

Federal Court



Cour fédérale

Date: 20200327

Docket: IMM-1167-19

Citation: 2020 FC 448

Ottawa, Ontario, March 27, 2020

PRESENT: Madam Justice McDonald

BETWEEN:

HASSAN SHAH

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] Mr. Shah's application for a temporary resident visa (TRV) was denied by the Visa Officer who determined that he would not leave Canada at the end of the authorized stay. The Officer noted that Mr. Shah had an open permanent residence (PR) application where he was sponsored by his wife. Although Mr. Shah claimed to be divorced in his TRV application, no divorce certificate was provided. The Officer also found that Mr. Shah has strong family ties to Canada and weak ties to his country of residence. On this basis, the Officer denied the TRV.

[2] For the reasons that follow, I have concluded that the Officer's decision is reasonable. This judicial review is therefore dismissed.

Background and Decision Under Review

[3] Mr. Shah is a citizen of Pakistan who applied for TRVs in May, August, and December of 2018. He says he wants to come to Canada to visit his two brothers who are Canadian citizens. His TRV applications were all denied.

[4] Previously, Mr. Shah had a TRV that was valid from October 2015 to January 2023, but it was cancelled when he received permanent resident status as a dependent of his spouse. However, because Mr. Shah never travelled to Canada after receiving PR status, he never became landed as a permanent resident.

[5] The decision under review is the December 2018 TVR refusal. The Officer stated that he was not satisfied Mr. Shah would leave Canada based on his strong family ties in Canada and weak ties to his country of residence. The Officer noted that Mr. Shah's permanent residence application was still open, and although his application says he is divorced, his former spouse was still listed on the permanent residence application and there was no divorce certificate on file.

Issues

[6] The Applicant raises two issues with the decision:

- 1) Did the Officer rely upon extrinsic evidence?
- 2) Is the Officer's decision reasonable?

Standard of Review

[7] The standard of review for issues of procedural fairness is correctness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65, at para 23 and *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 43).

[8] The standard of review for issues relating to the substance of the decision under review is reasonableness (*Vavilov* at para 23). “[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).

Analysis

- 1) *Did the Officer rely upon extrinsic evidence?*

[9] The Applicant argues that the Officer relied upon extrinsic evidence and this was a breach of procedural fairness. The “extrinsic evidence” complained of consisted of information in the Global Case Management System (GCMS) regarding the PR application filed by the Applicant's spouse in which the Applicant is listed as a dependant. The Officer noted that the PR application was still open, that the Applicant's wife is listed as his sponsor, and that there was no certificate of divorce.

[10] In my view, the PR information in the GCMS database is not “extrinsic” evidence. It was appropriate for the Officer to consider the PR information. In fact, in considering the TRV application, it should be expected that the Officer would consider all information relating to Mr. Shah’s immigration and visa applications. Furthermore, the information on his marital status was unclear. Although Mr. Shah states he is divorced in his TRV application, the open PR application and the lack of a divorce certificate raises the issue of his true marital status.

[11] The level of procedural fairness owed to a TRV applicant is on the lower end of the spectrum and is “very much context specific” (*Anand v Canada (Citizenship and Immigration)*, 2019 FC 372, at para 34) [*Anand*]. Each application is decided on the basis of the material provided, and the onus is on the Applicant to provide the necessary information to support the application (*Anand* at para 35-37).

[12] Furthermore, there is no duty on the Officer to clarify or attempt to rectify a deficient application. The “imposition of such a requirement would be akin to requiring the visa officer to give advance notice of a negative decision” which has been expressly rejected (*Sharma v Canada (Citizenship and Immigration)*, 2009 FC 786, at para 8).

[13] In this case, there was no breach of procedural fairness when the Officer considered the GCMS information as against the incomplete information provided by Mr. Shah. It was Mr. Shah’s responsibility to make sure the Officer had all of the necessary information to assess his application.

[14] With respect to the redactions in the GCMS notes, the Officer advised the Applicant that the redacted information was third party information and did not form part of the reasons for denying the TRV. In my view, nothing turns on this issue.

[15] I conclude that the Officer did not rely on extrinsic evidence in denying the Applicant's TRV application. No procedural fairness issues arise.

2) *Is the Officer's decision reasonable?*

[16] The Applicant argues that section 22(2) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] precludes an officer from determining that an individual will not leave Canada at the end of the authorized period because they have applied for permanent residency (*Gu v Canada (Citizenship and Immigration)*, 2010 FC 522, [Gu]).

[17] This section of the *IRPA* provides as follows:

(2) An intention by a foreign national to become a permanent resident does not preclude them from becoming a temporary resident if the officer is satisfied that they will leave Canada by the end of the period authorized for their stay.

[18] This provision of the *IRPA* precludes an Officer from drawing a negative inference when the inference is not supported by other facts "giving rise to a concern that the Applicant will not leave Canada" (*Gu* at para 20).

[19] Here however, the Officer relied upon factors beyond the open PR application to determine that the Applicant would not leave Canada. The Applicant's contention that the TRV was denied on the basis of the PR application is not supported by the GCMS notes or the information on record. In the GCMS notes, the Officer mentions strong social ties in Canada, weak ties in Pakistan, and the fact that Mr. Shah still appears to be married. The Applicant has two brothers in Toronto and only his mother is in Pakistan. The Officer also notes the possibility that the Applicant is still married, and has an open PR application. Accordingly, the Officer was considering all of these factors in denying the TRV application.

[20] Additionally, the information on record shows that the Applicant shared a bank account with a balance of \$200,000 with his brother. This was obviously a factor in the Officer finding a lack of intention to leave Canada.

[21] Although the Officer's decision is brief, it demonstrates a rational line of analysis, and is reasonable when considered contextually. The decision on a TVR is part of an administrative regime where the reasons provided are typically brief, therefore the information in the record must also be considered in assessing the reasonableness of the decision. As noted in *Vavilov* at para 103:

...formal reasons should be read in light of the record and with due sensitivity to the administrative regime in which they were given, a decision will be unreasonable if the reasons for it, read holistically, fail to reveal a rational chain of analysis or if they reveal that the decision was based on an irrational chain of analysis...

[22] In my view, the decision is reasonable and there is no basis for this Court to intervene.

[23] This judicial review is dismissed. There is no question for certification.

JUDGMENT IN IMM-1167-19

THIS COURT'S JUDGMENT is that this judicial review is dismissed. There is no question for certification.

"Ann Marie McDonald"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-1167-19

STYLE OF CAUSE: HASSAN SHAH v MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: JANUARY 15, 2020

JUDGMENT AND REASONS: MCDONALD J.

DATED: MARCH 27, 2020

APPEARANCES:

Dov Maierovitz

FOR THE APPLICANT

Melissa Mathieu

FOR THE RESPONDENT

SOLICITORS OF RECORD:

Dov Maierovitz
Barrister and Solicitor
Toronto, Ontario

FOR THE APPLICANT

Attorney General of Canada
Department of Justice
Toronto, Ontario

FOR THE RESPONDENT