

Federal Court



Cour fédérale

Date: 20100916

Docket: IMM-220-10

Citation: 2010 FC 927

Toronto, Ontario, September 16, 2010

PRESENT: The Honourable Madam Justice Heneghan

BETWEEN:

THIRAPHON PHATHONG

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR ORDER AND ORDER

[1] Ms. Thiraphon Phathong (the “Applicant”) seeks judicial review of the decision of Immigration Officer Duangchai Sangkum (the “Officer”) made on December 17, 2009. In his decision, the Officer refused the Applicant’s application, pursuant to the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the “Act”) and the *Immigration and Refugee Protection Regulations*, SOR/2002-227 (the “Regulations”), for a study permit.

[2] The Applicant, a citizen of Thailand, had sought a study permit to authorize her studies at St. Clair College in Windsor, Ontario. Her plan was to initially attend eight months of English language training, to be followed by a two-year Business Accounting program.

[3] The Applicant had been accepted as a student by St. Clair College. A deposit in the amount of \$4,500.00 had been paid to that institution by the Applicant's uncle who lives in Windsor with his wife, a sister of the Applicant's mother.

[4] The Officer rejected the Applicant's application for a study permit because he was not satisfied that the Applicant would leave Canada upon the conclusion of her proposed studies. His decision was based upon his assessment of the written application and supporting material that had been submitted by the Applicant, as well as his assessment of the Applicant and her answers to questions posed during a personal interview.

[5] The Applicant's application for a study permit was subject to paragraph 20(1)(b) of the Act which provides as follows:

20. (1) Every foreign national, other than a foreign national referred to in section 19, who seeks to enter or remain in Canada must establish,

...

(b) to become a temporary resident, that they hold the visa or other document required

20. (1) L'étranger non visé à l'article 19 qui cherche à entrer au Canada ou à y séjourner est tenu de prouver :

...

b) pour devenir un résident temporaire, qu'il détient les visa ou autres documents requis par

under the regulations and will leave Canada by the end of the period authorized for their stay.	règlement et aura quitté le Canada à la fin de la période de séjour autorisée.
---	--

[6] Subsection 216(1) of the Regulations is also relevant to the within matter and provides as follows:

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; and	c) il remplit les exigences prévues à la présente partie;
(d) meets the requirements of section 30;	d) il satisfait aux exigences prévues à l'article 30.
(e) [Repealed, SOR/2004-167, s. 59]	e) [Abrogé, DORS/2004-167, art. 59]

[7] The Officer's decision is reviewable on the standard of reasonableness since it involves the assessment of evidence and the exercise of discretion, see *Dunsmuir v. New Brunswick*, [2008] 1 S.C.R. 190.

[8] Having regard to the evidence that was before the Officer, including the oral responses from the Applicant during the interview, recorded by the Officer using the Computer Assisted Information Processing System (“CAIPS”), I am satisfied that the negative decision was reasonable. The Officer was not satisfied that the Applicant would leave Canada at the end of her studies. He drew this conclusion from the Applicant’s statements about the desire of her aunt that the Applicant work in the restaurant operated by her aunt and thereby repay the financial support that would have been provided by her aunt and uncle.

[9] In this application for judicial review the Applicant argued that the Officer had breached the requirements of natural justice by failing to give her the opportunity to address his concerns respecting the application for a study permit.

[10] In my opinion, there is no basis for judicial intervention having regard to the materials that were before the Officer and the contents of the certified tribunal record. I agree with the submissions concerning the applicable standard of review for issues of procedural fairness, that is correctness, but otherwise it is not necessary for me to deal with the Applicant’s arguments.

[11] In the results, the application for judicial review is dismissed. There is no question for certification arising.

ORDER

THIS COURT ORDERS 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-220-10

STYLE OF CAUSE: THIRAPHON PHATHONG v.
THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

PLACE OF HEARING: Toronto, ON

DATE OF HEARING: September 14, 2010

**REASONS FOR ORDER
AND ORDER:** HENEGHAN J.

DATED: September 16, 2010

APPEARANCES:

Casimir Eziefule FOR THE APPLICANT

David Cranton FOR THE RESPONDENT

SOLICITORS OF RECORD:

Casimir Eziefule FOR THE APPLICANT
Barrister and Solicitor
Windsor, ON

Myles J. Kirvan FOR THE RESPONDENT
Deputy Attorney General of Canada
Toronto, ON