

Federal Court



Cour fédérale

Date: 20240529

Docket: IMM-3048-23

Citation: 2024 FC 811

Ottawa, Ontario, May 29, 2024

PRESENT: Madam Justice Azmudeh

BETWEEN:

GHANSHYAM MITTAL

Applicant

and

**THE MINISTER OF IMMIGRATION
AND CITIZENSHIP**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Ghanshyam Mittal (the “Applicant”), is seeking a Judicial Review under section 72(1) of the *Immigration and Refugee Protection Act* [IRPA] concerning the rejection of her Temporary Resident Visa (“TRV”) for a visitor visa application for Canada. The Judicial Review is granted for the following reasons.

[2] The Applicant is an Indian citizen who was issued a five-year TRV in May 2018. In July 2018, he sought entry into Canada for five months, allegedly to sightsee. Upon examination, he

admitted to entering Canada to work. An Officer prepared a report under section 44(1) of IRPA for seeking entry to work without a valid work permit. An Officer ultimately found the Applicant to be inadmissible and issued an exclusion order, which imposed a one year exclusion bar to travel to Canada. IRCC subsequently communicated this to the Applicant in writing and advised him in a letter that his TRV was revoked and no longer valid for travel.

[3] On September 3, 2019, after the expiry of the one year exclusion order but while the previous visa was already revoked, the Applicant attempted to enter Canada, allegedly to attend a friend's wedding. He alleged that he had not received the TRV cancellation letter. As he did not have a valid TRV, he was denied boarding the plane and was advised to obtain a TRV for future travels to Canada.

[4] In August 2022, the Applicant applied for another TRV to attend a friend's 10th year wedding anniversary in January 2023. Together with the application, the Applicant explained this in a letter. The Applicant also alleges that the TRV online application was designed in such a way that the drop-down menu on the purpose of his trip did not give the option for visiting a friend. He therefore used visiting family as an option. The Officer reviewing the TRV application saw this as a material contradiction and rejected the application. The Officer's Global Case Management System (GCMS) notes which constitute the reasons are as follows :

I have reviewed the application. I have considered the following factors in my decision. Integrated Search noted. Vague / undeclared immigration history including removal order noted. Provided letter from the applicant indicates that the applicant is seeking entry to attend a friend's 10th Wedding Anniversary. Declared purpose is for family visit. The purpose of the applicant's visit to Canada is not consistent with a temporary stay given the details provided in the application. On a past visit in 2018 to Canada, the applicant did not comply with all conditions outlined

in R183 of the IRPR. The applicant has limited employment possibilities in their country of residence when taking into consideration the applicant's current employment, employment history, income, and immigration history. Weighing the factors in this application. I am not satisfied that the applicant will depart Canada at the end of the period authorized for their stay. For the reasons above, I have refused this application

II. Issues and Standard of Review

[5] The only issue before me is whether the Officer's decision was reasonable.

[6] Reasonableness review is a deferential and disciplined evaluation of whether an administrative decision is transparent, intelligible and justified: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65, at paras 12-13 and 15 [*Vavilov*]; *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21, at paras 8, 63 [*Mason*].

[7] I have started by reading the reasons of the decision-maker in conjunction with the record that was before them holistically and contextually. As guided by *Vavilov*, at paras 83, 84 and 87, as the judge in reviewing court, I have focused on the reasoning process used by the decision-maker. I have not considered whether the decision-maker's decision was correct, or what I would do if I were deciding the matter itself: *Vavilov*, at para 83; *Canada (Justice) v D.V.*, 2022 FCA 181, at paras 15 and 23.

[8] A reasonable decision is based on an internally coherent and rational chain of analysis and is justified in relation to the facts and law that constrained the decision-maker: *Vavilov*, esp. at paras 85, 91-97, 103, 105-106 and 194; *Canada Post Corp v Canadian Union of Postal Workers*, 2019 SCC 67, [2019] 4 SCR 900, at paras 2, 28-33 and 61; *Mason*, at paras 8, 59-61 and 66. For a decision to be unreasonable, the applicant must establish the decision contains

flaws that are sufficiently central or significant (*Vavilov* at para 100). Not all errors or concerns about a decision will warrant intervention.

III. Legislative Overview

[9] The following sections of the IRPA are relevant:

Immigration and Refugee Protection Act, SC 2001, c 27 [IRPA]

Application before entering Canada

11 (1) A foreign national must, before entering Canada, apply to an officer for a visa or for any other document required by the regulations. The visa or document may be issued if, following an examination, the officer is satisfied that the foreign national is not inadmissible and meets the requirements of this Act.

Obligation on entry

20 (1) Every foreign national, other than a foreign national referred to in section 19, who seeks to enter or remain in Canada must establish,

(a) to become a permanent resident, that they hold the visa or other document required under the regulations and have come to Canada in order to establish permanent residence; and

(b) to become a temporary resident, that they hold the visa or other document required under the regulations and will leave Canada by the end of the period authorized for their stay.

[...]

Visa et documents

11 (1) L'étranger doit, préalablement à son entrée au Canada, demander à l'agent les visa et autres documents requis par règlement. L'agent peut les délivrer sur preuve, à la suite d'un contrôle, que l'étranger n'est pas interdit de territoire et se conforme à la présente loi.

Obligation à l'entrée au Canada

20 (1) L'étranger non visé à l'article 19 qui cherche à entrer au Canada ou à y séjourner est tenu de prouver :

a) pour devenir un résident permanent, qu'il détient les visa ou autres documents réglementaires et vient s'y établir en permanence;

b) pour devenir un résident temporaire, qu'il détient les visa ou autres documents requis par règlement et aura quitté le Canada à la fin de la période de séjour autorisée.

[...]

Temporary resident

22 (1) A foreign national becomes a temporary resident if an officer is satisfied that the foreign national has applied for that status, has met the obligations set out in paragraph 20(1)(b), is not inadmissible and is not the subject of a declaration made under subsection 22.1(1).

Résident temporaire

22 (1) Devient résident temporaire l'étranger dont l'agent constate qu'il a demandé ce statut, s'est déchargé des obligations prévues à l'alinéa 20(1)b), n'est pas interdit de territoire et ne fait pas l'objet d'une déclaration visée au paragraphe 22.1(1).

[10] Section 179 of the IRPR governs the requirements for a TRV and reiterates that a foreign national must establish, among other things, that they will leave Canada by the end of the period authorized for their stay:

Immigration and Refugee Protection Regulations, SOR/2002-227 [IRPR]**Issuance**

179 An officer shall issue a temporary resident visa to a foreign national if, following an examination, it is established that the foreign national

[...]

(b) will leave Canada by the end of the period authorized for their stay under Division 2;

[...]

Délivrance

179 L'agent délivre un visa de résident temporaire à l'étranger si, à l'issue d'un contrôle, les éléments suivants sont établis :

[...]

b) il quittera le Canada à la fin de la période de séjour autorisée qui lui est applicable au titre de la section 2;

[...]

IV. Analysis**A. *Was the Officer's decision reasonable?***

[11] On a TRV application, the Applicant must establish that they meet the requirements of the IRPA and the IRPR. Visa officers have a wide discretion in their assessment of the application and the Court ought to provide considerable deference to an officer's decision given the level of expertise they bring to these matters (*Chera v Canada (Citizenship and Immigration)*, 2023 FC 733 at para 36 and *Singh v Canada (Citizenship and Immigration)*, 2022

FC 1745 at para 14). The onus is on the Applicant who seeks temporary entry to Canada to establish and satisfy a visa officer that they will leave Canada at the end of the authorized period of stay requested.

[12] In addition, in assessing the reasonableness of the decision, the Court recognizes that the high volume of visa decisions and the narrow consequences of a refusal are such that extensive reasons are not required: *Vavilov* at paras 88 and 91; *Lingepo v Canada (Citizenship and Immigration)*, 2021 FC 552 at para 13; *Yuzer v Canada (Citizenship and Immigration)*, 2019 FC 781 at paras 9 and 16 [*Yuzer*]; *Wang v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1298 at paras 19 and 20. Nonetheless, the reasons given by the Officer must, when read in the context of the record, adequately explain and justify why the application was refused: *Yuzer* at paras 9 and 20; *Hashemi v Canada (Citizenship and Immigration)*, 2022 FC 1562 at para 35 [*Hashemi*]; *Vavilov* at paras 86 and 93–98.

[13] Visa officers “must assess the strength of the ties that bind or pull the Applicant to their home country against the incentives, economic and otherwise, that might induce the foreign national to overstay”: *Hashemi* at para 19; *Rivaz v Canada (MCI)*, 2023 FC 198 at para 21-22; *Ali v Canada (MCI)*, 2023 FC 608 at paras 9-11; *Zeinali v Canada (Citizenship and Immigration)*, 2022 FC 1539 [*Zeinali*], at para 20; *Hassanpour v Canada (Citizenship and Immigration)*, 2022 FC 1738 at para 19; *Nesarzadeh v Canada (Citizenship and Immigration)*, 2023 FC 568 at paras 16-18; *Hassani v Canada (Citizenship and Immigration)*, 2023 FC 734 at para 20; *Chhetri v Canada (Citizenship and Immigration)*, 2011 FC 872 at para 14.

[14] In this case, in addition to the Applicant’s prior exclusion order and attempt to reuse a cancelled visa, the Applicant had also provided other relevant evidence that contradicted the

Officer's conclusion. These included evidence of ownership of a business, assets in India, personal savings and business bank statements, and the Applicant's friend's (the inviter) financial means and letter of support for his visit. In light of all these, it is unclear how the Officer concluded that the Applicant had limited prospects of employment in India.

[15] In fact, the Officer ignored the contrary evidence in his assessment. He did not weigh them or analysed them in any way. By not engaging with the contrary evidence in any way, the Officer made an arbitrary decision (*Seyedsalehi v Canada (Citizenship and Immigration)*, 2022 FC 1250).

[16] Moreover, the Officer construed a contradiction where the contradiction was forced by the limitations of the online application. The Applicant's uncontested evidence suggest that the online TRV application had a drop down menu which included visiting family but not friends. The Applicant had no choice but to choose from the options provided, but then provided the context in a letter.

[17] In this case, the online visa application or portal is designed and distributed by the Respondent. The Applicant cannot negotiate its content or interface. The online application has limited options in drop down menus. The Respondent has not submitted any evidence to suggest that "visiting friends" or "other" are options on the menu, or that applicants can proceed further by leaving any option blank.

[18] In this case, the Applicant tried to provide further context by providing further explanations in a letter, which the Officer automatically interpreted as a material contradiction, without engaging with the context of the online TRV application.

[19] I find that the Officer's ignorance of the context in which the TRV application was completed, where the Officer's employer had designed, created and provided the online application as a pre-requisite to apply for a visa, to be unreasonable.

[20] The Officer's lack of engagement with the contrary evidence and their ignorance the limits imposed by the online application have resulted in an arbitrary decision. In other words, the Officer's decision was not responsive to, or supported by, the environment where the application was made or the materials submitted by the Applicant. The Officer's decision lacks justification and is, as such, unreasonable.

V. Conclusion

[21] The Officer's decision is not reasonable, the application for judicial review is therefore granted.

[22] Neither party proposed a question for certification and I agree that none arises in this matter.

JUDGMENT IN IMM-3048-23

THIS COURT'S JUDGMENT is that

1. The Judicial Review is granted. This matter is to be determined by another officer and in accordance with these reasons.
2. There is no question to be certified.

"Negar Azmudeh"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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**REASONS FOR JUDGMENT
AND JUDGMENT:** AZMUDEH J.

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