

Federal Court



Cour fédérale

Date: 20240903

Docket: IMM-2272-24

Citation: 2024 FC 1371

Ottawa, Ontario, September 3, 2024

PRESENT: The Honourable Mr. Justice Gleeson

BETWEEN:

ROMAL DEEP SINGH RUPAL

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The Applicant, a citizen of India, arrived in Canada in August 2022 as a student. Following the completion of his degree, he returned to India. On September 13, 2022, he submitted a Post-Graduate Work Permit [PGWP] application.

[2] In a decision dated January 29, 2024, an Officer with Immigration, Refugees and Citizenship Canada [IRCC] refused the application because the Applicant had not complied with a request to produce his passport for processing.

[3] The Applicant applies under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] for judicial review of the IRCC Officer's [the Officer] refusal decision.

[4] The Global Case Management System [GCMS] notes indicate that on October 25, 2023, the Officer reviewed the Applicant's PGWP application and submissions. It is noted that the "PGWP requirements are met" and that the application was approved. On that same date, an Original Passport Request [OPR] issued to the Applicant via the online portal requiring that he produce his passport for processing within thirty days. The Applicant reports, and the Respondent does not dispute, that the Applicant did not receive notice to review his online account.

[5] The Applicant did not view the OPR until January 11, 2024 when the Applicant's representative conducted a routine check of the Applicant's online profile. The 30-day period to provide the passport having expired, the Applicant immediately submitted a web form request for the issuance of a new OPR letter.

[6] On January 15, 2024, IRCC confirmed by email that the January 11 web form request had been added to the Applicant's file. That same day, the Applicant sent an email to the IRCC's

New Delhi Office repeating the request that a new OPR issue. On January 24, having not yet received a new OPR, the Applicant sent his passport to the IRCC New Delhi Office.

[7] On January 29, 2024, the Officer refused the PGWP application on the basis that the Applicant had failed to comply with the October 25, 2023 OPR. The GCMS notes do not refer to the Applicant's January 11 and January 15 requests that a new OPR issue, nor is reference made to the passport that the Applicant sent to the IRCC on January 24, 2024.

[8] The Applicant submits that the Officer's failure to address the Applicant's request that a new OPR issue – a request that IRCC acknowledges was received and added to the file prior to the decision having been made on January 29, 2024 – renders the decision unfair and unreasonable.

[9] The Officer's decision is to be reviewed on the standard of reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at para 10). Reasonableness review requires that a court consider both the decision made and the reasoning process; a decision maker's failure to grapple with key issues raised by a party may call into question whether the decision maker was alert and sensitive to that issue (*Vavilov* at paras 83 and 128).

[10] In the circumstances of this case, the Applicant's request that a new OPR issue was a key matter, the timeline provided for in the original OPR having expired. In advance of the refusal decision being made, the Respondent acknowledged receipt of the Applicant's request and

advised it had been added to the file. Despite this, the request that a new OPR issue is not reflected in the GCMS notes, nor is the request addressed in the refusal letter.

[11] In submissions, counsel for the Respondent argues that the Applicant failed to fulfill the duty to regularly verify his online portal account. It is argued that *Kaur v Canada (Citizenship and Immigration)*, 2022 FC 1690 does not assist the Applicant, because in *Kaur* the documents in issue were confirmed to be before the IRCC officer prior to a decision being made. In this instance, there is some debate as to whether or not the passport was at the Officer's disposal prior to reaching a decision.

[12] In *Kaur* the decision was held to be unreasonable because it was not clear whether the decision maker had considered documents that had been submitted and acknowledged received prior to the final decision being rendered (*Kaur* at para 24). The very circumstance the Applicant relies upon here.

[13] As in *Kaur* the issue is not whether the Officer might have been in a position to have reasonably refused the application on the basis of noncompliance with the OPR. Instead, the issue is the Officer's failure to acknowledge and grapple with the request that a new OPR be issued, submitted and received prior to the Officer's final decision. The failure to engage with and address that request, whether the actual passport was before the Officer or not, undermines the transparency, justification and intelligibility of the decision and renders it unreasonable (*Vavilov* at paras 15 and 95).

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

JUDGMENT IN IMM-2272-24

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-2272-24

STYLE OF CAUSE: ROMAL DEEP SINGH RUPAL v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: AUGUST 29, 2024

JUDGMENT AND REASONS: GLEESON J.

DATED: SEPTEMBER 3, 2024

APPEARANCES:

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