Federal Court  Cour fédérale

Date: 20101203

Docket: IMM-5137-08

Citation: 2010 FC 1221

Ottawa, Ontario, December 3, 2010

PRESENT: The Honourable Mr. Justice Mosley

BETWEEN:

MARGARITA GRAPENDAAL

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review pursuant to section 72 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 ("*IRPA*") of the decision made on May 12, 2008 by a visa officer at the Embassy of Canada in Moscow, Russia. The visa officer refused the applicant's application for a temporary residence visa in Canada on the ground that the applicant did not provide truthful information during her interview.

BACKGROUND

[2] The applicant, Ms. Grapendaal, was born on 6 March 1969 in Russia. She currently works for the private investment fund Onexim Group ("Onexim") in Russia. The Owner/President of Onexim is Mr. Mikhail Prokhorov. The applicant is Advisor to the Vice-President, Ms. Elena Anikina and is also responsible for managing Mr. Prokhorov's personal assets. In the past, she has worked for Interros, one of Russia's largest holding companies.

[3] Onexim was created in June 2007 and named after "Onexim Bank", started by Mr. Prokhorov and his long-time business partner Vladimir Potanin in the early 1990s. It controls assets of over $US 25 billion with a diversified portfolio of investments in the following sectors: metals, mining, energy, financial services, insurance, media and real estate. As business partners, Mr. Prokhorov and Mr. Potanin controlled shares in Norilsk Nickel, Polyus Gold, Interros and Onexim Bank until they had a falling out in early 2008.

[4] According to the open source information contained in the record, Mr. Potanin is described as having been one of seven so-called "oligarchs" who donated large sums of money to Boris Yelstin's 1996 re-election campaign. This group of seven has been alleged to be associated with capital flight, money laundering and organized crime. Mr. Potanin was made First Deputy Prime Minister responsible for the government's financial and economic section from August 1996 to the spring of 1997.

[5] On April 3, 2008 Ms. Grapendaal applied for a temporary resident visa ("TRV") to come to Canada. Her application stated that the purpose of her visit was "to visit friends" and "to attend [the] 2008 Ice Hockey Championship". In her interview with the visa officer, the applicant added that she also wanted to visit Canada.

[6] On May 12, 2008 the applicant received a letter from an officer at the Canadian Embassy in Moscow refusing her application for a TRV. Following receipt of this letter, on May 30, 2008, counsel for the applicant submitted an Access to Information request to Citizenship and Immigration Canada ("CIC"). On August 28, 2008 CIC provided Ms. Grapendaal with the officer's Computer Assisted Immigration Processing System ("CAIPS") notes. These notes consist of a transcript of the applicant's interview as well as other information relating to the applicant such as: date of birth, family status and partial employment history.

[7] In September 2009 the respondent filed an application for non-disclosure of certain pages from the Certified Tribunal Record (CTR), pursuant to s.87 of the *IRPA*. The respondent argued that some information in the CTR contained classified information which would be injurious to national security or to the safety of any person in Canada should it be disclosed.

[8] On October 9, 2009 counsel for the respondent faxed the applicant copies of the redacted pages of the CTR that it had been determined could be made public. These pages provide information pertaining to the relationship between Mr. Prokhorov and Mr. Potanin, and the allegedly illicit activity associated with the companies which they owned and controlled, as noted above. In January 2010 I ordered certain information redacted from the CTR not to be disclosed in the underlying judicial review application.

[9] On March 2, 2010 the respondent brought a motion to strike the application for judicial review on grounds of mootness. The respondent argued that the primary purpose for Ms. Grapendaal's proposed visit to Canada was to attend the International Ice Hockey Federation World Championships (the "Championships") in Quebec City in May 2008 and the occurrence of that event has since elapsed. As such, it was argued, there was no live issue for the Court to determine and the case was bereft of any chance of success. Justice Dolores Hansen dismissed the motion, holding that the Court's discretion to hear the application was a matter to be determined by the application judge on a complete record at the time of the hearing. The issue of mootness therefore forms part of this judicial review.

DECISION UNDER REVIEW

[10] The visa officer's decision of May 12, 2008 was recorded on a standard-form template. In rejecting the application, the visa officer checked the box that read: *I am not satisfied that you have provided truthful information and/or answered truthfully all questions put to you.*

[11] The CAIPS notes, which transcribe the interview and include any comments made by the visa officer, also form part of the decision if they provide sufficient details concerning the reasons for which the application was denied: *Ogunfowora v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 471, 63 Imm. L.R. (3d) 157 at para. 60. Here, the CAIPS notes indicate that certain open source information suggested that the companies which employed Ms. Grapendaal, along with certain individuals who owned or worked for those companies, are, or were, involved in questionable business activities. When repeatedly asked in the interview about what she had heard

regarding such “questionable activity”, Ms. Grapendaal claimed she was not aware of any such activity.

[12] At the end of the CAIPS notes, the visa officer stated the following:

> HAVING REVIEWED ALL THE INFORMATION AVAILABLE TO ME, I AM NOT SATISFIED THAT APPLICANT WAS TRUTHFUL IN PROVIDING INFORMATION/ANSWERING QUESTIONS AT INTERVIEW. THIS HAS DIMINISHED THE OVERALL CREDIBILITY OF HER SUBMISSION, AND SHE HAS NOT DISCHARGED THE BURDEN OF PROOF THAT HER ADMISSION TO CANADA WOULD NOT BE CONTRARY TO IRPA. APPLICATION IS REFUSED. REFUSAL LETTER SIGNED.

ISSUES

[13] This application raises the following issues:

1. Is this application moot?
2. Did the visa officer provide adequate reasons?
3. Was the visa officer’s decision reasonable?

ANALYSIS

Is this application moot?

[14] The Supreme Court of Canada has stated that the question of mootness requires a two-step analysis. First, it must be determined if the dispute is still “tangible” and “concrete”. If not so, the

Court must then decide if it should exercise its discretion to hear the case: *Borowski v. Canada (Attorney General)*, [1989] 1 S.C.R. 342 at para.16.

[15] At the second stage, courts must consider: (1) whether the dispute is rooted in the adversary system; (2) if hearing the case would be judicially economical; and (3) the need for courts to be sensitive to their role and to the effectiveness of judicial intervention: *Borowski*, above, at paras. 31-40.

[16] In the case at bar, the applicant argues that no change in circumstances occurred between the time the leave application was commenced and the present judicial review. The applicant still wishes to visit Canada and her friends here. The respondent contends that the primary purpose of the applicant's trip to Canada was to attend the 2008 Championships which took place over two years ago. Because this event has passed, there is no longer a reason for her to come and so there is no longer a live issue to be decided by this Court in the context of a judicial review.

[17] I am satisfied that there continues to be a live issue between the parties as the applicant still wishes to visit Canada. It will be two years since the commencement of these proceedings. In that time, the procedural steps in this case have included a leave application, opposition by the respondent to the application for leave, a motion to strike, a non-disclosure request, and a judicial review. Both the applicant and the respondent have demonstrated the adversarial nature of this case through their written advocacy and their commitment to the issues.

[18] As the applicant points out, if the case is dismissed for mootness without a determination of the merits, the likely result will be that the applicant will reapply for another visitor's visa. If, at that time, the applicant is rejected, she may again choose to seek judicial review. Adding yet another step in the applicant's process would result in the expenditure of additional judicial resources. Thus, it is more economical to decide this case on the merits at the present time.

[19] In hearing the present matter, the Court would not be extending its jurisdiction beyond its normal scope. To the contrary, much of the Federal Court's work is dedicated to reviewing decisions exactly of this kind. In addition, because leave was granted, it is appropriate to proceed by way of a full judicial review: *Skobrev v. Canada (Minister of Citizenship & Immigration)*, 2004 FC 485 at para. 6. Accordingly, I will exercise my discretion to hear the case.

Was the visa officer's decision reasonable?

[20] Although the applicant frames it as such, this case is not about the visa officer's reliance on extrinsic evidence to make a finding of inadmissibility based on the applicant's potential involvement in criminal activity. The question that must be answered is whether the visa officer's decision to find the applicant inadmissible based on truthfulness, pursuant to s.16(1) of the *IRPA* was reasonable in that it fell within a range of possible, acceptable outcomes which are defensible in respect of the facts and law: *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190 at para. 47. For the reasons below, I conclude that it did.

[21] The CAIPS notes, which transcribe the interview and form part of the decision, clearly demonstrate a particular line of questioning surrounding the applicant's employment and certain "questionable activity" associated with the companies and individuals with which and with whom she works or has worked.

[22] In the interview, the visa officer told the applicant that the basis for asking about such "questionable activity" was certain open source materials. When asked what she knew of this alleged activity, the applicant responded that she had never heard anything negative about the companies. She asked if the visa officer was referring to an incident involving Mr. Prokhorov in France that was unrelated to the allegations of money laundering and criminal activity. The visa officer said, "Not specifically about that incident, more regarding the various companies and their activities". Again, the applicant said she knew nothing. She went on to speak about the individuals for whom she worked and the regular interaction she had with them. The visa officer then asked her, "and in all your time with them (since 2001) you have never heard or witnessed anything that might suggest any questionable business activities, either from within the companies or rival business partners or the newspapers". The applicant said, "No" and proceeded to mention the fact that there was a splitting of assets between the companies which the newspapers had been noting. This was not responsive to the question about her knowledge of questionable activities.

[23] Although the visa officer did not refer to specific open sources, in light of the line of questioning asked it is difficult to accept that an educated individual with a long history of having close connections to companies allegedly involved in this kind of criminal activity would have absolutely no awareness of issues which were openly discussed in the media. At the very least,

taking into account the fact that the information was available in open sources, including newspapers, it is hard to believe that the applicant did not know that the companies and/or individuals were the objects of suspicion. There is no indication in the record that the applicant is a naïve or unsophisticated individual who might have been unaware of such matters. To the contrary, she is a businesswoman with considerable employment experience and responsibilities.

[24] In passing, as this was not raised in argument, I note that the CAIPS notes state that the applicant was to bring along a "detailed CV" to the interview. She did not do this. When asked why not, she responded, "This interview notification came late and our office is close[d] so there is nobody there to print my CV". When the visa officer noted that she was given a choice to come in on a different date, the applicant replied that she is "busy". The visa officer asked why she could not prepare her own CV at home, to which the applicant responded, "I don't have a computer at home". The visa officer told her a handwritten CV would have been acceptable. The applicant said she did not think that was professional. Section 16(1) of the *IRPA* requires those who make applications for TRVs to produce "all relevant evidence and documents that the officer reasonably requires". The applicant's failure to produce her CV when specifically asked to do so would hardly have cast her application in the best light in view of the focus of the officer's concern.

[25] The visa officer had the benefit of interviewing the applicant in-person. By watching how she responded to the questions – by observing facial expressions, voice inflection, pauses in speech, etc. – the visa officer would have been in a better position than the Court to assess the credibility and truthfulness of the applicant: *Aguebor v. (Canada) Minister of Employment and Immigration* (F.C.A.) (1993), 160 N.R. 315 at para. 4. The visa officer's observations of her demeanour

undoubtedly contributed to the finding that the applicant was not truthful in answering the questions in the interview such that it diminished the credibility of her submission and that the applicant failed to discharge the burden of proof that her admission to Canada would not be contrary to *IRPA.* On the basis of the record before me, I am unable to find that the officer's conclusions fall outside the range of acceptable outcomes defensible on the facts and the law.

[26] The respondent is correct to emphasize that it is not for the Court to second guess a visa officer's findings or to substitute its own conclusion for that of the visa officer: *Obeng v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 754, 330 F.T.R. 196 at para. 40. Visa officers' special expertise entitles them to considerable deference in making a TRV finding: *Obeng*, above, at para. 21; *Ngalamulume v. Canada (Citizenship and Immigration)*, 2009 FC 1268, 362 F.T.R. 42 at para. 15; *Wang v. Canada (Minister of Citizenship and Immigration)*, 2010 FC 201 at para. 10.

Did the visa officer provide adequate reasons?

[27] Adequate reasons are those that serve the functions for which the duty to provide them was imposed: *Via Rail Canada Inc. v. Canada (National Transportation Agency)*, [2001] 2 FC 25 (Fed. C.A.), 193 D.L.R. (4th) 357 at para. 21. The applicant relies on *Canada (Minister of Citizenship & Immigration) v. Charles*, 2007 FC 1146, 69 Imm. L.R. (3d) 153 at para. 32, which cites *Baker v. Canada (Minister of Citizenship & Immigration)*, [1999] 2 S.C.R. 817, 174 D.L.R. (4th) 193 to assert that visa officer's reasons fulfill a number of purposes: "they ensure that issues and reasoning are well articulated; they allow parties to see that the applicable issues have been carefully

considered; and they are invaluable if a decision is to be appealed, questioned, or considered on judicial review".

[28] The applicant argues that she was not provided with sufficient reasons in order for her to know the case against her. She points to the "boiler plate" form which indicated the TRV rejection, claiming that it was devoid of any reference to the information provided by her in the application or the interview. The applicant further contends that the CAIPS notes did not provide sufficient details for her to know why the application was denied. Thus, she claims her procedural rights were breached.

[29] The duty of fairness does oblige visa officers to provide reasons that are "sufficiently clear, precise and intelligible so that a claimant may know why his or her claim has failed": *Mendoza v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 687 at par. 4; *Alem v. Canada (Minister of Citizenship and Immigration)*, 2010 FC 148 at para. 13. However, the principle of procedural fairness does not extend to the point of requiring a visa officer to provide an applicant with a "running score" of the weaknesses in their application: *Rukmangathan v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 284, 247 F.T.R. 147 at para. 23; *Paramasivam v. Canada (Minister of Citizenship and Immigration)*, 2010 FC 811 at para. 29. When rejecting a TRV application, a visa officer's duty to provide reasons is minimal: *Ngalamulume*, above, at para. 20.

[30] I agree with the respondent that the visa officer's reasons meet the minimum standard required. It is clear from the CAIPS notes that the main issue for the visa officer was the applicant's responses to the questions put to her concerning the "questionable activity" of the companies for

which she had worked. Throughout the interview, the applicant had ample opportunity to address these issues and to disabuse the visa officer of any concerns. She made no attempt to do so. In fact, when pressed on the subject, she made reference to another, unrelated issue, namely a trip Mr. Prokhorov took to France. I think it was made clear to her what the officer's concerns were during the interview and the CAIPS notes reflect that. I therefore find that the visa officer provided adequate reasons and did not breach the applicant's right to procedural fairness.

[31] No serious questions of general importance were proposed and none will be certified.

COSTS

[32] The applicant seeks costs for the proceedings and in particular for the motion to strike. Counsel argues that there could not have been a complete absence of merit to the application as it had been found to meet the threshold of an "arguable case" for leave to be granted.

[33] The respondent submits that costs for the motion to strike should be awarded to the party who is successful on the underlying judicial review application.

[34] As noted by Rule 22 of the *Federal Courts Immigration and Refugee Protection Rules*, SOR/93-22, costs are not to be awarded in respect of any application for leave, application for judicial review or appeal unless the Court, for special reasons, so orders.

[35] There are no “special reasons” for awarding costs in this application. There has not been an abuse of process nor has either of the parties undergone any serious hardships. While the motion to strike may have been an unnecessary additional step in the proceedings, it is understandable why the respondent brought such a motion in light of the fact that the primary reason the applicant had cited for wanting to visit Canada had lapsed.

JUDGMENT

IT IS THE JUDGMENT OF THIS COURT that the application is dismissed without costs. No questions are certified.

“Richard G. Mosley”
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-5137-08
STYLE OF CAUSE:	MARGARITA GRAPENDAAL and THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	Ottawa, Ontario
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REASONS FOR JUDGMENT:	MOSLEY J.
DATED:	December 3, 2010

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