

Federal Court



Cour fédérale

Date: 20231103

Docket: IMM-11494-22

Citation: 2023 FC 1468

Ottawa, Ontario, November 3, 2023

PRESENT: The Honourable Madam Justice Heneghan

BETWEEN:

SAMSHER SINGH

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS AND JUDGMENT

[1] Mr. Samsheer Singh (the “Applicant”) seeks judicial review of the decision of a visa officer (the “Officer”), refusing his application for a visitor’s visa and finding him inadmissible to Canada for misrepresentation pursuant to paragraph 40(1)(a) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the “Act”).

[2] The Applicant is a citizen of India. On March 11, 2022, he applied for a visitor's visa for the purpose of visiting his adult children in Canada. He checked a box indicating that he had never "been refused a visa or permit, denied entry or ordered to leave Canada or any other country or territory."

[3] The Applicant received a "Procedural Fairness" letter in May 2022, inquiring why he had not disclosed prior refusals of visa requests by the government of the United States of America.

[4] In his response to this letter, the Applicant said that he had understood the question to refer only to refusal of visa to enter Canada. He provided a copy of a refusal of a visa by the American authorities in 2016, this was the most recent refusal. He said that he did not have copies of the other refusals that had been made some 10 to 15 years earlier.

[5] The Applicant now argues that the decision of the Officer is unreasonable and shows that the decision was made without regard to the evidence.

[6] The Minister of Citizenship and Immigration (the "Respondent") raised a preliminary issue, that is objections to two exhibits to the affidavit of the Applicant filed in support of the within application for judicial review. The basis of the objection is that the two exhibits were not before the Officer.

[7] Otherwise, the Respondent submits that the decision shows no reviewable error and that this application should be dismissed.

[8] I agree with the position of the Respondent about the two exhibits to the affidavit of the Applicant.

[9] In general, only the evidence that was before a decision-maker can be considered by the Court upon an application for judicial review. There are limited exceptions to this rule, as discussed by the Federal Court of Appeal in *Association of Universities and Colleges of Canada v. Canadian Copyright Licensing Agency (Access Copyright)* (2012), 428 N.R. 297 (F.C.A.). One exception is when the “new” material is to provide background information to assist the Court in understanding the issues in play.

[10] I agree with the Respondent that the two exhibits in question do not serve that purpose. The exhibits will not be considered in disposing of this application.

[11] Following the decision of the Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, [2019] 4 S.C.R. 653 (S.C.C.), the Officer’s decision is subject to review on the standard of reasonableness.

[12] 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 the decision”; see *Vavilov, supra* at paragraph 99.

[13] I agree with the Applicant that the decision does not meet the applicable standard of review. The Applicant provided an explanation for the mistaken answer he had given in the visa application and he produced the supporting material that was available to him.

[14] Either the Officer did not consider this evidence or misunderstood it as meaning that all the American visa refusals occurred 10 to 15 years earlier. This understanding is not supported by the material provided by the Applicant, showing that the last refusal was made in 2016.

[15] In my opinion, the misrepresentation finding was unreasonable.

[16] In the result, the application for judicial review will be allowed, the decision will be set aside and the matter remitted to another officer for redetermination. There is no question for certification proposed.

JUDGMENT IN IMM-11494-22

THIS COURT'S JUDGMENT is that the application for judicial review is allowed, the decision of the Officer is set aside and the matter is remitted to another officer for redetermination. There is no question for certification.

"E. Heneghan"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-11494-22

STYLE OF CAUSE: SAMSHER SINGH v. THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: HELD BY WAY OF VIDEOCONFERENCE

DATE OF HEARING: OCTOBER 12, 2023

JUDGMENT AND REASONS: HENEGHAN J.

DATED: NOVEMBER 3, 2023

APPEARANCES:

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