Federal Court  Cour fédérale

Date: 20140526

Docket: IMM-5724-13

Citation: 2014 FC 499

Ottawa, Ontario, May 26, 2014

PRESENT: The Honourable Mr. Justice Martineau

BETWEEN:

ZHANG, DUO

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The applicant, a 26 year old citizen of the People's Republic of China [PRC], is seeking to review a decision of a visa officer, dated August 20, 2012, in which she was found not to have met the requirements of the *Immigration and Protection Act*, SC 2001, c 27 and its Regulations (SOR/2002-227), as an applicant for a Canadian study permit.

[2] The applicant studied broadcasting and hosting art in the PRC. In 2012, she applied for the English-Language and Culture Intensive Program at McGill University but was refused a study permit. The applicant did not challenge this first refusal. She now seeks to study Desktop Publishing at the Rosemount Technology Centre of the English Montreal School Board [EMSB] to which she was admitted.

[3] The only question at issue is whether the visa officer's refusal of the present application for a Canadian study permit is reasonable. I have decided to allow the application for judicial review.

[4] I will start with the first issue which relates to the officer's concern that the applicant will not leave Canada at the end of her stay. The applicant submits that the officer's finding that the applicant "does not appear *bona fide*" is not supported by the evidence, while the officer also fails to explain why her change of career was not genuine, and rather, bases the decision on the generalized view that reapplying for a study permit in a different field after one year is indicative that she would overstay. The respondent, on the other hand, contends that such finding is supported by the applicant's immigration history and is not unreasonable given the burden is on the applicant to prove that she will leave Canada once her visa is expired.

[5] First, the applicant explains in her study plan that she has been unable to find a job at a television station after graduation and that the field is increasingly competitive. She states that "[d]ue to my major, I can have a good development only if I can get a job in the TV Station. But unfortunately, I had many job rejections from the TV Stations after graduation … The present

situation is more and more graduates from the universities join into the competition with me in this industry. I realize that my development prospect is quite grim." After her first application for a permit to study at McGill was rejected, the applicant became engaged and had to "reconsider and re-plan [her] career path for him." She explains that her fiancé works in publishing and they seek to open a business together. While it is unclear what sort of business the applicant and her fiancé seek to open, or precisely why she needs to study Desktop Publishing, the study plan provides a plausible explanation for her genuine desire to study at Rosemount Technology Centre; an explanation that cannot arbitrarily be discarded by the visa officer. There must be an objective reason to question the motivation of an applicant for study visa.

[6] Second, it is apparent that the visa officer has also failed to consider any other reasons raised by the applicant to support her claim that she would return to the PRC. For example, her study plan states that her fiancé lives in China, he owns his own business there and he has purchased an apartment in her name. The applicant's declaration explains that her fiancé is not interested in living abroad but that her study "is also one part of the preparation for our future career; therefore I will not stay in Canada for long term" (see para VI of the declaration, Applicant's Record [AR] at 28). The declaration also states that the applicant plans to have a family in China and to take care of her parents there and that she understands the repercussions of failing to leave Canada (at paras VII and IX, AR at 28-29). As stated in *Cao v Canada (Minister of Citizenship and Immigration)*, 2010 FC 941 at para 13 [*Cao*], "[t]he decision to submit the applicant's declaration is not a banal gesture. The declaration is a clear statement that the applicant understand the consequences of overstaying his welcome in Canada, and for this reason, it will not happen."

[7] The second issue relates to the officer's assertion that the applicant fails to demonstrate her ability to pay for the program she intend to pursue in Canada. The applicant states that this finding is contrary to the evidence while the respondent submits that it is supported by the record.

[8] While the burden of proof is on the applicant, the decision must be based on reasonable findings of fact, and must be based on the record at hand (see *Zhang v Canada (Minister of Citizenship and Immigration)*, 2003 FC 1493 at para 7; *Utenkova v Canada (Minister of Citizenship and Immigration)*, 2012 FC 959 at para 7). In the case at bar, the applicant provides an invoice from the EMSB confirming that she had paid the CAD $100 application fee and CAD $14,890 in tuition. The balance owing is $6,897.17 (Certified Tribunal Record at page 20). In addition, she states in her study plan and declaration that her parents have prepared RMB 280,000 (approximately CAD $50,000) as living expenses and final payment of tuition and includes a certificate documenting her father's income from 2011 and 2012 (with his annual income being approximately CAD $15,000 a year).

[9] In the case at bar, the officer's failure to explain why the applicant would be unable to afford the program makes the decision unreasonable given the confirmation by EMSB that two-thirds of the fees are already paid and the declaration and study plan asserting that the applicant's parents are ready to support her. The respondent argues that there is no affidavit or sworn declaration signed by her parents establishing their undertaking to support her for the duration of her studies. However, since there is no indication that the officer was concerned about her ability to afford to live in Montreal, other than checking off a box in the form letter, I reject the

respondent's contention that the absence of an undertaking can save this decision. In passing, the visa officer also fails to address the applicant's sworn declaration which included further assurances that she would not overstay. While declarations cannot be presumed to be true, the statements made in a declaration must be weighed by the officer in light of the totality of the evidence and the personal circumstances of the particular applicant (*Cao* at para 13; *Huang v Canada (Citizenship and Immigration)*, 2012 FC 145 at para 13; and *Xie v Canada (Minister of Citizenship and Immigration)*, 2012 FC 1239 at paras 28-29).

[10] For all these reasons, I will allow this judicial review application. No question of general importance has been proposed by counsel and none shall be certified by the Court.

JUDGMENT

THIS COURT'S JUDGMENT is that the decision dated August 20, 2012 is set aside and the matter is sent back for redetermination by a different visa officer. No question is certified.

"Luc Martineau"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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