by the Applicant essentially ask this Court to reweigh the evidence. That is not the role of this Court in an application for judicial review (*Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 61). The Visa Officer was not satisfied that the Applicant qualified for a study visa. The decision is coherent and transparent, and therefore reasonable.

[23] The application for judicial review is therefore dismissed.

JUDGMENT IN IMM-2762-20

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.
2. No certified questions were proposed and none arises.

"Ann Marie McDonald"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2762-20

STYLE OF CAUSE: NATALIA BONDARENKO v MIRC

PLACE OF HEARING: HELD VIA VIDEOCONFERENCE

DATE OF HEARING: AUGUST 24, 2021

JUDGMENT AND REASONS: MCDONALD J.

DATED: OCTOBER 20, 2021

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