

Federal Court



Cour fédérale

Date: 20240917

Docket: IMM-9713-23

Citation: 2024 FC 1457

Ottawa, Ontario, September 17, 2024

PRESENT: The Honourable Mr. Justice Zinn

BETWEEN:

SARABJEET KAUR KALEKA

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Ms. Sarabjeet Kaur Kaleka, seeks judicial review of a decision dated July 28, 2023, in which an Immigration Officer refused her application for a temporary resident visa [TRV] to Canada as required by the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the *Act*].

[2] The central issues in this case are whether the Officer's refusal of the TRV application was procedurally fair and reasonable.

[3] For the following reasons, this application shall be dismissed.

II. Facts

[4] The Applicant is a citizen of India who applied for a TRV to Canada on or about June 29, 2023. She proposed to visit Canada from October 15, 2023 to February 15, 2024. Her stated purpose was to visit her brother-in-law and provide pre and post-natal assistance to his wife and her sister, Sandeep Kaur Kaleka.

[5] In support of her application, the Applicant provided the following documents from her Canadian hosts:

- An affidavit attesting to the invitation duly sworn by her brother-in-law and his wife, with certified copies of their Certificate of Canadian Citizenship and Permanent Resident Card;
- Bank balance certificates showing a household saving of \$82,105 as of June 26, 2023;
- Notices of Assessment showing a household income of \$93,355 CAD for the 2022 taxation year; and
- A Referral Letter from Sandeep Kaur Kaleka's physician stating that it would be beneficial for the Applicant to come to Canada to help with pre and post-natal care.

[6] The Applicant also submitted various financial documents:

- Bank balance certificates from her husband, showing a balance of approximately \$51,000 CAD;
- A Chartered Accountant's report detailing her liquid and immovable assets;
- Valuation reports of a plot of land owned by her; and
- Proof of her husband's employment.

[7] In her application, the Applicant stated that she had \$49,000 CAD for her stay in Canada and included her husband's affidavit stating that he would financially support the trip.

[8] The Applicant did not provide bank statements covering the past six months, which are documents included in the *New Delhi Visa Office Instructions* IMM5881E [*New Delhi Instructions*], a checklist for local visa officers and temporary resident applicants.

III. Decision Below

[9] On July 28, 2023, the Officer refused the Applicant's TRV application with a standard form refusal letter. The letter stated that the Applicant did not meet the requirements of the *Act* and the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [the *Regulations*].

[10] Specifically, the Officer was not satisfied that the Applicant would leave Canada at the end of her stay as required by paragraph 179(b) of the *Regulations*. The Officer cited two main reasons for this conclusion:

- The Applicant's assets and financial situation were deemed insufficient to support the stated purpose of travel.

- The purpose of the Applicant’s visit to Canada was not considered consistent with a temporary stay given the details provided in the application.

[11] In the Global Case Management System [GCMS] notes, the Officer elaborated on these reasons, emphasizing the lack of required bank account statements and the consequent inability to verify sufficient and stable funds. The Officer acknowledged reviewing financial statements from the Applicant and her husband, but explained that the absence of six months of bank statements from either the Canadian hosts or the Applicant prevented a proper determination of the source and consistency of funds. This deficiency directly contributed to the refusal.

IV. Issues

[12] The Applicant raises two issues on this application for judicial review: whether her right to procedural fairness was breached, and whether the Officer’s decision was reasonable.

V. Standard of Review

[13] For procedural fairness, the parties agree that the applicable standard of review is correctness. I find that a more accurate way to describe the standard is provided by Justice Pentney in *Kambasaya v Canada (Minister of Citizenship and Immigration)*, 2022 FC 31 at para 19:

Questions of procedural fairness require an approach resembling the correctness standard of review that inquires “whether the procedure was fair having regard to all of the circumstances” (*Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54 [*Canadian Pacific*]; *Heiltsuk Horizon Maritime Services Ltd v Atlantic Towing Limited*, 2021 FCA 26 at para 107). As noted in *Canadian Pacific* at paragraph 56, “the ultimate question remains whether the applicant knew the

case to meet and had a full and fair chance to respond”, and at paragraph 54, “[a] reviewing court... asks, with a sharp focus on the nature of the substantive rights involved and the consequences for an individual, whether a fair and just process was followed”.

[14] On assessing the merits of the Decision, I agree with the parties that the standard of review is reasonableness, as articulated by the Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*]. None of the exceptions based in legislative intent or the rule of law, as articulated by the Supreme Court in *Vavilov* and *Society of Composers, Authors and Music Publishers of Canada v Entertainment Software Association*, 2022 SCC 30, apply to displace the presumption of reasonableness as the standard of review.

[15] Reasonableness is a deferential, yet robust, standard of review: *Vavilov* at paras 12-13. The court must give considerable deference to the decision-maker, recognizing that this entity is empowered by Parliament and equipped with specialized knowledge and understanding of the “purposes and practical realities of the relevant administrative regime” and “consequences and the operational impact of the decision” that the reviewing court may not be attentive towards: *Vavilov* at para 93. Absent exceptional circumstances, reviewing courts must not interfere with the decision maker’s factual findings and cannot reweigh and reassess evidence considered by the decision-maker: *Vavilov* at para 125.

[16] For decisions on TRVs, the reasons need not be extensive for the decision to be reasonable: *Vavilov* at paras 91, 128; *Wardak v Canada (Citizenship and Immigration)*, 2020 FC 582 at para 71. This is in light of the “enormous pressures [visa officers] face to produce a large volume of decisions every day:” *Patel v Canada (Citizenship and Immigration)*, 2020 FC 672 at

para 10. Further, visa officers are afforded considerable deference, given the level of expertise they bring to these matters: *Vavilov* at para 93. The onus is on the applicant who seeks a work permit to satisfy a visa officer that they meet the requirements outlined in the *Regulations*.

VI. Legal Framework

[17] There is a legal presumption that a foreign national seeking to enter Canada is an immigrant, and the onus is on an applicant to rebut the presumption: *Obeng v. Canada (Citizenship and Immigration)*, 2008 FC 754 at para 20; *Chhetri v. Canada (Citizenship and Immigration)*, 2011 FC 872 at para 9; *Rahman v. Canada (Citizenship and Immigration)*, 2016 FC 793 at para 16.

[18] Paragraph 20(1)(b) of the *Act* imposes the following obligation on every foreign national seeking to enter or remain in Canada:

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,

...

(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.

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 :

[...]

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.

[Emphasis added]

[19] Subsection 179(b) of the *Regulations* requires visa officers assessing TRV applications be satisfied that foreign nationals will leave Canada at the end of the period authorized for their stay:

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;

[20] The *New Delhi Instructions* states “Failure to submit all required documentation may result in refusal or processing delays” [emphasis added]. As counsel for the Respondent conceded during oral submissions, there is nothing in the *New Delhi Instructions* pointing to any “required” documents for the application at issue. Rather, as regards financial documents, the *New Delhi Instructions* provides as follows:

All applicants should submit the following documents:

...

Visiting family or friends:

Proof of financial support

- Income Tax Returns for the past two years
- Copies of bank statements or bank book covering the past six (6) months.
- Any additional relevant documentation (employment letter, pay slips, proof of pension, business registration, investments, etc.)

....

[emphasis added]

VII. Analysis

[21] I find no reviewable errors in the Officer's reasons that invite this Court's intervention.

A. *There is no breach of procedural fairness*

[22] The Applicant submits that the Officer breached her right to procedural fairness by not providing her with an opportunity to address concerns over the source of funds. She argues that the Officer's focus on the absence of sufficient bank statements and the origin of funds reflects a credibility inquiry rather than an assessment of sufficiency, particularly given the comprehensive financial documents she had submitted. The Applicant relies on *Girn v. Canada (Citizenship and Immigration)*, 2015 FC 1222 [*Girn*], specifically paragraph 28, where the Court held that concerns about the origin of an applicant's funds can relate to credibility if detailed financial submissions have been provided.

[23] I agree that credibility concerns heighten the procedural fairness owed to an applicant and establish a duty to provide an opportunity to address the concerns: *Hassani v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1283 at para 24; *Talpur v. Canada (Citizenship and Immigration)*, 2012 FC 25 at para 21; however, I am not persuaded that the Officer's concerns in this case are about credibility.

[24] It is important to distinguish between finding evidence insufficient and deeming it not credible. Justice Gascon clearly articulated this distinction in *Ibabu v Canada (Minister of Citizenship and Immigration)*, 2015 FC 1068 at paragraph 35:

An adverse finding of credibility is different from a finding of insufficient evidence or an applicant's failure to meet his or her burden of proof. As stated by the Court in *Gao v. Canada (Minister of Citizenship and Immigration)*, 2014 FC 59, at para 32, and reaffirmed in *Herman v Canada (Minister of Citizenship and Immigration)*, 2010 FC 629 at para 17, "it cannot be assumed that in cases where an Officer finds that the evidence does not establish the applicant's claim, that the Officer has not believed the applicant". This was reiterated in a different way in *Ferguson v Canada (Minister of Citizenship and Immigration)*, 2008 FC 1067 at para 23, where Justice Zinn stated that while an applicant may meet the evidentiary burden because evidence of each essential fact has been presented, he may not meet the legal burden because the evidence presented does not prove the facts required on the balance of probabilities.

[emphasis added]

[25] In the case at hand, the various documents provided by the Applicant are snapshots of her financial situation. They do not provide the comprehensive view of her finances over time that is contained in bank statements or similar documents, which are financial documents that an applicant should provide. This case is thus distinguishable from *Girn*, where the financial documents provided by the applicant did include bank statements and other documents capable of establishing financial status and stability over time.

[26] Simply put, the Officer was not satisfied on the balance of probabilities that the Applicant had sufficient financial resources to support her stay in Canada, given the absence of bank statements. This deficiency pertains to the sufficiency of evidence, not credibility, and therefore the Officer was under no duty to inform the Applicant of these concerns, especially as the *New Delhi Instructions* alert applicants that bank statements are documents they should provide.

B. *The decision is reasonable*

[27] The Applicant challenges the reasonableness of the decision in two ways. First, she submits that the Officer's finding of insufficient funds was unreasonable because the Officer disregarded contradictory evidence. She argues that the Officer failed to properly consider and address the extensive documentation included in her application, focusing instead inappropriately on the absence of bank statements and the source of her funds.

[28] I disagree. A similar submission was recently rejected by Justice Ahmed. I agree with his rationale in *Koulaji v Canada (Citizenship and Immigration)*, 2024 FC 1044 at para 4:

I find that the decision is reasonable. The Principal Applicant did not provide copies of her bank transactions. The Officer was therefore entitled to find that there was a lack of objective evidence to establish the source of the Principal Applicant's funds (see *Roodsari v Canada (Citizenship and Immigration)*, 2023 FC 970 at para 33). The Applicants' arguments about other evidence establishing the source and availability of funds is simply an impermissible request for the Court to reweigh the evidence (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 125).

[29] The Applicant's second submission centres on the Officer's lack of explanation as to why the purpose of the visit was deemed inconsistent with a temporary stay. The Applicant contends that the GCMS notes merely state this conclusion without providing any reasoning, which demonstrates an absence of a rational chain of analysis. The Applicant relies on paragraph 27 of *Pirzada v. Canada (Citizenship and Immigration)*, 2023 FC 835 and paragraph 32 of *Chera v. Canada (Citizenship and Immigration)*, 2023 FC 733, which state that while extensive reasons

are not required in the context of visa applications per *Vavilov*, it is still unreasonable if visa officers fail to explain how a determination was made at all.

[30] I do not find that the Officer's conclusion regarding the Applicant's purpose of visit constitutes a new proposition requiring additional reasoning. I agree with the Respondent that this amounts to nothing more than a recognition that, given the facts before the Officer, the Applicant failed to rebut the presumption that she intended to immigrate to Canada and did not demonstrate that she would depart at the end of her authorized stay. A similar recognition was recently deemed reasonable by this Court: *Abdisoufi v. Canada (Citizenship and Immigration)*, 2024 FC 164 at paras 13-14.

VIII. Conclusion

[31] In light of the foregoing, I find that the Officer's decision was both procedurally fair and reasonable. The Officer's concerns about the Applicant's financial situation stemmed from a lack of documentation rather than credibility issues, and thus did not trigger a heightened duty of procedural fairness. The Officer properly emphasized the importance of bank statements, and the decision to refuse the application based on their absence falls within the range of acceptable outcomes.

[32] No question was proposed for certification.

JUDGMENT in IMM-9713-23

THIS COURT'S JUDGMENT is that this application is dismissed and no question is certified.

"Russel W. Zinn"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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