

Federal Court



Cour fédérale

Date: 20210625

Docket: IMM-5603-19

Citation: 2021 FC 669

Ottawa, Ontario, June 25, 2021

PRESENT: The Honourable Mr. Justice Manson

BETWEEN:

HONGMEI JU

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] This is an application for judicial review of a September 3, 2020 decision of an Immigration Officer [the “Officer”], refusing the Applicant’s Temporary Resident Permit application [the “Decision”].

II. Background

[2] The Applicant, Ms. Hongmei Ju, is a citizen of China. She entered Canada on November 18, 2011 and currently resides in Winnipeg, Manitoba. The Applicant lives with her daughter and husband, whom she married on September 17, 2017.

[3] The Applicant was initially issued a study permit, which expired on March 30, 2013. Her application for permanent residence under the Manitoba Provincial Nominee Program was refused on June 10, 2017 for misrepresentation. Her work permit application was also refused on June 13, 2017. The Applicant's applications for leave and for judicial review with respect to these refusals were ultimately dismissed on October 19, 2017 and November 14, 2017, respectively. The Applicant had also made a request for reconsideration of the application for permanent residence, which was denied and became the subject of another application for leave and for judicial review, which was also dismissed on March 26, 2019.

[4] The Applicant has initiated two proceedings against her former immigration consultant. In August of 2017, the Applicant filed a complaint with the Immigration Consultants of Canada Regulatory Council. In March of 2018, the Applicant filed a statement of claim with the Court of Queen's Bench in Manitoba. These matters remain pending.

[5] The Applicant submitted a Temporary Resident Permit application on September 5, 2017, which was refused on November 9, 2018. The Applicant's file was re-opened on consent. The information, including additional submissions from the Applicant, were reviewed by the Officer,

who again refused the Temporary Resident Permit on September 3, 2019. This Decision of the Officer is the subject of this current judicial review.

[6] The Applicant seeks an Order setting aside the Decision of the Officer and remitting the matter to a different immigration officer for reconsideration in accordance with the directions of this Court. The Applicant further seeks costs.

[7] On June 11, 2019, the Applicant also filed an application for permanent residence on humanitarian and compassionate grounds. This application is currently being processed.

III. Decision Under Review

[8] In her Decision, the Officer found that the Applicant had failed to establish that she has compelling reasons to remain in Canada. As set out in the Respondent's written submissions and confirmed by the evidence, the Officer found that:

- A. The Applicant's daughter is almost 20 years old and has a valid study permit until August of 2021. The daughter is an adult and does not require the Applicant's guardianship. While the Officer accepted that there is an emotional attachment between the Applicant and her daughter, the evidence shows that the daughter is close with the Applicant's Canadian husband and his family, who could be a source of emotional support while the Applicant is gone. The Applicant's daughter is also a citizen of China and could visit her mother;

- B. While the Applicant and her husband are in a genuine relationship, they have significant financial means and may have options to live together in China. It is reasonable to believe that the Applicant could find employment in China and support her husband and family financially;
- C. Although the Applicant has been in Canada for seven years, her degree of establishment in Canada is not extraordinary. It is not unreasonable that she would have made friends during that time, and while she is in a genuine spousal relationship, this is not the only determinative factor for establishment in Canada;
- D. Although the Applicant had provided information regarding the finding that she committed a misrepresentation under subsection 40(1)(a) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the “Act”], this Court has upheld that finding on more than one occasion. The Officer therefore chose not to address the merits of the misrepresentation finding in her Decision;
- E. Although the Applicant wants to stay in Canada to be a witness to a disciplinary hearing against her former immigration consultant, the evidence shows that her physical presence is not required for this proceeding. The Officer therefore gave neutral weight to this factor; and
- F. Although the Applicant has filed a statement of claim with the Court of Queen’s Bench in Manitoba and the Officer noted that the evidence shows that the

Applicant's presence in Canada may be required, there is no certainty as to whether this will be the case. The Officer therefore gave neutral weight to this factor.

[9] The Officer concluded:

After a careful and sympathetic review of all of the PA's application forms and submissions and also taking into account all the H&C factors brought forth by PA, particularly; the best interests of the children that may be affected by this decision and her Canadian husband, I am not satisfied that the issuance of a TRP [Temporary Resident Permit] is justified in these circumstances. While I accept that PA appears to pose less risk to Canadians, *I am not satisfied that the reasons for the PA to remain in Canada are compelling.*

Therefore the application for a TRP is refused.

[Emphasis added]

IV. Issue

[10] The issue is:

- A. Was the Decision of the Officer to refuse the Applicant's Temporary Resident Permit unreasonable?

V. Standard of Review

[11] The standard of review is that of reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*]).

VI. Relevant Provisions

[12] Subsection 24(1) of the *Act* provides:

Temporary resident permit

24 (1) A foreign national who, in the opinion of an officer, is inadmissible or does not meet the requirements of this Act becomes a temporary resident if an officer is of the opinion that it is justified in the circumstances and issues a temporary resident permit, which may be cancelled at any time.

Permis de séjour temporaire

24 (1) Devient résident temporaire l'étranger, dont l'agent estime qu'il est interdit de territoire ou ne se conforme pas à la présente loi, à qui il délivre, s'il estime que les circonstances le justifient, un permis de séjour temporaire — titre révocable en tout temps.

VII. Analysis

A. *The Parties' Positions*

[13] It is the Applicant's position that the Officer applied the incorrect test in assessing whether to grant the Temporary Resident Permit. She applied the "compelling reasons test", when she should have considered whether a Temporary Resident Permit would be justified given the Applicant's circumstances. In the alternative, the Officer's decision is unreasonable even under the standard of compelling reasons. The Officer fettered her discretion and the decision was unreasonable in light of the available evidence. The Applicant needed to remain in Canada to be with her dependent child and husband and in order to participate in two serious proceedings against her former immigration consultant.

[14] The Respondent submits that it was reasonable for the Officer to rely on the well-established compelling reasons test in deciding to refuse the Temporary Resident Permit. The Officer was sensitive to and considered the various factors raised by the Applicant, including her establishment in Canada, relationship with her daughter and husband and the Applicant's desire to participate in the ongoing proceedings against her former immigration consultant. It was reasonable for the Officer to conclude that these factors did not cumulatively warrant granting the Temporary Resident Permit to the Applicant.

B. *New Affidavit Evidence*

[15] I have considered the affidavits of the Applicant, sworn on January 7, 2020, and of her husband, also sworn on January 7, 2020. The affidavits contain evidence that was not before the Officer. The general rule is that evidence that was not before the decision maker is not admissible upon judicial review. The Applicant has not shown that the new evidence meets any exception to the general rule in this case (*Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22 at paras 19-20).

[16] These affidavits are not admissible.

C. *Reasonableness of the Decision*

[17] A reasonable decision must be justified, intelligible and transparent (*Vavilov*, above at paras 95, 100). It is "based on an internally coherent and rational chain of analysis and... is justified in relation to the facts and law that constrain the decision maker" (*Vavilov* at para 85).

[18] The regime for granting a Temporary Resident Permit is exceptional and highly discretionary. Its purpose is to provide some degree of flexibility “if an officer is of the opinion that it is justified in the circumstances”, in cases where a strict application of the *Act* would result in a person’s exclusion from Canada (*Abdelrahma v Canada (Citizenship and Immigration)*, 2018 FC 1085 at para 5 [*Abdelrahma*]; *Farhat v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1275 at paras 2, 22, 24 [*Farhat*]).

[19] The Federal Court in *Farhat* has further described that a Temporary Resident Permit allows officers to respond to exceptional circumstances and soften the sometimes harsh consequences of the *Act*, where there may be compelling reasons for a foreign national to stay in Canada. Temporary Resident Permits should therefore be issued cautiously.

[20] The Officer references both subsection 24(1) of the *Act* and the Federal Court decision *Abdelrahma*, in rendering her Decision and in support of her application of the compelling reasons test.

[21] In *Abdelrahma*, the Federal Court found that the compelling reasons test and a needs versus risk assessment are appropriate in determining whether a Temporary Resident Permit should be granted: “[a] TRP [Temporary Resident Permit] should only be granted where the reasons of the foreign national to be in Canada are compelling, and these reasons outweigh the risks posed to the health and safety of Canadians” (*Abdelrahma*, above at para 9).

[22] While I note that some cases have chosen to depart from or question the standard of compelling reasons, I see no reason to do so in the circumstances of this case, notwithstanding there are sympathetic facts provided in support of the Applicant's circumstances. The Federal Court in *Abdelrahma* considered both lines of cases before determining that the application of the compelling reasons test was appropriate (*Abdelrahma* at para 8).

[23] The Applicant, in her submissions to the Officer, requested that the Officer consider the compelling reasons test, citing the exact paragraph of *Abdelrahma* that the Officer considered and replicated in her Decision (*Abdelrahma* at para 9):

[9] In my opinion, the "compelling reasons" test and the needs versus risk assessment are appropriate considerations to determine whether a TRP should be granted. A TRP should only be granted where the reasons of the foreign national to be in Canada are compelling, and these reasons outweigh the risks posed to the health and safety of Canadians.

[24] Further, I am not convinced I should depart from the jurisprudence which upholds the compelling reasons test. The cases relied on by the Applicant do not consider the reasonableness of an immigration officer's decision as it relates to the application of the compelling reasons test.

[25] I find that the Officer was reasonable in her application of the compelling reasons test. She fully considered the Applicant's personal circumstances and was alive to the concerns raised by the Applicant. The Applicant's arguments disagree with the Officer's factual findings and ask this Court to reweigh the evidence considered by the Officer. The fact that there are ongoing legal proceedings in which the Applicant may be required to give testimony does not give rise to

a compelling reason in support of the Applicant's application, nor does the inherent and unfortunate consequence of separation from her daughter and husband in this case.

[26] The Applicant acknowledges that she must demonstrate that "there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency" (*Vavilov* at para 100). This Court must refrain from reweighing and reassessing the evidence before the decision maker.

[27] I do not find that the decision lacks justification in light of the facts. The Officer has not fundamentally misapprehended or failed to take into account the evidence before her (*Vavilov* at paras 125-126).

VIII. Conclusion

[28] For the reasons above, this Application is dismissed. There is no question for certification.

JUDGMENT in IMM-5603-19

THIS COURT'S JUDGMENT is that:

1. This Application is dismissed; and
2. There is no question for certification.

"Michael D. Manson"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-5603-19

STYLE OF CAUSE: HONGMEI JU v THE MINISTER OF CITIZENSHIP
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