Federal Court Cour fédérale

Date: 20240916

Docket: IMM-10337-23

Citation: 2024 FC 1453

Toronto, Ontario, September 16, 2024

PRESENT: The Honourable Mr. Justice A. Grant

BETWEEN:

ANMOL SINGH GILL

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. OVERVIEW

[1] The Applicant wished to visit Canada to attend his sister's wedding. A Visa Officer refused his application for a Temporary Resident Visa [TRV], finding that he had failed to establish that he would leave Canada at the end of his stay.

[2] I will allow this application, as I have found that the decision denying the Applicant's TRV application was unreasonable. My brief reasons follow.

II. BACKGROUND

[3] The Applicant is a citizen of India. His sister, Sukhleen Kaur Gill, is a permanent resident of Canada. In May 2023, the Applicant applied for a TRV to attend his sister's wedding, which was scheduled for June 18, 2023. In support of his application, the Applicant provided various documents, including the following:

a) Bank statements from his bank account at Punjab National Bank, including a 6-month detailed transaction history, showing a balance of approximately $10,281 CAD.

b) Bank statements from his joint account with his father at the Punjab National Bank, including a 6-month detailed transaction history, showing a balance of approximately $7,703 CAD.

c) Bank statements from his sister, including a 4-month detailed transaction history, showing a balance of $66,997 CAD.

d) A Letter of Invitation from the Applicant's sister setting out, amongst other things, the Sikh wedding rituals that required the participation of her brother, her assurance that she would provide room and board for the Applicant during his stay, and her commitment to ensure that he would leave Canada within his authorized period of stay.

e) Submissions from counsel for the Applicant setting out various details, including a summary of the Applicant's financial situation (totalling $84,981 CAD in combined

assets) and his sister's willingness to postpone the wedding should the TRV application not be processed in time.

III. DECISION

[4] The Applicant did not receive a decision on his TRV application until after the planned date of his sister's wedding. However, on September 8, 2023, a Visa Officer rejected the TRV application. The Officer was not satisfied Mr. Gill would leave Canada at the end of his stay, based on the following factors:

- The purpose of the Applicant's visit to Canada was not consistent with a temporary stay given the details he provided in his application.
- The Applicant's assets and financial situation were insufficient to support the stated purpose of travel.

[5] In notes entered into the Global Case Management System [GCMS], which form a part of the reasons for decision, the Officer stated as follows, with respect to the purpose of the Applicant's visit:

> The purpose of the applicant's visit to Canada is not consistent with a temporary stay given the details provided in the application. PA coming to visit sister on PR. Relationship established between PA and host. 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.

[6] The Officer stated as follows with respect to the Applicant's finances:

> The applicant's assets and financial situation are insufficient to support the stated purpose of travel for themselves (and any accompanying family member(s), if applicable). Limited and unclear documentation concerning source of supporting funds. In the absence of satisfactory documentation showing the source of these funds, I am not satisfied the PA has sufficient funds for the intended proposed stay in Canada.

IV. ISSUES

[7] The following issues have been raised on this application:

1. Should the Court decline to consider this matter because it is moot?

2. Was the decision of the visa officer reasonable?

3. Was there a breach of procedural fairness?

[8] For the below reasons, I have concluded that this matter is not moot. I have also concluded that the decision rejecting the Applicant's application was unreasonable. As a result of this unreasonableness, I need not consider the fairness issue.

V. STANDARD OF REVIEW

[9] It is not a matter of dispute between the parties that the Court's review of the substance of the Officer's reasons is to take place on the reasonableness standard, per *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 23 [*Vavilov*].

VI. ANALYSIS

A. *Mootness*

[10] As a preliminary matter, the Respondent argues that this matter is moot because the wedding date of the Applicant's sister has passed. For a number of reasons, I disagree.

[11] The test for determining mootness was established in *Borowski v. Canada (Attorney General)*, 1989 CanLII 123 (SCC), [1989] 1 SCR 342 [*Borowski*]. In *Borowski*, the Supreme Court held that courts may decline to hear a matter when "the decision of the court will not have the effect of resolving some controversy which affects or may affect the rights of the parties." Nonetheless, a court may exercise its discretion to address a moot issue if the circumstances warrant. In *Borowski*, the Court identified a non-exhaustive set of factors to help inform the decision as to whether to hear a matter, notwithstanding its mootness. These factors are:

- The continued existence of an adversarial context,
- The concern for judicial economy,
- The court's law-making role.

[12] In this matter, I have concluded that there remains a live controversy to resolve, which may affect the rights of the Applicant. As such, the matter is not moot. Moreover, even if the issues arising on this application were moot, I would exercise my discretion to hear it. My reasons follow.

[13] First, in the submissions provided in support of his TRV application, the Applicant indicated that his presence at the wedding was crucial and, as such, the wedding could be postponed if he was not granted a visa in time. While the Applicant has not indicated whether the wedding has now taken place, I note that the onus of establishing mootness rests on the moving party: *Saskatchewan (Minister of Agriculture, Food & Rural Revitalization) v Canada (Attorney General)*, 2005 FC 1027 at para 15; *Morin v Canada*, 2001 FCT 1430 at para 30. As the Minister bore the onus of establishing that this matter is now moot, and as there is no information one way or the other as to whether the wedding has occurred, I have no evidentiary basis on which to find that the Minister has met his burden.

[14] Second, as I noted at the hearing into this matter, the result of the Officer's decision is that the Applicant has been refused a visa to come to Canada. Irrespective of the Applicant's desire to attend his sister's wedding, this decision could have downstream consequences for the Applicant, who would have to disclose this visa refusal in subsequent applications to visit Canada and, quite likely, many other countries.

[15] In oral submissions, the Respondent argued that this refusal is of no particular moment for the Applicant, as he had already been refused a visa. I respectfully disagree. An individual's visa history is highly relevant to their prospects of obtaining future visas – this being the case, I consider any visa refusal to have at least potential consequences in subsequent visa applications. Put differently, I believe there will often remain some live controversy between the parties in visa refusal cases, even where the intended purpose of the visa has expired.

[16] Finally, as noted above, even if this matter were moot, I would exercise my discretion to hear it for the following reasons.

[17] First, as I have explained above, there remains a clearly adversarial context to these proceedings: the Applicant argues that the decision was unreasonable, as it was made in disregard to the evidence before the Officer. The Respondent disagrees, arguing that the decision was reasonable.

[18] Second, I do not believe that any concerns related to judicial economy are particularly acute in this matter, and should not override the fact that the outcome of this application may have some practical effect for the Applicant. As the Supreme Court noted in *Borowski*: "[t]he concern for conserving judicial resources is partially answered in cases that have become moot if the court's decision will have some practical effect on the rights of the parties…"

[19] Third, I believe that a consideration of the court's judicial role strongly militates in favour of hearing this matter. My rationale for this can perhaps best be understood by thinking through the consequences of a decision *not* to hear the matter. If courts were to routinely decline to hear judicial review applications of TRV decisions whenever the purpose of the visit has expired, it would essentially insulate all such decisions from judicial scrutiny. I believe that would be anathema to the constitutional role of judicial review, which is to ensure that exercises of state power are subject to the rule of law: *Vavilov* at para 82.

[20] To be clear, I am not suggesting that there were unreasonable delays in this case. Nor am I suggesting that a finding of mootness in cases such as this would incentivise delays in visa processing. What I am suggesting, however, is that it would be improper for this Court to immunize such delays from judicial review when they occur.

[21] As my colleague Justice Battista recently noted in *Nshimyumuremyi v. Canada (Citizenship and Immigration)*, 2024 FC 1352 at para 41 [*Nshimyumermyi*], "reflexive or broad application of mootness in the public law context has the potential to shield public decision making from transparency and accountability." In *Nshimyumermyi*, Justice Battista addressed the concern over shielding public decision-making from review by adding a new discretionary consideration to the *Borowski* criteria. The new consideration is as follows: "the role of one of the parties (or their agents) in manufacturing the conditions of mootness."

[22] The concerns that led Justice Battista to coin a new discretionary criterion are similar to those that I have referred to above. While I find that I can incorporate my concerns into the third *Borowski* criterion, the point is essentially the same: it cannot be that the actions of one party (which may or may not be lawful), can unilaterally dictate the justiciability of their actions.

[23] For the above reasons, I dismiss the Respondent's contention that this matter ought to be dismissed on the basis of mootness. I turn now to consider the Officer's decision on the merits.

B. *Failure to Consider the Evidence*

[24] As noted above, in support of his application, the Applicant provided bank statements from his own bank account in India and a joint bank account with his father, with a combined balance of $18,037 CAD. The Applicant also provided bank statements from his sister (who undertook to cover his expenses in Canada), which showed a balance of $68,681.08 CAD. The balance of funds available therefore totalled $86,718 CAD. All of these statements were accompanied by detailed financial transactions for the four to six months prior to the application date.

[25] In light of this detailed documentation, I do not view the Officer's summary conclusion regarding the sufficiency of the Applicant's assets to be intelligible or justified. Notably absent from this finding was any explanation as to *why* the available funds would have been insufficient to fund a brief visit to Canada, or *how* the financial documentation failed to demonstrate the source of those funds. As counsel for the Applicant noted at the hearing into this matter, the Applicant provided precisely the documentation suggested in the Immigration, Refugees and Citizenship Canada [IRCC] instructions.

[26] The Officer was not obliged to blindly accept either the financial statements of the Applicant, or his sister's undertaking. But, given the detailed information that was provided, it was incumbent on the Officer to make at least some reference to this evidence. The Officer did not do so, but rather inserted into the GCMS notes a generic, and likely template, statement that "the applicant's assets and financial situation are insufficient to support the stated purpose of travel for themselves (and any accompanying family member(s), if applicable)."

[27] A reasonable decision would at the very least need to acknowledge the funds available to the Applicant before determining that these assets were insufficient to fund a short trip to Canada.

C. *Purpose of Trip*

[28] I also find the Officer's findings related to the purpose of the Applicant's trip to be unreasonable. The stated purpose of the Applicant's trip was to attend his sister's wedding. This purpose was supported by documentation confirming that the wedding had been planned for June 18, 2023. The Officer did not find that the Applicant had a different purpose for his trip, but simply concluded that the purpose was not consistent with a temporary stay given the details provided in the application.

[29] Once again, this finding lacks any real justification. If there were details in the application that called into question the purpose of the Applicant's trip, these ought to have been mentioned, even if briefly. If there were no other details, then the Officer should have explained why the Applicant's desire to attend his sister's wedding was not consistent with a temporary stay.

[30] As a result of the above, I find the decision lacks justification and is therefore unreasonable.

VII. CONCLUSION

[31] As I recently noted in *Kaur v. Canada (Citizenship and Immigration)*, 2024 FC 1407, the duty to provide reasons in the TRV context is not onerous. Reasons may be brief, and need not address all of the evidence provided in support of an application. Nevertheless, decisions must contain a rational chain of analysis and must satisfy the basic requirements of intelligibility, transparency, and justification.

[32] I have concluded that the decision in this matter does not meet these requirements, and I must therefore grant this application for judicial review. The parties did not propose a question for certification, and I agree that none arises.

JUDGMENT in IMM-9335-23

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is granted.

2. The decision under review is set aside and the matter is referred back for redetermination by a different decision-maker.

3. No question is certified for appeal.

"Angus G. Grant"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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