Federal Court  Cour fédérale

Date: 20130207

Docket: IMM-5178-12

Citation: 2013 FC 131

Ottawa, Ontario, February 7, 2013

PRESENT: The Honourable Mr. Justice Simon Noël

BETWEEN:

MA, YAN BIN

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application by Yan Bin Ma, challenging a decision by a Visa Officer dated April 10, 2012, dismissing his application for a permanent resident visa for Canada in the Economic Immigration Class on the ground that his health condition might reasonably be expected to cause excessive demand on health or social services.

I. Facts

[2] The Applicant is a 49 year-old Chinese citizen, married, father of two children aged 18 and 25. He applied for landing in Canada as an investor and satisfied the Visa Officer that he has assets worth 3,81 million dollars. His application was received on January 30, 2008 at the Consulate General of Canada in Hong Kong.

[3] On September 12, 2008, the Applicant and his family were required to undertake a medical examination. On August 28, 2009, the Visa Officer received a copy of a Medical Notification dated August 26, 2009 indicating that the Applicant has a medical condition (Cerebrovascular Disease - Late Effects). In November 2008, he suffered a stroke that resulted in walking difficulties and that affected his speech. In the report, the medical officer concluded that he has a "health condition that might reasonably be expected to require services, the costs of which would likely exceed the average Canadian per capita costs over 5 years and would add to existing waiting lists and delay or deny the provision of these services to those in Canada who need and are entitled to them." The medical officer added that as a result of his condition, the Applicant will need respite care, speech and language, occupational and vocational training which will incur costs of $6500. The medical officer concluded that the Applicant is inadmissible on the basis of section 38 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 ["IRPA"].

[4] The Applicant was sent a fairness letter dated September 8, 2009 advising him of the medical officer's assessment. He was invited to submit additional information relating to his health condition, which he did. In response to the letter, on October 21, 2009, the Applicant sent additional documentation consisting of a notarized declaration dated October 12, 2009 and a Diagnosis

Examination Report issued by the Linyi City People's Hospital dated October 17, 2009. Such report was sent to the Respondent's medical officer for assessment, who indicated that the new material had no impact on his initial assessment of the Applicant's health condition.

[5] The notarized declaration reads as follows:

> "In light of my current health condition, I hereof make the solemn statement that if I pass the immigration application and get the immigration visa, I would bear all the medical costs and other expenses related to the stroke in my future life in Canada and will not burden the Canadian government."

[6] On May 12, 2010, a second procedural fairness letter was sent to the Applicant, addressing the deficiencies of the previous procedural fairness letter, inviting the Applicant to submit additional evidence with regard to his medical condition, the social services needed in Canada, an individualized plan to offset the excessive demand on social services and a signed Declaration of Ability and Intent.

[7] On July 7, 2010, the Applicant sent to the Visa Officer a proof of assets in his name and his dependant wife's name, a signed Declaration of Ability and Intent, a written statement dated July 7, 2010 jointly signed by them, in which he explains that his wife will assist him in rehabilitation, that he is responding well to the treatments as he is making constant efforts and exercises to improve his health condition. He also adds that he is willing and has the ability to pay all the expenses arising from professional services. He also submitted a Diagnosis Certificate issued by a physician from the Linyi City People's Hospital on June 25, 2010. The Diagnosis Certificate was sent to the medical officer who concluded that it did not change the assessment of medical inadmissibility.

II. Decision under review

[8] The decision by the Officer consists of the refusal letter dated April 10, 2012 as well as his CAIPS notes.

[9] In the refusal letter, the Visa Officer explained that the Applicant is inadmissible because he has a medical condition, Cerebrovascular Disease - Late Effects: Status post-cerebrovascular accident, and therefore needs respite care and outpatient day programs in the nature of physiotherapy, speech and language, occupational and vocational training, the current estimated annual cost of which, in Canada, is $6500, the "excessive demand cost threshold" for him being of $6141. The social services costs required for the Applicant therefore exceed the threshold by $359 per year.

[10] The Visa Officer recognized that the Applicant has assets controlled by him or his wife amounting to 3,81 million dollars and that he would have the financial ability to pay for the costs of the social services. However, he refused the Applicant's plan by concluding that the Applicant has not demonstrated that he has a "reasonable and workable plan to offset the excessive demand" on Canadian social services nor "the actual intention to implement such a plan mitigating these costs."

III. Relevant statutory provisions

[11] The relevant statutory provisions read as follows:

Immigration and Refugee Protection Act, SC 2001, c 27	*Loi sur l'immigration et la protection des réfugiés*, LC 2001, ch 27
Health Grounds	Motifs sanitaires

38. (1) A foreign national is inadmissible on health grounds if their health condition

[…]

(*c*) might reasonably be expected to cause excessive demand on health or social services

[…]

Immigration and Refugee Protection Regulations, SOR/2002-227

Definitions

1. (1) The definitions in this subsection apply in the Act and in these Regulations.

[…]

"excessive demand" means

(a) a demand on health services or social services for which the anticipated costs would likely exceed average Canadian per capita health services and social services costs over a period of five consecutive years immediately following the most recent medical examination required under paragraph 16(2)(b) of the Act, unless there is evidence that significant costs are likely to be incurred beyond that period, in which case the period is no more than 10 consecutive years; or

(b) a demand on health services or social services that would add to existing waiting lists and would increase the rate of mortality and morbidity in Canada as a result of an inability to provide timely services to Canadian citizens or permanent residents.

38. (1) Emporte, sauf pour le résident permanent, interdiction de territoire pour motifs sanitaires l'état de santé de l'étranger constituant vraisemblablement un danger pour la santé ou la sécurité publiques ou risquant d'entraîner un fardeau excessif pour les services sociaux ou de santé.

[…]

Règlement sur l'immigration et la protection des réfugiés, DORS/2002-227

Définitions

1. (1) Les définitions qui suivent s'appliquent à la Loi et au présent règlement.

[…]

« fardeau excessif » Se dit :

a) de toute charge pour les services sociaux ou les services de santé dont le coût prévisible dépasse la moyenne, par habitant au Canada, des dépenses pour les services de santé et pour les services sociaux sur une période de cinq années consécutives suivant la plus récente visite médicale exigée en application du paragraphe 16(2) de la Loi ou, s'il y a lieu de croire que des dépenses importantes devront probablement être faites après cette période, sur une période d'au plus dix années consécutives;

b) de toute charge pour les services sociaux ou les services de santé qui viendrait allonger les listes d'attente actuelles et qui augmenterait le taux de mortalité et de morbidité au Canada vu l'impossibilité d'offrir en temps voulu ces services aux citoyens canadiens ou aux résidents permanents.

[…]	[…]
Assessment of inadmissibility on health grounds	Évaluation pour motifs sanitaires
20. An officer shall determine that a foreign national is inadmissible on health grounds if an assessment of their health condition has been made by an officer who is responsible for the application of sections 29 to 34 and the officer concluded that the foreign national's health condition is likely to be a danger to public health or public safety or might reasonably be expected to cause excessive demand.	**20.** L'agent chargé du contrôle conclut à l'interdiction de territoire de l'étranger pour motifs sanitaires si, à l'issue d'une évaluation, l'agent chargé de l'application des articles 29 à 34 a conclu que l'état de santé de l'étranger constitue vraisemblablement un danger pour la santé ou la sécurité publiques ou risque d'entraîner un fardeau excessif.

IV. Applicant's submissions

[12] The Applicant generally submits that the Visa Officer's decision is unreasonable as he has established that he is in a financial position to mitigate the costs of the social services needed whether they amount to $6,500 or only $359 a year. The Applicant bases his argument on the fact that in *Hilewitz v Canada (Minister of Citizenship and Immigration); De Jong v Canada (Minister of Citizenship and Immigration)*, 2005 SCC 57, [2005] 2 SCR 706 [*Hilewitz*], the Supreme Court of Canada established that "excessive demand" is "inherently evaluative and comparative" and that therefore, the financial ability of the Applicant to cover the excessive costs needs to be taken into account. As the Visa Officer recognized that the Applicant has established having assets worth 3,81 million dollars, it is unreasonable to find that he has not submitted a detailed plan of action to defray the excessive costs of social services while in Canada.

[13] Indeed, the Applicant submits that contrary to the Visa Officer's conclusion, he has demonstrated that he has "taken action" to develop a cost mitigation plan by submitting a notarized

declaration confirming his intention to allocate his assets to his recovery as well as a list of assets which establish his financial ability to do so. Therefore, his plan is lengthy and detailed and he relies on *Velasquez Perez v Canada (Minister of Citizenship and Immigration)*, 2011 FC 1336 at para 33, 215 ACWS (3d) 185 [*Velasquez Perez*] to argue that his plan should be considered sufficient.

[14] Second, the Applicant is of the view that the fact that the Applicant's wife will assist him has not been given proper consideration by the Visa Officer.

[15] Third, the Applicant argues that the Visa Officer's finding that he did not contact Canadian physicians in order to understand the "medical" services that he will be needing in Canada and that he did not provide a list of the services required while in Canada is erroneous as he explained that he contacted a physician from Vancouver.

[16] Finally, the Applicant submits that the Visa Officer made an error in his decision as he did not make a distinction between social services and health services, which is important as some social services are not covered by the state.

V. Respondent's submissions

[17] The Respondent generally submits that a mere undertaking by the Applicant that he will defray the excessive demand on social services as he has enough funds available to him is insufficient. Indeed, a plan to mitigate the excessive costs of social services needed by an Applicant with a health condition must be complete, developed and certain and must not be speculative in

order to satisfy the government that likely "excessive demand" will be avoided. The plan provided by the Applicant was rightly found insufficient for the following reasons.

[18] First, the Applicant did not submit concrete evidence to support his intention to arrange and pay for social services and he did not demonstrate that he has researched the types of services needed, the availability of such services and the costs of such services or that he has made arrangements with service providers in Canada.

[19] Moreover, the Respondent adds that it has been recognized by this Court that personal undertakings not to use public social services are not enforceable in Canada and that a mere statement is therefore insufficient.

[20] Finally, even if his own resources would allow him to offset the excessive demand, the Applicant has not established that the private sector does provide such services.

[21] With regard to the Applicant's assertion that his wife will assist him and that this will reduce the demand on social services, the Applicant has not explained in details to what extent the help provided by his wife would reduce or eliminate the role, function and contributions of the trained and specialized professionals.

VI. Issue

[22] Does the Visa Officer's decision, through the assessment of the medical officer, constitute a reasonable finding that the Applicant is inadmissible pursuant to paragraph 38(1)(*c*) of the IRPA?

VII. Standard of review

[23] The Visa Officer's factual findings should be reviewed under the standard of reasonableness (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47, [2008] 1 SCR 190 [*Dunsmuir*]).

VIII. Analysis

[24] The decision rendered by the Visa Officer is reasonable and therefore, the intervention of this Court is not warranted.

[25] The Applicant's request for permanent residence was refused on the basis that the Applicant was not able to satisfy the Visa Officer that he had a concrete plan to offset the excessive costs of social services required by his health condition and that he did not demonstrate having the intention to do so. Considering the evidence submitted to the Visa Officer which formed the basis of his decision, such conclusion falls within "a range of possible, acceptable outcomes which are defensible in respect of the facts and law" [see *Dunsmuir*, above]. Indeed, the documents submitted by the Applicant were rightly found to be insufficient to demonstrate that there is less than a reasonable probability that the public system will have to incur excessive demand (*Hilewitz v Canada (Minister Citizenship and Immigration); De Jong v Canada (Minister of Citizenship and Immigration)* 2005 SCC 57 at para 46, [2005] 2 SCR 706 [*Hilewitz*]).

[26] First, it has been recognized that a letter of intent that confirms one's intention not to burden the public system, when that individual has the financial capacity to pay for all services publicly accessible to all is insufficient as such document is not enforceable in Canada (see *Deol v Canada (Minister of Citizenship and Immigration)*, 2002 FCA 271 at para 46, 215 DLR (4th) 675; *Choi v*

Canada (Minister of Citizenship and Immigration) (1995), 29 Imm LR (2d) 85 at para 33, 98 FTR 308). Therefore, a mere personal undertaking to waive all rights to social services cannot be considered to be sufficiently reliable so that the application should be granted.

[27] The Applicant's Personal Plan and other documents submitted were not found to be satisfactory by the Visa Officer as they did not demonstrate a clear intention not to burden the public system with the excessive costs of social services. Indeed, there is no indication that he has made arrangements with professionals who work in the private sector and who could provide the services that he needs. In his Personal Plan, the Applicant indicated that he contacted a physician in Vancouver for professional advices but he did not provide detailed information.

[28] Moreover, the argument by the Respondent that the Applicant has not demonstrated to which extent the help provided by his wife will reduce the work required from trained professionals is accepted by this Court. Indeed, the Applicant states in his Personal Plan that his wife will provide assistance to him but this does not establish clearly that it will reduce the Applicant's demand for social services provided by trained professionals.

[29] Contrary to what is alleged by the Applicant, the issue is not about whether or not the Visa Officer disregarded the Applicant's financial situation but about whether or not he submitted a plan that demonstrates that there is less than a reasonable probability that the public system will incur the excessive costs of social services required by him. As stated by the Supreme Court of Canada in *Hilewitz*, above, the financial situation of an applicant is a relevant factor to be examined when determining the probabilities that an Applicant's presence would place excessive demands on our

social services. However, unlike the Applicant's argument, this case does not stand for the proposition that financial capacity is the most important factor to be considered. Therefore, the Officer's concern is not restricted to an assessment of the Applicant's financial capacity to incur costs of $359 for social services. The issue at play is whether the Applicant has demonstrated that he has the intention to allocate his resources to pay for those services with a precise, serious and comprehensive multi-service health recovery plan.

[30] The Applicant relies on *Velasquez Perez*, above, a decision where the Federal Court decided that the Visa Officer's conclusion was unreasonable as he had ignored the Applicant's financial ability to pay for social services and that the decision was not based on all the available information. In the case at bar, the Visa Officer gave proper consideration to the Applicant's established ability to defray the social services that are required but however concluded that his application did not establish clearly that he would not burden the excessive demand on social services.

[31] Finally, it is important to underline that it is the Applicant who bears the onus of demonstrating that he is not inadmissible, once a negative medical assessment has been completed (*Zhang v Canada (Minister of Citizenship and Immigration)*, 2012 FC 1093 at para 20, 2012 CarswellNat 3526). In the present case, the Applicant was given two fairness letters which allowed him to make clear additional submissions and to submit additional documents. Therefore, the Applicant was asked repeatedly by the Officer to submit convincing evidence demonstrating a clear intention not to burden the public system but no additional, satisfactory evidence was provided.

[32] In conclusion, the Visa Officer properly assessed the Applicant's health condition to conclude that there is a reasonable probability that the public system will incur the excessive costs of social services required by him.

[33] No questions for certification were proposed by the parties and none will be certified.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed. No question is certified.

"Simon Noël"

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Judge

FEDERAL COURT

SOLICITORS OF RECORD

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