Federal Court  Cour fédérale

Date: 20221129

Docket: IMM-6464-21

Citation: 2022 FC 1644

Ottawa, Ontario, November 29, 2022

PRESENT: The Honourable Mr. Justice Ahmed

BETWEEN:

PARWINDER SINGH THIND

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant seeks judicial review of a decision by an immigration officer (the "Officer") of Immigration, Refugees and Citizenship Canada ("IRCC") dated September 15, 2021, denying his application for a Temporary Resident Permit ("TRP").

[2] The Officer found insufficient evidence to conclude that the Applicant had unique circumstances with compelling reasons to overcome his inadmissibility and warrant a TRP under subsection 24(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 ("*IRPA*").

[3] The Applicant submits that the Officer erred by applying an incorrect standard to assess the application and failing to consider key elements of the evidence.

[4] I find the Officer's decision is unreasonable because it fails to properly consider pivotal evidence in the Applicant's record, resulting in gaps in the reasoning. Accordingly, this application for judicial review is granted.

II. Facts

A. *The Applicant*

[5] The Applicant is a 39-year-old citizen of India. He entered Canada on a study permit on September 8, 2010, which was valid until August 31, 2011. In August 2011, he completed a Diploma in Marketing Management from Nordic College of Business and Technology ("Nordic College") in Toronto, Ontario.

[6] The Applicant extended his study permit, which was renewed until August 31, 2013. During this time, he also completed his Diploma in Computer Science from Nordic College.

[7] On January 27, 2013, the Applicant married Daljit Kaur. He extended his study permit again, which was renewed until November 30, 2014. He then applied to extend his visitor visa, which was extended from March 10, 2014 to October 22, 2016.

[8] The Applicant filed an application for an open work permit, which was approved and valid from October 12, 2016 to August 2, 2018. The Applicant worked as a mason from January 2017 to August 2018.

[9] The Applicant applied for permanent residence ("PR") in Canada under the Canadian Experience Class. He also applied for a bridging work permit based on this PR application. This PR application was refused in September 2018 and the bridging work permit was subsequently refused in October 2018. The Applicant applied for judicial review of the immigration officer's refusal of his PR application, which was allowed in February 2019.

[10] The Applicant's wife was a full-time student during this period. As a dependent spouse of a full-time student, the Applicant qualified under the Labour Market Impact Assessment ("LMIA") Exemption Code C42 and was therefore eligible for an open work permit. The Applicant retained New Vision Immigration Consultants ("New Vision") in Surrey, British Columbia to file an application for an open work permit under this exemption, which was filed on November 23, 2018. This application was refused on January 15, 2019.

[11] The Applicant's work permit expired on October 20, 2018, after which he was under a restoration period. When the open work permit application was refused on January 15, 2019, he

was still under the restoration period, which was due to end on January 18, 2019. On January 16, the Applicant contacted New Vision to discuss the refusal of his open work permit application. Consultants at New Vision advised him to apply for an extension to his visitor visa under restoration. Although the restoration period was only valid until January 18, New Vision filed his application for an extension with restoration on January 28, ten days late. The application was consequently refused on March 13, 2019. The Applicant claims that he had lost his temporary status in Canada due to New Vision's negligence and filed a complaint with the Immigration Consultants of Canada Regulatory Council on June 20, 2019.

[12] In July 2019, the Applicant submitted his first TRP application, which was approved on December 16, 2019. In January 2020, he applied for his work permit under LMIA Exception Code C42, in order to maintain his valid status in Canada. On July 13, 2020, the work permit application was returned with a letter stating that the Applicant had failed to regularize his status as directed on his TRP, and he therefore required the issuance of a TRP document until he was able to regularize his status. However, the Applicant could not leave Canada to regularize his status during this time because of the COVID-19 pandemic and its impact on air travel. If he had left and attempted to re-enter Canada, where he lives with his wife, he would have had to file another application, which would have been difficult given the closure of visa offices.

[13] To regularize his status from within Canada, the Applicant applied for a TRP for the second time, which was issued on March 30, 2021 and valid until his passport validity date, April 11, 2021. The Applicant's new passport copy was valid from March 11, 2021 to March 10, 2031. He received his TRP document but it was only valid until April 11, 2021, which was

the passport validity date of his previous passport. His new passport copy had not been updated in the records, even though he submitted the updated passport to IRCC on Mach 22, 2021.

[14] To maintain his status in Canada, the Applicant applied for a TRP for a third time, on May 3, 2021. The Applicant's wife has an open work permit that is valid until 2024. Her job falls into the National Occupation Classification ("NOC") B category. In his TRP application, the Applicant included that he met all the criteria to be issued an open work permit under LMIA Exemption Code C41 as a dependent spouse, but could only apply for this if his TRP application was also approved. He requested that the Officer approve his TRP application so that he could stay in Canada and be with his wife, stating that the past rejection of his application to extend his visitor visa was due to New Vision's negligence and beyond his control.

[15] This TRP application was rejected on September 15, 2021. This refusal is the subject of this application for judicial review.

B. *Decision Under Review*

[16] The Officer first summarized the Applicant's history of status in Canada, stating that on January 18, 2019, "[the Applicant] lost their possibility to apply to restore their temporary resident status." On the Applicant's submission that he lost temporary resident status due to New Vision's alleged negligence, the Officer found that the onus ultimately lies on the Applicant to comply with the conditions imposed upon entry into Canada, and it is therefore "reasonable to expect" that he would be made to leave Canada at the end of his authorized period of stay.

[17] The Officer found that there was no reason for the Applicant being unable to return to India and apply for a work permit from outside Canada, stating:

> Also it is noted that their spouse entered Canada in 2010 as a student and currently holds a temporary resident document valid until 2024. As clients' inadmissibility is status, there are mechanisms in place for the client to address this inadmissibility by leaving Canada and applying for the required documents in order to regularize their status. They been previously successful at obtaining a work permit from outside of Canada, there is no reason the client could not do the same again. They presented that COVID-19 complicated the client's situation as international travel is more difficult and ill advised. Because this is a worldwide pandemic, each country has been forced to respond and restrict its citizens. Indian nationals are entitled to return to their home country with observance of quarantine measures. Although travel with COVID is more challenging, the information provided does not clearly indicate that the client would be unable to return to India.

[18] Ultimately, the Officer concluded that the Applicant must satisfy that he is in "unique circumstances with compelling reasons" to overcome the inadmissibility and show that a TRP is justified, and the Applicant had not discharged this burden.

III. Issue and Standard of Review

[19] This application raises the sole issue of whether the Officer's decision to deny the Applicant's TRP application is reasonable.

[20] The appropriate standard of review is reasonableness, as established in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 ("*Vavilov*"). In *Vavilov*, the Supreme

Court stated that the standard of review analysis begins with a presumption of reasonableness (at para 16). This is consistent with this Court's jurisprudence reviewing the decisions of visa officers on TRP applications: *Abdelrahman v Canada (Citizenship and Immigration)*, 2020 FC 1141 at paras 13-14; *Liao v Canada (Citizenship and Immigration)*, 2021 FC 857 at para 20.

[21] 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).

[22] While one of the central elements of reasonableness is the justification provided for an administrative decision, which may involve reviewing the adequacy of reasons given for a decision (*Vavilov* at paras 79-81), reasonableness should also be considered in light of the decision's institutional context (*Vavilov* at paras 91, 103). Visa officers consider a high volume of applications, which limits the possibility for extensive reasons in every instance. The decision must still exhibit the hallmarks of reasonableness when reviewed as a whole, in light of the evidentiary record, with particular attention to a rational chain of analysis (*Vavilov* at paras 99, 137, 313).

IV. Analysis

[23] The Applicant submits that the Officer erred by applying the incorrect standard for assessing a TRP application. The Applicant cites *Shabdeen v Canada (Citizenship and Immigration)*, 2020 FC 492 ("*Shabdeen*"), which states that the applicable standard has been subject to debate, with certain decisions finding that an application must show "compelling reasons" or a "compelling need" to enter Canada (at para 14). The Applicant submits that the Officer misapplied subsection 24(1) of *IRPA* because the provision does not state that an applicant must show unique or compelling reasons to overcome inadmissibility. Rather, it requires that an officer assess whether a TRP is justified in the circumstances.

[24] The Applicant notes that the Officer likely referred to the IRCC Guidelines pertaining to the assessment of TRPs, which states that an officer may consider whether "the need for the foreign national to enter or remain in Canada is compelling." The Applicant submits that the Officer overstepped their discretion by assessing the Applicant's case based on the heightened "compelling reasons" standard, rendering the decision unreasonable.

[25] The Applicant also submits that regardless of the standard applicable to TRP applications, the decision was unreasonable because it failed to consider key elements of the Applicant's circumstances and evidence. Specifically, the Applicant argues that the Officer's reasons do not exhibit attentiveness to the following significant considerations:

- New Vision's negligence in filing the Applicant's visa extension application after the restoration period;

- The true impact that COVID-19 would have on the Applicant's ability to leave the country to regularize his status and then return to Canada;

- The fact that if the previous visa officer had considered the Applicant's new passport, the previous TRP would not have been valid for only 11 days; and

- The fact that the Applicant's inability to return to Canada due to COVID-19 would disrupt his intention of being with his family in Canada.

[26] Without showing consideration to these elements in the Applicant's application, the Applicant submits that the Officer failed to properly assess the Applicant's circumstances.

[27] The Respondent maintains that the Officer's decision is reasonable. On the issue of the applicable standard for assessing TRP applications, the Respondent submits that this Court has found the "compelling reasons" standard to be an appropriate lens through which to assess a TRP application and has applied it recently in *Ju v Canada (Citizenship and Immigration)*, 2021 FC 669 at para 24.

[28] On the assessment of the evidence, the Respondent notes that the Applicant's submissions on judicial review reiterate his original submissions before the Officer in an attempt to arrive at a more favourable result, and re-determining the case is not this Court's role on judicial review. The Respondent further submits that it is well-established that decision-makers are not required to mention every piece of evidence proffered by an application, and a reviewing court must instead look to the decision as a whole to understand the reasoning. The Respondent submits that the Officer reasonably found insufficient evidence showing that the Applicant could not travel or return to Canada once he regularized his status from abroad.

[29] I do not find that the Officer committed a reviewable error by applying the "compelling reasons" standard to the TRP application. It is reasonable for the Officer to consider whether the evidence showed compelling reasons to grant a TRP, when this same language is used in IRCC Guidelines outlining procedures for assessing TRP applications. As the Applicant notes, the applicable standard is still unsettled in this Court, as my colleague Justice McHaffie states in *Shabdeen*, at paragraph 14:

> As Ms. Shabdeen points out, there is some divergence in this Court's case law as to the standard applicable to a TRP application under section 24. Some decisions have concluded that an applicant must show "compelling reasons" or a "compelling need" to enter Canada: see, e.g., *Osmani v Canada (Citizenship and Immigration)*, 2019 FC 872 at paras 15, 19; *Abdelrahma v Canada (Citizenship and Immigration)*, 2018 FC 1085 at paras 8–9; *César Nguesso v Canada (Citizenship and Immigration)*, 2015 FC 880 at paras 93–97, each quoting *Farhat v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1275 at para 22. Other decisions conclude that imposing a "compelling reasons" standard inappropriately goes beyond the language of the *IRPA*: see, e.g., *Krasniqi* at para 19, quoting *Palmero v Canada (Citizenship and Immigration)*, 2016 FC 1128 at para 21.

[30] The Supreme Court in *Vavilov* established that when assessing a decision's reasonableness in light of the legal constraints that bear on it, "where the governing statute specifies a standard that is well known in law and in the jurisprudence, a reasonable decision will generally be one that is consistent with the established understanding of that standard" (at para 111). However, the jurisprudence reveals that the standard for assessing TRP applications remains unsettled. It is reasonable for the Officer to apply a standard that this Court has also applied when reviewing visa officers' TRP determinations (*Betesh v Canada (Citizenship and Immigration)*, 2008 FC 1374 at paras 63-64; *Abdelrahma v Canada (Citizenship and*

Immigration), 2018 FC 1085 at paras. 16-17; *Farhat v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1275 at para 22).

[31] That being said, I agree with the Applicant that the Officer erred in improperly assessing the evidence. While it is not this Court's role to reweigh and reassess the evidentiary record, "the reasonableness of a decision may be jeopardized where the decision maker has fundamentally misapprehended or failed to account for the evidence before it" (*Vavilov* at para 126). The evidence pertaining to the Applicant's status in Canada involves key facts that, if properly considered, could have fundamentally altered the Officer's analysis. For instance, while the Officer states that the Applicant bears the onus to comply with the conditions imposed upon entry, the Officer did little more than restate the Applicant's submissions regarding New Vision's alleged negligence. The reasons do not exhibit attentiveness to the extent of the impact that this alleged negligence may have had on the Applicant's ability to regularize his status, which is a pivotal element of the TRP application.

[32] The Officer also spent a significant portion of the reasons explaining how the difficult travel situation caused by the COVID-19 pandemic did not prohibit the Applicant from leaving Canada and regularizing his status from abroad. The Officer restated the public information about the entry requirements for all arrivals into India. However, the reasons do not show attentiveness to the difficulty the Applicant would have faced in *returning* to Canada to be with his wife, who is the Applicant's sole family member here. This difficulty is the central reason that the Applicant filed his second TRP application, to regularize his status in Canada without being stuck in India, with no possibility of return during the pandemic, to continue working and

residing with his wife here. These are significant factors that may have resulted in a different outcome had they been properly considered.

[33] The Officer's reasons do not appear mindful to the vulnerable position of immigrants who employ consultants to aid them in the immigration process. The vulnerability of a client in a client-professional relationship is "often exacerbated by the client's socio-economic background including, but not limited to, their immigration status" (*Immigration Consultants of Canada Regulatory Council v Bansal*, 2022 FC 1070 at para 76). The Applicant did his due diligence in following up with New Vision about the refusal of his open work permit on January 16, 2019, prior to the end of his restoration period. It is reasonable for him to expect that as professionals he retained to guide him through the immigration process, New Vision would respect the necessary deadlines to protect his status. The Officer failed to properly consider the Applicant's evidence of New Vision's alleged negligence and, consequently, the Applicant's possible lack of control in failing to regularize his status in Canada.

[34] In *Osmani v Canada (Citizenship and Immigration)*, 2019 FC 872 ("*Osmani*"), the Court similarly reviewed a visa officer's refusal of a TRP application. The Court found that the reasons were "essentially conclusory," providing little explanation for why the Applicant's reasons did not justify granting the TRP (at para 25). The Court found that the Officer relied primarily on the Applicant's Pre-Removal Risk Assessment ("PRRA") and work permit, and that this was unreasonable because the officer "was not permitted to rely solely on the open PRRA and work permit <u>to the exclusion of all other circumstances</u>" [emphasis added] (*Osman* at para 26). While the Officer in this case provided some explanation for the refusal, their analysis of

the TRP application was analogous to the one in *Osmani*, particularly in excluding key elements of the Applicant's evidence in favour of less significant considerations.

[35] Similarly, in *Mousa v Canada (Immigration, Refugees and Citizenship)*, 2016 FC 1358 ("*Mousa*"), the Court found an officer's refusal of a TRP application to be unreasonable. This Court found that the cautious issuance of TRPs "does not mean that the required analysis can be foregone" because "whether the Applicants have a compelling need to enter Canada is at the heart of the TRP analysis" (*Mousa* at para 12). In *Mousa*, the visa officer's failure to mention or analyse the applicant's submissions did not exhibit "regard to the evidence before him or her and the applicable factors required when balancing a TRP request" (*Mousa* at paras 14, 19).

[36] This analysis can be applied to the Officer's decision in this case. The reasons do not exhibit an attentiveness to the Applicant's central evidence, as required. As my colleague Justice Strickland found in *Mousa*, a decision on a TRP application requires "fulsome analysis of the reasons put forward by the application" (at para 9; *Osmani* at paras 20-21). The Officer in this case did not carry out a fulsome analysis and the resulting decision is therefore unreasonable.

V. Conclusion

[37] The Officer's refusal of the Applicant's TRP application is unreasonable because it does not properly assess the evidentiary record, resulting in a decision that lacks a rational line of analysis in light of the facts and evidence. No questions for certification were raised, and I agree that none arise.

JUDGMENT in IMM-6464-21

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is granted. The decision under review is set aside and the matter referred back for redetermination by another officer.

2. There is no question to certify.

"Shirzad A."
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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