Federal Court  Cour fédérale

Date: 20211122

Docket: IMM-5016-20

Citation: 2021 FC 1269

Ottawa, Ontario, November 22, 2021

PRESENT: The Honourable Mr. Justice Phelan

BETWEEN:

MEIFANG SU

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] This judicial review of the denial of a temporary resident visa [TRV] will be dismissed because the Officer's decision was reasonable.

II. Background

[2] The Applicant, a citizen of China, came to Canada in 2014 to study at Humber College. Having completed her studies in 2016, she went on to post-graduate work under a valid permit. While in Canada, she married a Canadian citizen who then applied to sponsor the Applicant for permanent residence in November 2019.

[3] In November 2019, the Applicant and her husband travelled to China where she had to renew her existing TRV in Shanghai. This TRV was set to expire on November 14, 2019.

[4] As part of the TRV application process, the Applicant received a Procedural Fairness Letter [PFL] because she had failed to disclose on her TRV application that she was charged with a criminal offence in Canada in August 2019. The charge, which was for assault, arose from a domestic dispute with her husband. While the Applicant disputed the merits of the charge, which was dropped after she entered into a peace bond agreement, she contended that her anxiety, depression and PTSD were the reason for her not disclosing the criminal charge.

[5] The Officer's decision noted that the Applicant had a spouse in Canada, that she had an open permanent residence application and that the Applicant was seeking a TRV for an extended period. On the basis of the Applicant's mental health issues, the Officer did not rely on her failure to disclose the criminal charge.

[6] Instead, the Officer based the decision on the fact that the Applicant's husband was in Canada, that she had a pending permanent residence application and that the TRV renewal was for an extended period from December 2019 to March 2020.

III. Analysis

[7] It is by now trite law that the standard of review for a TRV decision is reasonableness as that term is explained in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*].

[8] In *Rahman v Canada (Citizenship and Immigration)*, 2016 FC 793, the Court (Strickland J) set out the framework for TRVs:

> [16] The IRPA requires that a foreign national, before entering Canada, apply for a visa (s 11(1)), establish that they hold such a visa and that they will leave Canada by the end of the period authorized for their stay (s 20(1)(b)). With respect to TRV's, s 7(1) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 ("*IRP Regulations*") states that a foreign national may not enter Canada to remain on a temporary basis without first obtaining a TRV. Section 179 of the *IRP Regulations* sets out the requirements that must be met before a visa officer will issue a TRV. Among these is the requirement that the visa officer be satisfied that the foreign national will leave Canada at the end of the period authorized for his or her stay. There is a legal presumption that a foreign national seeking to enter Canada is an immigrant, and it is up to him or her to rebut this presumption (*Obeng* at para 20). Therefore, in the present case, the onus was on the Applicant to prove to the Officer that she is not an immigrant and that she would leave Canada at the end of the requested period of stay (*Chhetri* at para 9).

[9] Important to this judicial review is the presumption that a TRV applicant must rebut. In the current circumstances, the Officer did not commit any error in outlining the relevant facts.

The Officer gave the Applicant the benefit of the doubt on her non-disclosure of criminal charges – a concession not all officers would reasonably grant.

[10] There is nothing unfair or inadequate about brief reasons in TRV matters so long as the Court can see a line of reasoning that could justify the decision – often referred to as "connecting the dots": see *Vavilov* at para 97.

[11] It is evident that the Officer considered multiple facets of the application – not just one factor on its own. The Officer considered the pending permanent residence application, the presence of her spouse in Canada, that the Applicant's new visa would not provide the same rights to work as her previous visa, and had noted that she had been in Canada for approximately five years.

[12] In the circumstances, it was reasonable for the Officer to determine that these facts point to a conclusion that the Applicant's desire to stay in Canada was sufficiently strong, and that the pending permanent residence application pointed to her desire to stay in Canada to meet the cohabitation requirements for the family class permanent resident provisions.

[13] There was enough evidence before the Officer to justify her concerns and it is not the role of the Court to substitute its view of the Applicant's circumstances.

IV. Conclusion

[14] Therefore, this judicial review is dismissed. There is no question for certification.

JUDGMENT IN IMM-5016-20

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed.

There is no question for certification.

"Michael L. Phelan"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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