Federal Court  Cour fédérale

Date: 20200402

Docket: IMM-3813-18

Citation: 2020 FC 479

Ottawa, Ontario, April 2, 2020

PRESENT: Mr. Justice Norris

BETWEEN:

ANIQA SHOAIB
HIBA SHOAIB
ALISHA SHOAIB
UMME UMEEMA
ABDUL HASEEB

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. OVERVIEW

[1] Aniqa Shoaib, the principal applicant, is a citizen of Pakistan. The four co-applicants are her children, who today range in age from 10 to 20. In May 2018, all five applied for temporary resident visas so that they could visit Canada on holidays in late June and early July 2018.

Shoaib Abdul Sattar, the principal applicant's husband and the father of the co-applicants, would not be accompanying them on the trip and, therefore, did not apply for a visa.

[2] The applications were refused by a visa officer with the Canadian Embassy in Abu Dhabi on July 4, 2018.

[3] The applicants now apply for judicial review of this decision under section 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*]. They submit that the decision is unreasonable and that it does not comply with the requirements of procedural fairness.

[4] For the reasons that follow, I do not agree. As a result, this application must be dismissed.

II. DECISION UNDER REVIEW

[5] The visa applications were submitted by a Canadian lawyer, Ms. Mithoowani (who continues to represent the applicants). The applications were supported by written representations from Ms. Mithoowani dated May 2, 2018, which, among other things, explained why the applicants wished to come to Canada. Ms. Mithoowani wrote: "Mrs. Shoaib and her children have already secured US visas and are planning to spend some time in the US this summer, when the children are not in school. As they are already traveling to such a distance, they also wish to take in some of the sights of Canada during their holiday." Ms. Mithoowani also described the applicants' planned activities while in Canada and enclosed proof of hotel and sight-seeing bookings.

[6] Ms. Mithoowani noted that the applicants had visited Canada several times previously without incident (although they had also been refused Canadian visitor visas in 2006, 2007, 2008, and 2017). She also noted and provided evidence that the applicants had a significant history of foreign travel to other countries besides Canada (again without incident). The visa applications were supported by documentation showing, among other things, that the co-applicants were students in Pakistan and that the proposed trip to Canada was well within the applicants' financial means.

[7] Also enclosed with Ms. Mithoowani's letter were the applicants' flight bookings. They showed that the applicants were booked to depart Karachi for Toronto on June 28, 2018, and to depart Toronto for Karachi on July 8, 2018.

[8] The refusals of the visa applications were communicated to the applicants in letters from the Visa Section of the Canadian Embassy in Abu Dhabi. All five letters are identical. They state that the applications were refused because the visa officer was not satisfied that the applicants would leave Canada at the end of their stay as temporary residents. Specific factors the visa officer took into account in making this determination (as indicated by checked boxes) were: family ties in Canada and in country of residence; purpose of visit; employment prospects in country of residence; and current employment situation.

[9] Some additional light is shed on the officer's reasons for rejecting the applications by the Global Case Management System notes. Those notes state the following:

> HOF and children to travel for tourism. Submission from rep states that travelling to US and would like to visit Cda for a few

> days. Noted, however, that return flight booked directly to/from Canada. Insufficient evidence for family employment/income provided, account history irregular. Whole family applied for TRV's in Oct 2017 – spouse was refused for misrepresentation [****]. Prior travel history taken into account, however, given above information and fact that subject travelling with all of her children I am not satisfied that they are genuine visitors or that [they] would depart Canada at the end of authorized period of stay. Refused.

[10] I pause to note that "****" indicates information that the respondent redacted from the Certified Tribunal Record under section 87 of the *IRPA*. I confirmed this redaction in an Order issued on September 24, 2019. The respondent expressly disavowed any reliance on the redacted information and that information played no part in the determination of this application for judicial review.

III. STANDARD OF REVIEW

[11] The parties submit, and I agree, that the substance of the decision on a temporary resident visa application should be reviewed on a reasonableness standard (*Talpur v Canada (Citizenship and Immigration)*, 2012 FC 25 at para 19). Deference is owed to the visa officer because of their presumed expertise with respect to the applicable criteria and because of the largely fact-based nature of this kind of discretionary decision.

[12] Shortly after the hearing of the present application, the Supreme Court of Canada established a revised approach for determining the standard of review with respect to the merits of an administrative decision in *Canada (Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*]. Reasonableness is now the presumptive standard, subject to specific exceptions "only

where required by a clear indication of legislative intent or by the rule of law" (*Vavilov* at para 10). In my view, there is no basis for derogating from the presumption that reasonableness is the applicable standard of review here.

[13] The majority in *Vavilov* also sought to clarify the proper application of the reasonableness standard (at para 143). The principles the majority emphasized were drawn in large measure from prior jurisprudence, particularly *Dunsmuir v New Brunswick,* 2008 SCC 9 [*Dunsmuir*]. Although, as already noted, the present application was argued prior to the release of *Vavilov,* the footing upon which the parties advanced their respective positions concerning the reasonableness of the officer's decision is consistent with the *Vavilov* framework. I have applied that framework in coming to the conclusion that the officer's decision is reasonable; however, the result would have been the same under the *Dunsmuir* framework.

[14] An assessment of the reasonableness of a decision must be sensitive and respectful yet robust (*Vavilov* at paras 12-13). Reasonableness review focuses on "the decision actually made by the decision maker, including both the decision maker's reasoning process and the outcome" (*Vavilov* at para 83). 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). The exercise of public power "must be justified, intelligible and transparent, not in the abstract but to the individuals subject to it" (*Vavilov* at para 95). When a decision maker has provided reasons, those reasons must be read in light of the record as a whole and with due sensitivity to the administrative setting in which they were given (*Vavilov* at paras 91-94). The goal is to "develop an understanding of the decision maker's

reasoning process in order to determine whether the decision as a whole is reasonable" (*Vavilov* at para 99).

[15] With respect to questions of procedural fairness, the parties submit that they are to be determined on a correctness standard of review. There is some doubt as to whether it makes sense to speak of a standard of review in this context but, in essence, I agree with the parties about this as well. As a practical matter, what the correctness standard means is that no deference is owed to the decision maker on this issue. I must determine for myself whether the process the decision maker followed satisfied the level of fairness required in all of the circumstances (*Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 43; *Canadian Pacific Railway Co v Canada (Attorney General)*, 2018 FCA 69 at paras 33-56; *Elson v Canada (Attorney General)*, 2019 FCA 27 at para 31).

IV. ANALYSIS

[16] Foreign nationals wishing to enter Canada must rebut the presumption that they are immigrants (*Danioko v Canada (Citizenship and Immigration)*, 2006 FC 479 at para 15; *Ngalamulume v Canada (Citizenship and Immigration)*, 2009 FC 1268 at para 25). Applicants for temporary resident visas must therefore establish, among other things, that they will leave Canada at the end of the requested period for the stay: see sections 20(1) and 29(2) of the *IRPA* and section 179(b) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227.

[17] In the present case, the applicants' visa applications were rejected because they failed to satisfy the officer that they would leave Canada at the end of their stay as temporary residents.

The officer considered several factors in making this determination but in my view only one is necessary to support the decision as a reasonable one – namely, the purpose of the trip.

[18] The applicants submit that the decision is unreasonable and that it was made in a procedurally unfair manner because the officer effectively made an adverse credibility finding without first giving them an opportunity to address the officer's concerns. I do not agree.

[19] The materials provided in support of the visa applications contained an obvious inconsistency. On the one hand, counsel for the applicants stated in her written representations that the applicants wanted to visit Canada in the summer of 2018 because they were already planning to be in the United States at that time. On the other hand, the applicants' flights were between Pakistan and Canada. Moreover, other materials the applicants provided showed that all of the time between their arrival in Toronto from Pakistan on June 28, 2018, and their departure from Toronto for Pakistan on July 8, 2018, was taken up with activities in Canada. For example, they provided proof of hotel bookings in Toronto for three nights, in Vancouver for three nights, and in Calgary for four nights. Not only did the applicants fail to provide any indication that they would be in the United States as they claimed, their travel itinerary suggested the opposite – they would only be visiting Canada on this trip.

[20] On this record, the visa officer could reasonably find that the applicants had failed to discharge their burden without assessing their credibility. The applicants' own documents provided an objective basis for the officer to question the *bona fides* of the application (cf. *Kindie v Canada (Citizenship and Immigration)*, 2011 FC 850 at paras 13-14). Simply on the

face of those documents, the inference the officer drew is altogether transparent, intelligible, and justified. The officer was under no obligation to draw such an obvious problem with their application to the applicants' attention.

[21] In any event, the applicants would not have been any better off if the officer had done so. On December 12, 2018, the principal applicant swore an affidavit in support of the present application for judicial review. This affidavit is not admissible to support the applicants' contention that the officer's decision is unreasonable but I have considered it for the purpose of assessing their submission that the requirements of procedural fairness were not observed (cf. *Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22 at paras 19-20; *Bernard v Canada (Revenue Agency)*, 2015 FCA 263 at paras 13-28). According to the principal applicant, the flight bookings included with the visa applications were included in error and did not reflect her final instructions to the travel agent. The principal applicant states in her affidavit that she had initially asked the travel agent to book return flights from Karachi to Toronto but she later informed the agent that "we had made changes to our plan, since we had decided to visit the US as well." The agent made new bookings for the applicants' trip but the original bookings were mistakenly provided in support of the visa applications. Even if this is what happened, it is still inconsistent with their counsel's representation that the applicants wanted to visit Canada in the summer of 2018 because they already had plans to visit the United States at that time.

[22] In sum, the applicants have not established that the decision was made in a procedurally unfair manner or that "there are sufficiently serious shortcomings in the decision such that it

cannot be said to exhibit the requisite degree of justification, intelligibility and transparency" (*Vavilov* at para 100). There is no basis for me to interfere with the officer's decision.

V. CONCLUSION

[23] For these reasons, the application for judicial review is dismissed.

[24] The parties did not suggest any serious questions of general importance for certification under section 74(d) of the *IRPA*. I agree that none arise.

JUDGMENT IN IMM-3813-18

THIS COURT'S JUDGMENT is that

1. The application for judicial review is dismissed.

2. No serious question of general importance is stated.

"John Norris"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-3813-18
STYLE OF CAUSE:	ANIQA SHOAIB ET AL v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	DECEMBER 16, 2019
JUDGMENT AND REASONS:	NORRIS J.
DATED:	APRIL 2, 2020

APPEARANCES:

Naseem Mithoowani	FOR THE APPLICANTS
Christopher Ezrin	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Waldman & Associates Barristers and Solicitors Toronto, Ontario	FOR THE APPLICANTS
Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT