Federal Court  Cour fédérale

Date: 20231218

Docket: IMM-7280-22

Citation: 2023 FC 1717

Toronto, Ontario, December 18, 2023

PRESENT: The Honourable Mr. Justice Pentney

BETWEEN:

MARLOU FERRERA

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The Applicant, Marlou Ferrera, is a citizen of the Philippines. She initially came to Canada in 2017 on a work permit through the Temporary Foreign Worker Program (TFWP) as a live-in caregiver for a family with two children.

[2] The Applicant has two children of her own, who live in the Philippines with her sister. While the Applicant was working as a live-in caregiver, she sent back remittances to her sister to assist her in caring for her children and to help her sister run her small business.

[3] The Applicant's work permit expired on January 31, 2019. Before its expiry, she applied for a work permit extension and, therefore, was on "maintained status" until the extension was refused on March 9, 2019. Since that time, the Applicant has been out of status in Canada.

[4] After losing status on March 9, 2019, the following events occurred:

A. May 2019 – the Applicant filed an application for permanent residence (PR) through the Interim Pathway for Caregivers (IPC) Program and requested an open work permit;

B. January 20, 2020 – the Applicant's PR IPC application was refused (the Applicant did not achieve the requisite level of proficiency in her language tests);

C. January 21, 2020 – the Applicant's open work permit was refused;

D. January 22, 2020 – the Applicant consulted counsel (2 days after PR refusal);

E. February 4, 2020 – the Applicant retained counsel (15 days after PR refusal);

F. March 29, 2021 – the Applicant filed a Temporary Resident Permit (TRP) and work permit application (approximately 14 months after her PR refusal);

[5] The Applicant states that she sought a TRP for a period of two years in order to have the time needed to regularize her status and reapply for permanent residence in Canada through the Home Child-Care Provider Pilot Program.

[6] The Applicant's TRP and work permit application was refused on July 22, 2022. This refusal is the decision under review.

[7] In the decision, the Officer weighed the risks of issuing the TRP – including what the Officer described as the Applicant's disregard for and breach of Canadian immigration law – against the Applicant's reasons for seeking a TRP – including her need to provide financial support to her dependents in the Philippines and the relationships she developed while in Canada. Ultimately, the Officer was not satisfied that there were extenuating reasons to overcome two years of non-compliance with immigration law.

[8] The only issue in this case is whether the TRP and work permit decision was reasonable.

[9] This is assessed under the framework set out in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65, and recently confirmed in *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21. In summary, under the *Vavilov* framework, 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). An administrative decision-maker's exercise of public power must be "justified, intelligible and transparent" (*Vavilov* at para 95).

[10] Decisions need not be perfect. The onus is on the Applicant to demonstrate flaws in the decision that are "sufficiently central or significant to render the decision unreasonable" (*Vavilov* at para 100). The decision must be assessed in light of the history and context of the proceedings, including the evidence and submissions made to the decision-maker

(*Vavilov* at para 94). However, "absent exceptional circumstances, a reviewing court will not interfere with [the decision maker's] factual findings" (*Vavilov* at para 125).

[11] The Applicant argues that the decision is unreasonable for two reasons.

[12] First, the Applicant submits that the Officer fundamentally misapprehended the evidence on the timeline of events. The Officer concluded that the Applicant had shown "a complete disregard" for Canadian immigration law until she retained counsel in February 2022 and then took steps to regularize her status. However, the evidence shows that the Applicant retained counsel in February 2020, only one month after the PR application was refused. The Officer also made a mistake when they stated that the PR application and associated work permit were refused on January 20 and 21, 2021, respectively. These applications were actually refused in 2020.

[13] The Applicant contends that the Officer's errors compromised their assessment of "risk" to Canadian society because the correct timeline does not support the conclusion that the Applicant demonstrated "complete disregard" for immigration law. Rather, they show an ongoing effort to regularize her status. The Officer may have come to a different conclusion if they had not made the errors regarding the timeline.

[14] Second, the Applicant argues the Officer failed to engage meaningfully with her actual circumstances or those of her children. The Officer did not acknowledge or alone assess the Applicant's remittances as a stable source of income for her children and sister's business. The Officer also did not acknowledge that the Applicant was the sole provider for her children,

because they had all been abandoned by her abusive ex-husband. She also argues that the Officer failed to mention that she has an important relationship with the family that employed her in Canada. This decision failed to demonstrate the requisite "attentiveness" to central factors in her application: *Thind v Canada (Citizenship and Immigration)*, 2022 FC 1644 at para 32.

[15] The Respondent argues that the Officer conducted a fulsome analysis of the application and that the timeline issues are merely clerical errors. These misapprehensions were not central to the Officer's reasoning. The Officer considered that the Applicant had been without status for two years – whether or not she retained counsel. The Officer also addressed the Applicant's financial support for her family in the Philippines and considered her relationships and ties in Canada. The Officer was entitled to conclude that the evidence presented was neither compelling nor exceptional enough to support the issuance of a TRP.

[16] I find that the decision is unreasonable. The determinative issue is the Officer's mistake regarding the timeline. I disagree with the Respondent's characterization of this as a mere clerical error.

[17] In assessing the TRP application – which seeks a time-limited privilege to remain in Canada – the Officer was required to balance whether the Applicant's reasons for remaining in Canada were sufficiently compelling to outweigh any risks posed by her continued presence in Canada: see, for example, *Williams v Canada (Citizenship and Immigration)*, 2020 FC 8.

[18] In this case, the Officer's decision is based on a complete mischaracterization of the evidence regarding the risk element. The Officer rejected the Applicant's assertion that she posed

no risk to Canadian society and did not have a pattern of non-compliance with the law. The Officer stated that her "actions demonstrate the opposite" of this assertion. The Officer reviewed the history of the expiry of the Applicant's temporary status in Canada and her efforts to regularize it, and I note that this section contains errors regarding the dates of the refusal of her PR and open work permit application. The Officer then stated: "[The Applicant] continued to demonstrate complete disregard to Canadian immigration laws for another year until she retained the services of the current counsel in February, 2022."

[19] The Respondent says this is simply a clerical error. I disagree. The Officer misstates the dates – the Applicant consulted counsel a mere two days after the refusal of her IPC and open work permit applications, and thereafter took a series of steps in an effort to regularize her status in Canada and to qualify for permanent residence under government programs. The Officer's error regarding the timing appears to be the basis for their description of the Applicant as having demonstrated "complete disregard" for Canada's immigration laws. This finding is contrary to the evidence, and is unduly negative towards her. At most, the Applicant was out of status, and she was actively taking steps to get back into status.

[20] It is impossible to ascertain how this mistake influenced the rest of the Officer's analysis regarding the compelling circumstances presented by the Applicant. Perhaps this point is more easily understood by considering a hypothetical. There can be no doubt that an individual who had actually demonstrated a complete disregard for Canadian immigration laws, for example by evading a Direction to Report for removal by going into hiding for a number of years, would need to demonstrate particularly compelling reasons to obtain a TRP. If that is true, the converse

must equally be true: an individual who was technically out of status but actively seeking to regularize their situation should not be held to the same onerous standard as a scoff-law.

[21] Applying this reasoning to the facts of this case, the Officer's mistakenly negative characterization of the Applicant's conduct casts a shadow over the rest of their analysis. The reasons do not make clear whether or how the Officer's errors regarding the first part of the balancing exercise affected their analysis of the second.

[22] In my view, given the nature of the error, and its potentially prejudicial impact on the rest of the Officer's analysis, I am satisfied that this is sufficiently serious to make the entire decision unreasonable. It meets the threshold set out at paragraph 100 of *Vavilov,* because it is "sufficiently central or significant to render the decision unreasonable." The Officer's decision falls outside the factual matrix of the case, and cannot stand.

[23] For these reasons, the application for judicial review will be granted. The Officer's decision will be quashed and set aside, and the matter will be remitted for reconsideration by a different Officer.

[24] There is no question of general importance for certification.

JUDGMENT in IMM-7280-22

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is granted.

2. The Officer's decision dated July 22, 2022 refusing the Applicant's application for a temporary residence permit is hereby quashed and set aside.

3. The matter is remitted back for reconsideration by a different Officer.

4. There is no question of general importance for certification.

"William F. Pentney"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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