Federal Court  Cour fédérale

Date: 20211027

Docket: IMM-2767-20

Citation: 2021 FC 1145

Ottawa, Ontario, October 27, 2021

PRESENT: Mr. Justice McHaffie

BETWEEN:

MOHAMMED ILYAS QURAISHI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Mohammed Quraishi applied for an extension of his temporary resident visa (TRV) to remain in Canada for a further six months to care for his ill mother-in-law, make arrangements for her care, and provide support for family members. A visa officer rejected the application since they were not satisfied Mr. Quraishi was a bona fide visitor who would leave Canada at the end of his authorized stay.

[2] The substantive part of the visa officer's reasons for this decision, as set out in the Global Case Management System (GCMS) notes, consist of a description of Mr. Quraishi's most recent visit to Canada and the statement "[c]lient has had sufficient time to fulfill purpose." I agree with Mr. Quraishi that the lack of explanation for this conclusion, together with the lack of any consideration of other relevant factors, including his history of compliance and ties to India, renders this decision unreasonable.

[3] In reaching this conclusion, I am cognizant of the administrative setting of visa decisions, which must be made quickly and in high volume, and this Court's recognition that visa officers have only a minimal duty to give reasons. Nonetheless, even in this context, and even considering the officer's statement in the decision cover letter that they "carefully considered all information," I conclude the officer's reasons do not meet the requirements of justification expected of a reasonable decision.

[4] The application for judicial review is therefore allowed.

II. Issue and Standard of Review

[5] The only issue raised on this application is whether the officer's refusal of Mr. Quraishi's extension application was reasonable.

[6] The parties agree that TRV decisions are subject to review on the reasonableness standard: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16–17, 23–25; *Brar v Canada (Citizenship and Immigration)*, 2020 FC 445 at para 7.

[7] The Supreme Court in *Vavilov* sought to "develop and strengthen a culture of justification in administrative decision making" while recognizing the practical realities of the administrative settings in which such decisions are made: *Vavilov* at paras 2, 15, 81–86, 90–98, 103. As the Minister notes, the administrative setting is important in assessing the reasonableness of a decision, as "review of an administrative decision can be divorced neither from the institutional context in which the decision was made nor from the history of the proceedings": *Vavilov* at para 91. An administrative decision must therefore be read with sensitivity to the institutional setting and in light of the record: *Vavilov* at paras 94–96.

[8] Nevertheless, as Mr. Quraishi emphasizes, the institutional setting of an administrative decision does not absolve the decision maker from justifying their decision. Even when a decision is reviewed in context, it may contain a "fundamental gap" in reasoning, and it is not the Court's role to fashion reasons to buttress the decision: *Vavilov* at para 96. The "culture of justification" requires that where reasons for a decision are needed, the decision must be not only *justifiable* but *justified* to the affected person by means of those reasons: *Vavilov* at para 86.

[9] The issue in this case lies at the focal point of these principles, and requires the Court to assess whether the visa officer's reasons, read with sensitivity for the administrative setting of visa decisions, justified to Mr. Quraishi the rejection of his TRV extension application.

III. Analysis

A. *The administrative setting: TRV applications*

[10] There is no material dispute as to the general principles that apply to Mr. Quraishi's request for an extension of his TRV or to judicial review of the refusal of the application.

[11] Section 181 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [*IRPR*] provides that a foreign national may apply for an extension of their authorization to remain in Canada if they do so before the end of their authorized stay and have complied with their conditions of entry. An officer is to extend the TRV if the applicant establishes they meet the requirements of section 179 of the *IRPR*, which are the requirements for a new TRV: *IRPR*, s 181(2). The relevant requirement in the present case is in subsection 179(b), which requires the applicant to establish they "will leave Canada by the end of the period authorized for their stay."

[12] A visa applicant has the onus to demonstrate their eligibility for a visa, including that they will leave Canada by the end of the authorized period: *Khan v Canada (Minister of Citizenship and Immigration)*, 2001 FCA 345 at para 22. The Minister contends, with reference to this Court's decision in *Rahman* that in doing so, the applicant must rebut a legal presumption that they are not an immigrant to Canada: *Rahman v Canada (Citizenship and Immigration)*, 2016 FC 793 at para 16, citing *Obeng v Canada (Citizenship and Immigration)*, 2008 FC 754 at para 20. While nothing turns on this characterization, for the reasons I previously set out in *Gupta*, I believe it preferable to focus the inquiry on the statutory requirement that the applicant demonstrate they will leave at the end of the stay, rather than on the "not an immigrant" language

that came from a provision in the former *Immigration Act*, RSC 1985, c I-2: *Gupta v Canada (Citizenship and Immigration)*, 2019 FC 1270 at paras 21–23.

[13] Factors that have been recognized as relevant to the assessment of whether an applicant will leave Canada by the end of their authorized stay include the purpose of the visit, its length, the applicant's ties to Canada and to their own country, their financial ability, and their travel and immigration compliance history: *Kheradpazhooh v Canada (Citizenship and Immigration)*, 2018 FC 1097 at para 4; *Bunsathitkul v Canada (Citizenship and Immigration)*, 2019 FC 376 at para 19; *Rudder v Canada (Citizenship and Immigration)*, 2009 FC 689 at paras 11–12.

[14] This Court and the Federal Court of Appeal have recognized the large volume of visa applications that are received in visa offices in Canada and around the world: *Khan* at para 32; *Yuzer v Canada (Citizenship and Immigration)*, 2019 FC 781 at para 15. Visa officers must therefore process applications quickly and efficiently. This requirement, together with the circumscribed impact of a visa refusal, means that visa officers are not obliged to give extensive reasons for their decisions: *Yuzer* at paras 9, 20; *Patel v Canada (Citizenship and Immigration)*, 2020 FC 77 at para 15; *Khan* at para 31; *Vavilov* at para 133.

[15] While the decisions of visa officers need not be extensive, they nonetheless must meet the requirements of responsiveness and justification: *Vavilov* at paras 86, 91–96; *Patel* at paras 15–17; *Ekpenyong v Canada (Immigration, Refugees and Citizenship)*, 2019 FC 1245 at para 13; *Mendoza v Canada (Minister of Citizenship and Immigration)*, 2004 FC 687 at para 4. If a visa officer's reasons demonstrate that they have reasonably considered the evidence put

forward and reached a justified conclusion, it is not the Court's role to "step in and second-guess" that outcome: *Singh v Canada (Citizenship and Immigration)*, 2012 FC 526 at para 56.

B. *Mr. Quraishi's application and the officer's refusal*

[16] Mr. Quraishi entered Canada in August 2019 on a multiple entry visa that expired in September of that year. He applied for and obtained an extension of his temporary status, which permitted him to remain until February 4, 2020. In early February 2020, he submitted an online application to further extend his stay. The extension application was covered by a letter from counsel that referred to a six-month extension, although the application form itself stated that Mr. Quraishi planned to stay until February 4, 2021, which would be a 12-month extension.

[17] Counsel's cover letter set out the purpose of the requested extension, namely for Mr. Quraishi to remain in Canada with his family to arrange for and assist in providing care for his ailing mother-in-law, and to provide emotional and physical support for other family members, including his sister-in-law. The application provided information and records pertaining to Mr. Quraishi's ties to his native India, his ownership of property there, his travel history and history of compliance with immigration terms, and his financial wherewithal.

[18] The extension application was refused in a letter dated June 4, 2020. The substantive part of that letter reads as follows:

> Based on your application and accompanying documentation that you have provided, I have carefully considered all information and I am not satisfied that you meet the requirements of the Immigration and Refugee Protection Act and Regulations. Your application as requested is therefore refused.

> Persons wishing to extend temporary resident status in Canada must satisfy an officer that they will leave Canada by the end of the period authorized for their stay, that they will not contravene the conditions of entry and that they do not belong in a category of persons inadmissible to Canada under the Immigration and Refugee Protection Act.
>
> In reaching a decision, an officer considers several factors, which include the applicant's:
>
> 1. Reason for original entry and reason for requested extension;
>
> 2. Ties to country of permanent residence, including:
>   - employment and study commitments;
>   - family ties and responsibilities;
>   - status (citizenship or immigration status);
>
> 3. Financial means for the extended stay and return home;
>
> 4. Travel and identity documents;
>
> 5. Probability to leave Canada at the end of authorized stay.
>
> After considering all the circumstances of your case, I am not satisfied that you meet the requirements of the Act and Regulations.
>
> [Emphasis added.]

[19] The officer's GCMS notes, which the parties agree form part of the officer's reasons for decision, read as follows:

> Client entered Canada on August 4, 2019. Since has a valid visitor record valid until February 4, 2020. Client is now applying for another extension until February 4, 2021. Client has had sufficient time to fulfill purpose. I am not satisfied that client is a bona fide visitor and will leave at the end of authorized stay. Application refused as per R179. Refusal letter sent this date and advised to leave Canada.
>
> [Emphasis added.]

C. *The officer's decision does not meet the requirements of responsiveness and justification*

[20] The officer's letter and GCMS notes must be read in their administrative context, in light of the record before them, and in recognition of the minimal obligation on visa officers to give reasons. Despite reviewing the officer's decision in this generous context, Mr. Quraishi has satisfied me that the decision does not meet the minimum requirements of responsiveness and justification.

[21] As can be seen from its text, the refusal letter itself does no more than paraphrase some of the requirements of section 179 of the *IRPR*, give a general listing of factors that an officer considers, and repeat the statement that the officer is not satisfied that Mr. Quraishi meets the requirements of the Act. The letter provides no substantive indication of why the visa application was refused.

[22] As for the GCMS notes, they consist of a recitation of the immigration history, the statement that Mr. Quraishi "has had sufficient time to fulfill purpose," and a statement of the officer's conclusion. I agree with Mr. Quraishi that the only substantive statement of the officer's reasoning to be found in the letter or GCMS notes is the statement that Mr. Quraishi had had sufficient time to fulfill his purpose.

[23] This statement must be read in context. While Mr. Quraishi faults the officer for not setting out in his reasons what "purpose" they are referring to, his application itself set out the purpose of the requested extension. I do not believe the officer needed to reproduce this stated

purpose in their reasons. The conclusion that Mr. Quraishi had had sufficient time to fulfill his purpose must also be read in the context of the immigration history that the officer set out, namely that Mr. Quraishi had entered Canada on August 4, 2019, had a valid visitor record until February 4, 2020, and is "now applying for another extension until February 4, 2021."

[24] Nonetheless, I agree with Mr. Quraishi that one cannot tell from the officer's reasons why they concluded the period from his entry in August 2019 to the expiry of his visa in February 2020 (or possibly to the date of the decision, although the officer does not mention this) was sufficient to fulfill the purpose of arranging for care for Mr. Quraishi's ailing relative, assisting in that care, and providing emotional and physical support for other family members. No explanation for this assertion is given.

[25] Nor did the officer undertake any assessment of other factors such as Mr. Quraishi's ties to India, his positive compliance history, or his financial status, in concluding that he would not leave Canada when his TRV expired. This Court has found a failure to consider such contrary factors to be unreasonable: *Brar* at paras 19–22; *Asong Alem v Canada (Citizenship and Immigration)*, 2010 FC 148 at paras 16–17; *Rodriguez Martinez v Canada (Citizenship and Immigration)*, 2020 FC 293 at paras 15–17.

[26] The Minister notes that the officer confirmed they had "carefully considered all information" and considered "all the circumstances of your case." They also underscore that an officer is presumed to have considered all of the evidence on the record: *Rahman* at para 17. Despite this presumption, in my view a blanket or boilerplate statement that all information or all

circumstances have been considered cannot reasonably take the place of explaining how those circumstances were considered and why the conclusion was reached. To conclude otherwise would run contrary to the Supreme Court's emphasis on the importance of meaningfully accounting for and responding to key issues or central arguments: *Vavilov* at paras 127–128. I note that in *Rahman*, while Justice Strickland referred to the presumption, she also confirmed that most of the documents Ms. Rahman claimed were ignored were in fact referred to in the officer's GCMS notes: *Rahman* at paras 18–22.

[27] The Minister also argues it is clear the officer implicitly concluded that the concern about the purpose of Mr. Quraishi's visit outweighed all other factors. Even if one could reach this conclusion on the scant reasons given, which I question, the officer provided no explanation for why they found this single factor outweighed all the others. Combined with the lack of reasons to explain the conclusion even on that factor, I am unable to understand why the officer reached the conclusion they did.

[28] Even in the context of a TRV renewal decision, the officer had an obligation to justify their decision to Mr. Quraishi: *Vavilov* at paras 86, 95–96; *Patel* at para 15. I agree with Mr. Quraishi that "the letter and [GCMS] notes taken together are not 'sufficiently clear, precise and intelligible' to allow the Applicant to know why [his] application was denied, or to allow this Court to assess whether this denial was reasonable": *Asong Alem* at para 18.

IV. Conclusion

[29] The application for judicial review is therefore allowed and the refusal of Mr. Quraishi's application for an extension of his TRV is quashed.

[30] The Minister points out that Mr. Quraishi may have left Canada after the refusal of his application to remain, although the Minister did not contend that this would render the application for judicial review moot. Mr. Quraishi's departure might affect the nature of his application, which was for renewal of his TRV while in the country. However, in the absence of positive information or detailed submissions on this, I will simply follow the usual course of remitting Mr. Quraishi's application back for redetermination by another visa officer.

[31] Neither party proposed a question for certification and I agree that none arises.

JUDGMENT IN IMM-2767-20

THIS COURT'S JUDGMENT is that

1. The application for judicial review is allowed. The June 4, 2020 refusal of Mohammed Ilyas Quraishi's application for an extension of his temporary resident visa is quashed and that application is remitted for redetermination by another visa officer.

"Nicholas McHaffie"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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