

Federal Court



Cour fédérale

**Date: 20200327**

**Docket: IMM-2554-19**

**Citation: 2020 FC 451**

**Ottawa, Ontario, March 27, 2020**

**PRESENT: The Honourable Mr. Justice Favel**

**BETWEEN:**

**LINUS GOMES**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

**I. Background**

[1] Linus Gomes, the Applicant, applies for judicial review pursuant to s 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 of a visa officer's [Officer] decision made on March 29, 2019 refusing his Temporary Resident Visa [TRV] application. He requests an order in the nature of *certiorari* quashing the refusal, an order that the decision be remitted to

another officer in the United Arab Emirates for redetermination—with a chance to make additional submissions, and such further relief as the Court may allow.

[2] The application for judicial review is dismissed for the reasons that follow.

## II. Decision under Review

[3] The Applicant is a citizen of Pakistan. Although he has applied for several TRVs over the years, all have been refused. This underlying application itself was refused in 2018; however, the parties agreed to remit the decision for redetermination after the Applicant applied for judicial review. The Applicant was allowed to submit additional materials.

[4] The Certified Tribunal Record shows that a high volume of material was before the Officer. It includes, among other things, application forms, various financial documents, identity documents, lease documents, a letter of invitation from his sister, and return tickets to Canada for June 2019.

[5] The Officer refused the Applicant's most recent TRV application. In a letter dated March 29, 2019, the Officer states that he or she was not satisfied that the Applicant would leave Canada at the end of his stay as required. The letter uses several checkboxes to indicate that the Officer considered several factors, including the Applicant's family ties in both countries, limited employment prospects in the Applicant's country of residence, the Applicant's current employment situation, and the Applicant's current assets and financial status.

[6] The Officer's notes indicate that the Applicant has no other family in Pakistan, owns a business with a "modest" income, has access to a business account with approximately CAD \$1,500, and has access to a co-owned personal account containing approximately CAD \$95,000 with his mother "and sibling". The Officer stated that it was not clear how much of the money in the CAD \$95,000 account was actually the Applicant's.

### III. Issues and Standard of Review

[7] The Applicant alleges that the decision was unreasonable based on the Officer's conclusion that the Applicant was unlikely to leave Canada because of strong family ties in Canada and a lack thereof in Pakistan. He also alleges that his right to procedural fairness was breached because the Officer did not allow him to respond to his concerns about the Applicant's personal funds.

[8] The Respondent denies both of these allegations.

[9] The issues are: (A) was the Officer's decision reasonable; (B) was the Applicant denied procedural fairness?

[10] The Supreme Court, in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*], has updated the law regarding the standard of review.

[11] Reasonableness is the presumptive standard except in cases of procedural fairness; however, this standard can be rebutted in certain cases (*Vavilov* at paras 23, 33-72), none of

which apply here. Accordingly, I assess the decision's reasonableness as a whole on a standard of reasonableness; and I assess the procedural fairness issue on a standard of correctness. A decision may be found unreasonable for many reasons (*Vavilov* at para 101).

#### IV. Parties' Positions

##### A. *Was the Officer's decision reasonable?*

###### (1) Applicant's Position

[12] The Applicant submits that the Officer unreasonably concluded that the Applicant was unlikely to leave Canada. He argues that that the Officer did not provide a reasonable or intelligible explanation for this conclusion. The Applicant argues that simply restating facts related to family ties is not a proper approach and that this does not qualify as reasons. He also asks the Court to find that family ties be considered a "neutral factor at best", similar to how previous travel history is treated (e.g. *Dhanoa v Canada (Citizenship and Immigration)*, 2009 FC 729 at para 12).

###### (2) Respondent's Position

[13] The Respondent disagrees, citing *Doret v Canada (Citizenship and Immigration)*, 2009 FC 447 at para 24, as supporting that it was reasonably open to the Officer to consider the Applicant's family ties in Canada and his country of origin. Therefore, it submits, the Officer made no error in considering the Applicant's lack of family in Pakistan and abundance of family in Canada as a significant factor.

B. *Was the Applicant denied procedural fairness?*

(1) Applicant's Position

[14] The Applicant first alleges that the Officer breached procedural fairness because he failed to provide him a meaningful opportunity to respond to the Officer's concerns. These concerns were about the Applicant's uncertain ownership of claimed funds in a joint bank account.

[15] The Applicant cites passages from Canada's "operational instructions and guidelines" document as binding requirements for procedural fairness—namely, that, "there is a requirement that the essence of the decision-maker's concerns be communicated to the applicant". The Applicant also cites *Krishnamoorthy v Canada (Citizenship and Immigration)*, 2011 FC 1342 [*Krishnamoorthy*] for this proposition. Because the Officer did not give the Applicant a chance to respond to his concerns about the Applicant's ownership over his claimed account funds, the Applicant claims he breached this duty.

(2) Respondent's Position

[16] The Respondent notes that a Officer's procedural fairness requirements are at the lower end of the spectrum, citing *Canada (Minister of Citizenship and Immigration) v Patel*, 2002 FCA 55 at para 10. The Respondent notes that the Applicant's cited materials only apply in situations where the Officer relies on *extrinsic* evidence when making a decision, and, further, only in cases where significant rights are determined, such as permanent residency.

V. Analysis

A. *Was the Officer's decision reasonable?*

[17] With regard to the Applicant's first assertion—that the Officer did not provide intelligible or transparent reasoning with respect to how he considered the Applicant's family ties—I am not persuaded that the Officer committed a reviewable error. It is difficult to appreciate how additional reasons could be provided to make it clear that the Applicant has almost no family in Pakistan and that most of his family is in Canada. Those facts speak for themselves. The Officer's chain of reasoning is clear: the Applicant's primarily-Canadian family ties, combined with the Officer's other concerns, weighed in favor of refusing the Application. It was one of several factors.

[18] I decline the Applicant's invitation to find that “extensive family ties in Canada” act as a neutral factor at best. As Justice McVeigh has recently affirmed in *Anand v Canada (Citizenship and Immigration)*, 2019 FC 372 at para 30, it is not an error for an officer to consider strong family connections to Canada as a reason that an Applicant might remain in Canada.

B. *Was the Applicant denied procedural fairness?*

[19] I agree with the Respondent's position—*Krishnamoorthy* and the “operational instructions and guidelines” only stand for the proposition that an officer cannot rely on influential extrinsic evidence without giving an applicant an adequate opportunity to respond.

[20] The Officer in this case had no duty to give the Applicant an opportunity to respond in respect of his financial documents. “[W]here a concern arises directly from the requirements of

the legislation or related regulations, a visa officer will not be under a duty to provide an opportunity for the applicant to address his or her concerns” (*Hassani v Canada (Citizenship and Immigration)*, 2006 FC 1283 at para 24).

[21] In this case, the Officer’s concerns were directly related to the requirements of the legislation or regulations—namely, the *Immigration and Refugee Protection Regulations*, SOR/2002-227, s. 179(b), which requires an officer to be satisfied that an applicant will leave Canada at the end of their stay. I am persuaded by the Respondent’s reliance on *Toor v Canada (Minister of Citizenship and Immigration)*, 2006 FC 573 at para 16, that supports the proposition that officers may consider applicants’ financial means when determining whether they will leave Canada when their visa expires.

[22] Accordingly, the Officer did not breach procedural fairness in this matter.

## VI. Conclusion

[23] I find that the Officer did not commit a reviewable error. Accordingly, the application for judicial review is dismissed.

[24] There is no order as to costs.

[25] Neither party has proposed a question for certification and, in my view, none arises.

**JUDGMENT in IMM-2554-19**

**THIS COURT'S JUDGMENT is that:**

1. The application for judicial review is dismissed.
2. There is no question for certification.
3. There is no order for costs.

"Paul Favel"

---

Judge



**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-2554-19

**STYLE OF CAUSE:** LINUS GOMES v THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** JANUARY 13, 2020

**JUDGMENT AND REASONS:** FAVEL J.

**DATED:** MARCH 27, 2020

**APPEARANCES:**

Brian Koh FOR THE APPLICANT

Laoura Christodoulides FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Niren & Associates FOR THE APPLICANT  
Toronto, Ontario

Attorney General of Canada FOR THE RESPONDENT  
Toronto, Ontario