Federal Court  Cour fédérale

Date: 20220706

Docket: IMM-7504-19

Citation: 2022 FC 999

Toronto, Ontario, July 6, 2022

PRESENT: Justice Andrew D. Little

BETWEEN:

YUEYOU GUAN

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

AMENDED JUDGMENT AND REASONS

[1] In this judicial review application, the applicant requests that the Court set aside a decision made on November 4, 2019, by a Deputy Migration Program Manager (the "officer") at the Consulate General of Canada in Hong Kong. That decision rejected the applicant's application for an authorization to return to Canada ("ARC") under subsection 52(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (the *"IRPA"*).

[2] The applicant is a citizen of China. She and her current husband were married and had two sons, before divorcing and later remarrying. Their sons are now permanent residents of Canada.

[3] In 2004, the applicant came to Canada to visit her sons, who were studying here at that time. She requested refugee protection in Canada on the basis of her practice of Falun Gong.

[4] In June 2006, the Refugee Protection Division denied her claim. This Court dismissed her application for leave and judicial review of that decision.

[5] While in Canada, the applicant met her second husband, whom she married in October 2007. Her second husband applied to sponsor her. Meantime, a departure order was issued against her, which became a removal order. The applicant then left Canada on August 15, 2009.

[6] On her return to China, the applicant began to live with her former husband, apparently because she had nowhere else to live.

[7] In March 2015, she and her second husband divorced. In April 2015, she remarried her first husband. They remain married as of this application.

[8] In October 2015, the applicant submitted a request for a Temporary Resident Visa ("TRV") so she could come to Canada to visit her sons. By this time, both were Canadian citizens. The TRV application was denied.

[9] In January 2016, the applicant's son Yufu applied to sponsor his parents, the applicant and her husband, to become permanent residents of Canada.

[10] In January 2018, IRCC interviewed the applicant and her husband in Hong Kong. At the end of the interview, the officer stated that he was not satisfied that the relationship between the applicant and her husband was genuine. The officer removed the applicant from the permanent residence application but continued to process the son's sponsorship of her husband.

I. The Negative ARC Decision

[11] In August 2019, the applicant applied for an ARC so she could come from China to Canada to be with her husband and sons. The sons are both married and have their own children. The applicant's parents lived in China and are deceased. She has been separated from her sons for the past 15 years and is living alone in China without her husband.

[12] In her application for an ARC, the applicant relied on family separation issues and specifically, her and her family's emotional, mental and financial well-being. She acknowledged that she violated Canadian immigration laws by remaining in Canada beyond the date of her departure order, but noted that she left as required when it became an enforceable deportation order. According to the applicant, it has been 10 years since her removal and she has no intention of repeating her behaviour that warranted the departure order.

[13] As noted, the officer refused her application for an ARC by letter dated November 4, 2019. After setting out subsection 52(1) of the *IRPA*, the letter stated that there were no compelling reasons to set aside the provisions of the *IRPA* and allow the applicant's entry to Canada. She therefore remained inadmissible to Canada.

[14] The notes made by the officer in the Global Case Management System ("GCMS") stated that the applicant had an "extensive history of misrepresentation and deliberate non-compliance over more than 10 years". The officer found that in her application for a temporary resident visa in 2015, the applicant had not declared that she had been refused a visa to the United States. In addition, in her 2016 application for sponsored permanent residence, she did not declare her previous marriage and the refusal of her permanent resident application in 2009. The officer also found that she and her husband gave "contradictory reasons" when asked about her refugee claim and stay in Canada, and did not convince the officer that their relationship was genuine -- they "seemed to reunite just for sponsorship".

[15] The officer did not see any evidence that the applicant took responsibility for her actions over the years which led to her removal or for having provided incomplete and false information in applications. The officer did not find that the applicant's separation from her family was a "compelling enough reason to justify granting" an ARC. The officer did not find that the applicant was subject to any unreasonable or undeserved hardship. In addition, "[i]f she finds herself away from her family in Canada, it is because she has not dealt honestly with the Government of Canada and has repeatedly taken actions which were contrary to the laws and regulations".

II. The Applicant's Position in this Court

[16] Relying on *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65, the applicant challenges the reasonableness of the refusal of an ARC on the following grounds:

(a) the officer failed to meaningfully account for and grapple with central issues raised in her application. The officer's reasons focused solely on family

separation, without addressing other key issues she raised (citing *Vavilov*, at paras 127-128); and

(b) the officer misapprehended the evidence.

III. Standard of Review

[17] The standard of review of the officer's decision is reasonableness, as described in *Vavilov*. Reasonableness review is a deferential and disciplined evaluation of whether an administrative decision is transparent, intelligible and justified: *Vavilov*, at paras 12-13 and 15; *Quintero Pacheco v Canada (Citizenship and Immigration)*, 2010 FC 347, at paras 27-28.

[18] The starting point is the reasons provided by the decision maker, which are read holistically and contextually, and in conjunction with the record that was before the decision maker: *Vavilov*, at paras 91-96, 97, and 103; *Canada Post Corp v Canadian Union of Postal Workers*, 2019 SCC 67, at paras 28-33. A reasonable decision is one that is based on an internally coherent and a rational chain of analysis and is justified in relation to the facts and law that constrain the decision maker: *Vavilov*, esp. at paras 85, 99, 101, 105-106 and 194; *Entertainment Software Association v Society of Composers, Authors and Music Publishers of Canada*, 2020 FCA 100, at paras 24-35. The reviewing court must be able to discern a "reasoned explanation" for key aspects of the decision: *Alexion Pharmaceuticals Inc v Canada (Attorney General)*, 2021 FCA 157, at paras 7, 32, 64-66 and 70.

IV. Analysis

A. *Did the Officer Fail to Address Central Issues in the Application for an ARC?*

[19] The applicant submitted that the officer focused solely on family separation and failed to address any of the other submissions she offered in support of her ARC application. Specifically, the applicant contended that the following four points were highly relevant for the purposes of assessing her application:

- her stated reason for remaining in Canada beyond the date of her departure order, namely, that she feared returning to China due to her practice of Falun Gong;
- she reported to CBSA offices while the removal order was in effect and returned to China when there was an enforceable deportation order against her;
- her immigration violation was over 10 years before her ARC application and she had a clean immigration record since the time of that violation; and
- she had no criminal record and would not be a danger to the Canadian public if authorized to return to and remain in Canada.

[20] The applicant also referred to the guidance provided to officers in a manual entitled *Overseas Processing 1 – Procedures.* In section 6.2, it advises officers reviewing an ARC application to consider the severity of the immigration violation that led to the applicant's removal, the applicant's history of cooperation with Immigration, Refugees and Citizenship Canada and the reasons for the applicant's request to return to Canada. The applicant argued that the officer failed to consider all three of these questions.

[21] The officer's decision to grant or refuse an ARC under *IRPA* subsection 52(1) was relatively unconstrained. Neither party suggested that there were any criteria prescribed in the *IRPA* or its regulations. Court decisions have suggested that there is no required approach or

mandatory list of factors that must be considered by the officer: *Dheskali v Canada (Citizenship and Immigration)*, 2021 FC 1191, at para 14; *Quintero Pacheco*, at para 51; *Akbari v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1421, at paras 8 and 11. An officer must consider all the circumstances of the case, the rationale underlying subsection 52(1) and the overall context of the objectives of the *IRPA*: *Dheskali*, at para 14; *Akbari,* at para 11.

[22] Prior decisions of this Court have typically described ARC decisions as discretionary, fact-driven and subject to considerable deference: *Dheskali*, at para 14 (citing *Dirir v Canada (Citizenship and Immigration)*, 2019 FC 1547, at para 24; *Del Rio v Canada (Citizenship and Immigration)*, 2011 FC 737, at para 7; *Parra Andujo v Canada (Citizenship and Immigration)*, 2011 FC 731, at paras 23, 31; and *Umlani v Canada (Citizenship and Immigration)*, 2008 FC 1373, at para 60).

[23] The parties in this case both accepted that the officer may consider whether there are "compelling reasons" to issue an ARC. In *Dheskali,* Strickland J. held that the officer may weigh whether there are compelling reasons to issue an ARC against the circumstances that necessitated the issuance of a removal order against the applicant (at para 23). Justice Strickland also held that an officer may consider the applicant's immigration history (at para 15), whether that history suggests that the applicant would contravene immigration laws again (at para 23) and a variety of "other considerations arising from the application" including the importance of the reason for the proposed visit and the specific circumstances of the applicant and the family members in Canada (at paras 16-18).

[24] In the present case, the officer dealt with the applicant's central reason for requesting an ARC – family reunification and the impact of their separation. The officer did not find that reason compelling enough to grant an ARC to the applicant. The officer found no unreasonable or undeserved hardship and the applicant did not allege any. The officer found that she had not taken responsibility for her actions that led to her removal from Canada or for having provided incomplete and false information in immigration applications. She was away from her family because of her own conduct. The applicant has not shown that it was a reviewable error to consider these factors.

[25] In my view, the applicant's arguments based on the four points (listed above) are tantamount to asking the Court to reweigh the severity of the applicant's non-compliance with Canadian immigration laws and orders on the merits, something the Court is not permitted to do on this application: *Vavilov*, at paras 125-126. To be sure, none of the applicant's additional four points is an independent reason to issue an ARC to the applicant. They are actually counterpoints to attempt to answer the reasons why the officer refused it due to her immigration history. The applicant's submission that the officer had to address them expressly in reasons does not reveal an error in the reasoning process as contemplated by *Vavilov*. Nor can I conclude that the four points, individually or cumulatively, were such a constraint on the officer's decision that they had to be addressed.

[26] While the applicant submitted that the officer's reasons were insufficient, I am well satisfied that the officer's entry in the GCMS disclosed a reasoned explanation for a decision under subsection 52(1) in accordance with *Vavilov* and *Alexion Pharmaceuticals*.

B. ***Did the Officer Misapprehend the Evidence?***

[27] The applicant made four submissions to support the position that the officer misapprehended the evidence.

[28] First, the applicant raised issues about transparency, arguing that it was unclear what the officer relied upon in making the decision because the Certified Tribunal Record ("CTR") did not include all of the applicant's prior applications, including her 2015 application for a temporary resident visa and her 2016 and 2018 applications for permanent residence (as sponsored by her son). The applicant criticized the officer for apparently relying on entries in the GCMS rather than on the applications themselves.

[29] The applicant also referred to decisions of this Court indicating that a decision may be set aside if the CTR is not complete, in that it did not contain all of the documents relied upon by the officer to make a decision: *Narcisse v Canada (Citizenship and Immigration)*, 2007 FC 514, at paras 16-18; *Li v Canada (Minister of Citizenship and Immigration)*, 2006 FC 498, at para 15.

[30] In this case, I do not find sufficient cause to set aside the decision on the basis of an incomplete CTR.

[31] It is true that the CTR did not include all of the applicant's prior applications made to IRCC. However, in her application record, the applicant chose to challenge the officer's decision by filing all of the underlying applications in an effort to show that the officer's reasoning in the GCMS notes was unreasonable. The applicant's argument focused on whether the absence of

documents led to additional transparency and intelligibility concerns in the officer's reasons contained in the GCMS notes. The applicant made no submissions about procedural fairness arising from the (lack of) contents of the CTR.

[32] In my view, the GCMS notes make it sufficiently clear what the officer relied upon to make the decision to refuse an ARC. Although the officer's GCMS notes began by stating "[f]ile, notes and records reviewed", the officer also expressly referred to the applicant's failure to make full disclosure in her prior applications for a TRV in 2015 and her 2016 application for permanent residence, and to her answers in an interview for the latter application. I am confident that by reading the GCMS notes, the applicant understood the officer's concerns. From the Court's perspective, there was sufficient information in the GCMS notes and the application record to enable a proper judicial review and to understand the concerns of the officer under *IRPA* subsection 52(1): see *Vancouver International Airport Authority v Public Service Alliance of Canada*, 2010 FCA 158, [2011] 4 FCR 425, at para 16(d). The record indicates that the officer did consider all of the applications, and these applications are before the Court.

[33] Considering how the applicant framed her submissions on transparency and intelligibility, the contents of the application record she filed and the contents of the GCMS notes, I do not find it appropriate to set aside the decision on the sole ground that the CTR was deficient. See *Togtokh v Canada (Citizenship and Immigration)*, 2018 FC 581, at para 16; *Patel v Canada (Citizenship and Immigration)*, 2013 FC 804, at paras 29-32; *Torales Bolanos v Canada (Citizenship and Immigration)*, 2011 FC 388, at para 52.

[34] The applicant's second submission was that the contents of the 2015 TRV application and the 2016 permanent residence application contradicted the officer's conclusion. The applicant made an intricate argument about what she meant when she ticked a box on her application form and then enumerated some but not all of past refusals. In making this argument, the applicant asked the Court to draw different inferences or come to different conclusions about her intentions when she completed her immigration applications, than the inferences or conclusions made by the officer. Absent exceptional circumstances (that are not present here), the Court is not permitted to do so on a judicial review application: *Vavilov*, at para 125.

[35] Third, the applicant argued that the officer should have looked at the "entire" set of her applications and failed to account for her 2018 application for permanent residence and her 2019 application for an ARC. Instead, the officer relied on the applications made in 2015 and 2016. This argument has no merit. It was open to the officer to rely on omissions and misrepresentations in any or all of the applicant's immigration forms, and to find that they were relevant and important to the ARC decision. Equally, the officer could have determined that the omissions or misrepresentations were innocent or immaterial. Absent a fundamental misapprehension or failure to account for material evidence in the record (which did not occur here), the Court will not interfere with the officer's determination: *Vavilov*, at para 126; *Federal Courts Act*, RSC 1985, c F-7, paragraph 18.1(4)(*d*).

[36] Lastly, the applicant submitted that the answers she and her husband provided in Hong Kong during the interview were not contradictory as the officer concluded. She contended that, contrary to an officer's finding in 2016 that was relied upon by the officer deciding the ARC

request, the applicant's marriage to her husband was in fact genuine. Again, the Court may not reweigh or reassess the evidence in the record: *Vavilov*, at para 125.

[37] Having read the passages in the interview notes mentioned by the parties' counsel, I see no reviewable error in the officer's assessment of the record. It is unclear how the applicant can challenge the previous officer's conclusion on this application; the present officer's reliance on it was not unreasonable.

V. Conclusion

[38] The application is therefore dismissed. There is no question for certification.

JUDGMENT in IMM-7504-19

THIS COURT'S JUDGMENT is that:

1. The application is dismissed.
2. No question is certified under paragraph 74(*d*) of the *Immigration and Refugee Protection Act.*

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-7504-19
STYLE OF CAUSE:	YUEYOU GUAN v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	MARCH 8, 2022
REASONS FOR JUDGMENT AND JUDGMENT:	A.D. LITTLE J.
DATED:	JULY 6, 2022

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