Federal Court  Cour fédérale

Date: 20241051

Docket: IMM-12438-23

Citation: 2024 FC 1628

Calgary, Alberta, October 15, 2024

PRESENT: Justice Andrew D. Little

BETWEEN:

JOSHUA OLAIDE BABALOLA

Applicant

and

IMMIGRATION, REFUGEES AND CITIZENSHIP CANADA

Respondent

JUDGMENT AND REASONS

[1] The applicant asks the Court to set aside a decision made by letter dated September 15, 2023, finding that he was not eligible to sponsor his mother for permanent residence because he did not meet the minimum necessary income requirement in subparagraph 133(1)(*j*)(i) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 (the "*IRPR*").

[2] The applicant submitted that the decision was unreasonable under the principles in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, [2019] 4 SCR 653.

[3] For the following reasons, the application will be granted.

[4] In 2020, the applicant filed an expression of interest to sponsor his mother as a permanent resident of Canada under the Parents and Grandparents Sponsorship program.

[5] In October 2022, the applicant was invited to apply to the program. In December 2022, he did so. At that time, the applicant's spouse did not sign the application as a co-sponsor.

[6] By letter dated July 14, 2023, IRCC advised the applicant that based on the requirements for a family of six people, he had "not demonstrated that he [met] the required income to sponsor for one or more of the three consecutive taxation years preceding the date of filing of the sponsorship application". In addition, IRCC advised that the sponsorship application appeared to include four family members who might not be eligible dependents under the Parents and Grandparents Sponsorship program. The letter further advised that if IRCC did not receive a response within 30 days, "we will proceed with the financial assessment of the sponsor's application including all family members you have listed."

[7] The Global Case Management System ("GCMS") contained the following entry on July 14, 2023: "Sponsor Eligibility: In progress. DEP clarification letter sent this date […]."

[8] On July 25, 2023, the applicant responded by email. The applicant's cover email advised that he was providing information to "bridge the required income to sponsor gap", that he and his spouse were both sponsors and that they were providing updated financial information that showed that their combined incomes met or exceeded the minimum necessary income ("MNI") and they could therefore fulfill their sponsorship obligations. The applicant completed the relevant boxes provided in the July 14 letter and confirmed that the four individuals were not dependents because they were 22 years of age or older. He also filed a new Financial Evaluation for Parents and Grandparents Sponsorship (the "Financial Evaluation form") to include his spouse as a co-sponsor. On the Financial Evaluation form the box that the applicant's spouse was "co-signing the undertaking" was ticked. His spouse signed the form and advised of her income from employment.

[9] By letter dated September 15, 2023, IRCC advised the applicant that he was not an eligible sponsor because he did not meet the MNI requirement in subparagraph 133(1)(*j*)(i) of the *IRPR*.

[10] The GCMS contained the following entry on September 15, 2023:

> Sponsor Eligibility Decision: Failed. FC4 Sponsorship category: Parent SPR opted to discontinue if found ineligible Non accompanying dep. Children removed from the application after getting the clarification from the client refer edocs# 637933326 Pursuant to regulation 133 (1)(j)(i), the SPR/Co-signer (if applicable) does not meet the minimum necessary income requirement to fulfill the undertaking. SPR is therefore ineligible to sponsor. MNI Test 1 not Met. MNI requirements: -Year: 2019; Income Source: Option C Line 150; Income Amount: $76953; Income Required: $78296;MNI available for 5 person(s)MNI necessary for 6 person(s); included parties: SPR, SPR's Spouse, 3 SPR's DEP children, PA; Appears Met: No -Year: 2020; Income

> Source: Option C Line 150; Income Amount: $86179; Income Required: $61613;LICO available for 9 person(s)LICO necessary for 6 person(s); included parties: SPR, SPR's Spouse, 3 SPR's DEP children, PA; Appears Met: Yes -Year: 2021; Income Source: Option C Line 150; Income Amount: $100508; Income Required: $62814;LICO available for 11 person(s)LICO necessary for 6 person(s); included parties: SPR, SPR's Spouse, 3 SPR's DEP children, PA; Appears Met: Yes Sponsor 2019 Option C Line 119 indicates Sponsor was in receipt of EI benefits EI Benefits not deducted as they appear to be special benefits. Dep was born 2019/08/19. Sponsor 2020 Option C Line 119 indicates Sponsor was in receipt of EI benefits. As per Temporary Public Policy any benefits received under line 119 during 2020 are not deducted from income total for year. SPR is married since 2010, thus SPR's spouse added to MNI. SPR's DEP children born in 2011,2016,2019 PA is widowed since 2017 GCMS Check: No relevant/material information found. Authorized representative status: SPR as Unpaid Rep. Application locked in on 2022/12/16. Application received on 2022/12/16. -Refund initiated in the amount of $1005 (APRF and RPRF). -SPR opted to discontinue if found ineligible Case status updated in GCMS.

[11] It is well established in the jurisprudence that GCMS notes form part of the officer's reasons for the decision: see e.g., *Lotfikazemi v. Canada (Citizenship and Immigration)*, 2024 FC 691, at para 11; *Mohammadzadeh v. Canada (Citizenship and Immigration),* 2022 FC 75, at para 5.

[12] Although the officer's reasons for the impugned decision included this GCMS entry, the applicant did not make any specific submissions about the contents of officer's notes. The applicant's position was that based on the refusal letter, the officer properly considered the information the applicant provided about eligible dependants but ignored the financial information about his spouse's income which would have enabled the applicant to meet the MNI. In other words, if the officer had included the applicant's spouse as a co-sponsor, their combined

incomes would have met the MNI in 2019 and they could presumably have sponsored the applicant's mother as a permanent resident (assuming there were no other impediments).

[13] The applicant relied on this Court's decision in *Dokaj v. Canada (Citizenship and Immigration)*, 2009 FC 847, as follows:

> [25] If the Applicant's common-law spouse is to be considered in the calculation of the size of the Applicant's family, her income should also be included in the sponsorship undertaking as per subsection 132(5) and paragraph 134(1)(c) of the Regulations. The statutory provisions do not provide for the exclusion of the spouse's income while including her as a dependent member of the Applicant's family.

[14] The respondent did not question that the applicant and his spouse together could have sufficient financial means to meet the MNI for 2019. Instead, the respondent's position was that the officer's decision was reasonable because the new Financial Evaluation form filed on July 25, 2023, was a "late and misguided effort" by the applicant to add his spouse as a co-sponsor. The respondent emphasized that there was information provided to the applicant earlier in the application process about co-sponsorship and that he chose not to include his spouse as a co-signor at the outset. The respondent further submitted that even if the spouse's income could be included on the new Financial Evaluation, the spouse had not signed the necessary financial undertaking.

[15] The respondent argued that publicly available IRCC publications advised applicants that a co-signor cannot be added during process unless there is a "change in circumstances" that requires a financial reassessment, which did not arise in this case. The respondent's written

submissions contained references to and excerpts from IRCC publications and links to them (which, unfortunately, did not work).

[16] The standard of review of the refusal decision is reasonableness, as described in *Vavilov.* Reasonableness review is a deferential and disciplined evaluation of whether an administrative decision is transparent, intelligible and justified: *Vavilov,* at paras 12-13 and 15. The starting point is the reasons provided by the decision maker, which are to be read holistically and contextually, and in conjunction with the record that was before the decision maker. 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. The legal and factual factors that may constrain an administrative decision maker include (as are material to this case): the governing statutory scheme (here, the *IRPR*); relevant court decisions; the evidence before the decision maker; the submissions of the parties; and the practices of the administrative body: *Vavilov,* at para 106.

[17] In this case, the officer's letter only referred to the MNI and subparagraph 133(1)(*j*)(i) of the *IRPR* as the basis for the refusal. Neither the refusal letter nor the officer's GCMS notes expressly mentioned the spouse's income or analyzed whether the applicant could add his applicant's spouse as a co-sponsor or co-signer. This addition was apparent from the applicant's position in his cover email and in the attached Financial Evaluation form. It was obviously important to the applicant's position: *Vavilov,* at paras 127-128.

[18] From my review, the GCMS notes confirm that 2019 was the only taxation year in which the applicant's income alone did not meet the MNI. There is no dispute that using only his income, the applicant was less then $2,000 short of the prescribed minimum. The officer did not include the applicant's spouse's income in the calculation for 2019, which – assuming her income as stated in the Financial Evaluation form was found to be accurate – would have bridged the $2,000 gap. In the circumstances, the officer's conclusion not to include the spouse's income, or to permit the spouse as a co-signor (whichever occurred), was tantamount to a decision to refuse the application.

[19] The officer was entirely silent in the letter and the GCMS notes on why the spouse's income was not included in the MNI assessment or why the spouse could not be a co-sponsor at that stage of the process. In the absence of an express justification, I am not persuaded by the respondent's position related to possible implicit justifications in the circumstances of this case.

[20] First, the respondent did not identify any specific provision in the *IRPR* that the officer may have relied upon to preclude the applicant from updating his application to add his spouse as a co-sponsor at the point when he attempted to do so in his application process. (I will address the effect of the chapeau language in subsection 133(1) below.)

[21] Second, the officer might have relied on administrative practices or policies when making the impugned decision, which in turn could provide an implicit justification as contemplated in *Vavilov,* at para 94. However, I find that the respondent is unable to rely on this argument in this case because the policies applicable at the relevant times were not available in the record before

the Court. The respondent's written submissions included excerpts from the policies and links to them. However, none of the links worked. Unfortunately, the respondent did not file an affidavit attaching the relevant publications as they stood when the applicant filed his application in December 2022 or at the time of the impugned decision in September 2023. Nor was there an affidavit explaining other aspects of the administrative practices or context for the impugned decision: see *Vavilov,* at para 94. It is not an attractive option for the Court to search the internet for the correct policies applicable in 2022 and 2023: see generally, *Canada (Attorney General) v. Kattenburg,* 2020 FCA 164, at para 32.

[22] Third, even when looking at the excerpts quoted in the respondent's written submissions, the respondent's submissions do not enable me to discern an implicit justification for the officer's decision. Put another way, I am not confident, based on the record and the excerpt that the officer was of necessity constrained not to permit the applicant to add his spouse as he attempted to do. The key excerpt from the policy (as quoted by the respondent) included the following:

> Adding a co-signer during processing
>
> A co-signer can be added between the day on which the sponsorship application was filed and the day on which a decision is made with respect to the application, if required, due to a change in circumstances related to family composition and the need to meet the increased MNI for the increased family size.
>
> When assessing the sponsor's income, an officer will consider both the increase in the MNI requirements resulting from the addition of a co-signer to the family size and the co-signer's income, calculated in accordance with R134(a) to (c) against the LICO in effect at that time. This is in line with the Federal Court ruling in *Dokaj vs. Canada*, that if an officer considers an applicant's spouse or partner in the calculation of the size of the applicant's family, that person's income should also be included in the financial assessment.

> [Underlining and bolding added.]

[23] It is interesting to note both the income inclusion considerations and the publication's description of *Dokaj*. In this case, the officer included the applicant's spouse to determine the calculation of a six-person family, but did not include her income in the MNI calculation.

[24] The same excerpt goes on to state:

> **Except in instances where there is a change in family circumstances, a co-signer may not be added to the sponsorship application if the sponsorship was <u>already assessed</u> and at the time of that assessment, the sponsor failed to meet the sponsorship requirements.**
>
> [Original bolding; underlining added.]

[25] Reading this latter passage, it only appears that the applicant could not add a co-signer (co-sponsor) if the sponsorship was "already assessed" and at the time of that assessment the sponsor failed to meet the sponsorship requirements. In the present case, the GCMS notes indicate that the officer's assessment of the applicant's eligibility was "[i]n progress" as of July 14, 2023 – it was not complete. The July 14 letter to the applicant advised him that if he did not respond within 30 days, "we <u>will proceed</u> with the financial assessment of the sponsor's application including all family members you have listed" [emphasis added] – in other words, that the financial assessment had not already been completed. On its face, then, I am not persuaded by the excerpt that the policy provides an implicit justification for the officer's decision in the applicant's specific circumstances. A reasonable decision had to consider the specific circumstances arising in this case, which did not occur.

[26] Fourth, I cannot accept the respondent's argument that the absence of a signed undertaking from the spouse explains the officer's decision. The officer did not refer to such an omission as a reason for not including the spouse's income in the MNI calculations; the refusal letter only referred to the MNI and subparagraph 133(1)(*j*)(i). I also see no basis in the record to infer that it was the reason. Neither a party nor the Court may backfill or supplement the officer's reasons in the letter and the GCMS notes: *Vavilov,* at para 96. It is also unclear to me why the Financial Evaluation form, as updated, does not meet the respondent's argument in substance. The Financial Evaluation form advised that the spouse was "co-signing the undertaking" and the spouse signed that form. If there had been a concern with the absence of a correctly signed undertaking form – an example of which was also not filed in the record in this Court – it would have been noted in the GCMS notes and could have been easily rectified between the officer, the applicant and his spouse. As this matter will be remitted for redetermination, the applicant's spouse can presumably now file an undertaking document.

[27] Lastly, I am not able to agree with the respondent's submission that the chapeau language of *IRPR* subsection 133(1) provided the justification for the officer's decision on the basis that it precluded the applicant's submission of an updated Financial Evaluation form in July 2023 in response to the letter he received. The provision provided that a sponsorship application shall only be approved by an officer "if, on the day on which the application was filed and from that day until the day a decision is made with respect to the application, there is evidence that the sponsor" has the attributes listed in paragraphs (*a*) to (*k*). The respondent did not identify any of paragraphs (*a*) to (*k*) that proscribed the addition of a co-sponsor entirely or that permitted an addition only due to a change in circumstances such as family composition. I note that if the

effect of the chapeau language were, as a matter of law, to preclude the applicant from filing an update to add his spouse as a co-signor, it would appear also to affect the respondent's recognized exception for a change in circumstances related to family composition.

[28] For these reasons, I conclude that the officer's decision was not justified in relation to the factual and other constraints bearing on it: *Vavilov*, at paras 105-106, 125-126 and 127-128. It must therefore be set aside.

JUDGMENT IN IMM-12438-23

THIS COURT'S JUDGMENT is that:

1. The application is granted. The officer's decision dated September 15, 2023, is set aside. The application is remitted for redetermination by another officer, having regard to the Court's Reasons.

2. No question is certified under paragraph 74(*d*) of the *Immigration and Refugee Protection Act.*

"Andrew D. Little"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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APPEARANCES:

I. Duna	FOR THE APPLICANT
M. Green	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Usha Immigration Calgary, Alberta	FOR THE APPLICANT
Attorney General of Canada Calgary, Alberta	FOR THE RESPONDENT