Federal Court  Cour fédérale

Date: 20190326

Docket: IMM-2987-18

Citation: 2019 FC 372

Ottawa, Ontario, March 26, 2019

PRESENT: The Honourable Madam Justice McVeigh

BETWEEN:

MANNAT PAL KAUR ANAND

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION CANADA

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] This is a judicial review of a decision [Decision] denying a temporary resident visa ["TRV"] to Mannat Pal Kaur Anand [the "Applicant"]. The Officer denied the TRV because the Officer was not satisfied that the Applicant would depart Canada at the end of her stay, considering her lack of ties back to India, purpose of visit, personal assets and financial status,

pursuant to section 179 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 ["*IRPR*"].

II. Background

[2] The Applicant was born in Iran on January 22, 1991, but is a citizen of India. The Applicant is a lawyer practicing in the Punjab and Haryana High Court in Chandigarh, India.

[3] The Applicant's parents are Daman Pal Singh Anand (Applicant's father) and Manpreet Kaur Anand (Applicant's mother).

[4] The Applicant has a number of Canadian relatives, including:

i. Her maternal uncle, Pali Bedi (Manpreet's biological brother), and Pali Bedi's wife, Navpreet Kaur Bedi (collectively referred to as the "Bedi family");
ii. Her brother, Gavanpreet Signh Anand ("Gavan"). Gavan was born in Canada when Manpreet visited Canada on a visitor's visa in 1988.
iii. Her maternal aunt, Kanwalpreet Kaur Dutt (Manpreet's sister).

[5] The Applicant earns a modest annual salary working as a lawyer. Since 1984, the Applicant's parents have owned and operated a fashion boutique in India called Mannat Ladies Point. While the Applicant's parents have titles to property and/or relatively significant assets, the Applicant herself has much more modest financial connections to India.

[6] The Applicant, as well as Daman and Manpreet, applied for TRVs in April 2018, ostensibly to travel to Calgary to visit their relatives. This initial application was rejected on May 11, 2018. The Officer, in the "tick" portion of the response, indicated a number of reasons for refusing this initial decision, specifically: travel history, purpose of visits, personal assets and financial status.

[7] The Applicant re-filed a new visitor visa application on May 26, 2018. The new visitor visa application included information indicating that the Applicant was a lawyer who earned a modest annual income in 2017-2018. The Applicant also filed additional information on travel history and the purpose of visit.

III. Issues

[8] The issues are:

A. Did the Officer make a reasonable decision on the merits?

B. Was there a breach of procedural fairness?

IV. Standard of Review

[9] The case law is well established that decisions about whether the officer erred in a refusal of TRVs are reviewed for reasonableness (*Paramasivam v Canada (Citizenship and Immigration)*, 2010 FC 811; *Rudder v Canada (Citizenship and Immigration)*, 2009 FC 689).

[10] Questions of procedural fairness are adjudicated on the standard of correctness (*Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 43).

[11] It is important to bear in mind, as has been well established by this Court, that the duty of fairness in a procedural fairness context is at the lower end of the spectrum on review of these kinds of visa applications, as the consequences to the applicant on a refusal to issue a TRV are not permanent (*Alabi v Canada (Citizenship and Immigration)*, 2018 FC 1163).

V. Relevant legislation

[12] The relevant provisions of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*] are as follows:

Requirements	**Formalités**
Application before entering Canada	**Visa et documents**
11 (1) A foreign national must, before entering Canada, apply to an officer for a visa or for any other document required by the regulations. The visa or document may be issued if, following an examination, the officer is satisfied that the foreign national is not inadmissible and meets the requirements of this Act.	11 (1) L'étranger doit, préalablement à son entrée au Canada, demander à l'agent les visa et autres documents requis par règlement. L'agent peut les délivrer sur preuve, à la suite d'un contrôle, que l'étranger n'est pas interdit de territoire et se conforme à la présente loi.

[13] The relevant provisions of the *IRPR* are as follows:

DIVISION 1	**SECTION 1**
Temporary Resident Visa	**Visa de résident temporaire**
Issuance	**Délivrance**
179 An officer shall issue a temporary	179 L'agent délivre un visa de résident

resident visa to a foreign national if, following an examination, it is established that the foreign national	temporaire à l'étranger si, à l'issue d'un contrôle, les éléments suivants sont établis :
(a) has applied in accordance with these Regulations for a temporary resident visa as a member of the visitor, worker or student class;	a) l'étranger en a fait, conformément au présent règlement, la demande au titre de la catégorie des visiteurs, des travailleurs ou des étudiants;
(b) will leave Canada by the end of the period authorized for their stay under Division 2;	b) il quittera le Canada à la fin de la période de séjour autorisée qui lui est applicable au titre de la section 2;
…	…

VI. Preliminary Issues

A. *Extrinsic Evidence Introduced in Applicant Memorandum*

[14] In paragraphs 26 and 29 of the Applicant's Memorandum, the Applicant argues that the Officer erred by making "no mention at all" of the Applicant's family in India.

[15] The Respondent contends that the Applicant introduces inadmissible extrinsic evidence in both of these paragraphs. The Respondent's position is that the extrinsic evidence introduced in argument has to do with the presence of family members in India but that the Applicant did not put this evidence before the decision maker. Indeed, a key part of the Decision relates to how the Applicant did not demonstrate adequate ties back to India in her application.

[16] The Applicant in the Reply Memorandum argues that the Applicant is justified to introduce this extrinsic evidence as there is a matter of procedural fairness being alleged here; namely, that the visa officer should have informed the Applicant of all of his or her concerns in

the first refusal so that the Applicant could have satisfactorily answered those concerns on the second application.

[17] This argument must fail.

[18] While the Applicant is not incorrect that extrinsic evidence not before the decision maker may be introduced if a procedural fairness argument is raised, the evidence must be raised by way of affidavit evidence, not by way of argument in memoranda. Rule 110(4) of the *IRPA* dictates how such evidence is to be introduced.

[19] Extrinsic evidence is presumptively inadmissible in cases of judicial review except in narrow circumstances. In *Tsleil-Waututh Nation v Canada (Attorney General)*, 2017 FCA 128 at paragraph 11, Justice Stratas noted for the Federal Court of Appeal that the basic rule is that the evidence must be restricted to what was in the record before the decision maker; however, there are categories of affidavit evidence that may be admitted on judicial review even though they are not part of the record before the administrative decision maker, and only when it is in the "interests of justice".

[20] The Applicant's argument is flawed, as the "extrinsic evidence" being relied upon does not go to the procedural fairness argument being alleged. The Applicant argues that the procedural fairness issue arose from the visa officer's failure to provide comprehensive reasons in the first refusal so that the Applicant could address those concerns on the second application.

Providing new information relating to the presence of other family members in India has nothing to do with this argument.

[21] On the basis of the above, I agree with the Respondent that the impugned portions of the paragraphs of the Memorandum of Argument must be struck or given no consideration.

VII. Analysis

A. *Did the Officer make a reasonable decision on the merits?*

[22] The Applicant submits that the Officer erred in their assessment of the evidence on whether the Applicant would return to India at the end of her stay as follows.

(1) Ties Back to India

(a) *Financial*

[23] The Applicant submits that the Officer drew an unreasonable conclusion from her low income. She says that the Officer erred by finding that the annual income of the Applicant was "modest"; rather, because the cost of living is so low in India, her apparently "modest" income has more buying power; ie, is more than modest.

[24] The Applicant further argues that the Officer ignored the savings and immovable assets in the possession of the Applicant in India. The Applicant submits that the she has significant financial ties back to India, including having a well-paying job as an attorney.

(b) *Pull Factors*

[25] The Applicant argues that the Officer erred by drawing a negative inference from the presence of family members in Canada as "strong pull factors".

(c) *Dual Intent*

[26] The Applicant speculates that the Officer may have been worried that the Applicant would arrive in Canada and try to become a permanent resident. The Applicant argued that an officer cannot draw a negative inference from an application simply on the basis that there is "dual intent".

(2) Purpose of Visit

[27] Although the "tick-mark" indicates "purpose of visit" as a reason for refusal, no reasons are offered to elaborate on whether the purpose of the visit is valid. The Applicant argues that when no reasons are provided whatsoever, as per *Agidi v Canada (Citizenship and Immigration)*, 2013 FC 691, the decision is unreasonable.

[28] Certainly, within the record there are factors to assume that the Applicant meets the statutory requirement for granting a TRV under the *IRPA*. However, that is simply not the test. As long as the Officer's decision is a reasonable one, deference must be owed.

[29] The Officer made the following notes in the CMS system:

> I have reviewed all the documentation provided for this application. Summary of key finds below: — Integrated Search record on family member in Canada — Client declared previous PR (FSW) applications which were closed — PA has limited declared family in home country; strong pull factors to Canada. Son is a Canadian citizen by birth and was born when mother visited Canada in 1988 Mother also has two siblings in Canada — Insufficient proof of financial status; see proof of funds on file. Modest income shown on ITR — PA/family does not appear established in home country. Given the foregoing, PA has not demonstrated sufficient establishment or sufficient ties to motivate return. I am not satisfied on balance that PA is a bona fide visitor to Canada who will depart at the end of authorized stay. Application refused.
>
> Emphasis added

[30] In this case, there are excellent reasons that the Officer appropriately raised, including:

- **A lack of financial ties to India**. I do not find the Applicant's argument that the Officer erred by not considering the cost of living in India relative to her income. Simply, this "comparative evidence" was not before the decision maker. Therefore, it was reasonable for the Officer to come to a conclusion that the Applicant had low/modest earnings in India.
- **Family pull-factors**. In *Mohammed v Canada (Citizenship and Immigration)*, 2017 FC 992 [*Mohammed*], Justice Pentney examined a similar refusal where the officer had three concerns as the basis for the refusal of a TRV as push/pull factors: the applicant's family ties in Canada and Iraq, the purpose of the proposed visit, and whether the Applicant had sufficient funds for the trip. Justice Pentney upheld the refusal as a reasonable one. Just as in Mohammed, it is not an error for the Officer to consider the strong family

connection to Canada, especially when no evidence was proffered to him or her to demonstrate family ties back to India.

- **Dual Intent**. The Officer in weighing the evidence considered all the factors including that if she came to Canada that she would not leave Canada. This cannot be characterized as dual intent as she was asking for a visitor visa and that should be the only intent.
- **Purpose of Visit**. The argument that there are no reasons to support this finding fails as the inadequacy of reasons is no longer a stand-alone ground of judicial review, in light of the Supreme Court's decision in *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at paragraph 14. Secondly, the Officer noted, "I am not satisfied on balance that PA is a bona fide visitor to Canada who will depart at the end of authorized stay." The Officer did not believe the purpose of the visit was to be a visitor. In the context of this visa application, those are the reasons.

B. *Was there a breach of procedural fairness?*

[31] The Applicant submits that a procedural fairness issue arose when the Applicant was not given the opportunity to make full answer in the second application. Essentially, new reasons for refusal- namely, a lack of ties to India – were raised in the second refusal that were not clearly demarcated by the visa officer.

[32] The Applicant relies on *Hersi v Canada (Minister of Citizenship and Immigration)*, [2000] FCJ No 2136 (FC) ["*Hersi*"] to support this argument. In *Hersi*, Justice Dawson held:

> [20] The ability to meaningfully participate in the decision-making process requires clear notice of the case to be met, a full and fair opportunity to present evidence and submissions relevant to that

> case, and full and fair consideration of that case by an impartial decision-maker.

[33] The Applicant further argues that the visa officer had a duty to inform the Applicant of a concern that the visa officer has with respect to a concern that the Applicant could not have anticipated (*Fong v Canada (Minister of Employment & Immigration)*, [1990] 3 FC 705).

[34] However, it is important to note that the level of procedural fairness is on the lower end of the spectrum in the context of TRV applications and is very much context specific (*Tuiran v Canada (Citizenship and Immigration)*, 2018 FC 324 at paras 14, 15).

[35] In my assessment, there is no defect in the Officer's decision arising out of a procedural fairness issue. The relevant decision for judicial review is the current refusal and not a previous refusal. Each application is on the basis of the material provided in the application. Each application is different. An applicant may apply for the purpose of coming to visit a particular person one time, and it may be to attend a conference the next time.

[36] However, in this case, the first refusal arose because that particular officer was not being satisfied that the Applicant would return back to her home country at the end of her stay. On this application, the Officer too was not satisfied that the Applicant would return back to her home country at the end of her stay. The Certified Tribunal Record does not contain the original application or notes, but rather only contains the original refusal letter of the first application. That application was determined by an officer on that particular application and each officer makes their own determination.

[37] In this context, the Officer did not have to inform the Applicant of their concerns regarding this decision, nor did they have to tell the Applicant what in comparison from a previous refusal was the concern of this particular application. The onus is on the Applicant in the TRV application to provide what is needed. The level of procedural fairness in this situation does not rise to the level that a concern of the officer has to be told to the applicant and then allow them to respond.

[38] I find there was no breach of procedural fairness and that the decision was reasonable and will dismiss this application.

[39] No certified question was presented and none arose from the argument.

JUDGMENT in IMM-2987-18

THIS COURT'S JUDGMENT is that:

1. The application is dismissed;

2. No question is certified.

"Glennys L. McVeigh"
Judge

FEDERAL COURT

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