Federal Court  Cour fédérale

Date: 20110615

Docket: IMM-4839-10

Citation: 2011 FC 694

Montréal, Quebec, June 15, 2011

PRESENT: The Honourable Madam Justice Bédard

BETWEEN:

MELANIE LOVERIDGE

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review, pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*] of a decision of a visa officer with the High Commission of Canada in the United Kingdom, dated July 28, 2010, whereby the applicant's application for a study permit was refused.

[2] Counsel for the applicant requested that the style of cause be amended in order to identify the applicant with her complete name instead of an initial.

I. Background

[3] The applicant is a citizen of the United Kingdom (UK). Between 2006 and 2009, she attended Hartpury College in Gloucestershire where she studied animal care and animal management.

[4] On March 22, 2010, she was accepted into the Pre-Health Sciences program at Georgian College in Ontario for the 2010-2011 school year. She was also conditionally accepted into the school's Veterinary Technician program for the subsequent year.

[5] She applied to the High Commission of Canada in the UK for a Canadian study permit at the end of March 2010. She indicated in her application that her husband would be accompanying her to Canada.

[6] The applicant submitted a "motivation letter" in support of her application which read, in part:

> I have decided to study on the Pre Med Science course and the Veterinary Technician course in Canada as I wish to start a fresh life in Canada and make the most of learning. I chose these courses as I have a passion for animals and veterinary science. By starting a new life in Canada I believe I will be happier in a country where there are more job opportunities. Now that I have been accepted onto the pre med science course I can make the most of learning as much as I can.
> …
> I have chosen not to study in England as there are not many college places available as the veterinary profession is very competitive. If I

> had applied to college in England and achieved my educational goals it would be very difficult to find a job because of the recession and because too many people here want to work with animals. There are very few animal related jobs in England and as I have been told there is no shortage of animal jobs available in Canada.
> …
> If I took a course in England I would be qualified to do what I want to do in the veterinary profession but, the chances of finding a job in the veterinary profession would not be very good as there are so many people looking for the same type of job. When I return to the UK I will be able to get my Canadian qualification evaluated to a UK standard. Since work in the animal care field in the UK is very competitive, I am confident that UK employers will value my Canadian qualification and experience. This combined with the qualifications and experience I have already gained from the UK should put me in a stronger position to find employment upon my return to the UK.
>
> My family and friends are based in the UK.

II. The decision under review

[7] By letter, dated July 28, 2010, a visa officer with the High Commission of Canada in the UK found that the applicant had not met the requirements set out in the *IRPA* to warrant granting a study permit. The officer explained the decision as follows:

> You have not demonstrated sufficient ties to the U.K. to satisfy me that you have dual intent and will leave Canada at the end of the period authorized for your stay.

[8] In a Computer Assisted Immigration Processing System (CAIPS) note dated July 23, 2010, the officer indicated that both the applicant and her husband were unemployed in the UK, that they had both experienced difficulty becoming established there, that there was no proof that they owned property there, and that the bank documents that they had submitted did not provide any detail as to the ownership of the associated accounts. She found that the applicant and her husband had few ties

to the UK and concluded that she was “not satisfied” that they would return to the UK if they were refused permanent status in Canada.

III. Issue

[9] Only one issue arises for consideration on this application:

Did the officer err by finding that the applicant had not demonstrated that she would leave Canada by the end of the period authorized for her stay?

IV. Standard of review

[10] The question of whether or not an applicant will leave Canada by the end of the period authorized for their stay is a question of fact to be reviewed against the reasonableness standard (*Patel v Canada (Minister of Citizenship and Immigration)*, 2009 FC 602 at para 28, 178 ACWS (3d) 428; *Wang v Canada (Minister of Citizenship and Immigration)*, 2009 FC 619 at para 13, 345 FTR 294 [*Wang*]). The Court will consider the existence of justification, transparency and intelligibility within the decision-making process and whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47, [2008] 1 SCR 190).

V. Analysis

[11] Paragraph 20(1)(*b*) of the *IRPA* indicates, in part, that in order to become a temporary resident, a foreign national must establish that they will leave Canada by the end of the period authorized for their stay:

Obligation on entry	Obligation 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.

[12] Paragraph 216(1)(*b*) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 also indicates that a foreign national applying for a study permit must establish that they will leave Canada by the end of the period authorized for their stay:

Study permits	Permis 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 :
…	[…]
(*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;

[13] Despite the clear requirement for applicants to establish that they will leave Canada by the end of the period authorized for their stay, subsection 22(2) of the *IRPA* nonetheless allows an applicant for temporary status to apply with the ultimate intention of becoming a permanent resident. That is to say, "a person may have the dual intent of immigrating and of abiding by the immigration law respecting temporary entry" (*Rebmann v Canada (Solicitor General)*, 2005 FC 310 at para 19, [2005] 3 FCR 285). Subsection 22(2) reads:

Dual intent	Double intention
22(2) An intention by a foreign national to become a permanent resident does not preclude them from becoming a temporary resident if the officer is satisfied that they will leave Canada by the end of the period authorized for their stay.	22(2) L'intention qu'il a de s'établir au Canada n'empêche pas l'étranger de devenir résident temporaire sur preuve qu'il aura quitté le Canada à la fin de la période de séjour autorisée.

[14] The applicant contends that it was unreasonable for the officer, in light of the evidence that was presented, to infer on her part an intention to remain permanently in Canada. She insists that her motivation letter indicated, at a minimum, a willingness to return to the UK if required and that, as such, it was unreasonable for the officer to find that she had not established that she would leave Canada if she were required to do so. She argues that, in fact, her motivation letter clearly expressed her dual intent: she would stay in Canada if she had the opportunity to stay but would go back to the UK if required. She contends that she did not need to have a firm intent to go back to her country of origin in order to have a dual intent within the meaning of section 22 of the *IRPA*.

[15] The applicant insists that she was credible and that she did not hold back any information in her application. She argues that there was no contradiction in her motivation letter but, on the

contrary, that the letter clarified her intentions. She further argues that the officer made an error when concluding that the bank statements did not identify the owner of the accounts since the name NLoveridge appeared on the statements. She further points to the fact that her family and friends are located in the UK as demonstrating her strong ties to that country and her motivation to return there. The applicant also submits that no negative inference should be made from the fact that she and her husband were unemployed and that she did not have ownership of property in the UK. She contends that those circumstances could be viewed as reasons for wanting to migrate to another country, but that they do not support the contention that the applicant would refuse to leave Canada if required to do so.

[16] The respondent, on the other hand, argues that the applicant's motivation letter was vague, contradictory, and could not properly be interpreted as supporting a singular intention of returning to the UK. The respondent submits that the applicant had the burden of convincing the officer that she would leave Canada by the end of the period authorized for her stay and that she failed to discharge that burden.

[17] I agree with the respondent that the applicant's motivation letter is contradictory and unclear. In the first portion of her letter, the applicant indicates that her intention is to remain permanently in Canada. She speaks of "starting a new life in Canada" and states that she "will be happier in a country where there are more job opportunities". If her sole intention was to stay in Canada only long enough to complete her studies, as is argued by the applicant, then the additional job opportunities available in Canada would be of no relevance. In the latter portion of the

applicant's letter, however, she indicates that "when" she returns to the UK she will be able to use the education received in Canada as a competitive advantage in her job search.

[18] The motivation letter, thus, indicates both an intention to stay in Canada as well as an intention to leave Canada and return to the UK. This is different from indicating a "dual intent" within the meaning of subsection 22(2) of the *IRPA*, because that type of a "dual intent" is actually an intention to remain permanently in Canada, coupled with an intention to abide by immigration laws as required - i.e. a willingness to leave Canada if required to do so. The two intentions involved under subsection 22(2) are complementary, not contradictory.

[19] Given that the intentions expressed in the applicant's motivation letter appear to be contradictory, it cannot be said that the officer acted unreasonably in finding that the letter provided little support for the proposition that the applicant would leave Canada by the end of the period authorized for her stay.

[20] Indeed, the burden was with the applicant to demonstrate that she would leave Canada at the end of her study period. As indicated by Justice Russel Zinn in *Wang*, above, at para 14, "The Officer is required to assess the evidence presented and weigh that evidence to determine whether it establishes on the balance of probabilities that the applicant will leave Canada at the conclusion of [the] study permit."

[21] The officer noted that both the applicant and her husband were unemployed in the UK and had experienced difficulty becoming established there. She also noted that there was no proof of

property ownership in the UK. She concluded that the applicant had not demonstrated sufficient ties to the UK to show that she would leave Canada at the end of the period authorized for her stay. While it is true that the applicant did indicate in her motivation letter that her “family and friends are based in the UK”, she did not provide any further detail on familial or other ties to the UK.

[22] Ultimately, even if the officer erred in considering the bank statements, given the contradictory nature of the applicant’s motivation letter, combined with the dearth of other evidence indicating that the applicant would leave Canada at the end of the period authorized for her stay, it cannot be said that the officer erred in finding that the applicant had not demonstrated dual intent. It is not the Court’s role to reassess the evidence. The officer’s determination fell within the range of possible, acceptable outcomes defensible in respect of the facts and law and was reasonable.

[23] For the foregoing reasons, this application for judicial review is dismissed.

[24] No questions were proposed for certification and none arise.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed. No question is certified. The style of cause is amended and the applicant is identified as Melanie Loveridge.

"Marie-Josée Bédard"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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APPEARANCES:

Vonnie E. Rochester	FOR THE APPLICANT
Yan Demers	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Vonnie E. Rochester Montréal, Quebec	FOR THE APPLICANT
Myles J. Kirvan Deputy Attorney General of Canada Montréal, Quebec	FOR THE RESPONDENT