Federal Court  Cour fédérale

Date: 20230823

Docket: IMM-4853-22

Citation: 2023 FC 1123

Ottawa, Ontario, August 23, 2023

PRESENT: The Honourable Madam Justice Turley

BETWEEN:

SYED HUMAYUN KABIR

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Overview

[1] The Applicant seeks judicial review of a decision [Decision] by an immigration officer [Officer] to deny his application for a permanent resident visa in the Quebec Investor Class. The Officer rejected the Applicant's request for permanent residence because he had not demonstrated a genuine intent to reside in Quebec pursuant to subsection 90(2) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [*IRPR*].

[2] In his application for judicial review, the Applicant challenged the refusal on the basis that the Officer erred in focusing on his son's marital status, instead of assessing the sufficiency of the evidence in support of his intent to reside in Quebec. At the hearing, the Applicant raised a new argument – that the Officer breached procedural fairness in failing to provide the Applicant with adequate notice that credibility was in issue.

[3] For the reasons that follow, I am dismissing the application. Based on the evidence, it was reasonable for the Officer to conclude that the Applicant failed to demonstrate a genuine intent to reside in Quebec, as he had no concrete plans, including accommodation and a business plan. In addition, based on inconsistent evidence about the son's marital status, it was open to the Officer to make an adverse credibility determination extending to the application as a whole.

[4] I decline to exercise my discretion to consider the new argument raised by the Applicant for the first time at the hearing.

II. **Background**

A. *The application for permanent residence*

[5] The Applicant is a citizen of Bangladesh. In November 2011, he filed an application for a Certificat de Sélection du Québec [CSQ] in the Immigrant Investor subcategory, which was approved in September 2014. Subsequently, CSQ's were issued to the Applicant, his spouse and their four children.

[6] In November 2014, the Applicant filed an application for permanent residence, listing his spouse and their children as accompanying dependents.

[7] After reviewing the application, it was determined that an interview was required to assess two concerns: (i) the Applicant's intent to reside in Quebec; and (ii) the son's marital status. On the latter issue, the concern was the Applicant may have submitted a fraudulent document. The Applicant had submitted unmarried certificates for each of his sons, but prior to that one his sons has listed his status as "married" on Facebook. The son's status was changed to "single" following an inquiry concerning whether the Applicant's sons were currently single and never been married.

[8] The Applicant was interviewed by videoconference on March 14, 2022, accompanied by his wife and two of their sons.

[9] During the interview, the Officer questioned the Applicant about his intent to reside in Quebec. More specifically, the Officer asked the Applicant about his business plans, his settlement plans, his knowledge of French, when he had visited Quebec and why one of his sons was studying in British Columbia instead of Quebec. The Officer also asked him whether any of his children were married.

[10] The Officer then questioned the Applicant's son at length (without the Applicant present) about his marital status, whether he had ever been in a serious relationship and his Facebook profile of July 2018 that listed him as married to a particular woman.

[11] After interviewing the son, the Officer called the Applicant back into the interview and questioned him about his son's relationship. The Officer told the Applicant he had credibility concerns about his application due to the contradictory information about his son's marital status.

[12] The Officer further advised the Applicant he had concerns about the Applicant's intent to reside in Quebec because he had not demonstrated "any concrete plans in settling down in Quebec."

B. *The Decision*

[13] The Officer's assessment was recorded in the Global Case Management System [GCMS] on March 17, 2022 as follows:

> At interview, I had concerns about applicant's intent to reside in the province and his son's marital status. I have reviewed the information on file, additional documents submitted and response at interview. However, my concerns are not assuaged. Applicant was not able to provide me with a concrete plan about settling in Quebec. When asked about his accommodation plans, he was not able to state the area or city he is considering to settle down. He was not able to communicate his business plans in detail. His son is studying in BC since 2020 and applicant was not able to explain satisfactorily why he did not enrol his son in a university in Quebec since their plan is to settle their eventually. I am also concerned with the marital status of applicant's son (1990/12/10). Son had updated his FB profile status as married to Laboni Islam in 2018. When the office enquired about his marital status via email, he changed it to 'single'. I highlighted this to applicant's son but his explanation that he did that for 'excitement' is not satisfactory. I note that this is rather unusual in Bangladeshi culture – declaring that one is married to someone when they are not. Moreover, applicant and his son provided different versions about the relationship with Laboni Islam. Applicant stated that Laboni Islam's family came with the marriage proposal in 2019/2020 and he did not agree for the marriage. Son stated that he was in a relationship with her from 2017-2018, Noted that he initially declared that he was not in any relationship before. The

> inconsistent statements provided by applicant and his son raises credibility concerns and therefore I find that I am not able to rely on any information presented by applicant. While the facebook status is not definitive, when I put them together, I have concerns with the overall credibility of the application and therefore, I find that I am not satisfied, on a balance of probabilities, with their intent of residing in Quebec.

[14] By letter dated March 29, 2022, the Officer denied the Applicant's application for permanent residence under the Quebec Investor Class on that basis that the Officer was not satisfied the Applicant intended to reside in Quebec.

III. **Issues and Standard of Review**

[15] In his Memorandum of Fact and Law, the Applicant challenged the reasonableness of the Decision on numerous grounds. However, the Applicant's counsel only pursued one ground at the hearing, namely that "the Officer's decision is not based on an internally coherent and rational chain of analysis and thus, is unreasonable." More specifically, the Applicant argued there was a "disruption" in the chain of analysis in that the Officer extended his disbelief regarding the son's marital status to his assessment of the Applicant's intent to reside in Quebec.

[16] There is no dispute that the applicable standard of review is reasonableness, as set out in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*]. The reviewing court must consider "the decision actually made by the decision maker, including both the decision maker's reasoning process and the outcome": at para 83. 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": at para 85. The decision must

exhibit “the hallmarks of reasonableness – justification, transparency and intelligibility”: at para 99.

[17] On judicial review, the court should respect the distinct role and specialized knowledge of administrative decision-makers: *Vavilov,* at paras 13, 75, 93. The court should defer to decision-makers with respect to findings of facts and the weighing of evidence. Absent exceptional circumstances, the reviewing court will not interfere with an administrative decision-maker’s factual findings: *Vavilov,* at paras 125-126.

[18] At the hearing, the Applicant’s counsel made a procedural fairness argument not raised in his Memorandum of Fact and Law. He argued that the Officer failed to give the Applicant advance notice that credibility was an issue and that, as such, the process leading to the Decision was unfair. The Respondent’s counsel objected to this new argument. While he took the position the Court should not entertain it, he did make brief submissions in response to the new argument. I advised counsel I would address whether I would exercise my discretion to consider this new argument in my decision on the merits of the application.

IV. **Analysis**

A. *New argument will not be entertained*

[19] The well-established jurisprudence is that, absent exceptional circumstances, new arguments should not be entertained as to do so would prejudice the opposing party and leave the Court unable to fully assess the merits of the new argument: *Omomowo v Canada (Citizenship and Immigration)*, 2023 FC 78, at paras 26-28; ***Abdulkadir v Canada (Citizenship and***

Immigration), 2018 FC 318, at para 81; *Del Mundo v Canada (Citizenship and Immigration)*, 2017 FC 754, at paras 12-14; *Adewole v Canada (Attorney General)*, 2012 FC 41, at para 15.

[20] In my view, there are no exceptional circumstances in this case that warrant departing from this general principle. The Applicant could have raised the procedural fairness argument in his Memorandum of Fact and Law filed on the leave application or at the very least, he could have filed a further Memorandum and sought to address the issue at that time. Raising the new argument at the hearing for the first time deprived the Respondent of the opportunity to respond in a meaningful way.

[21] Furthermore, as articulated by Justice Roy in *Mohseni v Canada (Minister of Citizenship and Immigration)*, 2018 FC 795, allowing new arguments adversely impacts the administration of justice:

> [37] It is also a disservice to the administration of justice if an applicant is allowed to depart from the case he was authorized to bring before the Court. This provides an incentive to take the other side by surprise and gain a tactical advantage or force the Court to grant an adjournment. Indeed, IRPA establishes that time is of the essence as section 74 requires that the hearing take place no later than 90 days after leave was granted. In my view, unless there are truly extraordinary circumstances, the Court ought not to allow for cases to be derailed through new arguments being entertained the day of the hearing.

[22] Based on the foregoing, I decline to consider the new argument raised by the Applicant.

B. *The Decision is reasonable*

[23] I am not persuaded by the Applicant's argument that the Decision is based on an internally incoherent and irrational chain of analysis. After reviewing the application, the Officer determined that an interview was required to assess two key concerns before making a decision: (i) the Applicant's intent to reside in Quebec; and (ii) the son's marital status.

[24] As set out in the GCMS notes, the Officer considered both these issues in refusing the application for permanent residence. First, the Officer assessed the Applicant's intent to reside in Quebec and determined that he had failed to provide any concrete plans about settling down in Quebec. This finding, in and of itself, would have been sufficient to dispose of the Applicant's visa application.

[25] However, the Officer proceeded to address the second concern about the son's marital status. This was a legitimate train of inquiry relevant to the application for permanent residence. After questioning both the son and the Applicant, the Officer determined that there was contradictory evidence that affected the overall credibility of the application.

(1) No Genuine Intent to Reside in Quebec

[26] In accordance with subsection 90(2) of the *IRPR*, a foreign national must demonstrate an intent to reside in the province for permanent residency under the Quebec Investor Class:

90. (1) Class – For the purposes of subsection 12(2) of the Act, the Quebec investor class is prescribed as a class of persons who may become permanent residents on the basis of their ability to become economically established in Canada.	90. 1 Catégorie – Pour l'application du paragraphe 12(2) de la Loi, la catégorie des investisseurs (Québec) est une catégorie réglementaire de personnes qui peuvent devenir résidents permanents du fait de leur capacité à réussir leur établissement économique au Canada.
(2) Member of class – A foreign national is a member of the Quebec investor class if they	(2) Qualité – Fait partie de la catégorie des investisseurs (Québec) l'étranger qui satisfait aux exigences suivantes :
(a) intend to reside in Quebec; and	a) il cherche à s'établir dans la province de Québec;
(b) are named in a Certificat de sélection du Québec issued by Quebec.	b) il est visé par un certificat de sélection du Québec délivré par cette province.

[27] In assessing an applicant's intent to reside in a given province, visa officers exercise broad discretion. They may consider all available indicia, including past conduct, present circumstances, and future plans: *Quan v Canada (Citizenship and Immigration)*, 2022 FC 576, at para 24 [*Quan*]; *Tran v Canada (Citizenship and Immigration)*, 2021 FC 721, at para 33 [*Tran*]; *Yaman v Canada (Citizenship and Immigration)*, 2021 FC 584, at para 29 [*Yaman*]; *Rabbani v. Canada (Citizenship and Immigration)*, 2020 FC 257, at para 43; *Dhaliwal v Canada (Citizenship and Immigration)*, 2016 FC 131, at para 31 [*Dhaliwal*].

[28] The Officer asked the Applicant numerous questions in order to assess his intent to reside in Quebec. These included questions about his prior visit to Quebec in 2011, his decision to

apply under the Quebec Investor Class, his business plans, his settlement plans, why his son was studying in British Columbia rather than Quebec, whether he spoke French and why he had not learnt French while his application was pending.

[29] Following the interview, the Officer determined that the concerns about the Applicant's intent to reside in Quebec were not "assuaged". Ultimately, the Officer concluded that the Applicant had not provided any concrete plans about settling in Quebec, in terms of his accommodation and his business. When asked about his settlement plans, the Applicant was unable to state the area or city he was considering. Further, he was not able to communicate his business plans in detail. The Applicant simply stated that he intended to own a popular restaurant and a construction business.

[30] The Officer further noted that one of the Applicant's sons had been studying in BC since 2020 and that the Applicant was unable to satisfactorily explain why he did not enrol his son in a university in Quebec. This Court has held there is "little connection" between a child's decision to study outside the province and a parent's intent to reside in the province: *Quan*, at paras 27-28; *Yaman*, at paras 31-32; *Dhaliwal*, at para 33. Here, the fact that the son was not studying in Quebec was not a determinative factor in the Decision. Rather, the Officer's expressed concern was the Applicant did not provide a satisfactory explanation for why his son was not attending university in Quebec if they planned to settle there.

[31] Based on the Applicant's inability to answer basic questions with any specificity or detail, it was reasonable for the Officer to conclude that the Applicant had failed to demonstrate a genuine intent to reside in Quebec.

(2) Overall credibility undermined

[32] The Officer was concerned with the son's marital status because it raised an issue with regard to his eligibility as a dependent. Pursuant to section 2 of the *IRPR*, to qualify as a "dependent child" of an applicant for permanent residency under the Quebec Investor Class, the child cannot be married or living common law. Consequently, if the son was married, he would be ineligible as one of the Applicant's accompanying family members.

[33] In light of the son's prior Facebook status as "married" and the subsequent submission of an unmarried certificate for that son, the Officer questioned both the son and the Applicant about this discrepancy. The interview did not, however, allay the Officer's concerns. Rather, based on the son's unsatisfactory explanation for updating his Facebook profile status to married in 2018 and inconsistent statements provided by the Applicant and the son, the Officer had concerns with the overall credibility of the application.

[34] The assessment of credibility lies within "the heartland of the discretion of triers of fact": *Yan v Canada (Citizenship and Immigration)*, 2017 FC 146, at para 18. As such, credibility findings are accorded significant deference on judicial review and cannot be overturned unless they are perverse, capricious or made without regard to the evidence: *Fageir v Canada (Citizenship and Immigration)*, 2021 FC 966 at para 29; *Tran*, at para 35; *Azenabor v Canada*

(Citizenship and Immigration), 2020 FC 1160, at para 6. The Applicant has failed to demonstrate any such grounds to overturn the Officer's credibility determination.

[35] Further, I do not accept the Applicant's argument that the Officer "merely extends his disbelief regarding the son's marital status, to his assessment of the Applicant's intent to reside in Quebec, without the requisite degree of justification." Before concluding that credibility concerns affected the application as a whole, the Officer considered the Applicant's intent to reside in Quebec. As set out above, the Officer was not satisfied that the Applicant met the requirements for permanent residency under the Quebec Investor Class as he was unable to provide any concrete settlement plans. The Officer could have relied on this finding alone to dismiss the application.

[36] It was also open to the Officer to make a general finding of a lack of credibility based on the specific credibility concerns identified with the son's marital status: *Romero Gomez v Canada (Citizenship and Immigration)*, 2021 FC 1266, at para 25; *Lawani v Canada (Citizenship and Immigration)*, 2018 FC 924, at para 24; *Hohol v Canada (Citizenship and Immigration)*, 2017 FC 870, at para 19; *Lawal v Canada (Citizenship and Immigration)*, 2010 FC 558, at para 22.

V. **Conclusion**

[37] Based on the foregoing, the application for judicial review is dismissed. In my view, the Applicant's arguments amount to a disagreement with the Officer's assessment and weighing of the evidence. On judicial review, it is not for the Court to reassess and reweigh the evidence.

[38] The parties did not raise a question for certification and none arises in this case.

JUDGMENT in IMM-4853-22

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. There is no question for certification.

"Anne M. Turley"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-4853-22
STYLE OF CAUSE:	SYED HUMAYUN KABIR v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	HELD BY VIDEOCONFERENCE
DATE OF HEARING:	AUGUST 14, 2023
REASONS FOR JUDGMENT AND JUDGMENT:	TURLEY J.
DATED:	AUGUST 23, 2023

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