Federal Court  Cour fédérale

Date: 20220628

Docket: IMM-2377-20

Citation: 2022 FC 967

Toronto, Ontario, June 28, 2022

PRESENT: The Honourable Madam Justice Furlanetto

BETWEEN:

MAHASHANKER THAVARATNAM

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] This is an application for judicial review of a January 27, 2020 decision [Decision] of a Visa Officer [Officer] refusing an application for a Temporary Resident Visa [TRV] pursuant to paragraph 20(1)(b) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 and section 179 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227.

[2] As set out further below, the application is allowed as the Officer's reasons do not exhibit the requisite degree of justification and transparency as to why the Decision was made in the face of the Applicant's evidence.

I. Background

[3] The Applicant is a citizen of Sri Lanka. He has been a Director with the Premier Healthcare Network (pvt) Ltd [PH Sri Lanka] in Sri Lanka since April 2018. He is married with a wife and property in Sri Lanka. His parents and sister's family live in Canada.

[4] On January 15, 2020, the Applicant made his second application for a TRV to come to Canada from March 3, 2020 to April 2, 2020 to attend training with Premier Health Canada [PH Canada], the sister company of PH Sri Lanka. Both companies are owned by the Applicant's brother-in-law, who offered to pay the Applicant's expenses for the trip.

[5] On January 27, 2020, the Officer refused the application as he was not satisfied that the Applicant would leave Canada at the end of his stay based on his travel history, the purpose of his visit, and his personal assets and financial status. The Officer was also not satisfied that the Applicant had a legitimate business purpose in Canada.

[6] In the Global Case Management System [GCMS] Notes the Officer states that he has reviewed the Applicant's documents. He concludes that the Applicant's ties to his country of residence appear weak, the documentation provided shows limited or minimal funds, and the nature of the planned business activities cannot be verified.

[7] On January 29, 2020, the Applicant made a request for reconsideration of the Decision. The request was denied on February 6, 2020.

[8] On February 14, 2020, the Applicant made a further request for reconsideration. The second request was denied on March 10, 2020 and the Applicant was advised to reapply if there was a significant change in his circumstances.

[9] The Applicant applied for judicial review of the Decision on May 3, 2020. An extension of time to file his application for judicial review was provided when leave was granted.

II. Preliminary Matter – Style of Cause

[10] As a preliminary matter, I note that the style of cause for this proceeding has been amended to reflect the correct Respondent – The Minister of Citizenship and Immigration.

III. Issues and Standard of Review

[11] The sole issue on this application is whether the Decision was reasonable. The central question raised by the Applicant is whether the Officer adequately addressed the Applicant's evidence and provided sufficient reasons.

[12] An Officer's decision to grant or deny a TRV is reviewed on a standard of reasonableness (*Quraishi v Canada (Citizenship and Immigration)*, 2021 FC 1145 [*Quraishi*] at para 6). None of the situations that rebut the presumption of a reasonableness review of administrative

decisions are present in this case (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at paras 16-17).

[13] A reasonable decision is "based on an internally coherent and rational chain of analysis" that is "justified in relation to the facts and law that constrain the decision maker" (*Vavilov* at paras 85-86).

[14] In this case, the Court must start from an understanding that the decision of a visa officer is highly discretionary and is entitled to significant deference (*Kupriianova v Canada (Citizenship and Immigration)*, 2021 FC 958 [*Kupriianova*] at para 14; *Azizulla v Canada (Citizenship and Immigration)*, 2021 FC 1226 [*Azizulla*] at para 14). Extensive reasons are not required given the high volume of applications visa officers are required to process (*Kupriianova* at para 14). However, the reasons must still be responsive to the submissions and evidence before the decision-maker (*Kupriianova* at para 14).

[15] The decision will be reasonable if when read as a whole and taking into account this administrative setting, it bears the hallmarks of justification, transparency, and intelligibility (*Vavilov* at paras 91-95, 99-100).

IV. Analysis

[16] The Applicant argues that the Officer did not take into consideration the evidence submitted in support of his application, which he asserts contradicts the findings of the Officer. He asserts that the fact that he has a wife, property and employment in Sri Lanka establish that

he has strong ties to the country. The Applicant contends that he has sufficient funds and that the purpose of his visit was clear from his evidence and was focussed on furthering his knowledge for his employment in Sri Lanka.

[17] The Respondent argues that the decision-maker is presumed to have considered all the evidence. It asserts that the Applicant is seeking to have the Court reweigh the evidence and place the burden of proof on the Officer. The Respondent contends that the Decision is supported by the evidentiary record.

[18] I agree that a reasonableness review does not allow the Court to reweigh the evidence (*Vavilov* at para 125). An officer is not obliged to refer to all of the evidence in making their decision and is generally presumed to have considered all the evidence (*Brar v Canada (Citizenship and Immigration)*, 2020 FC 445 [*Brar*] at para 20; *Florea v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 598, 1993 CarswellNat 3983 (FCA)). However, an officer's decision must still be justified in light of the evidence before the Officer (*Vavilov* at paras 125-126; *Kupriianova* at para 13). An officer's failure to show that they have engaged with the evidence before him is a reviewable error (*Brar* at para 20).

[19] In the face of significant or critical evidence contradicting an officer's conclusion, the officer must explain why that conclusion was reached despite the evidence (*Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)* (1998), [1999] 1 FC 53, 157 FTR 35 at para 17; *Azizulla* at para 21; *Brar* at para 22). A blanket or boilerplate statement that all

information has been considered cannot reasonably take the place of explaining how that information was considered and why the conclusion was reached (*Quraishi* at para 26).

[20] In the GCMS notes, the Officer states a series of conclusions followed by a boilerplate statement that the relevant factors have been considered in determining that the Applicant is not a genuine visitor who would comply with the conditions of temporary entry. The Officer notes that an "Integrated Search" revealed adverse information, but that information is not disclosed or identified.

[21] The Officer concludes that the Applicant's ties to his country of residence appear weak. However, he does not address the evidence that the Applicant's wife and employment are in Sri Lanka, and that his wife owns property there. The Respondent notes that the Applicant also has ties to Canada through his parents and sister's family. It argues that the Officer was entitled to place more weight on that evidence. However, I do not consider that a conclusion that the ties to Sri Lanka are "weak" on its own is reasonable in the face of this conflicting evidence. Some further explanation is required.

[22] Similarly, the Officer concludes that the Applicant had limited or minimal funds according to the documentation provided. However, the Officer does not explain why the Applicant's own resources, a large sum of rupees that equates to $18,000 CAD, are insufficient, particularly when the Applicant's plane tickets, lodging and travel insurance is paid for.

[23] The Officer further concludes that the nature of the planned business activities cannot be verified. There is no further explanation given. This conclusion does not address the evidence of the Applicant's training program, which includes, amongst other information, a detailed agenda covering the Applicant's stay. It does not explain why the information is considered insufficient.

[24] The Respondent proposes various explanations for the Officer's conclusions. It asserts that the Applicant's ties to Sri Lanka are weak when weighed against his family residing in Canada because only his wife is in Sri Lanka and they have no children. The Respondent asserts that the Applicant's savings equate to $18,000 CAD and his pay for the year $5,000 CAD, which is extremely low by Canadian standards. It suggests that the business activities cannot be verified because they are training activities at a private organization owned by a relative. These explanations, however, were not those given in the GCMS notes. Counsel's speculation of a plausible explanation cannot cure the inadequacy of the reasons for decision (*Asong Alem* v *Canada (Citizenship and Immigration)*, 2010 FC 148 [*Asong Alem*] at para 19).

[25] While a lengthy explanation is not required, concluding only that the Applicant has weak ties, limited funds and that the nature of the business activities cannot be verified, is not enough. Some limited explanation as to how the Officer arrived at those conclusions is necessary (*Runnath v Canada (Citizenship and Immigration)*, 2014 FC 606 at para 14-17; *Asong Alem* at paras 14-16).

[26] In my view, the Decision is unreasonable because it fails to be transparent and to sufficiently justify its conclusions in the face of the evidence presented (*Vavilov* at paras 125-128).

[27] The application is accordingly allowed and the TRV application will be remitted back to another officer for redetermination.

[28] No question for certification was proposed by the parties and none arises in this case.

JUDGMENT IN IMM-2377-20

THIS COURT'S JUDGMENT is that

1. The style of cause is amended to correctly identify the Respondent as The Minister of Citizenship and Immigration.

2. The application for judicial review is allowed. The January 27, 2020 decision refusing the Applicant's temporary resident visa is set aside and the application for the temporary resident visa is remitted back to another officer for redetermination.

3. No question of general importance is certified.

"Angela Furlanetto"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-2377-20
STYLE OF CAUSE:	MAHASHANKER THAVARATNAM v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
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