Federal Court  Cour fédérale

Date: 20200224

Docket: IMM-3418-19

Citation: 2020 FC 293

Ottawa, Ontario, February 24, 2020

PRESENT: Mr. Justice McHaffie

BETWEEN:

ALEXANDER RODRIGUEZ MARTINEZ
YULIET AMADOR PERAZA
PAOLA ANYOLI RODRIGUEZ AMADOR

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicants sought temporary resident visas (TRVs), saying that they wished to spend two months in the summer of 2019 visiting a friend on Manitoulin Island and seeing the sights of Toronto. The visa officer who rejected the application was not satisfied that the Applicants have strong socio-economic ties with their home country of Cuba. The officer was thus not satisfied

that the Applicants were sufficiently established in Cuba to depart Canada at the end of their stay.

[2] In reaching this conclusion, the officer did not refer to material information regarding the family's property ownership, family ties and employment in Cuba. Given the centrality of this evidence to the question before the officer, I conclude that the officer's failure to consider it renders the decision unreasonable.

[3] The application for judicial review is therefore granted. However, despite positive elements supporting the application, I cannot accept the Applicants' submission that the evidence is so overwhelming that granting the TRVs is the only reasonable outcome. I therefore decline to direct the issuance of the TRVs as requested. Rather, the refusal of the application will be quashed and family's TRV application will be sent back for redetermination by another officer.

II. The Application for Temporary Resident Visas

[4] The Applicants are a couple and their young daughter. The parents are each small business owners: Mr. Rodriguez Martinez has a DJ business, while Ms. Amador Peraza operates a hairdressing and nails boutique. They have never travelled outside of Cuba. A Canadian friend who visits the family regularly in Cuba invited them to visit her in Ontario for two months in 2019.

[5] Subject to exemptions that are not applicable, foreign nationals who wish to visit Canada must apply for a TRV before entering: *Immigration and Refugee Protection Act*, SC 2001, c 27,

ss 11(1), 20(1)(*b*); *Immigration and Refugee Protection Regulations*, SOR/2002-227 [*IRPR*], s 7(1). Subsection 179(*b*) of the *IRPR* states that an officer will only issue a TRV to a foreign national if they establish, among other things, that they will leave Canada at the end of their stay:

Issuance	**Délivrance**
179 An officer shall issue a temporary resident visa to a foreign national if, following an examination, it is established that the foreign national	**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) will leave Canada by the end of the period authorized for their stay under Division 2;	**b)** il quittera le Canada à la fin de la période de séjour autorisée qui lui est applicable au titre de la section 2 ;

[6] In advance of the planned travel to Canada, the family applied for TRVs at the Embassy of Canada in Havana, stating their intention to visit their friend before returning to Cuba. To show that they would leave Canada at the end of the stay, they filed information regarding their finances, employment, and ties to Cuba. This included information and supporting documents regarding Ms. Amador Peraza's licence to operate her boutique; real estate owned by each of them in Cuba (including the daughter, who owns property owing to an inheritance); and their family in Cuba, including Mr. Rodriguez Martinez' ailing 73 year-old mother and Ms. Amador Peraza's niece, for whom they provide some care. They also filed a statutory declaration from their Canadian friend that stated her intention to buy the family's return tickets from Cuba, accommodate them, pay for their visit while in Canada, and ensure that they returned to Cuba via Pearson International Airport at the end of their stay.

III. Rejection of the Application for Temporary Resident Visas

[7] In April 2019, a visa officer denied the family's request for TRVs. The letter setting out the denial stated that the officer was not satisfied that the family would leave Canada at the end of their stay based on their travel history, their current employment situation, and their personal assets and financial status. The Global Case Management System (GCMS) notes of the officer making the decision were limited to the following:

> family of 3, no travel history, visiting a friend for 2 months, family life savings of 3k, family income of $300 monthly,Despite support of Host - not satisfied Applicants have strong socio economic ties with home country. I am not satisfied PAs are sufficiently established in home country to depart Canada at the end of their stay. Refused.

[8] The GCMS notes also include a somewhat lengthier notation made earlier the same day, which contains a brief summary of the family's situation and the documents they filed. However, this summary contains no analysis and the coding in the "Created By" column indicates that it was completed by a different officer.

[9] The Applicants argue that the officer's decision was unreasonable, because it failed to consider material evidence regarding their establishment in Cuba—notably the evidence of their employment, their property ownership, and their family in Cuba—and to respond to the Applicants' submissions on these issues in the TRV applications. The Applicants also submit that the evidence is such that there is only one reasonable decision: the issuance of the requested TRVs. As such, they ask the Court to direct that outcome rather than simply quash the existing decision.

[10] For the reasons that follow, I agree that the officer's decision was unreasonable, but do not agree that a direction should issue that the TRVs be granted.

IV. The Officer's Decision was Unreasonable

[11] The reasonableness standard applies to the review of an officer's decision regarding the issuance of TRVs. The Supreme Court of Canada's recent decision *Vavilov* confirms that the reasonableness standard applies to the judicial review of administrative decisions, except where legislative intent or the rule of law requires otherwise: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16–17, 23–25. As neither of these exceptions applies in this case, the presumption of reasonableness applies.

[12] Reasonableness review also accounts for the context of a decision: it will depend on the constraints imposed by that context, and must be sensitive to the institutional context in which the decision was made: *Vavilov* at paras 88–96. A reasonable decision is one based on internally coherent reasoning, and one that is justified in light of the legal and factual constraints that bear on the decision: *Vavilov* at paras 101–107. The former requires that the decision show a rational chain of analysis making it possible to understand the decision maker's reasoning on critical points: *Vavilov* at para 103. The latter requires, among other things, that the decision "meaningfully account for the central issues and concerns raised by the parties," providing "responsive" reasons that show the decision maker has listened to the parties: *Vavilov* at para 127. They are not required to respond to every argument or make an explicit finding on each subordinate element; but must "meaningfully grapple" with key issues or central arguments raised: *Vavilov* at para 128.

[13] This Court applied these principles recently in the context of a study permit application in *Patel v Canada (Citizenship and Immigration)*, 2020 FC 77. Justice Diner aptly noted that "the context of a visa office, with immense pressures to produce a large volume of decisions every day, do not allow for extensive reasons": *Patel* at para 15. I agree, and underscore that this institutional constraint, together with the discretionary nature of a visa officer's decision and the onus on an applicant to satisfy the statutory requirements, must inform the assessment of reasonableness: *Talpur v Canada (Citizenship and Immigration)*, 2012 FC 25 at para 19; *Vavilov* at para 91.

[14] Nonetheless, as Justice Diner noted at paragraph 17 of *Patel*, the institutional reality of a visa office does not dispense with the requirement that a reasonable decision be responsive:

> Again, while the reality of visa offices and the context in which its officers work include significant operational pressures and resource constraints created by huge volumes of applications, this cannot exempt their decisions from being responsive to the factual matrix put before them. Failing to ask for basic responsiveness to the evidence would deprive reasonableness review of the robust quality that *Vavilov* requires at paras 13, 67 and 72. "Reasonableness" is not synonymous with "voluminous reasons": simple, concise justification will do.
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> [Emphasis added.]

[15] In the present case, the only aspect of the officer's notes relevant to their conclusion that the Applicants' lack "strong socio economic ties" with Cuba was the note "family life savings of 3k, family income of 300$ monthly." This note contains no analysis of these factors or why they support a conclusion that the Applicants would not leave Canada: *Patel* at paras 21–22; *Asong Alem v Canada (Citizenship and Immigration)*, 2010 FC 148 at paras 14–15. As the Respondent suggests, one might understand the note to express a concern regarding the family's wealth, and

thus their economic incentive to return to Cuba, although it would take a generous reading and a fair degree of inference to do so. Regardless, even with a generous reading, the officer's reasons do not analyze, consider or refer to material evidence regarding the Applicants' economic ties to Cuba (notably the fact that all three own real estate there), or any evidence regarding their social ties (notably close family members, including those who draw on their support). The evidence regarding their ties to and establishment in Cuba are supportive, though not determinative, of a finding that the family would return to Cuba to resume their life there following their visit to Canada.

[16] I agree with the Applicants that these are not simply "subordinate" issues that need not be addressed in the context of a visa officer's decision, but are sufficiently "key" or "central" issues that failure to address or respond to them makes the decision unreasonable: *Vavilov* at paras 127–128; *Patel* at para 17; *Asong Alem* at para 16; *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)* (1998), 157 FTR 35, 1998 CanLII 8667 (FC) at paras 15–17. Without considering this evidence, I do not believe that the reasons, read in conjunction with the record, make it possible to understand the officer's reasoning regarding the Applicants' establishment in Cuba: *Vavilov* at paras 102–104. This failure to consider the evidence renders the officer's decision unreasonable.

[17] In these circumstances, I need not decide whether the lack of analysis regarding the impact of the family having "no travel history," or the absence of consideration of the Canadian friend's evidence that she would support the Applicants during their visit and ensure they departed, was similarly unreasonable.

V. No Direction to Issue the Temporary Resident Visas

[18] In addition to an order setting aside the refusal of the TRVs, the Applicants seek what they describe as a "*Rudder* direction," *i.e.*, a direction that another visa officer issue TRVs to the family: *Rudder v Canada (Citizenship and Immigration)*, 2009 FC 689 at para 37. In essence, they are asking for an order in the nature of *mandamus* or "indirect substitution," asking the Court to substitute its conclusions for those of the administrative decision maker and directing the decision maker to act accordingly: *Canada (Citizenship and Immigration) v Tennant*, 2019 FCA 206 at paras 70-75.

[19] This Court may make such an order pursuant to its ability to give "such directions as it considers to be appropriate" in setting aside a decision: *Federal Courts Act*, RSC 1985, c F-7, s 18.1(3)(*b*); *Tennant* at paras 71–72. However, given Parliament's choice to give decision-making authority to the visa officer, and the role of reviewing courts on judicial review, the power to make directions amounting to indirect substitution should be used only in exceptional circumstances, namely where returning the case would be "pointless" since only one outcome is reasonable or possible: *Tennant* at paras 79–82; *Rudder* at para 37; *Vavilov* at paras 139–142.

[20] The Applicants submit that the evidence filed in support of their application for TRVs is so overwhelming that granting the TRVs is the only reasonable outcome. I am unable to agree. While the Applicants have identified positive factors supporting their application, including factors not considered by the visa officer, I cannot conclude that there is only one reasonable outcome. I therefore decline to direct the issuance of the TRVs as requested.

VI. Conclusion

[21] The officer did not adequately engage with the Applicants' evidence regarding the family's property ownership, family ties and employment in Cuba. This was central to their claim, and the officer's failure to consider and address this information rendered the decision unreasonable.

[22] I will therefore allow the application for judicial review, quash the officer's decision and remit the matter to a new visa officer for redetermination. However, I will not direct the issuance of TRVs to the Applicants.

[23] Neither party proposed a question for certification and none arises. No question is certified.

[24] I thank counsel for their concise and candid submissions.

JUDGMENT IN IMM-3418-19

THIS COURT'S JUDGMENT is that

1. The application for judicial review is granted and the Applicants' application for temporary resident visas is referred back for determination by another officer.

"Nicholas McHaffie"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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