

Federal Court



Cour fédérale

Date: 20230707

Docket: IMM-5116-22

Citation: 2023 FC 930

Ottawa, Ontario, July 7, 2023

PRESENT: Madam Justice McDonald

BETWEEN:

**BRANKO VUJOVIC, DEJANA VUJOVIC,
KSENIJA VUJOVIC, STEFAN VUJOVIC,
ANASTASIJA UJOVIC**

Applicants

and

**THE MINISTER OF CITIZENSHIP &
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] This is an Application for judicial review of a series of decisions, dated May 17, 2022, which denied the Applicants restoration of their temporary resident status.

[2] The Applicants are a family from Montenegro who came to Canada for Mr. Vujovic to play soccer for the Scarborough Soccer Club. He was issued a work permit and a temporary

resident permit in November 2019, which was valid until July 2021. His family members, his wife and three children, were also issued visas.

[3] The Applicants applied to renew their visas and restore their temporary resident status in November 2021. Their applications were all refused. As his family's visas are subsidiary to Mr. Vujovic's application, I will focus on the decision that refused Mr. Vujovic's application for a work visa [Decision].

[4] With the assistance of legal counsel, the Applicants applied for judicial review of the visa refusals. The Applicants' legal counsel filed an Application Record, including written submissions.

[5] The week before the hearing, the Applicants' legal counsel brought a Motion to be removed from the record. The Motion was granted on the basis that the Applicants had notified legal counsel that they had retained new counsel in October 2022. No Motion to appoint new legal counsel was filed.

[6] As such, the Applicants were without legal representation. In advance of the hearing, the Applicants asked for permission to have a "friend" attend the hearing to provide translation for them, as they have limited English language skills. The Court denied this request and the Applicants were advised that only a lawyer could represent them, or they could represent themselves.

[7] On June 7, Mr. Vujovic and his wife attended the hearing. It was obvious that the Applicants had little understanding of English and, therefore, would not be able to make oral submissions. I granted a brief adjournment to allow legal counsel for the Minister to discuss with the Applicants if they were prepared to have the Court rely upon their written submissions in the place of them making oral submissions.

[8] When the Court resumed, legal counsel for the Minister advised that the Applicants were prepared to rely upon their written submissions. The Respondent Minister advised that they would also be relying upon their written submissions and emphasized the requirement of evidence to support the reciprocity provisions of subsection 205(b) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [*Regulations*].

[9] The Court reserved its Judgment, explaining that the Reasons would be made based upon the written submissions filed by the parties, as well as the Applicants' Record and the Certified Tribunal Record.

I. Background

[10] Mr. Vujovic came to Canada to play soccer for the Scarborough Soccer Club. He was issued a Labour Market Impact Assessment [LMIA] exempt work permit under subsection 205(b) of the *Regulations* in November 2019. Mr. Vujovic and his family remained in Canada after their temporary residency expired in July 2021. However, they applied to restore and renew their temporary resident status within the 90-day period set out in section 182 of the *Regulations*.

[11] Mr. Vujovic wanted to continue playing soccer for the Scarborough Soccer Club. He sought to restore his work permit pursuant to subsection 205(b) of the *Regulations*.

Subsection 205(b) states a work permit may be issued where the applicant “intends to perform work that ... would create or maintain reciprocal employment of Canadian citizens or permanent residents of Canada in other countries”. These visas are known colloquially as C20 visas.

[12] In the alternative, Mr. Vujovic requested a work permit be issued under subsection 205(a) of the *Regulations*.

[13] Mr. Vujovic also sought an extension of his Open Work Permit to allow him to do additional work in Canada. Ms. Vujovic sought restoration of her Open Work Permit, as his dependent spouse and they sought visitor visas for their three children.

A. *Decision Under Review*

[14] Mr. Vujovic’s C20 work visa was denied on May 17, 2022. The Decision states Mr. Vujovic had “not provided sufficient evidence that [he] met the reciprocity requirement for a C20 work permit.” The Decision further states that as the C20 work visa was refused, Mr. Vujovic was not eligible to have his temporary resident status restored.

II. Issue and Standard of Review

[15] Although the Applicants raise a number of issues with the Decision, the Officer's failure to address the request for a work visa under subsection 205(a) of the *Regulations* is dispositive of this judicial review. I therefore decline to address the other issues raised by the Applicants.

[16] On this issue, the standard of review is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65).

III. Analysis

[17] The Applicants argue the Officer erred in failing to consider Mr. Vujovic's work permit application under subsection 205(a) of the *Regulations*. The request under subsection 205(a) is neither referenced in the Decision itself nor in the relevant Global Case Management System notes.

[18] Subsection 205(a) of the *Regulations* states that a work permit may be issued where a foreign national "intends to perform work that ... would create or maintain significant social, cultural or economic benefits or opportunities for Canadian citizens or permanent residents."

Mr. Vujovic submitted his presence in Canada was vital to the Canadian Soccer League, which could not operate without foreign players and coaches.

[19] Although the Respondent argues Mr. Vujovic could not apply under subsection 205(a) as he did not have status, no authority was cited in support of this position. Further, this position is

contrary to the purpose of subsection 205, which is to provide LMIA-exempted work permits to foreign nationals.

[20] Likewise, there is nothing in the *Regulations*, or in the jurisprudence of this Court that suggests the Applicant was ineligible to rely upon subsection 205(a) because he did not have status.

[21] I note in *Hashmi v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1335, that the Court held that the officer's failure to consider subsection 205(a) as an alternative ground raised by the applicant was unreasonable (paras 27-28).

[22] In my view, it was unreasonable for the Officer to fail to engage with the request to consider the application under subsection 205(a) at all. The Decision is, therefore, not responsive to the issues raised in Mr. Vujovic's application, and is, therefore, not justifiable (per *Vavilov* at paras 81-86).

IV. Conclusion

[23] This Application for judicial review is granted. There is no question for certification.

JUDGMENT IN IMM-5116-22

THIS COURT'S JUDGMENT is that:

1. This Application for judicial review is granted. The Decision is set aside and the matter is remitted to another officer for redetermination; and

2. There is no question for certification.

"Ann Marie McDonald"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-5116-22

STYLE OF CAUSE: VUJOVIC ET AL v THE MINISTER OF CITIZENSHIP
& IMMIGRATION

PLACE OF HEARING: TORONTO, ON

DATE OF HEARING: JUNE 7, 2023

JUDGMENT AND REASONS: MCDONALD J.

DATED: JULY 7, 2023

APPEARANCES:

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Dejana Vujovic

(ON THEIR OWN BEHALFS)

Nadine Silverman

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