Federal Court Cour fédérale

Date: 20241023

Docket: IMM-11183-23

Citation: 2024 FC 1679

Ottawa, Ontario, October 23, 2024

PRESENT: The Honourable Mr. Justice Ahmed

BETWEEN:

ALI KAMALI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Ali Kamali, seeks judicial review of a decision of an Immigration Officer (the "Officer") dated June 8, 2023 refusing him a permanent residency visa in the self-employed persons class. This application for judicial review was filed 25 days late.

[2] The preliminary issue in this proceeding is whether the Applicant satisfies the test for an extension of time. The Applicant submits that he meets the test. The Respondent submits that he does not.

[3] For the following reasons, I agree with the Respondent. The Applicant does not meet the test for an extension. Moreover, I find that the Officer's decision is reasonable and was made in a procedurally fair manner. This application for judicial review is dismissed.

II. **Facts**

[4] The Applicant is a citizen of Iran. In March 2019, he applied for a permanent residency visa in the self-employed persons class to Immigration, Refugees and Citizenship Canada ("IRCC").

[5] On March 25, 2023, IRCC issued a letter requesting that the Applicant provide "additional information…in relation to [his] meeting the definition" of a self-employed person. The letter stated: "**If you do not comply with the request above within 45 days from the date of this letter, your application will be assessed on the basis of the information already before the officer.** Failure to provide the requested documents could result in the refusal of your application" (emphasis in original). The deadline for submitting additional material was May 9, 2023.

[6] On May 8, 2023, the Applicant's representative requested a 30-day extension to file additional materials ("Visa Extension"). However, there are no records of the Visa Extension

request in IRCC's Global Case Management System ("GCMS"). In the absence of a response, the Applicant assumed that the Visa Extension had been granted.

[7] On June 8, 2023, IRCC issued a refusal letter to the Applicant, stating that the Applicant's business plan was generic and vague and that the Applicant failed to demonstrate the ability and intent to become self-employed in Canada. The Officer's decision was rendered on May 30, 2023.

[8] Later that day, the Applicant responded via email to the refusal, stating that he assumed the Visa Extension request had been granted and that his application should be assessed based on new materials, which were attached to his message.

[9] The deadline for the Applicant to apply for judicial review of the Officer's decision was August 7, 2023. According to the Applicant, he was unable to retain a lawyer "due to severe internet filtering in Iran." The application for judicial review was filed on September 1, 2023, 25 days after the deadline.

III. **Analysis**

[10] The determinative issue in this proceeding is whether the Applicant meets the test for an extension of time to file an application for judicial review ("JR Extension").

[11] The Applicant submits that he meets the test for the JR Extension. He further submits that the Visa Extension was valid, and the Officer therefore ought to have assessed his

application based on the new materials submitted on June 8. Having failed to do so, the Officer breached their duty of procedural fairness and rendered a decision that was unreasonable.

[12] The Respondent submits that the Applicant does not meet the legal test for the JR Extension and that his application for judicial review should be dismissed. If the Court determines otherwise, the Respondent submits that the Officer's decision is reasonable and not in breach of the duty of procedural fairness.

[13] For the reasons below, I find that the Applicant does not meet the test for the JR Extension. In any event, I find that the Officer's decision is reasonable and was made in a procedurally fair manner.

[14] The parties submit that the applicable standard of review for the merits of the Officer's decision is that of reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 ("*Vavilov*") at paras 25, 86-87). I agree.

[15] The issue of procedural fairness is to be reviewed on the correctness standard (*Mission Institution v Khela*, 2014 SCC 24 at para 79; *Canadian Pacific Railway Company v Canada (Attorney General*), 2018 FCA 69 ("*Canadian Pacific Railway Company*") at paras 37-56; *Canadian Association of Refugee Lawyers v Canada (Immigration, Refugees and Citizenship)*, 2020 FCA 196 at para 35). I find that this conclusion accords with the Supreme Court of Canada's decision in *Vavilov* (at paras 16-17).

[16] Reasonableness is a deferential, but robust, standard of review (*Vavilov* at paras 12-13). The reviewing court must determine whether the decision under review, including both its rationale and outcome, is transparent, intelligible, and justified (*Vavilov* at para 15). 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). Whether a decision is reasonable depends on the relevant administrative setting, the record before the decision-maker, and the impact of the decision on those affected by its consequences (*Vavilov* at paras 88-90, 94, 133-135).

[17] For a decision to be unreasonable, the applicant must establish the decision contains flaws that are sufficiently central or significant (*Vavilov* at para 100). Not all errors or concerns about a decision will warrant intervention. A reviewing court must refrain from reweighing evidence before the decision-maker, and it should not interfere with factual findings absent exceptional circumstances (*Vavilov* at para 125). Flaws or shortcomings must be more than superficial or peripheral to the merits of the decision, or a "minor misstep" (*Vavilov* at para 100).

[18] Correctness, by contrast, is a non-deferential standard of review. The central question for issues of procedural fairness is whether the procedure was fair having regard to all of the circumstances, including the factors enumerated in *Baker v Canada (Minister of Citizenship and Immigration)*, 1999 CanLII 699 (SCC), [1999] 2 SCR 817 at paras 21-28; *Canadian Pacific Railway Company* at para 54).

A. *The Applicant Does Not Meet the Test for the JR Extension*

[19] The test for an extension of time is set out at paragraph 3 of *Canada (Attorney General) v Hennelly*, 1999 CanLII 8190 (FCA) ("*Hennelly*"). The "overriding consideration" in applying this test is "that the interests of justice be served" (*Canada (Attorney General)v Larkman*, 2012 FCA 204 ("*Larkman*") at para 62). As stated in *Hennelly* (at para 3):

> The proper test is whether the applicant has demonstrated:
>
> 1. a continuing intention to pursue his or her application;
> 2. that the application has some merit;
> 3. that no prejudice to the respondent arises from the delay; and
> 4. that a reasonable explanation for the delay exists.

[20] The Applicant does not meet the test for the JR Extension. Neither the test in *Hennelly* nor the interests of justice per *Larkman* favour the granting of an extension in this case.

[21] The Applicant has not demonstrated a continuing intention to pursue his application. The Applicant asserts that "[he] always had an intention to file the Application for Leave and pursue the Judicial Review," as evidenced by "his retention of counsel…as well as through the written advocacy." However, the mere fact that the Applicant retained counsel and submitted written materials is not sufficient to ground a finding of continuing intention, particularly given the absence of any such statement of intention in the Applicant's email to IRCC on June 8, 2023. Bare assertions of continuing intention are not sufficient to satisfy the first element of the test for an extension of time.

[22] Additionally, the Applicant fails to provide "a good account" for the whole period of delay (*Lewis v Canada (Minister of Citizenship and Immigration)*, 2001 FCT 676 ("*Lewis*") at para 6, citing *Grewal v MEI*, 1985 CanLII 5550 at 282 (FCA)). As previously determined by this Court, "[j]udicial review proceedings in immigration matters are summary proceedings to be carried on with despatch [sic]…The Court leans against extending defaulted time limits, unless a good account can be given for every day of the delay" (*Suen v Canada (Minister of Citizenship & Immigration)*, 1996 CarswellNat 462, 62 ACWS (3d) 871 ("*Suen*") at para 6, cited in *Lewis* at para 6).

[23] The Applicant does not give "a good account…for every day of the delay" (*Suen* at para 6). In fact, the only explanation provided by the Applicant is a single sentence stating that he was unable to retain a lawyer due to severe Internet filtering in Iran. No further information or supporting evidence is provided. I therefore agree with the Respondent that "[t]he Applicant has not provided full details" about the "steps…he took to retain counsel," "how the severe internet filtering in Iran prevented him from retaining counsel, and how long the severe internet filtering lasted." The Applicant's submissions are not sufficient to satisfy the test in *Hennelly* or to establish that an extension would serve the interests of justice (*Larkman* at para 62).

[24] For these reasons, the Applicant does not meet the test for the JR Extension. This finding is determinative of this application.

B. *The Officer's Decision is Reasonable and was Made in a Procedurally Fair Manner*

[25] Moreover, I find that the Officer's decision is reasonable and was made in a procedurally fair manner. Even if this application had been filed on time, it would nonetheless be dismissed.

[26] The parties agree that it is a breach of procedural fairness for a decision to be rendered prior to the expiry of a requested extension (*Hussain v Canada (Citizenship and Immigration)*, 2012 FC 1199 at para 10). However, the parties disagree as to whether the Officer received the request for the Visa Extension. The Applicant submits that the Officer received the request and ignored it. The Respondent submits that the Officer did not receive the request.

[27] I agree with the Respondent.

[28] The GCMS notes clearly indicate that no Visa Extension request came before the Officer. As of May 30, 2023, there was "[n]o update (aside from use of rep) for 2023 provided."

[29] The Applicant's materials are not sufficient to overcome the evidence in the GCMS notes. The Applicant provides a screenshot of a document entitled "Extension.pdf" on his IRCC portal, stating that his representative uploaded the Visa Extension request letter on May 8, 2023. However, the screenshot was recorded on October 17, 2023. The Applicant did not bring affidavit evidence from his representative confirming the contents of the document, the date it was uploaded, or whether any follow-up action was taken.

[30] In any event, the document does not refute the Respondent's evidence that no extension request was actually brought before the Officer. The Applicant's submission that "the extension request was in fact received by IRCC and was ignored by the Officer" is not supported by the evidentiary record.

[31] Consequently, there is no issue with procedural fairness. Having not received an extension request or any additional materials by the May 9, 2023 deadline, the Officer did not err by rendering their decision based on the materials available as of May 30, 2023. The request letter clearly stipulated that this would occur if the Applicant's materials were not received by May 9.

[32] Similarly, the Officer's decision to deny the permanent residency visa is reasonable. The GCMS notes demonstrate that the Officer gave due consideration to the materials before them. The Officer identified specific issues, including the vagueness of the materials, the lack of a plan to compete with existing businesses in the Applicant's field, and the absence of concrete details corroborating the Applicant's "intention and ability to be self-employed in Canada and to make a significant contribution to specified economic activities in Canada." Both the rationale and outcome of the Officer's negative decision are transparent, intelligible and justified (*Vavilov* at para 15). I agree with the Respondent that the Officer's decision is reasonable.

IV. **Conclusion**

[33] This application for judicial review is dismissed. The Applicant does not meet the test for an extension of time per *Hennelly* and *Larkman*. In any event, I find no breach of procedural

fairness or reviewable error, as the decision is responsive to both the Applicants' submissions and the "specific constraints imposed by the governing legislative scheme" (*Vavilov* at paras 108 and 127). No questions for certification were raised, and I agree that none arise.

JUDGMENT in IMM-11183-23

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is dismissed.

2. There is no question to certify.

"Shirzad A."
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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