Federal Court  Cour fédérale

Date: 20211208

Docket: IMM-679-20

Citation: 2021 FC 1379

Ottawa, Ontario, December 8, 2021

PRESENT: The Honourable Mr. Justice Ahmed

BETWEEN:

MARK SINGH

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Mr. Mark Singh, seeks judicial review of the decision of an immigration officer (the "Officer") of Immigration, Refugees and Citizenship Canada ("IRCC"), refusing the Applicant's permanent residency application under the Manitoba Provincial Nominee Class.

[2] The Officer determined that the Applicant failed to provide all relevant evidence and documentation related to his criminal charge for sexual assault, as was requested by IRCC and as required under subsection 16(1) of the *Immigration and Refugee Protection Act* SC 2001, c 27 ("*IRPA*").

[3] The Applicant submits that the Officer's decision is unreasonable because the information requested by IRCC was known or otherwise accessible by IRCC. The Applicant also submits that his rights to procedural fairness were breached because IRCC created a legitimate expectation that his permanent residence application would be placed on hold pending the outcome of his criminal matter, and because IRCC failed to send communications to his legal representative.

[4] For the reasons that follow, I find the Officer's decision is reasonable and find that there was no breach of procedural fairness. I therefore dismiss this application for judicial review.

II. **Facts**

A. *The Applicant*

[5] The Applicant is a 25-year-old citizen of India. On October 10, 2017, the Applicant submitted a permanent residence application under the Manitoba Provincial Nominee Class. The Applicant provided his personal email address as the contact on his application form.

[6] On November 19, 2018, the Applicant was arrested and charged with Sexual Assault by the Winnipeg Police Service (the "WPS").

[7] As a condition of his release, the Applicant was required to deposit his passport with the WPS. On December 10, 2018, the Applicant's passport was transferred from the WPS to an Inland Enforcement Officer of the Canada Border Services Agency (the "CBSA Officer").

[8] On April 12, 2019, IRCC sent the Applicant a letter regarding the next steps in his permanent residence application. Included in that letter was a request for the Applicant's passport and the condition that the Applicant must advise IRCC immediately if either he or any of his family members had been charged or convicted of a criminal offence. IRCC received no response from the Applicant advising of his sexual assault charge.

[9] In an affidavit sworn on April 25, 2019 and filed in the Provincial Court of Manitoba as part of the Applicant's criminal proceedings, the Applicant confirmed that he was aware of the requirement outlined in the April 12, 2019 letter.

[10] In a statutory declaration made on April 26, 2019 and filed in the Provincial Court of Manitoba as part of the Applicant's criminal proceedings, the CBSA Officer confirmed that the CBSA was in possession of the Applicant's passport and that the passport had been seized for investigative reasons. The CBSA Officer also confirmed that they had been advised by an official at IRCC that the Applicant's permanent residence application would be placed on hold pending the outcome of his criminal trial, and that IRCC no longer required his passport.

[11] In an email dated April 18, 2019, the CBSA Officer contacted an IRCC immigration officer to alert IRCC of the Applicant's pending criminal charge.

[12] On May 22, 2019, the Applicant's counsel provided a Use of a Representative Form to the CBSA Officer to request the Applicant's passport.

[13] Once IRCC became aware of the Applicant's criminal charge, two procedural fairness letters were sent to the Applicant on May 2, 2019 and June 17, 2019. Each letter required that the Applicant provide documentation showing the disposition of the criminal charge for sexual assault or proof of an upcoming court date. These communications were sent directly to the Applicant and were not provided to the Applicant's counsel. The May 2, 2019 letter gave the Applicant 30 days to submit additional information. The June 17, 2019 letter was a final reminder, and gave the Applicant 15 days to provide the information requested.

[14] By letter dated August 12, 2019, the Officer notified the Applicant that his application for permanent residence was refused for failure to provide IRCC with the requested information related to his pending criminal charge. The letter was posted to the Applicant's MyCIC account and was emailed to the Applicant's email address.

[15] On December 20, 2019, the CBSA Officer issued a report pursuant to subsection 44(1) of the *IRPA*. That report is subject to Judicial Review in 2021 FC 1380.

[16] On January 2, 2020, a delegate of the Minister referred the Applicant to an admissibility hearing under subsection 44(2) of the *IRPA.*

[17] On January 13, 2020, the Applicant's counsel filed a Use of a Representative Form with IRCC in connection with the Applicant's refused permanent residence application.

[18] On January 21, 2020, the Applicant provided IRCC with additional submissions related to his permanent residence application. By way of letter to the Applicant dated March 4, 2020, IRCC stated that the initial decision to refuse the application remains unchanged.

B. *Decision Under Review*

[19] The Officer's August 12, 2019 decision to refuse the Applicant's permanent residence application as a member of the Provincial Nominee Class is the subject of this judicial review.

[20] The decision consists of a refusal letter and the Officer's Global Case Management System ("GCMS") notes, which form part of the reasons for the Officer's decision.

[21] In their decision, the Officer determined that the Applicant failed to provide relevant evidence and documentation related to his criminal charge for sexual assault, as was requested by IRCC and as is required under subsection 16(1) of the *IRPA.*

[22] The Officer noted that IRCC had sent the Applicant a letter on May 2, 2019, giving the Applicant 30 days to provide a police or court document showing the disposition of his criminal

charge for sexual assault, or proof of the next court date and supporting documents if the matter was still ongoing. The Officer further noted that a final reminder was sent to the Applicant on June 17, 2019 giving him 15 days to provide the requested evidence and documents in order to complete the assessment of his permanent residence application.

III. **Preliminary Matters**

A. *Style of Cause*

[23] Both the Applicant and the Respondent's submissions name the Respondent as the Minister of Citizenship and Immigration and the Minister of Public Safety and Emergency Preparedness. During the hearing, the Court brought the proper name of the Respondent to the attention of both counsel. The parties agreed that the proper name of the Respondent is "The Minister of Citizenship and Immigration." As a result, the style of cause is amended to remove the Minister of Public Safety and Emergency Preparedness as a respondent, with immediate effect.

B. *New Evidence*

[24] The Respondent submits that the Applicant's further affidavit of July 16, 2021 contains facts that were not before the Officer and post-date the August 12, 2019 decision, and are thus inadmissible. Specifically, paragraphs 5-8 of the affidavit describe the scheduling of trial dates and the outcome of the Applicant's criminal proceedings.

[25] The Applicant conceded to this point during the hearing. The new evidence will therefore not be considered since it was not before the Officer at the time the decision was rendered.

IV. **Issues and Standard of Review**

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

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

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

[27] Aside from the issue of procedural fairness, the applicable standard of review is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 ("*Vavilov*") at para 10; *Singh v Canada (Citizenship and Immigration)*, 2020 FC 687 at para 9).

[28] 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).

[29] 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).

[30] Issues concerning breaches 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). The central question 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 ("*Baker*") at paragraphs 21-28; (*Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54).

V. **Analysis**

A. *Reasonableness of the Officer's Decision*

[31] The Applicant submits that the Officer's decision to refuse his permanent residence application was unreasonable because IRCC had access to the requested information about the Applicant's criminal charge through information sharing agreements with the CBSA.

[32] Under section 16(1) of the *IRPA*, a foreign national who applies to be a permanent resident in Canada must produce relevant evidence and documents required by IRCC:

Obligation — answer truthfully	**Obligation du demandeur**
16 (1) A person who makes an application must answer truthfully all questions put to them for the purpose of the examination and must produce a visa and all relevant evidence and documents that the officer reasonably requires.	16 (1) L'auteur d'une demande au titre de la présente loi doit répondre véridiquement aux questions qui lui sont posées lors du contrôle, donner les renseignements et tous éléments de preuve pertinents et présenter les visa et documents requis.

[33] IRCC sent the Applicant two procedural fairness letters to the email address he had provided when he initiated his application, and no Use of a Representative Form was submitted to IRCC until after the permanent residence application was refused on August 12, 2019. IRCC's first procedural fairness letter, sent on May 2, 2019, required the Applicant to provide IRCC with documents showing the disposition of the Applicant's criminal charge for sexual assault or proof of the next court date and supporting documents if the criminal proceedings were still ongoing. The Applicant was given 30 days from the date of the letter to provide the requested information. On June 17, 2019, a final reminder was sent to the Applicant requiring that he provide this information within 15 days of the letter. No new documentation was received by IRCC following these letters.

[34] By failing to provide all relevant evidence and documents requested by IRCC in the context of his permanent residence application, the Applicant failed to comply with subsection 16(1) of the *IRPA*. Based on this, it was reasonable for the Officer to refuse the Applicant's permanent residence application. The fact that IRCC learned of the Applicant's ongoing criminal proceedings indirectly through CBSA does not preclude IRCC from reasonably requesting documentation related to those proceedings directly from the Applicant.

B. *Procedural Fairness*

(1) Legitimate expectations

[35] The Applicant submits that he legitimately expected that IRCC would have knowledge of the information available to the CBSA, including details related to his criminal case. The Applicant also submits that he legitimately expected that his application would be put on hold pending the outcome of his criminal trial. This stems from a statutory declaration filed in connection with the Applicant's criminal proceedings, in which the CBSA Officer declared that he had spoken to a representative of IRCC who had told him that the Applicant's permanent residence application had been placed on hold, pending the final disposition of the Applicant's criminal charge.

[36] The doctrine of legitimate expectation looks to the conduct of a Minister or public authority in the exercise of a discretionary power — including established practices, conduct and representations — that can be characterized as clear, unambiguous and unqualified, and that have induced in the complainants a reasonable expectation that they will retain a benefit or be consulted before a contrary decision is taken (*C.U.P.E. v Ontario (Minister of Labour)*, 2003 SCC 29 (CanLII) at para 131; *Mount Sinai Hospital Center v Quebec (Minister of Health and Social Services)*, 2001 SCC 41 (CanLII) at para 16; *Agraira v Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36 (CanLII) ("*Agraira*") at para 95).

[37] The Applicant cites *Baker* at paragraph 26 to argue that the doctrine of legitimate expectation can create a procedural right, particularly where representations or conduct of a Minister or other public authority induces a legitimate expectation of a specific procedure:

> […] This doctrine, as applied in Canada, is based on the principle that the "circumstances" affecting procedural fairness take into account the promises or regular practices of administrative decision-makers, and that it will generally be unfair for them to act in contravention of representations as to procedure, or to backtrack on substantive promises without according significant procedural rights.

[38] In *Canada (Attorney General) v Mavi*, 2011 SCC 30, at paragraph 69, the Supreme Court of Canada affirmed:

> Generally speaking, government representations will be considered sufficiently precise for purposes of the doctrine of legitimate expectations if, had they been made in the context of a private law contract, they would be sufficiently certain to be capable of enforcement.

[39] Furthermore, in *Agraira*, the Supreme Court of Canada held that there may be a legitimate expectation that a procedure will be followed in the future if a public authority has made representations about the procedure it will follow in making a particular decision or if a certain procedural practice was consistently adhered to in the past (at para 94).

[40] The Applicant argues that it was implicit in the CBSA Officer's statutory declaration that he was providing information on behalf of IRCC with respect to the Applicant's permanent residence application and that the CBSA Officer was acting as an agent of IRCC. According to

the Applicant, the CBSA Officer clearly and unambiguously represented to the Applicant that IRCC was aware of his criminal charge. The Applicant submits that the distinction between the CBSA and IRCC as separate entities was unrecognizable to him as a layperson.

[41] The Applicant also submits that communications between the Manitoba Department of Justice, the CBSA and IRCC reveal that these departments shared information about the Applicant's criminal proceedings, including the Applicant's criminal charge and proceeding date, suggesting that there are active communication channels to enable IRCC to obtain the information requested.

[42] In my view, the CBSA Officer's statutory declaration did not suggest that they were an agent of IRCC, nor did the CBSA Officer's comments consist of a "clear, unambiguous and unqualified" representation from IRCC that would have led to the Applicant's legitimate expectation that his application for permanent residence would be placed on hold indefinitely.

[43] The Respondent submits that regardless of what the Applicant's expectations of IRCC's procedures might have been following the CBSA Officer's statutory declaration of April 26, 2019, the Applicant's expectations ought to have changed following the first procedural fairness letter that IRCC sent to the Applicant on May 2, 2019. I agree. In the May 2, 2019 letter, IRCC clearly outlined that it had been made aware of the Applicant's pending criminal charge for sexual assault, that his permanent residence application was under review, and that he was required to provide IRCC with certain documents and information related to his criminal proceedings. IRCC was clear about what was expected of the Applicant in the review of his

permanent residence application. I therefore find that there was no breach of procedural fairness with respect to this issue.

(2) ***Communications sent to the Applicant***

[44] The Applicant submits that his rights to procedural fairness were breached when IRCC failed to send communications to his counsel. The Applicant argues that he did not receive the letters sent from IRCC between May and August 2019, and only discovered the refusal of his application in the context of another Federal Court case in January 2020.

[45] The Applicant submits that his counsel provided a Use of a Representative Form to the CBSA Officer on May 22, 2019, which authorized the CBSA and IRCC to communicate with his counsel on his behalf. I note that this form was submitted in the context of requesting the Applicant's passport from CBSA, not in the context of the Applicant's permanent residence application with IRCC. Yet the Applicant contends that, due to a Memorandum of Understanding for information sharing between IRCC and the CBSA, the Use of a Representative Form was subject to the information sharing annex and therefore available to be shared between the CBSA and IRCC.

[46] During the hearing, the Applicant's counsel agreed that IRCC and CBSA are indeed separate departments and agencies. It follows that provision of information to one does not equate to provision of information to both, and the CBSA is therefore not required to provide IRCC with information related to the Applicant's permanent residence application.

[47] The Applicant relies on the case of *Hu v Canada (Minister of Citizenship and Immigration)*, 2000 CanLII 16093 (FC) ("*Hu*"), to assert that the Officer breached the Applicant's right to procedural fairness by ignoring the Applicant's appointment of a representative and therefore deprived the Applicant of a reasonable opportunity to respond.

[48] In *Hu*, the applicant moved and failed to advise the visa officer of his change of address, yet the applicant's lawyer advised the visa officer to direct all correspondence to the lawyer's office. Despite this, IRCC sent a notice to the applicant's former address directing him to appear for an interview. The applicant did not receive the letter, did not appear for the interview, and his application for permanent residence was ultimately refused. At paragraph 16, Justice Pinard held:

> […]it is a clear breach of the duty of fairness to willfully ignore the applicant's duly signed change of mailing address and to instead insist on sending the letters requiring the applicant to appear for an interview elsewhere.

[49] I find that the present case is distinguishable from *Hu.* IRCC sent its communications to the email address provided by the Applicant on his permanent residence application and sent its communications directly to the Applicant because neither the Applicant nor his counsel had submitted a Use of a Representative Form before the Applicant's permanent residence application was refused on August 12, 2019. In fact, a Use of Representative Form was not sent to IRCC until January 13, 2020. I therefore do not find that there has been a breach of procedural fairness.

VI. **Conclusion**

[50] I find that the Officer's decision to refuse the Applicant's permanent residence application was reasonable and that there was no breach of procedural fairness. The onus was on the Applicant to provide the information requested by IRCC in the context of his permanent residence application and the Officer rendered a decision based on the information provided. I therefore dismiss this application for judicial review.

[51] No questions for certification were raised, and I agree that none arise.

JUDGMENT in IMM-679-20

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. The style of cause is hereby amended to reflect "The Minister of Citizenship and Immigration" as the proper Respondent.

3. There is no question to certify.

4. No costs are awarded.

"Shirzad A."
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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