Federal Court  Cour fédérale

Date: 20200327

Docket: IMM-3517-19

Citation: 2020 FC 445

Ottawa, Ontario, March 27, 2020

PRESENT: The Honourable Mr. Justice Favel

BETWEEN:

UPINDER SINGH BRAR, KAINAAT KAUR BRAR AND MANRAJ SINGH BRAR

Applicants

and

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Background

[1] Upinder Singh Brar, the Applicant, and his two children, all of Indian citizenship [Applicants], seek judicial review pursuant to section 72 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] of a visa officer's [Officer] decision dated May 23, 2019 refusing their Temporary Resident Visa [TRV]. The Applicants seek to have the decision set aside and remitted to a different officer for redetermination.

[2] The application for judicial review is allowed for the reasons that follow.

II. Decision under Review

[3] The Applicants are all citizens of India. They wish to visit relatives in Canada with a TRV. Their co-sponsor is the brother-in-law of the Applicant, who lives with his wife in Canada.

[4] The application was refused because the Officer was not satisfied that the Applicants would leave Canada at the end of their stay, per section 179(b) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227. The Officer provided three reasons for concluding this: (1) their travel history, (2) their family ties in Canada and their country of residence, and (3) the purpose of their visit. The Officer's notes indicate that he assessed the Applicant's evidence, including some "positive factors" like statements or other evidence; however, he found that they could not outweigh some of the negative factors, such as the Applicant's economic motives to remain in Canada, the Applicant's purpose of visit being vague or poorly documented, and the Applicant's prior travel history.

[5] As a preliminary point, I note that the Certified Tribunal Record [CTR] contains only the application forms, the identical denial letters and the Officer's notes. The adult Applicant's affidavit indicates that more was provided to the Officer: forms, a submission letter, passport information, financial information, school information of the minor Applicants, affidavits from the hosts etc. Although the CTR contains less than the Application Record, the Officer's reasons do not indicate that only the application forms were considered. In its submission, the

Respondent has not challenged the Applicants' submission of what they state was initially provided to the Officer.

III. Issues and Standard of Review

[6] The Applicants argue that the Officer, (a) erred in law when reaching his decision, (b) based his decision on erroneous findings of fact, made in a perverse or capricious manner, and (c) failed to "observe the principle of natural justice." I consider the last issue to indicate an alleged breach of procedural fairness.

[7] This matter was argued prior to the Supreme Court's decision in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*]. The Court did not direct further submissions on the standard of review and counsel did not request such an opportunity. I have reviewed the Supreme Court's recent review of the Canadian administrative law framework and find that this question should be assessed under a reasonableness standard of review. I can see no reason to rebut the now-presumed presumption of reasonableness (*Vavilov* at paras 16-17).

[8] Questions of procedural fairness are reviewed on a correctness standard: *Natt v Canada (Citizenship and Immigration)*, 2009 FC 238 at para 14; *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12.

[9] The Respondent submits that the Officer's decision was reasonable and that there was no breach of procedural fairness.

IV. Parties' Positions

A. *Was the Officer's decision reasonable?*

(1) Applicants' Position

[10] The Applicants argue that the Officer did not consider their submitted evidence, which went against his conclusion that they would not leave Canada. They claim that their evidence establishes this fact, and that the Officer must have overlooked this evidence in coming to his conclusion. The Applicant relies on Justice Russell's decision in *Paramasivam v Canada (Citizenship and Immigration)*, 2010 FC 811 (CanLII) [*Paramasivam*] as support that an officer's failure to consider or mention highly material evidence before him is a material error. The Applicant claims that his considerable Indian holdings and income establish that he and his children have sufficient ties to India. He cites *Kuewor v Canada (Citizenship and Immigration)*, 2010 FC 707, for the proposition that the officer was not sufficiently responsive to the evidence before him.

[11] The Applicant also attacks the Officer's findings of fact and reasons. He claims that the officer ignored most, if not all, of their documents. He cites *Dhillon v Canada (Minister of Citizenship and Immigration)*, 2003 FC 1446 [*Dhillon*] as support for the preposition that it is unreasonable for an officer to not properly and carefully consider the evidence before him.

(2) Respondent's Position

[12] The Respondent submits that the Officer made a reasonable decision. It states that an officer is presumed to have considered all of the evidence unless the contrary is shown: *Onyeka v Canada (Citizenship and Immigration)*, 2009 FC 336.

[13] The Respondent acknowledges that there was a small error—in that the Officer stated that the Applicant had "some" travel history when in fact he had "none"—but argues that, in accordance with *Rahman v Canada (Citizenship and Immigration)*, 2016 FC 793 at para 29 [*Rahman*], the Officer based his decision on many other factors and a minor error in one of them isn't sufficient to justify overturning his conclusion.

[14] The Respondent also argues that the Officer properly considered the Applicant's ties to India. Again, the Respondent states that an Officer is presumed to have weighed and considered all of the evidence presented before him, citing *Rahman* at para 10. What is important, the Respondent claims, is only that the Officer's reasons allow the reviewing Court to understand why the decision was made, per *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para 16.

[15] The Respondent maintains that the Officer properly determined that the purpose of the Applicants' visit was "vague" and "poorly documented". According to the Respondent, the evidence the Applicants presented, including marriage certificates, income tax returns, employment leave approvals, property valuations, an invitation from his brother-in-law, and documents showing his brother-in-law's financials, was not sufficient to meet their onus that they have some reason for visiting Canada. The Respondent notes that none of this evidence

points to a *specific* reason why the Applicant wanted to visit his relatives. For the Respondent, the Applicants are simply asking for a reweighing of the evidence.

B. *Was the decision procedurally fair?*

(1) Applicant's Position

[16] The Applicants claim that the Officer breached procedural fairness by not considering the purpose of the Applicants' visit, even after the adult Applicant sent a letter stating the purpose of his visit was to visit family members during the summer. Further, he claims that the Officer failed to mention the adult Applicant's sworn declaration that supports this purpose. The Applicant relies on *Girn v Canada (Citizenship and Immigration)*, 2015 FC 1222 [*Girn*], where judicial review was allowed when an officer failed to mention the applicant's submitted documents.

(2) Respondent's Position

[17] The Respondent takes the position that there has been no breach of procedural fairness, noting that, in this context, there is no duty for an officer to "follow up" with an applicant if they have not met their onus of establishing they are in within the requirements of *IRPA* and its regulations. They cite *Duc Tran v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1377 for this proposition. The Respondent further notes that the procedural fairness obligations in this context are low: *Dash v Canada (Citizenship and Immigration)*, 2010 FC 1255 at para 27; *Solopova v Canada (Citizenship and Immigration)*, 2016 FC 690 at para 42.

V. Analysis

A. *Was the Officer's decision reasonable?*

[18] A TRV applicant has the burden of providing all of the relevant evidence to satisfy an officer that the requirements of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 are met. Here, the Applicants' onus was to show that they would leave Canada at the end of their stay: *Rahman* at para 16. A reasonableness standard of review does not allow Courts to re-weigh evidence: *Pei v Canada (Citizenship and Immigration)*, 2007 FC 391 at para 14.

[19] Because the Officer failed to mention evidence that strongly went against his conclusions—the Applicants' financial ties to India—I find that the decision was unreasonable.

[20] While it is true that a visa officer is not obliged to mention every piece of evidence, an officer's failure to show that they have engaged with the evidence before them is a reviewable error: *Dhillon* at para 7. There, Justice O'Reilly said:

> This evidence still may not have been enough. It is not for me to say. However, the Visa Officer's reasons for turning Mr. Dhillon down do not mention or respond to any of the evidence of his ties to India or the likelihood of his timely return there […] If the evidence was still inadequate, Mr. Dhillon should have been told why.

[21] *Dhillon* is slightly different from the instant case, as it concerned an applicant who had been rejected multiple times and was attempting to respond to concerns raised in his previous TRV applications. In the present case, the Applicant had also previously been denied a TRV but

there were no arguments related to this fact, so I am not relying on this for the purpose of my reasons.

[22] This case is similar to *Paramasivam*, in that the officer made conclusions that were directly in opposition to the Applicants' evidence; yet the officer made no attempt to explain why the evidence was not enough to overcome his concerns. The Applicants presented evidence that they have strong ties to India, including substantial assets and employment; yet the Officer only states that, "the Applicants' incentive to stay in Canada may outweigh their ties in their home county". There is no indication that the Officer properly engaged with the evidence before him. This lack of analysis constitutes a reviewable error.

[23] As to the Applicants' purpose for visiting Canada, I note that, on the face of the applications, the adult Applicant's application referred to the purpose of the visit as "other" and the minor Applicants' applications both referred to "family visit". In addition, the May 6, 2019 representative's letter indicated that the Applicant wanted to visit family. The Officer does not adequately explain why the submitted evidence was insufficient.

[24] Although the Officer made a slight mistake—assessing that the Applicants had *some* prior travel history even though they had none—this alone is not so serious as to constitute a reviewable error.

[25] Viewed as a whole, in light of what the Applicant has sworn was submitted to the Officer, I am left to conclude that the decision of the Officer was unreasonable.

B. *Was the decision procedurally fair?*

[26] I find that the Applicants' arguments in this regard are mischaracterized; they are simply more arguments about why the decision was unreasonable. *Girn* does not support the Applicants' position—although judicial review was allowed in that case partially due to a procedural fairness issue, there was also a credibility issue in that case (see *Girn* at para 30). Here, there is no such issue of credibility.

[27] The decision was made in a procedurally fair manner.

VI. Conclusion

[28] The application for judicial review is allowed. The matter is to be re-determined by a different officer.

[29] There is no question for certification and there is no order as to costs.

JUDGMENT in IMM-3517-19

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is allowed and this matter is to be re-determined by a different officer;
2. There is no question for certification; and
3. There is no order as to costs.

"Paul Favel"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-3517-19
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APPEARANCES:

Amit Kumar Verma	FOR THE APPLICANTS
Charlotte Chan	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Verma Law Corporation Surrey, British Columbia	FOR THE APPLICANTS
Attorney General for Canada Vancouver, British Columbia	FOR THE RESPONDENT