Federal Court  Cour fédérale

Date: 20210811

Dockets: IMM-972-20
IMM-973-20
IMM-974-20

Citation: 2021 FC 760

Ottawa, Ontario, August 11, 2021

PRESENT: The Honourable Mr. Justice Ahmed

Docket: IMM-972-20

BETWEEN:

AMRINDER SINGH SANGHA

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

Docket: IMM-973-20

AND BETWEEN:

GURTEJ SINGH SANGHA

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

Docket: IMM-974-20

AND BETWEEN:

KULDEEP KAUR SANGHA

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] This Judgment concerns three separate applications for judicial review that are determined together: IMM-972-20, IMM-973-20, and IMM-974-20.

[2] The Applicants, a family of three, seek judicial review of the decision of a visa officer (the "Officer") of Immigration, Refugees and Citizenship Canada ("IRCC"), refusing the Applicants' temporary resident visa ("TRV") applications. The Officer was not satisfied that the

Applicants would leave Canada by the end of their authorized stay, as required under subsection 179(b) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 (the "*IRPR*").

[3] The Applicants submit that the Officer unreasonably determined that the Applicants would likely not leave Canada by the end of their authorized stay. In particular, the Applicants assert that the Officer erred in determining that the Applicants do not have sufficient personal funds and assets to facilitate their visit to Canada; the Applicants have insufficient ties to India; and that the stated purpose for the Applicants' visit is vague. Additionally, the Applicants submit that the Officer breached their duty of fairness by raising credibility concerns without providing the Applicants with an opportunity to address those concerns.

[4] For the reasons that follow, I find that the Officer's decision is unreasonable. The Officer refused the Applicants' TRV applications by relying on minute details rather than engaging with the relevant evidence. I therefore grant this application for judicial review.

II. Facts

A. *The Applicants*

[5] The Applicants are nationals of India and a family of three: Ms. Kuldeep Kaur Sangha, Mr. Gurtej Singh Sangha, and their 16-year-old son, Amrinder Singh Sangha (the "Minor Applicant"). Mr. Sangha owns agricultural land in India and works as a dairy farmer, Ms. Sangha works as a homemaker, and the Minor Applicant is a student.

[6] On January 30, 2019, the Applicants applied for TRVs to attend the wedding anniversary of an uncle, Mr. Angrej Singh Sangha, and his wife, Ms. Mandeep Kaur Sangha, both of whom reside in Canada (the "Relatives").

[7] The Applicants indicated in their TRV applications that they intended to stay in Canada for 11 days. The Applicants submitted evidence of their assets to support the trip, including an accountant's report stating the Applicants' combined net worth of $235,437, an Indian income tax return verification form, and a letter from the Kore Wala Kalan Milk Producers Co-Op Society Ltd confirming Mr. Sangha's annual net income from dairy farming.

[8] The Applicants also submitted a letter of support from the Relatives, which stated that the Relatives were willing to provide all necessary financial support and accommodation to the Applicants during their visit to Canada. The Relatives also provided a marriage certificate, a bank statement, proof of employment, and a certificate of title for a mortgaged home in Canada.

[9] In a letter dated February 20, 2019, a visa officer of IRCC (the "Previous Officer") refused the Applicants' TRV applications (the "Previous Decision"). The Applicants then sought judicial review of that decision.

[10] In a decision dated January 16, 2020, this Court set aside the Previous Decision and remitted it for redetermination by a different decision-maker (*Sangha et al v Canada (Citizenship and Immigration)*, 2020 FC 62 ("*Sangha*")). This Court held that the Previous Officer

unreasonably determined that the Applicants had insufficient funds for their proposed trip in light of the relevant evidence (*Sangha* at paras 16-17).

B. *Decision Under Review*

[11] The Officer sent the Applicants a letter on January 23, 2020, requesting additional or updated documentation for the redetermination of their applications. As the Officer did not receive a response from the Applicants before the stipulated deadline of February 2, 2020, the Officer based their decision on the information contained in the Applicants' original TRV applications.

[12] In a decision dated February 4, 2020, the Officer again refused the Applicants' TRV applications, finding that the Applicants would likely not leave Canada by the end of their authorized stay. The Officer's decision is largely contained in their Global Case Management System ("GCMS") notes, which form part of the reasons for their decision (*Torres v Canada (Citizenship and Immigration)*, 2019 FC 150 at para 19).

[13] The Officer refused the Applicants' TRV applications for largely the same reasons as the Previous Officer, namely:

1. the Applicants do not have sufficient personal funds and assets to facilitate their visit to Canada;

2. the Applicants have insufficient ties to India; and

3. the Applicants' stated purpose for their visit is vague.

III. Relevant Provisions

[14] Under subsections 11(1) and 20(1)(b) of the *Immigration and Refugee Protection Act*, SC 2001, c 27, a foreign national requires a TRV to enter Canada as a temporary resident:

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.
Obligation on entry	**Obligation à l'entrée au Canada**
20 (1) Every foreign national, other than a foreign national referred to in section 19, who seeks to enter or remain in Canada must establish,	20 (1) L'étranger non visé à l'article 19 qui cherche à entrer au Canada ou à y séjourner est tenu de prouver :
[…]	[…]
(b) to become a temporary resident, that they hold the visa or other document required under the regulations and will leave Canada by the end of the period authorized for their stay.	b) pour devenir un résident temporaire, qu'il détient les visa ou autres documents requis par règlement et aura quitté le Canada à la fin de la période de séjour autorisée.

[15] Under subsection 179(b) of the *IRPR*, a visa officer must be satisfied that a foreign national will leave Canada by the end of their authorized stay to issue a TRV:

Issuance	**Délivrance**
179 An officer shall issue a temporary resident visa to a foreign national if, following an examination, it is established that the foreign national	179 L'agent délivre un visa de résident temporaire à l'étranger si, à l'issue d'un contrôle, les éléments suivants sont établis :
[…]	[…]
(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;

IV. Issues and Standard of Review

[16] This application for judicial review raises the following issues:

A. *Did the Officer err in determining that the Applicants have insufficient personal funds and assets to facilitate their visit to Canada?*

B. *Did the Officer err in determining that the Applicants have insufficient ties to India?*

C. *Did the Officer err in determining that the stated purpose of the Applicants' visit is vague?*

D. *Did the Officer breach their duty of fairness?*

[17] It is common ground between the parties that reasonableness is the applicable standard of review for the first, second, and third issues. The Applicants submit that the applicable standard of review for the fourth issue is correctness, which the Respondent does not dispute.

[18] I agree with the Applicants. Issues pertaining to the merits of a visa officer's decision to refuse a TRV application are reviewed upon the reasonableness standard (*Sangha* at para 10, citing *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 ("*Vavilov*"), whereas issues of procedural fairness are reviewed upon what is best reflected in the correctness standard (*Canadian Association of Refugee Lawyers v Canada (Immigration, Refugees and Citizenship)*, 2020 FCA 196 at para 35).

[19] Reasonableness is a deferential, but robust, standard of review (*Vavilov* at paras 12-13). The reviewing court must determine whether the decision under review, including both its rationale and outcome, is transparent, intelligible and justified (*Vavilov* at para 15). A reasonable decision is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision-maker (*Vavilov* at para 85). Whether a decision is reasonable depends on the relevant administrative setting, the record before the decision-maker, and the impact of the decision on those affected by its consequences (*Vavilov* at paras 88-90, 94, 133-135).

[20] For a decision to be unreasonable, an applicant must establish the decision contains flaws that are sufficiently central or significant (*Vavilov* at para 100). A reviewing court must refrain

from reweighing the evidence that was before the decision-maker, and it should not interfere with factual findings absent exceptional circumstances (*Vavilov* at para 125).

[21] Correctness, in contrast, is a non-deferential standard of review. The central question for issues of procedural fairness is whether the procedure was fair having regard to all of the circumstances, including the factors enumerated in *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 at paras 21-28 (*Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54).

V. Analysis

A. *Did the Officer err in determining that the Applicants have insufficient personal funds and assets to facilitate their visit to Canada?*

[22] In finding that the Applicants do not have sufficient funds and assets, the Officer impugned the true state of the Applicants' financial circumstances and the ability of the Relatives to support the Applicants during their visit:

> Insufficient proof of financial status / large recent multiple deposits seen in account (26122015732608) to significantly boost funds, no transaction details provided for account (28122018113941), and only one [Income Tax Return] (2018-19) submitted on 03 Dec 2018 seen on file. Inviter's bank account shows net worth of -443,493.13; see proof of funds on file.

[23] In my view, the Officer made a veiled credibility finding with respect to the Applicants' personal assets in a manner that is not sufficiently justified, intelligible, and transparent (*Vavilov* at para 99). The Applicants provided an accountant's report stating their net worth is $235,437,

including $13,775 in cash. The Officer provided no reasons for why that evidence was insufficient, and instead questioned the source of the Applicants' income by surmising that the recent deposits were intended to "significantly boost [the Applicants'] funds." As noted by the Applicants, Mr. Sangha is a self-employed dairy farmer and it is therefore not necessarily suspicious for him to receive large payments at irregular intervals.

[24] In essence, the Officer found that the Applicants' evidence is not credible by speculating that the Applicants have injected funds into their bank account to bolster their application. As the Officer does not transparently assert this adverse credibility finding or justify it in relation to the evidence, I find that the Officer's decision is unreasonable.

[25] With respect to the Relatives' assets, the Relatives provided evidence to display that they have assets to support the Applicants during their visit. The Relatives provided a bank statement, indicating their net worth is negative $443,493 because they have a mortgage on a property in Canada. In addition to owning a home, albeit mortgaged, the Relatives' evidence displays that they have nearly $28,158 in liquid assets and stable employment income, with one of the Relatives earning $11,000 per month. The Officer, however, fails to address this evidence, and instead focuses solely on the fact that the Relatives have $443,493 of debt, making it seem as if the Relatives do not own a dime to their name.

[26] The Respondent submits that the Officer reasonably accounted for the evidence in determining that the Applicants have insufficient funds for their visit. In doing so, the Respondent makes essentially the same arguments that it made in the judicial review of the

Previous Decision (*Sangha* at para 14). Specifically, the Respondent asserts that it was reasonable for the Officer to find that the Applicants have insufficient funds because the Applicants' TRV applications state they only have $3,500 available for their visit.

[27] Given the similarity of the Respondent's arguments, I find this Court's reasoning in *Sangha* applies equally to the Respondent's submissions in the case at hand:

> [15] In my view, the Officer erred by failing to consider contradictory evidence and making subjective and arbitrary findings, which render the decision unreasonable. Although the Officer found there were insufficient funds for the trip, there was significant evidence to the contrary. On each application, it was indicated that the Applicant had $3,500 CAD available for the trip. Since each application was submitted individually, the most obvious explanation would be that each Applicant would have $3,500 CAD in available funds for an 11-day trip, not that the entire family would be limited to $3,500 CAD. Even given the latter scenario, the Officer's conclusion fails to have regard to other contradictory evidence, since there were approximately $55,000 CAD in available funds for the Applicants.

[28] The Respondent also relies on *Clement v Canada (Citizenship and Immigration),* 2019 FC 703 ("*Clement*"), for the principle that the provision of a bond does not necessitate granting a TRV.

[29] I find *Clement* is distinguishable from the case at hand. In *Clement*, the applicant's relative in *Clement* simply stated that he was willing to sign a bond on the applicant's behalf (*Clement* at paras 28-29). In this case, the Relatives provided more than a promise; they provided substantial evidence as to how they intend to support the Applicants during their visit.

B. *Did the Officer err in determining that the Applicants have insufficient ties to India?*

[30] The Officer found that the Applicants had insufficient ties to India because they were travelling together as a family:

> PA/family does not demonstrate sufficient establishment or sufficient ties to motivate return; whole family is travelling together to Cda. Given the foregoing, PA has not demonstrated sufficient establishment or sufficient ties to motivate return.

[31] I accept that the family ties of a visa applicant in Canada and in their country of origin is a proper consideration in assessing whether a visa applicant will leave Canada at the end of their authorized stay (*Salman v Canada (Citizenship and Immigration)*, 2015 FC 270 at para 6).

[32] I do not accept, however, that a family travelling together is alone a reasonable ground to conclude that they have insufficient ties to their country of origin. If that were the case, then innumerable families wishing to travel to Canada together would fail to meet the requirement of subsection 179(b) of the *IRPR*.

[33] Further, I also cannot help but question whether such reasoning would be employed with respect to families from wealthier countries. I suspect that the Officer would be more hesitant to find that a family from the UK or France would have insufficient ties to their country of origin because they intended to travel to Canada together. Thus, the implicit notion in the Officer's reasoning is that without the majority of one's immediate family, there is little to tie one to a country such as India. As shall be discussed next, this notion is unreasonable.

[34] The Officer's reasoning is not justified in relation to the plethora of evidence that establishes the Applicants' ties to India (*Vavilov* at para 85). The Applicants aptly lay out their submissions on this matter in their Memorandum of Argument:

> [22] The evidence before the Officer was that the Applicant has been a farmer in India since 1998, running a dairy farm. Proof of his farming operation was submitted with the application, along with proof of the Applicant's property ownership in India. It is incomprehensible to find that someone who has resided in a country for the entirety of their life; has held long-term employment in that country running a farm; owns property in that country; has raised a family in that country; has a son enrolled in school in that country, would not be established. Further, the Applicant also has strong familial ties to India — his elderly father.

[35] Substituting the word "incomprehensible" with "unreasonable," I agree with the Applicants' submissions. In finding that the Applicants were unlikely to leave Canada at the end of their authorized stay solely because the Applicants intend to travel as a family, the Officer neglected the constellation of evidence that contradicts their conclusion. This Court must refrain from reweighing the evidence that was before the Officer; however, as the Officer failed to justify their decision in light of the relevant facts, I find that the Officer's decision is unreasonable (*Vavilov* at paras 125-126).

[36] In arguing to the contrary, the Respondent relies on *Watts v Canada (Citizenship and Immigration)*, 2020 FC 158 ("*Watts*") at para 28, for the principle that the Officer is not required to give detailed reasons for their decision. Before Justice Brown in *Watts* was a different record with a different decision, which allowed him to trace the decision-maker's reasoning without encountering any fatal flaws in its overarching logic (*Watts* at para 32, citing *Vavilov* at para 102). In this case, the Officer's rationale for discounting these essential elements of the

Applicants' evidence is not addressed in the reasons and cannot be inferred from the record, thus rendering the Officer's decision unreasonable (*Vavilov* at para 98).

C. *Did the Officer err in determining that the stated purpose of the Applicants' visit is vague?*

[37] The Officer found that the Applicants' reason for visiting Canada was vague, as the Applicants provided a different reason for their visit in their previous TRV application:

> Purpose of visit is vague, as per IMM5275, PA is attending a new house warming and religious ceremony, the same reason applied on the previous TRV refusal submitted on 11 May 2018 and refused on 05 Jun 2018; however, the letter of support for this application stated that the purpose is to attend uncle's marriage anniversary on 23 Feb 2019, date of marriage shown on Hindu Marriage Register was 14 Feb 1987 and date of registration was on 07 Apr 2008.

[38] In my view, the Officer's determination is not sufficiently justified, transparent, and intelligible (*Vavilov* at para 99). The Applicants, as noted by the Officer, provided a different reason for their visit in their previous TRV application. However, in the TRV application at issue, the Applicants asserted that they were attending their uncle's marriage anniversary on February 23, 2019. The Officer provides no rationale for discounting this stated purpose; rather, the Officer merely notes the date of marriage shown on the Hindu Marriage Register and the date of registration. It is unclear how the Officer relied on these dates, if at all, to conclude that the purpose of the Applicants' visit is vague.

[39] The Respondent asserts that the Officer reasonably relied upon the fact that the date of the uncle's marriage anniversary had passed by the time the Applicants' TRV application was

remitted for redetermination. The Officer provides no such reasons in their decision. It is not for the Respondent to provide reasons in an attempt to bolster an otherwise deficient decision.

[40] The Officer's reasons — as stated in the decision — are the starting point for determining whether their decision is reasonable (*Vavilov* at para 84). In reading the Officer's reasons in conjunction with the record, the Officer's rationale of this critical point is not comprehensible, thus rendering their decision unreasonable (*Vavilov* at para 103).

[41] Having found that the Officer's decision is unreasonable, I find it unnecessary to address whether the Officer breached their duty of fairness.

VI. Conclusion

[42] This is the second instance in which the Respondent's refusal of the Applicants' TRV applications has been remitted for determination. Rather than applying the reasons for the judgment in *Sangha*, the Officer in this instance seemingly doubled down on determining that the Applicants would likely not leave Canada at the end of their authorized stay. In doing so, the Officer failed to address an array of evidence that contradicted their conclusions, instead focusing on singular, flimsy grounds for refusal.

[43] The Applicants request that the Officer's decision be remitted to a different decision-maker for redetermination in accordance with the instructions of this Court. I find this to be a suitable remedy. Upon redetermination, the Respondent's delegate must reasonably grapple with

the Applicants' evidence of significant personal and familial assets, their ties to India, and the clearly stated reason for their visit, all outlined in detail in this decision.

[44] The parties have not proposed a question for certification, and I agree that none arises.

JUDGMENT in IMM-972-20 and IMM-973-20 and IMM-974-20

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is granted. The Officer's decision is remitted to a different decision-maker for redetermination in accordance with the instructions of this Court.

2. There is no question for certification.

3. A copy of this Judgment and Reasons will be placed on files IMM-973-20 and IMM-974-20.

"Shirzad A."
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-972-20
STYLE OF CAUSE:	AMRINDER SINGH SANGHA v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
AND DOCKET:	IMM-973-20
STYLE OF CAUSE:	GURTEJ SINGH SANGHA v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
AND DOCKET:	IMM-974-20
STYLE OF CAUSE:	KULDEEP KAUR SANGHA v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	HELD BY VIDEOCONFERENCE
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