Federal Court  Cour fédérale

Date: 20210610

Docket: IMM-5924-20

Citation: 2021 FC 584

Ottawa, Ontario, June 10, 2021

PRESENT: The Honourable Mr. Justice Manson

BETWEEN:

YASAN YAMAN

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] This is an application for judicial review of an Officer's decision refusing the Applicant's application for permanent residence under the Quebec investor class, dated November 5, 2020 [the "Decision"].

II. Background

[2] The Applicant, Yasar Yaman, his wife and two daughters are citizens of Turkey. The Applicant was selected as a Quebec immigrant investor by the Province of Quebec.

[3] The Applicant applied for permanent residence, under the Quebec investor class in August of 2017, which requires, pursuant to subsection 90(2) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [the "*Regulations*"], the intention to reside in Quebec. As part of his application, the Applicant had signed a statement to this effect, a "Schedule 5 Declaration of Intent to Reside in Quebec Economic Classes" [the "Declaration"].

[4] On September 14, 2020, the following concerns regarding the Applicant's intention to reside in Quebec were noted in the Global Case Management System [GCMS] in that the Applicant: (i) sent his children to study outside of Quebec; (ii) does not appear to have ever set foot in Quebec; and (iii) is employed in Singapore with a salary that is likely far in excess of potential earnings in Canada.

[5] The Applicant was requested to attend a personal interview at the High Commission of Canada in Singapore, by convocation letter dated October 14, 2020 [the "Convocation Letter"]. The interview was required in order to complete the assessment of his application. The Officer's concerns regarding the Applicant's intention to reside in Quebec were not disclosed in the Convocation Letter.

[6] The interview occurred on October 28, 2020. The Officer advised the Applicant that the purpose of the interview was to assess the Applicant's eligibility to immigrate to Canada under the NV5-QC Quebec investor class and to assess admissibility. The Officer also interviewed the Applicant's wife and one of the Applicant's daughters.

[7] After proceeding with some questioning of the Applicant, the Officer asked the Applicant: "[a]re you also aware that one of the main requirements of this program is to reside in Quebec?". The Officer then continued to ask questions related to travel to Canada and steps the Applicant has taken to prepare for a life in Canada and specifically in Quebec.

[8] During the interview, following this initial questioning of the Applicant, his wife and his daughter, the Officer then disclosed his concerns to the Applicant:

> Procedural fairness Applicants under this program are required to have the intention to reside in Quebec, and must satisfy an officer that they have that intention. I have concerns that you may not intend to reside in Quebec. I am going to provide you with reasons, and then provide you with an opportunity to respond to my concerns. Do you understand? Yes. Let's begin.

[9] The Officer then put the following concerns to the Applicant:

> 1. You have extensive travel history around the world and have travelled many times to Toronto but never took the opportunity to go to Quebec, except one time, and it was solely for business purposes… 2. Your two children studied in Canada but none has been to Quebec. Your youngest daughter was accepted to McGill and decided to study in another province, even after you had applied for immigration to Quebec. Your wife appears to have friends only in Ontario and has never been to Quebec… 3. You mentioned that you may or may not retire but would ensure to fulfill your residency obligation. Once granted PR, you have a right to depart Canada and maintain residency obligation, but if you did this, your ties and those of your family to Quebec would

> appear to be limited while you would be keeping strong ties in Singapore… 4. Overall, you do not appear to have taken concrete steps or have a concrete plan to prepare for your life in Canada, the plan seemed rather vague…

[10] Prior to terminating the interview, the Officer advised that his next steps would be to review the information and make a final decision. No opportunity to make further submissions was offered to the Applicant.

[11] The GCMS notes indicate that on October 29, 2020, the Officer had found that he is not satisfied, on the balance of probabilities, that the Applicant has the intention to reside in Quebec and therefore is not satisfied that the Applicant is a member of the Quebec investor class, pursuant to subsection 90(2) of the *Regulations*.

[12] On October 29, 2020, the Officer nonetheless received and considered post-interview submissions and documents from the Applicant, relating to several of the concerns the Officer had expressed during the interview. The Officer noted that these submissions did not alleviate his concerns. The Decision, in the form of a refusal letter, was provided to the Applicant, dated November 5, 2020.

[13] The Applicant is seeking judicial review of the Decision to refuse the application for permanent residence, under the Quebec investor class. The Applicant seeks an Order quashing the Decision and directing its redetermination.

III. Decision Under Review

[14] The Officer was not satisfied that the Applicant intended to reside in Quebec. The Officer noted that the Applicant had not taken concrete steps to establish himself in Quebec, including any serious effort to visit Quebec and prepare for the move. The GCMS notes indicate:

> … I note that even though the PA has travelled multiple times to Canada, he only went to Quebec once in 2018, for a 4-day business meeting in Montreal. His spouse and two daughters have never travelled to the province of Quebec, despite spending a significant amount of time in the neighbouring province of Ontario, notably after the NV5-QC application was submitted. I weight positively the fact that the family is well-travelled and was able to establish successfully in different countries in the past; nonetheless, it seems that the family members have limited interest in visiting and getting to know their prospective province of residence in Canada. PA mentioned at the beginning of the interview that he chose the NV5-QC immigration program among other reasons because it seemed to be a quicker process and also because his daughters were interested in living in Canada. I weight positively the fact that both daughters have studied at Canadian Intl School overseas. I also note, however, that both daughters have chosen to study outside Quebec… The explanation provided did not satisfy me that there were serious efforts made by the PA and his family to visit and prepare to move to the prospective province of residence. PA has currently a good employment in Singapore. He stated that he would be eligible to retire at age 55 in May 2021 but that he may decide to keep his position, in which case he would make sure to comply with his residency obligation. This, however, raised the concern of weak ties to the province of Quebec…

[15] The Officer found that the Applicant was provided with an opportunity to respond to the concerns, but the response provided by the Applicant did not alleviate those concerns.

IV. Issues

[16] The issues in this application are:

A. Was there a breach of procedural fairness?

B. Was the Decision reasonable?

V. Standard of Review

[17] The issue concerning the alleged breach of procedural fairness is reviewable on the standard of correctness. The second issue is reviewable on the standard of reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*]; *Yeager v Canada (Attorney General)*, 2020 FCA 176 at para 23).

VI. Relevant Provisions

[18] The relevant provisions include section 11(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27:

Application before entering Canada	**Visa et documents**
11 (1) A foreign national must, before entering Canada, apply to an officer for a visa or for any other document required by the regulations. The visa or document may be issued if, following an examination, the officer is satisfied that the foreign national is not inadmissible and meets the requirements of this Act.	**11 (1)** L'étranger doit, préalablement à son entrée au Canada, demander à l'agent les visa et autres documents requis par règlement. L'agent peut les délivrer sur preuve, à la suite d'un contrôle, que l'étranger n'est pas interdit de territoire et se conforme à la présente loi.

[19] Further, section 90(2) of the *Regulations* provides that:

Member of class	**Qualité**
(2) A foreign national is a member of the Quebec investor class if they	**(2)** Fait partie de la catégorie des investisseurs (Québec) l'étranger qui satisfait aux exigences suivantes :
(a) intend to reside in Quebec; and	**a)** il cherche à s'établir dans la province de Québec;
(b) are named in a Certificat de sélection du Québec issued by Quebec.	**b)** il est visé par un certificat de sélection du Québec délivré par cette province.

VII. Analysis

[20] It is the Applicant's position that the Officer breached his duty of procedural fairness by failing to specify his concerns in the Convocation Letter. The Applicant's Declaration was owed the presumption of truthfulness and the Applicant was entitled to specific notice of any credibility concerns. The Officer further rendered an unreasonable Decision, by allegedly failing to appreciate the evidence before him and coming to conclusions which were contrary to the evidence presented.

[21] It is the Respondent's position that the Decision is a reasonable outcome on the basis of the evidence and applicable law. Further, the process leading up to the Decision meets procedural fairness standards. The Convocation Letter constituted sufficient notice. Moreover, the Applicant had the benefit of an in-person interview. The Officer's specific concerns were disclosed to the Applicant at this time and he was provided with a subsequent opportunity to clarify or elaborate on the answers he provided. The duty of procedural fairness owed to visa applicants is at the lower end of the spectrum and the Applicant had the opportunity to meaningfully participate in the decision making process.

A. *The Convocation Letter and Procedural Fairness*

[22] A procedural fairness letter is meant to "provide the applicant with a meaningful opportunity to respond" to the Officer's concerns (*Asanova v Canada (Citizenship and Immigration)*, 2020 FC 1173 at para 33). As stated by the Federal Court in *Toki v Canada (Immigration, Refugees and Citizenship)*, 2017 FC 606 at paragraphs 24 to 25:

> [24] As for *Asl* at para 23, while Justice Gagné did note that "that the procedural fairness owed by visa officers is on the low end of the spectrum", she also held that "[o]f course, the duty of fairness in this context still 'require[s] visa officers to inform applicants of their concerns so that an applicant may have an opportunity to disabuse an officer of such concerns' (*Talpur v Canada (Citizenship and Immigration)*, 2012 FC 25 at para 21)". Moreover, in that case, the issue was clearly put to the applicant (see para 30). Here, that was not the case for Mr. Toki. He simply did not know – but rather had to guess in the dark – as to the case against him.
>
> [25] As noted in both *AB* and *Asl*, an officer is required to provide more than general concerns, which the Officer failed to do here. Failure to do so means that the applicant cannot have a meaningful participation in the fairness process – which is entirely the purpose of the PFL [procedural fairness letter], and for which the underlying policy and doctrinal goals of the opportunity to answer the case against you exists in administrative law. In other words, this error is fatal in and of itself.

[23] As noted in the GCMS on September 14, 2020, the Officer clearly had identified specific concerns with the Applicant's intention to reside in Quebec. These concerns were not disclosed in the Convocation Letter, where the Applicant was only notified that a personal interview "is required in order to complete the assessment of your application".

[24] The notice provided during the course of the interview was insufficient. The Officer raised his concerns late in the interview process, after having already questioned the Applicant, his wife and daughter. This did not afford an opportunity for the Applicant to address the Officer's concerns in any meaningful way, nor focus his answers, during most of the interview, to the Officer's specific concerns. Moreover, the only requested document prior to the interview concerning the Applicant's intent to reside in Quebec was the Declaration, which was provided.

[25] The Officer emphasized the vagueness of the Applicant's wife and daughter's plans and the "absence of strong or corroborating evidence", which may have been rectified had the Applicant been provided with adequate notice of the case to be met.

[26] An applicant is entitled to notice of an officer's concerns in advance of an interview or an opportunity to respond to any concerns after the interview (*Likhi v Canada (Citizenship and Immigration)*, 2020 FC 171 at para 35). The Officer failed to provide adequate notice and the duty of fairness was breached by the Officer.

[27] While the Applicant provided additional submissions the day following the interview, I accept the Applicant's evidence that this was done with haste, as the Officer had not afforded any opportunity or timeframe in which additional submissions could be received. The result is that the Applicant was not afforded adequate procedural fairness.

B. *Reasonableness of the Decision*

[28] Reasonableness requires justification, transparency and intelligibility. The Decision must be justified by way of reasons directed to those to whom the decision applies, and in light of the factual and legal constraints that bear upon the Decision (*Vavilov*, above at paras 86, 99). However, absent exceptional circumstances, a reviewing court will not interfere with the factual findings of the decision maker (*Vavilov* at para 125).

[29] Foreign nationals applying in the Quebec investor class must have both a *Certificate of Selection for Quebec* and demonstrate that they intend to reside in Quebec (the *Regulations*, s

90(2)). The assessment of intention is a highly subjective notion and "may take into account all indicia, including past conduct, present circumstances, and future plans, as best as can be ascertained from the available evidence and context" (*Dhaliwal v Canada (Citizenship and Immigration)*, 2016 FC 131 at para 31).

[30] Although the Officer is afforded broad discretion in his determination of intention, his findings must be grounded in the facts before him and based on an internally coherent and rational chain of analysis (*Vavilov* at para 85). The Decision here fails to provide any reasonable logical chain of analysis in several respects.

[31] The Officer overly emphasizes the Applicant's daughters' academic and career choices in rendering the Decision, placing particular weight on any choice made to study outside Quebec:

> I also note, however, that both daughters have chosen to study outside Quebec. The oldest (YoB 1997) has completed a bachelor at U Toronto. The youngest (YoB 2001) studied in high school in Toronto for two years (2016-2018), and is currently enrolled at UBC… Regardless, the PA indicated that the youngest daughter was accepted to McGill but ultimately decided not to take up McGill's offer of admission.

[32] There is no reasonable connection between the decision of the daughters to go to university outside of Quebec, a choice based on numerous factors, and the intention of the Applicant to reside in Quebec. The Officer's apparent emphasis in the Decision on this first factor makes little sense. Moreover, the Officer also indicated that such considerations are not relevant in a November 5, 2020 entry in the GCMS notes, recognizing that the daughters' whereabouts are not necessarily indicative of the Applicant's intention to reside in Quebec:

> Client also submitted an email showing that the oldest daughter currently in Singapore had applied for internships and jobs in Montreal and that she had started drafting a letter to apply for a Master program at McGill. This information is positive in support of the intention of the oldest daughter to study and work in Montreal. *However, it does not respond to my concern that the PA himself has not taken concrete steps to establish himself in Quebec.*
>
> [*Emphasis added*]

[33] In any event, I further note the Applicant's submission that the youngest daughter was never accepted at McGill University and supporting evidence which suggests she was nonetheless interested in attending this university, had applied and was waitlisted. The eldest daughter has further applied for internships and jobs in Montreal. Were this factor relevant, the evidence suggests both daughters intention to pursue either an education or career in Quebec.

[34] The Officer also relies on the fact that the Applicant has only travelled to Quebec once for a 4-day business trip and does not have concrete plans about what he would do once he has moved to Quebec.

[35] The specificity of the Applicant's plans may have been rectified with notice of the Officer's concerns. However, travel constraints imposed by the pandemic and the Applicant's prior experience establishing himself and his family in other countries are relevant considerations. Further, the Applicant is close to retirement and therefore has several options available to him in terms of next steps. It seems appropriate that he would be weighing various options at this stage in his life.

[36] On this basis, the Decision is unreasonable, as the Officer either fundamentally misapprehended or failed to reasonably take into account the evidence before him.

VIII. Conclusion

[37] For the reasons above, this application is granted. The matter will be remitted to a different officer for redetermination.

JUDGMENT in IMM-5924-20

THIS COURT'S JUDGMENT is that:

1. The application is granted and the matter is remitted to a different officer for redetermination;

2. The style of cause is hereby amended to reflect the correct spelling of the Applicant's name, Yasar Yaman; and

3. There is no question for certification.

"Michael D. Manson"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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