

Federal Court



Cour fédérale

Date: 20110415

Docket: IMM-4100-10

Citation: 2011 FC 463

Ottawa, Ontario, April 15, 2011

PRESENT: The Honourable Mr. Justice Boivin

BETWEEN:

PHUONG MY HONG

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review of a decision dated May 19, 2010, by the Immigration Section of the Consulate General of Canada at the Canadian Embassy in Ho Chi Minh City, Vietnam. In the decision, the Visa Officer denied the applicant's application for a student visa. The Visa Officer rejected the application on the basis that the applicant failed to provide adequate evidence that she had sufficient and available financial resources and was not convinced that she would leave Canada at the expiry of her authorized stay.

Factual background

[2] The applicant, Ms. Phuong My Hong, is a citizen of Vietnam.

[3] Prior to this application, Ms. Hong submitted two applications. Both applications were denied.

[4] In January 2010, Ms. Hong submitted her third temporary student visa application¹. In that application, she indicated that the “principal idea behind studying in Canada was to learn languages as she is very interested in Hotel and Restaurant Management. This application was denied on May 19, 2010.

[5] On July 15, 2010, Ms. Hong filed an application for judicial review.

Relevant Legislation

[6] Subsection 11(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (the Act) provides that a foreign national must meet the requirements of the Act before an officer can issue the document that will allow an applicant to enter Canada:

¹ Both parties confirmed at the hearing that Ms. Hong submitted her third temporary student visa application and not her fourth, as the file seems to indicate.

PART 1	PARTIE 1
IMMIGRATION TO CANADA	IMMIGRATION AU CANADA
DIVISION 1	SECTION 1
REQUIREMENTS BEFORE ENTERING CANADA AND SELECTION	FORMALITÉS PRÉALABLES À L'ENTRÉE ET SÉLECTION
<i>Requirements Before Entering Canada</i>	<i>Formalités préalables à l'entrée</i>
<u>Application before entering Canada</u>	<u>Visa et documents</u>
11. (1) A foreign national must, before entering Canada, apply to an officer for a visa or for any other document required by the regulations. The visa or document may be issued if, following an examination, the officer is satisfied that the foreign national is not inadmissible and meets the requirements of this Act.	11. (1) L'étranger doit, préalablement à son entrée au Canada, demander à l'agent les visa et autres documents requis par règlement. L'agent peut les délivrer sur preuve, à la suite d'un contrôle, que l'étranger n'est pas interdit de territoire et se conforme à la présente loi.
[...]	...

[7] As outlined by subsections 20(1) and 22(1) of the Act, a foreign national seeking to obtain a student visa must convince the Visa Officer that they are not inadmissible to Canada and meet the eligibility requirements under the Act and the *Immigration and Refugee Protection Regulations*, SOR/2002-227 (the Regulations). Among those eligibility requirements, the foreign national must convince the Visa Officer that they are not an immigrant and that they intend to leave Canada by the end of the period requested for their stay:

DIVISION 3

SECTION 3

ENTERING AND
REMAINING IN CANADAENTRÉE ET SÉJOUR AU
CANADA*Entering and Remaining**Entrée et séjour*Obligation on entryObligation à l'entrée au Canada

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,

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) to become a temporary resident, that they hold the visa or other document required under the regulations and will leave Canada by the end of the period authorized for their stay.

b) pour devenir un résident temporaire, qu'il détient les visa ou autres documents requis par règlement et aura quitté le Canada à la fin de la période de séjour autorisée.

[...]

...

Temporary residentRésident temporaire

22. (1) A foreign national becomes a temporary resident if an officer is satisfied that the foreign national has applied for that status, has met the obligations set out in paragraph 20(1)(b) and is not inadmissible.

22. (1) Devient résident temporaire l'étranger dont l'agent constate qu'il a demandé ce statut, s'est déchargé des obligations prévues à l'alinéa 20(1)b) et n'est pas interdit de territoire.

[...]

...

[8] Finally, subsection 216(1) and 220 of the *Immigration and Refugee Protection Regulations* provide the criteria to be considered by the Visa Officer in assessing a student visa application:

DIVISION 3

SECTION 3

ISSUANCE OF STUDY
PERMITSDÉLIVRANCE DU PERMIS
D'ÉTUDESStudy permitsPermis 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; 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.

[...]

...

Financial resourcesRessources financières

220. An officer shall not issue a study permit to a foreign national, other than one described in paragraph 215(1)(d) or (e), unless they have sufficient and available financial resources, without working in Canada, to

220. À l'exception des personnes visées aux sous-alinéas 215(1)d) ou e), l'agent ne délivre pas de permis d'études à l'étranger à moins que celui-ci ne dispose, sans qu'il lui soit nécessaire d'exercer un emploi au Canada, de ressources financières suffisantes pour :

(a) pay the tuition fees for the course or program of studies that they intend to pursue;	a) acquitter les frais de scolarité des cours qu'il a l'intention de suivre;
(b) maintain themselves and any family members who are accompanying them during their proposed period of study; and	b) subvenir à ses propres besoins et à ceux des membres de sa famille qui l'accompagnent durant ses études;
(c) pay the costs of transporting themselves and the family members referred to in paragraph (b) to and from Canada.	c) acquitter les frais de transport pour lui-même et les membres de sa famille visés à l'alinéa b) pour venir au Canada et en repartir.

Points in Issue

[9] The issue to be considered in this application is the following: Did the Visa Officer err in refusing to grant Ms. Hong a student visa?

Standard of review

[10] The respondent argues that the decision of the Visa Officer is an administrative decision made in the exercise of a discretionary power. The respondent relies on *Ayatollahi v Canada (Minister of Citizenship and Immigration)*, 2003 FCT 248, [2003] FCJ No 340, at para 12, in which Justice Snider held that:

[12] An application to be admitted to Canada as a visitor involves a discretionary decision on the part of the visa officer (*Immigration Act*, R.S.C. 1985, c. I-2 s. 9(4)). This decision is based on an assessment of the visa application (*Immigration Act*, s. 9(2.1)); there is no statutory requirement for an oral hearing. In the case of an application for student authorization, the applicant must include certain documents with his or her visa application (*Immigration Regulations*, s. 15(1)). The only party to this application is the visa applicant (and any accompanying dependents); submissions are not made by parties opposite in interest to the applicant. The burden is on the visa applicant to satisfy the visa officer that he or she is not an

immigrant (Immigration Act, s. 9(1.2)). In my view, these provisions of the Immigration Act and Immigration Regulations, 1978, SOR/78-172 indicate that the decision on an application for a temporary student authorization is not judicial or quasi-judicial in nature.

[11] In *Kibangoud v Canada (Minister of Citizenship and Immigration)*, 2008 FC 692, [2008] FCJ No 921, at para 9, Justice Tremblay-Lamer confirmed that the standard of review applicable to discretionary decisions is indeed reasonableness.

[12] Furthermore, in *Obeng v Canada (Minister of Citizenship and Immigration)*, 2008 FC 754, [2008] FCJ No 957, at para 21, this Court held that:

[21] The officer's decision is an administrative decision made in the exercise of her discretionary power, having in mind the obligation imposed on her by the Law and its regulations. Such a discretionary decision is for the most part a question of fact, and as such, a decision entitled to considerable deference in view of the officer's special expertise, and that certain questions she has to decide call on her experience and do not lend themselves to one specific, particular result but instead give rise to a number of possible and reasonable conclusions. (*Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] S.C.J. No. 9, at paragraph 47). When the decision at issue falls within that spectrum, the Court should not interfere.

[13] According to the decision of the Supreme Court of Canada in *Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190, the reasonableness standard requires the Courts to give considerable deference to decision-makers when reviewing that discretion. Such decisions usually involve questions of fact. As well, visa officers have recognized expertise in analyzing and assessing student visa applications.

Analysis

[14] The Visa Officer provided two reasons for Ms. Hong's refusal: (i) the Visa Officer was not satisfied that Ms. Hong would leave Canada when her temporary resident visa expired and, (ii) the Visa Officer was not satisfied that the applicant had sufficient funds to complete her studies in Canada.

[15] Ms. Hong asserts that the Visa Officer made a reviewable error by not properly assessing the factual evidence. Ms. Hong argues that she specifically made it clear in her letter of intent that her goal or future study plan was to improve her English in order to apply to the Institut de tourisme et d'hôtellerie du Québec (ITHQ) and return to Vietnam with increased job prospects.

[16] Moreover, Ms. Hong argues that the Visa Officer did not consider the evidence in determining that she is not sufficiently established in Vietnam. Ms. Hong argues that the Visa Officer failed to consider that she has spent all her life in Vietnam, that all of her friends and immediate family members reside with her in Vietnam and that she has been employed, on a permanent basis, as an IT support technician for Cetana PSB Intellis for the past five years (Applicant's Record, Exhibit H, p. 65).

[17] With respect to her studies, Ms. Hong stresses that she provided the Visa Officer with a certificate establishing her success in completing a program in Hotel and Tourism management in Vietnam. According to Ms. Hong, the Visa Officer committed an error when he concluded that her proposed studies are not reasonable in light of her previous studies and that she is not sufficiently established in Vietnam for the purposes of granting her a one year study permit.

[18] Finally, Ms. Hong argues the fact that some of her extended family members live in Canada, and her desire to study intensive English for one year with purported interest in applying for the IHTQ, are not, on their own, sufficiently determinative factors in concluding that she would not leave Canada upon the expiry of her student visa.

[19] On the other hand, the respondent argues that "there is a legal presumption that a foreign national seeking to enter Canada is presumed to be an immigrant, and it is up to him to rebut this presumption" (*Obeng, supra*, at para 20). In the present case, the respondent asserts that the Visa Officer concluded in the refusal letter that Ms. Hong's proposed studies are not reasonable because, as indicated in the CAIPS notes, that ESL (English second language) at such great expense is not reasonable when similar programs are available in Vietnam at much less expense.

[20] The respondent notes that Ms. Hong admitted in her letter of intent that her primary goal was to learn English in addition to the fact that she had recently completed a course in Hotel and Restaurant Management in Vietnam. Thus, the respondent submits that the Visa Officer's statement was not unreasonable (see *Tran v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1377, [2006] FCJ No 1732, at para 32).

[21] The Visa Officer's concerns were whether Ms. Hong would leave Canada by the end of the period authorized for her stay and whether she had sufficient funds for living costs and tuition.

[22] The Visa Officer's reasons in the decision dated May 19, 2010 reflect these concerns:

- a. That the applicant did not satisfy the visa officer that she would leave Canada by the end of the period authorized for her stay because:

- i. She has not demonstrated that she is sufficiently well established in her country of residence (Vietnam);
 - ii. Her proposed studies are not reasonable in light of one or more of her qualifications, previous studies, employment, level of establishment, other educational opportunities available in Vietnam or Canada, language abilities, or future prospects and plans, and;
- b. That the applicant has not satisfied the visa officer that she had sufficient funds for living costs and tuition for the first year of her studies and return transportation without working in Canada because:
 - i. the applicant has not demonstrated that her sponsor will provide adequate support to cover the cost of her studies.

[23] The Computer Assisted Immigration Processing System (the CAIPS) notes prepared by the Visa Officer at the interview with Ms. Hong provide the following details in support of the refusal:

[...] PA states all expenses to be paid by uncle in Canada, who has claimed business income of \$29 K for 2008, T1 general submitted but this is not a reliable document as it can be self-generated. Bank account RBC at \$11K, aunts NOA at 4[sic]10K. It appears LICO not met. Not satisfied funds in place, and given that funds are low, ESL at such great expense is not reasonable when similar programs available in Vietnam and region at much less expense. The applicant has very strong ties in Canada, specifically close family. I am not satisfied that this applicant would leave Canada at the end of the period authorized if issued a TRV. Refused.

[24] Following a review of the evidence, and despite counsel for the applicant's able arguments, the Court is of the view that the Visa Officer's decision is reasonable.

[25] Many of the applicant's allegations are not supported by evidence.

[26] For instance, the applicant argued that she has been employed in Vietnam for the past five years in a permanent job as an IT technician at Cetana PSB Intellis. However, there is no evidence

from Cetana PSB Intellis to support and confirm her allegation (Record at p. 2). Based on this lack of documentation, the Court cannot find that Ms. Hong is employed in Vietnam and hence established. Also, regarding her studies, a certificate entitled “Advanced Diploma of Hospitality Management” dated June 2, 2009 does not provide any information with respect to the duration of the course and the relevance of the qualification. Finally, the fact that Ms. Hong has family members residing with her in Vietnam is one factor to be considered amongst many others and is not necessarily determinative (*Obeng; Song v Canada (Minister of Citizenship and Immigration)*, 2002 FCT 288, [2002] FCJ No 385).

[27] The evidence adduced in support of her funding is also incomplete. On the one hand, while the applicant is of the view that the Visa Officer failed to take into account the financial support of her parents, her Application for a study permit fails to mention her parents’ financial involvement. The information at box 11 of her application “Funds available for my stay in Canada” mentions: “Family Friend, Mr Hung Anh Pham” and her answer to “My expenses in Canada will be paid by” is: “Other” although another available answer was: “Myself or my parents” (Record at p. 3). Further Mr. Hung Anh Pham’s Income Tax and Benefit Return (T1 General 2007) shows a total income of \$16,131.01 (Applicant’s Record at p. 97). In the absence of a tax assessment, the Income Tax and Benefit Return (T1 General 2007) is not conclusive. The Visa Officer mentioned in its decision that these forms can be self-generated. The Court notes that Mr. Thi Ngoc Nguyen provided financial information demonstrating bank funds to the amount of \$11,000.00 and a total earning for 2008 to the amount of \$9,685.00 (Applicant’s record at pp. 114 and 115).

[28] Counsel for Ms. Hong argued before this Court that a letter of intent signed by Mr. Hung Anh Pham and his wife, Ms. Thi Ngoc Chau Nguyen, demonstrates that they are willing and able to provide shelter, food and any vital expenses for Ms. Hong for the duration of the permit. While this may be true and while it confirms Mr. Hung Anh Pham and his wife's engagement toward Ms. Hong, it also only provides one side of the picture.

[29] Indeed, there is no letter of intent or affidavit or engagement of some sort from the applicant's parents confirming that they also undertake to financially support their daughter. Absent confirmation of a clear engagement from Ms. Hong's parents to support her financially, their annual income, revenues, savings and ownership of land adduced in evidence (Applicant's record at pp. 118, 129, 140, 141, 150, 156 and 162) cannot be given much weight. Again, on the basis of the evidence, the Visa Officer was entitled to conclude that he was not satisfied that sufficient funds were in place. Further, given that the available funds were low, it was pertinent for the Visa Officer to conclude that the same type of education is available in Vietnam at much less expense.

[30] Ms. Hong also submits that her parents are wealthy and that she benefits from a high standard of living in Vietnam. She therefore concludes that the risk of her not returning to Vietnam is low. In support of this argument, counsel for Ms. Hong referred to *Zuo v Canada (Minister of Citizenship and Immigration)*, 2007 FC 88, [2007] FCJ No 130, and *Yue v Canada (Minister of Citizenship and Immigration)*, 2003 FCT 423, [2003] FCJ No 598. However, both these cases are distinguishable from the case at bar. Indeed and contrary to this case, the parents were engaged in providing financial support. More particularly, in *Zuo*, the applicant's father had provided an affidavit in that respect.

[31] Applications for student visa are to be analyzed on a case-by-case basis and the role of the Visa Officer does not amount to supplementing the applicant's evidence, as counsel for Ms. Hong seems to suggest. It is trite law that the onus is on the applicant to provide the Visa Officer with all the relevant information and complete documentation in order to satisfy the Visa Officer that the application meets the statutory requirements of the Act and the Regulations (*Tran v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1377, [2006] FCJ No. 1732). More particularly, in this case, it was the applicant's responsibility to provide the Visa Officer with all of the evidence in order to satisfy the Visa Officer of her financial capacity.

[32] On the basis of the evidence, it was thus open to the Visa Officer to decide that Ms. Hong would not leave Canada at the end of her authorized stay. The Court finds that the Visa Officer's decision is transparent, intelligible and falls within the range of possible, acceptable outcomes (*Dunsmuir* at para 47).

[33] Accordingly, this application for judicial review will be dismissed. No question for certification was proposed and none arises in this case.

JUDGMENT

THIS COURT'S JUDGMENT is that

1. The application for judicial review is dismissed;
2. No question is certified.

“Richard Boivin”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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