Federal Court Cour fédérale

Date: 20241008

Docket: IMM-9802-23

Citation: 2024 FC 1586

Ottawa, Ontario, October 8, 2024

PRESENT: The Honourable Mr. Justice Roy

BETWEEN:

AHMED NAJEEB JILANI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The applicant, Mr. Ahmed Najeeb Jilani, challenges the decision to deny him and his family the visitor's visa he sought. The judicial review application is made pursuant to s 72 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*].

I. Facts

[2] The applicant is a citizen of Pakistan who is a permanent resident of Saudi Arabia. He is married and they are the parents of a daughter and a son. The children were born in 2017 and 2016 respectively. The applicant is employed in Saudi Arabia as a country manager with Travel Designer Group. That employment had started barely a year before, in May 2022, when the applicant and his family applied for visitor visas in June 2023 for an opportunity to come to Canada to visit the applicant's parents and his brother and his family.

[3] The applicant's prior employment before the employment at the time he sought visitor visas for himself and his family was for a period of twelve months.

[4] The application for visitor visas for the applicant and his family was made on June 12, 2023. The applicant stated that he had $8,000 available for the trip which was to take place in the summer of 2023. The trip was for a duration of two weeks and was to include the four family members. It is noteworthy, however, that the applicant's brother had professed to support the applicant and his family during their stay in Canada. He claimed substantial income and significant assets.

[5] The visas for the applicant's family and himself were refused less than one month later. From the evidence offered by the principal applicant (affidavit of September 25, 2023), there is no doubt that the visa applications for his wife and children were refused at basically the same time (12:53 pm and 12:54 pm on July 4, 2023) as his own application. Indeed they were treated

together as the applicant and family were to travel together. As the applicant says himself, the reasons for the refusals were the same. As we shall see, the fact that they were to travel together was one of the reasons given by the visa officer for not being satisfied the applicant and family would leave Canada at the expiration of their visas. The judicial review application followed shortly thereafter in spite of the fact that the window for the visit was rapidly closing. As the Court pointed out at the hearing of the application, it is unclear why the matter is pursued one year after the family visit was to take place.

II. The decision under review

[6] As is usual in these matters, the reason for the decision to refuse to issue visitor visas are to be supplemented in the notes included in the Global Case Management System [GCMS] kept by the Department of Citizenship and Immigration. The notes form part of the Reasons (*Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817, para 44), together with the decision letter of July 4, 2023.

[7] The decision maker found that the applicant did not meet the requirements of *IRPA* in that he was not satisfied the applicant would leave Canada once the visitor visa expired. The reasons for not being satisfied are:

- fundamentally, the visitor visas were denied because the visa officer was not satisfied the various family members will leave Canada at the end of their stay. The letter refers specifically to the applicant having to establish that he will leave Canada;
- the applicant does not have family ties outside Canada;

- the ties with his country of nationality are weak;
- this is a family of four, from Pakistan, travelling to Canada for a two-week family visit. The decision maker states that the purpose of the visit is not consistent with a temporary stay in view of the details provided in the application;
- the GCMS notes find that there are limited funds available for the visit;
- the applicant has been in his current employment since May 2022. That employment and status in Saudi Arabia are precarious (the GCMS notes speak in terms of "not secured") in view of "Saudization". There are limited employment possibilities in the country of residence (Saudi Arabia);
- the fact that the family is travelling together weakens the possibility of ties abroad, in Saudi Arabia or Pakistan.

These factors considered together make the decision maker conclude that the applicant has not shown he will leave Canada at the end of the stay.

III. Arguments and analysis

[8] The applicant makes two arguments. First, the decision is unreasonable. Second, the reasons given for the decision are insufficient and inadequate.

[9] I begin with the adequacy of reasons. In my view, this contention is without merit. The combination of the letter of July 4, 2023, and the GCMS notes, provides the reader with the reasons for the decision made.

[10] The Supreme Court of Canada in its seminal judgment in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65, [2019] 4 SCR 653 [*Vavilov*], insisted that not only the outcome of an administrative decision be reasonable, but also that it be justified. The applicant quotes from two paragraphs taken out of *Vavilov*, para 95 and the end of paragraph 98. In fact, much more is said by the Supreme Court.

[11] It starts with the acknowledgement that the reviewing court should not expect perfection. Thus, we should not expect that every argument will be addressed (para 91). In fact, ""Administrative justice" will not always look like "judicial justice", and reviewing courts must remain acutely aware of that fact" (para 92). Indeed, institutional expertise and experience count.

[12] The reasons given for a decision "are the means by which the decision maker communicates the rationale for its decision". What does a reviewing court do? It "must begin its inquiry into the reasonableness of a decision by examining the reasons provided with "respectful attention" and seeking to understand the reasoning process followed by the decision maker to arrive at its conclusion" (para 84). In effect, the reasons given are the basis for the assessment that must be made of an administrative decision. They are read in light of the record with a view to understanding the reasoning leading to the decision made.

[13] The Supreme Court agreed with the often referred to analogy made by Rennie J in the case *Komolafe v Canada (Citizenship and Immigration)*, 2013 FC 431, about the "dots on the page". I reproduce paragraph 97 of *Vavilov* to supply the full context:

> [97] Indeed, *Newfoundland Nurses* is far from holding that a decision maker's grounds or rationale for a decision is irrelevant. It

> instead tells us that close attention must be paid to a decision maker's written reasons and that they must be read holistically and contextually, for the very purpose of understanding the basis on which a decision was made. We agree with the observations of Rennie J. in *Komolafe v. Canada (Minister of Citizenship and Immigration)*, 2013 FC 431, 16 Imm. L.R. (4th) 267, at para. 11:
>
> > *Newfoundland Nurses* is not an open invitation to the Court to provide reasons that were not given, nor is it licence to guess what findings might have been made or to speculate as to what the tribunal might have been thinking. This is particularly so where the reasons are silent on a critical issue. It is ironic that *Newfoundland Nurses*, a case which at its core is about deference and standard of review, is urged as authority for the supervisory court to do the task that the decision maker did not do, to supply the reasons that might have been given and make findings of fact that were not made. This is to turn the jurisprudence on its head. *Newfoundland Nurses* allows reviewing courts to connect the dots on the page where the lines, and the direction they are headed, may be readily drawn.

[14] No one will argue that the administrative decision made in this case was in the nature of Shakespearian sonnets. But the dots on the page were clear and they give in my view the clear justification for why the decision maker refused to issue the visas. The applicant, a Pakistani national without ties to his country of nationality, wishes to spend a not insignificant amount of money to come to Canada and visit his parents and his brother's family who reside in this country. The record shows that the applicant's brother in Canada is a Canadian citizen. He has the constitutional right to come and go, "the right to enter, remain in and leave Canada" (s 6 of the *Canadian Charter of Rights and Freedoms*). At the hearing, the Court asked what was the status of the parents the applicant and his family wished to come to visit. On this record, it is not known why the applicant and his family wanted to reunite with these family members. What is clear, however, is that the applicant is to come to Canada with his whole family, therefore

weakening his ties with his country of residence, Saudi Arabia. The applicant has been in his current job for barely one year, after having already left his previous employment after barely a year. The decision maker relies on their institutional expertise to note the existence of Saudization in Saudi Arabia that makes employment and status less than secured. These are the dots on the page that make the decision maker conclude that he is not satisfied the applicant has shown he and his family will leave Canada after the visa expires. It is not difficult to connect the dots and understand the justification given. There is no need for the Court to seek to fashion reasons "in order to buttress the administrative decision" (para 96). The dots on the page constitute the justification which was offered in support of the decision.

[15] Whether that constitutes a reasonable decision is a different issue, which I now address.

[16] The starting point in the analysis concerning the refusal to grant a visa to foreigners must be the passage often quoted from *Canada (Minister of Employment and Immigration) v Chiarelli*, [1992] 1 SCR 711. I reproduce the passage from pages 733 and 734:

> Thus in determining the scope of principles of fundamental justice as they apply to this case, the Court must look to the principles and policies underlying immigration law. The most fundamental principle of immigration law is that non-citizens do not have an unqualified right to enter or remain in the country. At common law an alien has no right to enter or remain in the country: *R. v. Governor of Pentonville Prison*, [1973] 2 All E.R. 741; *Prata v. Minister of Manpower and Immigration*, [1976] 1 S.C.R. 376.
>
> La Forest J. recently reiterated this principle in *Kindler v. Canada (Minister of Justice)*, *supra*, at p. 834:
>
> > The Government has the right and duty to keep out and to expel aliens from this country if it considers it advisable to do so. This right, of course, exists independently of extradition. If an alien known to

> have a serious criminal record attempted to enter into Canada, he could be refused admission. And by the same token, he could be deported once he entered Canada.
>
> …
>
> If it were otherwise, Canada could become a haven for criminals and others whom we legitimately do not wish to have among us.
>
> The distinction between citizens and non-citizens is recognized in the *Charter*. While permanent residents are given the right to move to, take up residence in, and pursue the gaining of a livelihood in any province in s. 6(2), only citizens are accorded the right "to enter, remain in and leave Canada" in s. 6(1).
>
> Thus Parliament has the right to adopt an immigration policy and to enact legislation prescribing the conditions under which non-citizens will be permitted to enter and remain in Canada. …
>
> [my emphasis]

That expression of that most fundamental principle of immigration law has resisted the test of time. It was repeated verbatim in *Medovarski v Canada (Minister of Citizenship and Immigration)*, 2005 SCC 51, [2005] 2 SCR 539, at paragraph 46. That paragraph, in turn, has been cited more than 120 times since then.

[17] The most fundamental principle was of course included in *IRPA*. Thus, ss 11(1) requires that before entering Canada, the foreign national must obtain the appropriate visa or other document required by the regulations. The Canadian citizen and every person registered as an Indian under the *Indian Act*, RSC 1985, c I-5, has a right to enter and remain in the country (ss 19(1) of *IRPA*). The permanent resident is allowed to enter the country if an officer is satisfied that they have that status following an examination (ss 19(2) of *IRPA*). Not so for a temporary resident. Section 20 creates the burden to a foreign national who wants to become a

temporary resident to establish that they "will leave Canada by the end of the period authorized for their stay".

[18] It is not only that the burden of proof is on the foreign national. It is also that the burden is to "establish" (in French, the foreign national "est tenu de prouver", not an insignificant burden as it implies that it be done on a balance of probabilities) that the foreigner will leave Canada.

[19] Faced with that burden, an applicant will have to establish before the reviewing court that the officer who is not satisfied that the foreigner will leave has made an unreasonable decision. It must be shown that the foreigner did put before the decision maker such a strong case that it was unreasonable to conclude that the applicant will not leave Canada at the expiration of the visa.

[20] The duty to show that a decision such as this is unreasonable is itself significant. As my colleague, Mr. Justice Brown, did write in *Chaudhary v Canada (Citizenship and Immigration)*, 2024 FC 102 [*Chaudhary*], another case where a discretionary authorization (work permit) was denied to a foreign national working in Saudi Arabia, a more than adequate summary of the burden supported by an applicant where reasonableness is the standard of review may be found in the companion decision to *Vavilov*: *Canada Post Corp v Canadian Union of Postal Workers*, 2019 SCC 67, [2019] 4 SCR 900. I reproduce paragraphs 31 to 33 with the emphasis provided by Brown J, with whom I agree:

> [31] A reasonable decision is "one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker" (*Vavilov*, at para. 85). Accordingly, when conducting

> reasonableness review "[a] reviewing court must begin its inquiry into the reasonableness of a decision by examining the reasons provided with 'respectful attention' and seeking to understand the reasoning process followed by the decision maker to arrive at [the] conclusion" (*Vavilov*, at para. 84, quoting *Dunsmuir*, at para. 48). The reasons should be read holistically and contextually in order to understand "the basis on which a decision was made" (*Vavilov*, at para. 97, citing *Newfoundland Nurses*).
>
> [32] A reviewing court should consider whether the decision as a whole is reasonable: "what is reasonable in a given situation will always depend on the constraints imposed by the legal and factual context of the particular decision under review" (*Vavilov*, at para. 90). The reviewing court must ask "whether the decision bears the hallmarks of reasonableness – justification, transparency and intelligibility – and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision" (*Vavilov*, at para. 99, citing *Dunsmuir*, at paras. 47 and 74, and *Catalyst Paper Corp. v. North Cowichan (District)*, 2012 SCC 2, [2012] 1 S.C.R. 5, at para. 13).
>
> [33] Under reasonableness review, "[t]he burden is on the party challenging the decision to show that it is unreasonable" (*Vavilov*, at para. 100). The challenging party must satisfy the court "that any shortcomings or flaws relied on ... are sufficiently central or significant to render the decision unreasonable" (*Vavilov*, at para. 100).
>
> [emphasis in original]

[21] It is also worth mentioning that the reviewing court does not reweigh the evidence before the administrative decision maker (*Vavilov*, para 125). Indeed the reviewing court is not a court of first view. The reviewing process has as a starting point "the principle of judicial restraint", adopting "an appropriate posture of respect" (*Vavilov*, para 13-14).

[22] Thus, the reviewing court takes the decision as it is, without supplementing it (*Sun v Canada (Attorney General)*, 2024 FCA 152). It considers the decision as a whole and in context, by examining the reasons to understand the basis on which the decision was made to ascertain if

it is internally coherent and there exists a rational chain of analysis to justify what was found by the decision maker. Whether the reviewing court would have reached the same decision as the decision maker is irrelevant.

[23] Since the burden rests on the applicant's shoulders, I turn to the arguments offered to claim that the refusal to issue the visa was unreasonable in the circumstances of this case.

[24] I note immediately that the assertion made by the applicant that his family members, "due to the passage of time", are no longer pursuing the judicial review application any more carries no weight. What is before the Court is the administrative decision which had to consider whether a family of four would spend a significant amount of money to travel to Canada for two weeks in the summer of 2023, in the context of the principal applicant having recently started new employment in Saudi Arabia. As the decision maker states in the GCMS notes, the status of employment in Saudi Arabia is not secure in view of Saudization. The fact that the rest of the family may not seek to accompany the principal applicant at this time is of no moment on judicial review.

[25] In effect, the applicant's complaint is with the assessment of the evidence offered in support of the visa applications for himself and his family. Hence, he argues that the decision maker did not sufficiently consider his employment history in Saudi Arabia since 2004 (with a period of time in Pakistan, from 2017 to 2020). The relevance of the work history is left unexplained on this record. The same is true for the offer made by the applicant's brother to look after expenses while in Canada. The issue is whether or not it is reasonable, in the circumstances

of this case, for the immigration officer not to be satisfied the applicant had established he and his family would go back to Saudi Arabia or Pakistan at the end of their two weeks in Canada. Disagreeing with the decision maker is one thing; showing that the decision is unreasonable is another.

[26] In matters of this nature, the decision maker considers whether an applicant has a sufficient "pull" to return to the departed country. It is quite evident from the reasons given in this case that that constituted fundamentally the decision maker's concern. The "pull", in the view of the decision maker, is towards Canada as it is noted prominently that the applicant does not have significant family ties outside Canada; that he is travelling with his family; that he is in a new job in Saudi Arabia; that there are limited funds to undertake the trip; that the employment is not secure in view of the Saudization (referred to as being "a state effort to give Saudis better access to jobs currently held by foreigners", *Chaudhary*, para 17); that there are limited employment possibilities in the country of residence; that there are weak ties with the country of nationality.

[27] Here, the applicant disagrees with the decision maker that he is not well established in Saudi Arabia. But if employment is fragile, the past establishment counts for little going forward. The applicant suggests that he is "punished" because he lives in Saudi Arabia instead of Pakistan. With respect, this has nothing to do with being "punished" in any way. It is rather about the exercise of the state to provide access to the country as is its prerogative.

[28] Visa officers have not only expertise in these matters, but they have the special knowledge that comes with being posted in the region (when that applies). That was the case here. I share the view of Brown J, in *Chaudhary*, where he states that there is no reason to doubt that the local staff in Saudi Arabia are trained and have professional knowledge of Saudization (para 40). A measure of deference is owed in view of the professional knowledge of trained visa officers, especially when posted in the country. Relying among others on *Khaleel v Canada (Citizenship and Immigration)*, 2022 FC 1385, our Court in *Chaudhary* states that "[t]he Court has determined visa officers are entitled to rely on their personal, and more accurately, their professional knowledge of information on local conditions and factors in assessing evidence on this point". The same point had been made in *Haghshenas v Canada (Citizenship and Immigration)*, 2023 FC 464, at para 31:

> [31] I also agree visa officers may use their general experience and knowledge of local conditions to draw inferences and reach conclusions on the basis of the information and documents provided by the Applicant. Their Decisions are entitled to respectful deference given their experience among other things.

[29] It bears repeating that the visa officer does not make the determination that the applicant will not return to his country of nationality or his country of residence. He simply determines that the applicant has not established before the officer, on the basis of sufficient information, that he will return to his country of residence or nationality, or, more generally, that he will leave Canada.

[30] The applicant would have preferred more extensive reasons be given to deny the visa applications. When denied, one often thinks that reasons were short and the disappointment is understandable. But such is not the law.

[31] There are hundreds of thousands of visa applications to come to Canada every year. Lengthy reasons with more details are not required with respect to visa applications and the reviewing courts do not insist on their presence if the reasonableness of the decision is discernible. As the Court of Appeal reminded us in *Zeifmans LLP v Canada*, 2022 FCA 160, such requirement would defeat the purpose of administrative processes that are to be timely and effective. The Court goes on to state at paragraph 10:

> *Vavilov* says more. It tells us that an administrative decision should be left in place if reviewing courts can discern from the record why the decision was made and the decision is otherwise reasonable: *Vavilov* at paras. 120-122; *Canada (Citizenship and Immigration) v. Mason*, 2021 FCA 156 at paras. 38-42. In other words, the reasons on key points do not always need to be explicit. They can be implicit or implied. Looking at the entire record, the reviewing court must be sure, from explicit words in reasons or from implicit or implied things in the record or both, that the administrator was alive to the key issues, including issues of legislative interpretation, and reached a decision on them.

In my view, this is very precisely the situation in the case at hand. It is easy to understand the reasons for the decision made. Would that be the decision made by the reviewing court on the merits? Not necessarily. But that is neither here nor there. The only issue is whether the decision made was reasonable. The applicant has not discharged his burden that it was not.

[32] It follows that the judicial review application must be dismissed.

IV. Conclusion

[33] McHaffie J summarized the requirements for cases such as the one before the Court in *Iriekpen v Canada (Citizenship and Immigration)*, 2021 FC 1276:

> [7] The "administrative setting" of the visa officer's decision includes the high volume of visa and permit applications that must be processed in the visa offices of Canada's missions: *Canada (Minister of Citizenship and Immigration) v Khan*, 2001 FCA 345 at para 32; *Patel v Canada (Citizenship and Immigration)*, 2020 FC 77 at paras 15, 17. Given this context and the nature of a visa application and refusal, the Court has recognized that the requirements of fairness, and the need to give reasons, are typically minimal: *Khan* at paras 31–32; *Yuzer* at paras 16, 20; *Touré v Canada (Citizenship and Immigration)*, 2020 FC 932 at para 11.

[34] The reasons given by the decision maker were adequate and the outcome has not been shown to be unreasonable. The judicial review application is accordingly dismissed. The parties were canvassed and were of the view that there is no question to be certified on this record. The Court concurs.

JUDGMENT in IMM-9802-23

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed; and

2. There is no question to be certified pursuant to section 74.

"Yvan Roy"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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