

Federal Court



Cour fédérale

Date: 20130729

Docket: IMM-7176-12

Citation: 2013 FC 827

Ottawa, Ontario, July 29, 2013

PRESENT: The Honourable Madam Justice Snider

BETWEEN:

**NOUH HUSSEIN ABDALLA HAMAD,
MUNIRA SALEH MAHMOUD, AND
ABDALLA, AHMAD, ASIA AND
ABDERRAHMAN HAMAD
BY THEIR LITIGATION GUARDIAN,
NOUH HUSSEIN ABDALLA HAMAD**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The Principle Applicant (PA), Mr. Nough Hussein Abdalla Hamad, is a citizen and resident of Libya. The PA has a wealthy brother in Canada who is prepared to fund the PA and his family while the PA completes a two-year business program at George Brown College of Applied Arts and Technology in Toronto. In 2011, the PA applied for a temporary resident visa.

His wife and children separately applied for temporary visas to enable them to accompany the PA. The applications were initially refused in decisions dated June 14, 2011; these decisions were overturned by Justice Zinn and remitted for re-consideration (see *Hamad et al v Canada (Minister of Citizenship and Immigration)* 2012 FC 336, 8 Imm LR (4th) 169).

[2] For purposes of the re-consideration, the PA was interviewed by the First Secretary, Canadian Embassy, Egypt (the Officer). In a decision dated August 9, 2012, the Officer First Secretary, Canadian Embassy, Egypt (the Officer) refused the application. The letter of refusal reflected the following broad reasons for the refusal as follows:

- (a) The PA had not satisfied the Officer that he would leave Canada by the end of the period authorized for his stay; and
- (b) The PA's proposed studies were "not reasonable in light of one or more of your qualifications, previous studies, employment, level of establishment, other educational opportunities available in Canada, language abilities, or your future prospects and plans".

[3] The reasons for the Officer's decision include the entries contained in the Global Case Management System (GCMS). The GCMS notes, which were taken contemporaneously with the review of the file and interview of the Applicant, highlight several areas of concern for the Officer:

- The Applicant had not researched any other schools in Canada or elsewhere;
- The Applicant had little knowledge of what courses he would be taking;
- Although the Applicant claimed that upgrading his schooling would help him in the future in Libya, the Applicant was not able to explain how;
- The Applicant was unable to provide a logical explanation for waiting nine years to continue his studies.

[4] At the end of the day, the Officer concluded that it was not reasonable for a man of the PA's position to uproot himself and his family to pursue a two-year business program at a Canadian college. Although the Officer did not expressly state that she was not satisfied that the PA had answered truthfully all questions put to him, it is clear from her decision that she did not believe the PA's assertions that he was going to Canada to attend the business program at George Brown. In sum, it is evident that the Officer concluded that the Applicants were not *bona fide* – that they were using the study permit as a ruse to come to Canada permanently.

[5] The Officer's decision to refuse the student visa is reviewable on a standard of reasonableness (see, for example, *Gu v Canada (Minister of Citizenship and Immigration)*, 2010 FC 522 at para 14, [2010] FCJ No 624). When reviewing a decision on a reasonableness standard, the Court must determine "whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law" and whether the decision displays "justification, transparency and intelligibility" (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47, [2008] 1 SCR 190 [*Dunsmuir*]).

[6] I have a number of problems with the decision which cumulatively lead me to the conclusion that the decision lacks justification, transparency and intelligibility.

[7] A key problem with the Officer's decision is that her notes in the GCMS with respect to the interview differ in some important aspects from the Applicant's version of his interview. I appreciate that the notes were taken contemporaneously with the interview and that the Applicant's affidavit was sworn some time later. However, in the absence of an affidavit from the Officer explaining what transpired at the interview, I am unable to reconcile the two versions. The differences are most relevant with respect to the intentions of the Applicant upon his return to Libya. On this critical issue, the affidavit reflects a more complete response that, if considered by the Officer, may have led to a different conclusion.

[8] A second concern with the decision involves the Officer's statement that:

PA claims that he has a lot of free time in Libya, yet has not [bothered] to upgrade his English, nor his courses in Libya in the last 5 years . . .

[9] The problem with this remark is that it is not correct. As he states in his affidavit, the PA had taken an English course in March 2012. The Officer, it appears, never asked the Applicant whether he had undertaken any educational upgrading. Nor is there any place on the application form to include information about further educational courses. I appreciate that the burden is on the Applicant to make his case and that the Officer is not obliged to provide a “running score” to the Applicant. However, in this case, the Officer’s important finding was based on speculation rather than on the evidence before her.

[10] Even if the Officer’s failure to ask about additional courses was not an error, the question arises about whether the Officer considered that Libya was in the midst of serious instability during much of the time in question. One would think that, as a matter of common sense, the Officer would have considered that taking educational courses during this time would be problematic.

[11] Although it is not clear from the reasons (which raises a problem with the intelligibility of the reasons), the Officer seems to have based her decision to a large extent on the fact that this proposed course of study was not a normal undertaking for a man with a family. This may be true. Nevertheless, what appears not have been appreciated by the Officer was the unusual context of this application in which the PA’s older brother – a person well established in Canada – was offering to bring his brother and family to Canada to pursue educational opportunities. There is absolutely nothing in the record that indicates that the brother is using this as a back-door way of giving the PA and his family permanent residence in Canada. The clearly stated intent was for the PA to study in Canada and return to Libya with newly acquired

language and business skills. This misapprehension of the totality of the evidence before her led to some unsupported findings. For example, the Officer did not take into account that the educational studies were arranged by the PA's brother, thus providing an explanation as to why the PA was unable to list in detail the specific courses he would be taking.

[12] In sum, I conclude that the decision lacks the justification, transparency and intelligibility required for a decision to be reasonable.

[13] I stress that a different reviewing officer may still come to the same conclusion; it is not for the Court to decide whether the study visa should be granted. However, the Applicants are entitled to an intelligible decision that reflects the entirety of the case before the Officer.

[14] Neither party proposes a question for certification.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that:

1. The application for judicial review is allowed, the decision of the Officer quashed and the matter remitted for re-determination by a different officer, with an opportunity provided to the Applicants to make further submissions if they choose; and
2. No question of general importance is certified.

“Judith A. Snider”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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STYLE OF CAUSE: NOUH HUSSEIN ABDALLA HAMAD et al v
THE MINISTER OF CITIZENSHIP AND
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PLACE OF HEARING: TORONTO, ONTARIO

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DATED: JULY 29, 2013

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