Federal Court  Cour fédérale

Date: 20210301

Docket: IMM-6652-19

Citation: 2021 FC 188

Ottawa, Ontario, March 1, 2021

PRESENT: The Honourable Mr. Justice Bell

BETWEEN:

DAVID ALFONZO BLANCO CARRERO

Applicant

and

THE MINISTER OF CITIZENSHP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

(Delivered from the Bench via Videoconference from Fredericton, New Brunswick, on February 25, 2021, and edited for syntax and grammar with added references to the relevant case law.)

I. Nature of the Matter

[1] This is an application for judicial review pursuant to s. 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*] of a decision made by the Canadian Visa Office located in Mexico on September 3, 2019. Mr. Kevin Ascott (the "Officer") refused Mr. David

Alfonzo Blanco Carrero's (the "Applicant") application for permanent residence as a member of the Quebec Skilled Worker Class because he was not satisfied that the Applicant met the requirements of subsection 86(2) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [*Regulations*]; specifically, the intention to reside in the Province of Quebec.

II. Facts

[2] The Applicant is a citizen of Venezuela. He arrived in Montreal, Quebec in May of 2008 as a temporary resident holding a position of diplomatic representative for Venezuela to the International Civil Aviation Organization (the "ICAO"). In 2010, he was granted a *certificat de sélection du Québec* ("CSQ") and thereafter applied for permanent residence under the province of Québec's Skilled Worker program with his then common-law partner and daughter. On June 3, 2011, he received written confirmation that Immigration, Refugees and Citizenship Canada ("IRCC") had received his application.

[3] Between 2012 and 2017, the Applicant underwent medical and criminal record screenings at the request of IRCC. This led to a series of examinations and interviews conducted by various representatives of the Canadian Security Intelligence Services ("CSIS"), the Royal Canadian Mountain Police ("RCMP") and the Canadian Border Services Agency ("CBSA").

[4] The Applicant retained legal counsel in 2017. On October 23, 2017, due to the delays in processing, the Applicant filed several requests to access his personal information with IRCC and the CBSA. The file revealed that the agents had taken issue with the Applicant's military service in Venezuela, the political coup that took place in 1992 and the Applicant's employment

at the General Sectoral Directorate of Intelligence and Prevention Services in Venezuela between 2003 and 2005. Despite the issues raised by the agents, IRCC was satisfied with the Applicant's detailed explanations with regard to these issues.

[5] On April 19, 2018, the CPC-Ottawa Processing Center informed the Applicant that his application for permanent residence had been transferred to the Canadian Visa Office located in Mexico for further review.

[6] During this time, the Applicant's CSQ expired and he separated from his former common-law partner. Moreover, in 2018, his daughter's student visa application was denied. The Applicant recounts that he had no other choice but to send his daughter to another country due to the increasing danger in Venezuela, while he moved to Colombia.

A. *Interaction with the Quebec Immigration System*

[7] On April 9, 2019, the Applicant contacted the *Ministère de l'Immigration du Québec* ("MIDI") to withdraw his and his former partner's CSQs and apply for a joint CSQ with his daughter. Accordingly, the MIDI closed his former file and opened a new one.

[8] On June 3, 2019, the MIDI contacted the Applicant to signal its intention to refuse his application, as he had not obtained enough points to qualify. MIDI provided the Applicant with 90 days to submit additional documentation that might influence its decision on his application. However, on June 16, 2019, the province of Quebec adopted Bill 9, *An Act to increase Québec's socio-economic prosperity and adequately meet labour market needs through successful*

immigrant integration, 1st Sess, 42nd Leg, Québec, 2019, (assented to 16 june 2019), SQ 2019, c 11 ("Bill 9"). The purpose of Bill 9 was to give the Quebec government greater control in determining who is accepted into the province and the means through which they will integrate into the province. Most significantly, it included an amendment that resulted in the cancellation of a backlog of existing applications for the Quebec Skilled Worker program. As a result, the Applicant's file with Québec's immigration office was canceled and deleted from its records. At the hearing before me on February 25, 2021, the Applicant's counsel contended his application in Québec was cancelled and deleted erroneously as it was not intended to be caught by the new legislative provision.

B. *The Source of the IRCC's Concerns*

[9] On July 3, 2019, the Applicant's legal counsel contacted the Canadian Visa Office in Mexico requesting that they take special measures based on Humanitarian and Compassionate grounds ("H&C grounds"). This email eventually became the basis of the IRCC's determination that the Applicant lacked the intention to reside in Quebec. A portion of the July 3, 2019 email is reproduced below:

> […]
>
> Be assured that we are doing all we can to comply with all the requirements.
>
> However, Quebec Immigration (the MIDI) does not just issue a CSQ for an accompanying family member. That would be too easy.
>
> Quebec Immigration recalculates the points of the applicant who, unfortunately, because of the passing of time (CIC kept his file pending for 11 years), does not reach the minimum threshold especially because he is no longer in Canada. We, therefore, received a letter of intention to refuse our client's application for a

> CSQ. While it remains to be reviewed as the point system used to evaluate the file is incomplete, our client Mr. Blanco Carrero will reply with IELTS and TEF results as well as proven experience in his related field which were not accounted for.
>
> Yet, at this point in time, our client having sold his assets in Quebec when pressured by IRCC to leave Canada, no longer insist on immigrating to Quebec if other options are available.
>
> The options we are asking you to consider are as follow:
>
> Transferring his application to a federal immigration on humanitarian grounds, taking into account the best interest of the child concerned (she can no longer return to Venezuela and he is, right now, her only family).
>
> Taking into account the long history of his file at IRCC since 2011 when his case was not processed because some officers in different agencies wrongly assessed his past including reaching unsupported biased assumptions.
>
> As you already know, if assessed properly and in a reasonable time line 8 years ago, Mr. Blanco Carrero would have immigrated to Canada and, under the legislation and policies as they were then, would have been allowed to sponsor his daughter.
>
> If the option can be considered we are ready to make the proper complete submissions as well as filing any form required to that end.
>
> Another option would be for him to just renounce to have his daughter immigrate with him at this time. As she has already passed the medicals, if he is granted PR on a timely basis, he would be able to sponsor her at a later date: She just turned 19.
>
> […]

[10] On August 20, 2019, the Officer sent a letter to the MIDI wherein he questioned whether the Applicant had the required intention to stay in Quebec and asked if the MIDI would still support his application under the skilled worker class. For reasons unknown, the Officer assumed that the Applicant's daughter's CSQ was refused due to financial concerns. A portion of the email is reproduced below:

> […]
>
> Je suis en train de traiter la demande de travailleur qualifié de M. Blanco Carrero que nous avons reçue en 2011. La demande est âgée parce que nous avions des préoccupations particulières. Finalement, nous avons conclu que le demandeur n'est pas inadmissible. Pendant le traitement de sa demande, sa composition familiale accompagnante a changé. Nous lui avons donc demandé que le demandeur obtienne un CSQ pour sa fille accompagnante mais le MIDI l'avez refusé pour des raisons financières.
>
> En réception du refus du MIDI, le demandeur nous a informé qu'il voulait arriver au Québec sans sa fille, et, à cause de son refus quebecois, qu'il va déménager à une autre province afin de faire une demande de parrainage. A cause de cette information, j'ai des préoccupations que le demandeur n'ait pas intention de rester au Québec.
>
> […]

[11] The Officer rendered his decision on September 3, 2019. He received an answer from MIDI on September 4, 2019. The MIDI denied having refused the Applicant's daughter's CSQ due to financial concerns and claimed to have simply lost the fee required for the addition of a child to the Applicant's file. Moreover, they indicated that they would have likely refused his application following his response, because he no longer fit the criteria. The MIDI also confirmed that the processing of the Applicant's file was never finalized, since it was deleted on June 16, 2019 because of Bill 9. Again, I mention that the Applicant contends his file should not have been deleted by MIDI.

III. Decision Under Review

[12] On September 3, 2019, the Officer denied the Applicant's application for permanent residence as a Quebec skilled worker, having concluded the Applicant did not satisfy the requirements under subsection 86(2) of the *Regulations*.

[13] In his reasons, the Officer indicated that he was not satisfied the requirements were met because the Applicant indicated that his dependent child was refused a CSQ and that he was willing to move to another province in order to sponsor his child.

[14] The H&C grounds raised by the Applicant were briefly disposed of in the notes that were included as part of the decision. The H&C grounds were dealt with rather perfunctorily, by which the Officer stated that he was not satisfied the application warrants this type of consideration.

IV. Relevant Provisions

[15] The relevant provisions are ss. 9(1)(*b*), 25.2(1) and 25.2(3) of the *IRPA*, s. 86(2) of the *IRPR* and cl. 28 of Bill 9, as set out below:

Immigration and Refugee Protection Act, S.C. 2001, c. 27	***Loi sur l'immigration et la protection des réfugiés, L.C. 2001, ch. 27***
Sole provincial responsibility — permanent residents	**Responsabilité provinciale exclusive : résidents permanents**
9 (1) Where a province has, under a federal-provincial agreement, sole responsibility for the selection of a foreign national who intends to reside	**9 (1)** Lorsqu'une province a, sous le régime d'un accord, la responsabilité exclusive de sélection de l'étranger qui cherche à s'y établir comme

in that province as a permanent resident, the following provisions apply to that foreign national, unless the agreement provides otherwise:

résident permanent, les règles suivantes s'appliquent à celui-ci sauf stipulation contraire de l'accord :

(b) the foreign national shall not be granted permanent resident status if the foreign national does not meet the province's selection criteria;

b) le statut de résident permanent ne peut être octroyé à l'étranger qui ne répond pas aux critères de sélection de la province;

Public policy considerations

25.2 (1) The Minister may, in examining the circumstances concerning a foreign national who is inadmissible or who does not meet the requirements of this Act, grant that person permanent resident status or an exemption from any applicable criteria or obligations of this Act if the foreign national complies with any conditions imposed by the Minister and the Minister is of the opinion that it is justified by public policy considerations.

Séjour dans l'intérêt public

25.2 (1) Le ministre peut étudier le cas de l'étranger qui est interdit de territoire ou qui ne se conforme pas à la présente loi et lui octroyer le statut de résident permanent ou lever tout ou partie des critères et obligations applicables, si l'étranger remplit toute condition fixée par le ministre et que celui-ci estime que l'intérêt public le justifie.

Provincial criteria

(3) The Minister may not grant permanent resident status to a foreign national referred to in subsection 9(1) if the foreign national does not meet the province's selection criteria applicable to that foreign national.

Critères provinciaux

(3) Le statut de résident permanent ne peut toutefois être octroyé à l'étranger visé au paragraphe 9(1) qui ne répond pas aux critères de sélection de la province en cause qui lui sont applicables.

Immigration and Refugee Protection Regulations (SOR/2002-227)	***Règlement sur l'immigration et la protection des réfugiés (DORS/2002-227)***
Member of the class	**Qualité**
(2) A foreign national is a member of the Quebec skilled worker class if they	**(2)** Fait partie de la catégorie des travailleurs qualifiés (Québec) l'étranger qui satisfait aux exigences suivantes :
(a) intend to reside in the Province of Quebec; and	**a)** il cherche à s'établir dans la province de Québec;
(b) are named in a Certificat de sélection du Québec issued to them by that Province.	**b)** il est visé par un certificat de sélection du Québec délivré par cette province.
Bill 9 ***An Act to increase Québec's socio-economic prosperity and adequately meet labour market needs through successful immigrant integration,*** **1st Sess, 42nd Leg, Québec, 2019, (assented to 16 june 2019), SQ 2019, c 11**	**PL 9,** ***Loi visant à accroitre la prospérité socio-économique du Québec et à répondre adéquatement aux besoins du marché du travail par une intégration réussie des personnes immigrantes,*** **1re sess, 42e légis, Québec, 2019, c 11 (sanctionné le 16 juin 2019), LQ 2019, c 11**
28. An application filed with the Minister before 2 August 2018 under the Regular Skilled Worker Program is terminated if, on 16 June 2019, the Minister has not made a selection, refusal or rejection decision on the application.	**28.** Il est mis fin à toute demande présentée au ministre dans le cadre du Programme régulier des travailleurs qualifiés avant le 2 août 2018 si, le 16 juin 2019, il n'a pas pris de décision de sélection, de refus ou de rejet concernant cette demande

V. Issues

[16] While the Applicant raises several issues, I am satisfied this application may be disposed of by assessing whether the decision meets the test of reasonableness; and, in the alternative, whether there was a breach of procedural fairness.

VI. Analysis

[17] Both the Applicant and the Respondent agree that the Officer's decision is subject to review on the reasonableness standard; see *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65. They also agree that on issues of procedural fairness, correctness is the applicable standard.

[18] The Applicant contends that the Officer's decision is unreasonable in that it is based upon an erroneous interpretation of the Applicant's email of July 3, 2019. The Applicant submits that in this email, he declared that his file with Quebec's immigration office was still pending and that he was taking the necessary steps to comply with the requirements such that MIDI could order a CSQ for himself and his daughter. The Applicant accurately points out that he never stated that MIDI had refused to issue a CSQ to his daughter, based on financial concerns; nor did he ever declare having formed the intention to reside outside of Quebec, as indicated by the Officer in his decision.

[19] The Applicant further submits that it was unreasonable for the Officer to make his decision prior to receiving a response from MIDI. On August 20, 2019, the Officer had

forwarded an email to MIDI inquiring about the Applicant's status. The Applicant says that the fact the Officer rendered his decision on September 3, 2019, prior to having received information, which he (the Officer) considered important, demonstrates unreasonableness in the logic of the decision. Furthermore, the Officer's reasoning and interpretations are confirmed as being flawed by MIDI's response received on September 4, 2019. In that response, MIDI confirmed that the Applicant's daughter was not refused a CSQ due to financial concerns, rather the Applicant's file was cancelled and deleted with no conclusion due to Quebec's adoption of Bill 9; see *Zhang v. Canada*, 2020 FC 53 at para. 12.

[20] I agree with the position advanced by the Applicant as it relates to reasonableness. There is no evidence which demonstrates the Applicant's daughter was refused a CSQ. In fact, the letter from MIDI dated September 4, 2019, indicates that his daughter's CSQ application was not refused due to financial concerns; rather the application was never finalized because it was deleted and cancelled following Quebec's adoption of Bill 9. I am also of the view that the Officer breached the rules of procedural fairness by requesting information from MIDI regarding the Applicant and then making the decision prior to having received the requested information. As noted, the information from MIDI, which contradicted a conclusion made in the September 3rd decision, arrived on September 4th.

[21] Furthermore, the Officer unreasonably interpreted a gesture of co-operation by the Applicant regarding the part of Canada to which he was willing to re-locate. In my view, it was unreasonable for the Officer to interpret the Applicant's attempt to resolve what appears to have been a bureaucratic nightmare created by Canada and Québec, as an intention to reside outside

the Province of Québec. In my view, the only reasonable interpretation of the whole of the record is that the Applicant wants to settle in Québec. However, as a last resort, he would be willing to move elsewhere in Canada.

C. H&C consideration

[22] I also agree with the Applicant that the Officer failed to give proper consideration to the H&C considerations. The Province of Québec did not conclude the Applicant failed to meet the selection requirement. Rather, apparently due to the erroneous application of Bill 9, it cancelled and deleted the Applicant's application. A distinction must be made between cancelling an application by operation of law and making a final determination that a party does not meet the eligibility criteria.

VII. Conclusion

[23] In the result, the application for judicial review is allowed. The decision is unreasonable and does not meet the requirements of procedural fairness.

JUDGMENT in IMM-6652-19

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is allowed;
2. The decision of the visa officer made on September 3, 2019 is quashed;
3. Unless the parties resolve the issue of the appropriate remedy on or before May 14, 2021:
    a. the application is adjourned to May 31, 2021 at 10:00 a.m. for further submissions on the issue of the appropriate remedy;
    b. both parties are required to submit further written submissions on or before May 14, 2021;
    c. either party make a submission in response to the position taken by the other party on or before May 21, 2021;
    d. in their written submissions due on or before May 14, 2021, both parties are directed to address the issue of solicitor-client costs and whether this Court may direct, as part of its remedy, that the visa application be referred to a different visa officer for redetermination based upon the law of Québec prior to the declaration in force of Bill 9. In addition, the parties may make any other submission on the issue of remedies as counsel may advise.
4. Costs, if any, are to be determined following the continuation of the application on May 31, 2021, or upon request of the parties, presuming there is no resolution of that issue.

No question is certified at this time for consideration by the Federal Court of Appeal.

"B. Richard Bell"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-6652-19
STYLE OF CAUSE:	DAVID ALFONZO BLANCO CARRERO v THE MINISTER OF CITIZENSHP AND IMMIGRATION
PLACE OF HEARING:	HEARD BY VIDEOCONFERENCE FROM FREDERICTON, NEW BRUNSWICK; MONTREAL, QUEBEC
DATE OF HEARING:	FEBRUARY 25, 2021
REASONS FOR JUDGMENT AND JUDGMENT:	BELL J.
DATED:	MARCH 1, 2021

APPEARANCES:

Me Patricia Gamliel	FOR THE APPLICANT
Me Michel Pépin	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Dunton Rainville S.E.N.C.R.L. Montreal, Quebec	FOR THE APPLICANT
Attorney General for Canada Montreal, Quebec	FOR THE RESPONDENT