Federal Court  Cour fédérale

Date: 20220630

Docket: IMM-4485-21

Citation: 2022 FC 972

Ottawa, Ontario, June 30, 2022

PRESENT: The Honourable Madam Justice Heneghan

BETWEEN:

ZORAN LALIC

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS AND JUDGMENT

[1] Mr. Zoran Lalic (the "Applicant") seeks judicial review of the decision of an officer (the "Officer"), denying his request to apply for permanent residence from within Canada, on Humanitarian and Compassionate ("H and C") grounds, pursuant to subsection 25(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the "Act").

[2] The Applicant is a citizen of Croatia. He entered Canada in 1987, as a refugee claimant. His claim for refugee protection was refused in 1988. He has remained in Canada since 1987.

[3] In 1992, the Applicant applied for status in Canada under the Minister's Yugoslav Special Measures Program (the "Special Program"), a special program for the re-settlement of Nationals of the former Yugoslavia.

[4] In the affidavit that he filed in support of this application for judicial review, the Applicant attached, as an exhibit, the affidavit that he submitted with his request for H and C relief. The "attached" affidavit was sworn on March 26, 2021. In that affidavit, the Applicant deposed that he was told, in 1994, that his Special Program application could not be located. He deposed that:

> When I spoke to the officer about my pending PR application, she indicated she had no record of the Yugoslav Special Measures program PR application.
>
> After showing her the letter I had received from Vegreville and recognizing that immigration authorities had effectively lost my application, she provided me with the relevant forms to apply for PR through the Humanitarian and Compassionate (H&C) category.
>
> I understood this to mean that I was being presented with an alternative path to landing because of the error in relation to the Yugoslav Special Measures application.

[5] According to information that he obtained by means of an Access to Information request made in 2016 (the "Access Request"), the Applicant learned that a decision was never made on his Special Program application.

[6] In 1994, the Applicant made his first H and C application. This application was refused because he did not respond to a request for new information. According to the “attached” affidavit, the Applicant deposed that “This letter may have been sent to an address I had ceased residing at, or to my immigration representative at the time”.

[7] An officer denied the application on the grounds that the Applicant had “strong ties to family abroad” and that he was “unwilling or unable” to support himself in Canada.

[8] In the “attached” affidavit, the Applicant deposed that in 1998, following the refusal of the first H and C application, he requested information about his outstanding Yugoslav Special Measures Program application. He further deposed that he received no more information about this Special Program application until he received a response to his Access Request in 2016.

[9] The Applicant learned through a response to the Access Request that a letter had apparently been sent to him in 1998 informing him that a search was “being conducted” for the application and that he would be “informed of results in due course”.

[10] The Applicant submitted his second H and C application in 2020. This application was refused on June 30, 2021 and is the subject of this proceeding.

[11] In denying the Applicant’s H and C application, the Officer gave minimal weight to the Applicant’s establishment, the current country conditions in Croatia, and the best interests of the child.

[12] The Applicant now argues that the Officer applied the wrong legal test for hardship for an H and C application, made unreasonable findings of fact and unreasonably discounted his ability to reintegrate to life in Croatia.

[13] The Minister of Citizenship and Immigration (the "Respondent") submits that the Officer made no error to justify judicial intervention.

[14] The decision of the Officer is reviewable on the standard of reasonableness, according to the decision of the Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v. Vavilov* (2019), 441 D.L.R. (4th) 1 (S.C.C.).

[15] In considering reasonableness, the Court is to ask if the decision under review "bears the hallmarks of reasonableness – justification, transparency and intelligibility – and whether it is justified in relation to the relevant factual and legal constraints that bear on that decision"; see *Vavilov, supra* at paragraph 99.

[16] The Applicant raises three arguments. However, it is not necessary to address all of them. It is sufficient to address only the submissions that the Officer made unreasonable findings of fact.

[17] The Applicant argues that the Officer's reasons contain a "serious mistake of fact" in relation to the Special Program application.

[18] In the decision, the Officer said that the Special Program application was “refused” and that the Applicant applied for a “reconsideration”. However, the Applicant submits that the Special Program application was never decided and that there was therefore no request for reconsideration.

[19] The Applicant argues that the Officer unreasonably relied on these erroneous findings of fact when assessing his establishment in Canada.

[20] I agree with the submissions of the Applicant.

[21] The response to the 2016 Access Request sets out the chronology of the Applicant’s immigration history. The last recorded activity, per the Access Request response, is as follows:

> 1998/11/04 “letter to PC that search is being conducted – would informed of results in due course”
>
> 1998/11/13 – File received from GTEC and given to “SCT” for review
>
> 1998/11/16 – “SRC”
>
> 2003/01/27 – Notes “last access date”; and date that the file was sent to archives

[22] In my opinion, the Officer’s reliance on erroneous findings of fact was misplaced and undermines the reasonableness of the Decision.

[23] In the result, the application for judicial review is allowed, the decision is set aside and the matter remitted to a different officer for re-determination. There is no question for certification.

JUDGMENT in IMM-4485-21

THIS COURT'S JUDGMENT is that the application for judicial review is allowed, the decision is set aside and the matter is remitted to a different officer for re-determination. There is no question for certification.

"E. Heneghan"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-4485-21
STYLE OF CAUSE:	ZORAN LALIC v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	HELD BY WAY OF TELECONFERENCE BETWEEN TORONTO, ONTARIO AND ST. JOHN'S, NEWFOUNDLAND AND LABRADOR
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APPEARANCES:

Aleksandar Jeremic	FOR THE APPLICANT
Charles J. Jubenville	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Anchor Law Barrister and Solicitor Toronto, Ontario	FOR THE APPLICANT
Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT