Federal Court Cour fédérale

Date: 20240815

Docket: IMM-4601-22

Citation: 2024 FC 1270

Ottawa, Ontario, August 15, 2024

PRESENT: The Honourable Mr. Justice Gleeson

BETWEEN:

HYE YOUNG KONG

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Immigration, Refugees and Citizenship Canada refused the Applicant's application for permanent residence status as a member of the Spouse in Canada class in December 2021 because the Applicant failed, after numerous requests, to provide probative identity documents.

[2] In April 2022, the Applicant requested the permanent residence application be re-opened on the basis that the requested information had been provided in advance of the December 2, 2021 refusal decision by way of letter dated October 8, 2021 [October 2021 correspondence]. A copy of the October 2021 correspondence was attached.

[3] In a decision dated May 3, 2022 the request for reconsideration was denied. The Applicant now applies under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 for judicial review of the May 3, 2022 decision, arguing the Officer erred in refusing the request for reconsideration.

[4] For the following reasons, the Application is granted.

II. Analysis

[5] The May 3, 2022 letter refusing the reconsideration request states:

> Your application was considered on its substantive merits and was refused on 2022/02/21. You were provided with the decision on 2022/02/21, thereby fully concluding your application. After careful consideration of your request, the initial decision to refuse your Family Class application remains unchanged. I understand that you may be disappointed by the decision, however the decision stands.

[6] The Global Case Management System [GCMS] notes indicate the refusal letter had been forwarded to the Applicant and her representative but the notes provide no further explanation or justification for refusing the reconsideration request.

[7] The Respondent submits both the initial decision and the reconsideration decision were reasonable. The Respondent argues the Applicant had been provided numerous opportunities to submit the requested documents but had failed either to do so or to provide a sufficient explanation as to why the documents could not be produced.

[8] The standard of review to be applied on judicial review of a reconsideration decision is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at para 10, *Sharanych v Canada (Citizenship and Immigration)*, 2023 FC 1655 at para 16; *Ali v Canada (Citizenship and Immigration)*, 2022 FC 1638 at para 25). A reviewing court applying the reasonableness standard must determine whether the decision reflects the attributes of transparency, intelligibility and justification, and meaningfully accounts for the central issues and concerns raised by the parties (*Vavilov* at paras 15, 85 and 127).

[9] In this instance, the Applicant requested reconsideration of the initial decision on the basis that relevant documents had been submitted as requested but were not considered. The GCMS notes do not reference the Applicant's October 2021 correspondence, and there is no other indication in the Certified Tribunal Record that the October 2021 correspondence was received. It is therefore unclear whether the Applicant's October 2021 correspondence was received and considered at the time of the initial decision.

[10] In considering the request to re-open the application or reconsider the initial decision, the Officer was required to determine whether to exercise their discretion to reconsider taking into

account all relevant circumstances (*Canada (Citizenship and Immigration) v Kurukkal* 2010 FCA 230 at para 5).

[11] It is not evident that the Officer took into account all relevant circumstances in exercising their discretion. The Officer does not grapple with or even acknowledge the Applicant's primary submission in support of the request to re-open.

[12] It is not enough for an officer asked to reconsider a prior decision on the basis that relevant information was not considered to simply rely on the fact that the initial application was considered on "its substantive merits." Instead, the officer's reasons - which need not be lengthy - should grapple with and address the core issue or issues raised by an applicant seeking reconsideration. This not only reflects the principle of responsive justification (*Vavilov* at paras 127, 128 and 133; *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 at paragraph 76,) but also is necessary to allow a court on judicial review to meaningfully consider the decision.

[13] The Officer's decision is unreasonable. I need not address the issue of fairness.

III. Conclusion

[14] The Application is granted. The parties have not identified a question of general importance and none arises.

<u>JUDGMENT IN IMM-4601-22</u>

THIS COURT'S JUDGMENT is that:

1. The Application is granted.

2. The matter is returned for redetermination by a different decision-maker.

3. No question is certified.

"Patrick Gleeson"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-4601-22
STYLE OF CAUSE:	HYE YOUNG KONG v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
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APPEARANCES:

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