Federal Court  Cour fédérale

Date: 20140625

Docket: IMM-6342-13

Citation: 2014 FC 612

Ottawa, Ontario, June 25, 2014

PRESENT: The Honourable Mr. Justice Roy

BETWEEN:

JIN, Liwen

Applicant

And

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

ORDER AND REASONS

[1] In this application for judicial review made pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA], it is the decision of an Immigration Officer that is challenged.

[2] The decision, dated May 22, 2013, denies an application for a permanent resident visa as a member of the Canadian Experience Class.

[3] In the decision, which was transmitted by email, the Immigration Officer states that:

> [Y]ou have not provided tangible evidence you are returning to Canada, i.e. copy of a purchased an [*sic*] airline ticket, offer/contract of employment in Toronto. In addition, there is no indication Yutong Wu is the proprietor of the condo, nor was a signed lease provided. Based on the above, I am not satisfied it is your intent to establish in Canada and in a province other than the province [*sic*] of Quebec.

[4] That letter of decision followed what has been called a "fairness letter" which was sent on February 20, 2013. Such a letter is for the purpose of indicating to applicants why their application will be denied if additional information or evidence is not provided. In the case at bar, the only indication of the concerns reads as follows:

> Please provide written evidence that you intend to live in a different province than Quebec in order for me to take a final decision on your application. If you choose not to respond with additional information and/or documentation, or if your submission does not respond to these concerns, you [*sic*] application may be refused.

[5] Within the 30 days given in order to provide a response, the applicant, through a representative who was not her counsel in these proceedings, responded with an email on March 19, 2013. In that email, the Immigration Officer is advised that the applicant has left Canada and a copy of her passport showing her entry into China on June 21, 2012 is appended. The email also advises that the applicant is working in Shanghai since November 1, 2012. The third paragraph is particularly relevant. It reads:

> Mrs. Jin plans to come back to Canada on September 1st, 2014. She will lease a condo in Toronto. Please refer to the attached rental confirmation. Mrs. Jin lived and studied in London, Ontario from September 2006 to October 2010. She intends to settle in Ontario because her second language is English and because of her relations in the province of Ontario. She feels it would be difficult

> to find a permanent job in Québec because she doesn't speak French.

[6] There is in fact a letter confirming her employment in Shanghai and a document, which is not dated, which seeks to provide evidence that a condominium owned by that person, Yutong Wu, will be leased to Ms Jin.

[7] It is not disputed by the parties that the standard of review in the circumstances is the standard of reasonableness. The task at hand is therefore to determine whether the decision letter of May 22, 2013 meets the reasonableness standard. In my view, it does not.

[8] The concern that was raised initially was to the effect that the applicant would in fact reside in the Province of Quebec. As indicated in that letter, "the Canadian experience class is prescribed as a class of persons who may become permanent residents on the basis of their experience in Canada and who intend to reside in a province other than the Province of Quebec." Thus, the applicant, through a representative, sought to alleviate the concern by providing evidence that she would indeed reside outside of the Province of Quebec. The applicant responded to the concern raised.

[9] However, the decision letter switches gears in that the decision is based on the argument that "[Y]ou have not provided tangible evidence you are returning to Canada". The concern that was present that the applicant would reside in Quebec has magically become whether or not the applicant would be returning to Canada at all. One has to wonder why an applicant would go through the trouble of retaining a consultant and fill out the various forms and questionnaires that

need to be completed if the person does not intend to return to Canada. What is more is that the further explanation of what might be missing appears to be inaccurate. The Immigration Officer declares that there is no indication that Yutong Wu is the proprietor of the condo. This is not so. On the basis of the evidence before the decision-maker, this gentleman is the owner of the condominium. There is no indication in the decision as to why the Immigration Officer would refute that information.

[10] In my view, it is unreasonable to require, for instance, that an applicant would have to purchase an airline ticket, and incur a significant cost, for the sole purpose of satisfying an Immigration Officer that she intends to avail herself of the permanent residence visa she requested. It would be more reasonable to purchase such an expensive ticket after the Canadian authorities have confirmed that a visa will be delivered. Similarly, there is no indication why the letter from the owner of the condominium would not be sufficient and why a signed lease would be needed.

[11] Accordingly, one is left with a refusal based on concerns that were not raised in the fairness letter and for reasons that appear on their face to be less than convincing. One has to consider that the exchange of information was taking place some six months before the applicant would make her way to Canada. Had the Immigration Officer had concerns about the employment situation once in Toronto, she could, and I suggest she should, have raised these with the applicant. Limiting her concerns to where the applicant will reside in the Province of Quebec sets up the applicant for failure if other concerns are present.

[12] The respondent has alluded to the case law that finds that there is no need to enter into a discussion with applicants about their credibility or authenticity of information submitted in support of an applicant (*Hassani v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1283, [2007] 3 FCR 501).

[13] With respect, such is not the case here. The respondent raised a very specific concern in the fairness letter: will the applicant reside in the Province of Quebec. That is the matter that is addressed squarely in the response. There is no further discussion of the credibility or authenticity of that information. Rather, a completely different issue, the return to Canada altogether, becomes the reason for the refusal. *Black's Law Dictionary* (West Group, 7th ed) defines "bait and switch" as "A sales practice whereby a merchant advertises a low-priced product to lure customers into the store only to induce them to buy a higher-priced product." Although most analogies are somewhat defective, this one illustrates the point in that the applicant is lured into thinking that the issue is one thing, to be told that it is something else of an even higher order.

[14] I would not dispute that the concerns about the residency in the Province of Quebec of the applicant were legitimate. In her initial application, it was clear that following her studies in London, Ontario, she resided in the Province of Quebec and, indeed, held a job in the province. However, it was incumbent on the Immigration Officer to deal with those concerns on the basis of the information that was provided on March 19. They were deemed to address the concerns raised in the fairness letter and, in my estimation, it was not reasonable to deny the application for permanent residence on a completely different basis not even alluded to. If doubts about

residency in Quebec deserved a fairness letter, doubts about a return to Canada were equally deserving of a fair warning.

[15] As a result, the application for judicial review is granted, and this application for permanent residence as a member of the Canadian Experience Class has to be reassessed and determined anew by a different immigration officer. There is no question for certification.

ORDER

THIS COURT'S JUDGMENT is that the application for judicial review is granted, and this application for permanent residence as a member of the Canadian Experience Class has to be reassessed and determined anew by a different immigration officer. There is no question for certification.

"Yvan Roy"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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DATED:	JUNE 25, 2014

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