Federal Court Cour fédérale

Date: 20220805

Dockets: IMM-2012-21
IMM-2025-21
IMM-2026-21
IMM-2027-21

Citation: 2022 FC 1170

Ottawa, Ontario, August 05, 2022

PRESENT: The Honourable Mr. Justice Bell

Docket: IMM-2012-21

BETWEEN:

IRINA SEMENUSHKINA

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

Docket: IMM-2025-21

AND BETWEEN:

IRINA SEMENUSHKINA

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

Docket: IMM-2026-21

AND BETWEEN:

ANDREY BATYSHEV
ALEKSANDRA BATYSHEVA
MIKHAIL BATYSHEV

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

Docket: IMM-2027-21

AND BETWEEN:

ANDREY BATYSHEV
ALEKSANDRA BATYSHEVA
MIKHAIL BATYSHEV

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Nature of the Matter

[1] The Applicants seek judicial review, pursuant to s 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [“IRPA”], of two decisions rendered by the same Visa Officer (the “Officer”) on January 27, 2021 (“First Decision”) and March 2, 2021 (“Second Decision”), respectively, in which the Officer refused to issue the Applicants Temporary Resident Visas (“TRV”).

[2] On February 18, 2022, this Court ordered that files IMM-2012-21, IMM-2025-21, IMM-2026-21 and IMM-2027-21 be heard together. Files IMM-2025-21 and IMM-2027-21 relate to the First Decision. Files IMM-2012-21 and IMM-2026-21 relate to the Second Decision.

[3] For the reasons set out below, I dismiss all four applications for judicial review.

II. Facts

[4] Aleksandra Batysheva (“Ms. Batysheva”), her spouse Andrey Batyshev (“Mr. Batyshev”), their minor son, three-year-old Mikhail Batyshev (“Mikhail”) and Ms. Batysheva’s mother, Irina Semenushkina (“Ms. Semenushkina”) (collectively the “Applicants”), are citizens of Russia.

[5] In December 2020, the Applicants applied for TRVs to visit Anna Sosedova, a childhood friend of Ms. Batysheva (“Ms. Sosedova”), who resides in Canada. In their application, the Applicants set out, among other factors, their proposed length of stay, the fact Ms. Batysheva and Ms. Sosedova were childhood friends and their desire to re-enact, as a family, a memorable trip to Canada that Ms. Batysheva had with her father in the 1990s. The Applicants provided

evidence of savings of approximately $130,000.00 CAD held in the names of Ms. Batysheva and Mr. Batyshev, Ms. Batysheva and Mr. Batyshev's earnings as corporate lawyers as well as the fact that Ms. Semenushkina is a retired engineer who owns multiple properties in Russia. In addition, the Applicants provided evidence of their extensive travel history, which included 11 international trips during the past five years. Only one of those trips was made by all four applicants at the same time.

[6] On January 27, 2021, the Officer rendered the First Decision. The refusal letters and Global Case Management System ("GCMS") notes were identical for all Applicants.

[7] On February 18, 2021, the Applicants submitted to the same Officer a document titled "Request for Reconsideration", accompanied by new TRV forms and fee payments. The Applicants relied on the same evidence.

[8] On March 2, 2021, the Officer rendered the Second Decision. Again, the refusal letters and Global Case Management System ("GCMS") notes were identical for all Applicants. I note here that the text of the refusal letters and the GCMS notes in relation to the Second Decision differed from those in relation to the First Decision.

[9] On March 24, 2021, Ms. Semenushkina sought leave of this Court to judicially review the First Decision (file IMM-2025-21), as did Ms. Batysheva, Mr. Batyshev and Mikhail (file IMM-2027-21). On that same day, Ms. Semenushkina also sought leave of this Court to judicially review the Second Decision (file IMM-2012-21), as did the remaining Applicants (file

IMM-2026-21). On February 18, 2022, this Court granted leave and, as noted above, ordered the files be heard together.

III. Decisions under Review

A. *The First Decision*

[10] In her decision letters, the Officer stated that she was not satisfied the Applicants would leave Canada at the end of their proposed stay, as required by paragraph 179(b) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 ["IRPR"]. In the letters, the Officer referred to the Applicants' family ties in Canada and in their country of residence, the purpose of their visit, and, the limited prospects of employment in their country of residence. The Officer's GCMS notes read as follows:

> *Tourist trip to visit friends for 14 days. Whole family to travel. I am not satisfied that the applicant would leave Canada at the end of their stay as a temporary resident. The purpose of visit does not appear reasonable given the applicant's socio-economic situation and therefore I am not satisfied that the applicant would leave Canada at the end of the period of authorized stay. Based on the applicant's limited employment prospects in their country of residence/citizenship, I have accorded less weight to their ties to their country of residence/citizenship. Weighing the factors in this application. I am not satisfied that the applicant will depart Canada at the end of the period authorized for their stay. For the reasons above. I have refused this application.*

B. *The Second Decision*

[11] In the Second Decision, the Officer once again states that she is not satisfied the Applicants would leave Canada at the end of their stay, as required by paragraph 179(b) of the

IRPR. The grounds relied on by the Officer were family ties in Canada and in the country of residence and the purpose of the visit. On this occasion, the Officer referred to the COVID-19 pandemic. The Officer's GCMS notes read as follows:

> *HOF, spouse, child and parent traveling to visit childhood friend of HOF, who landed 2002. One photo on file listing HOF and friend together and dated after 2002. No compelling reason to travel in light of covid pandemic, particularly in consideration of vulnerabilities of family members. While members of family have some travel history, insufficient travel together as a family to weigh favorably in my assessment. Income and savings reflected for HOF and spouse, but does not overcome insufficiency of purpose and weak family ties to home country, as family travelling together. Based on docs on file, not satisfied purpose and ties sufficient for trip and to ensure departure from Canada if granted TRV. Refused*

IV. Relevant Provisions

[12] The relevant provisions are s 179(b) of the *IRPR* and s 302 of the *Federal Courts Rules*, SOR/98-106 ["Rules"]:

***Immigration and Refugee Protection Regulations*, SOR/2002-227**	***Règlement sur l'immigration et la protection des réfugiés*, DORS/2002-227**
Issuance	**Délivrance**
179 An officer shall issue a temporary resident visa to a foreign national if, following an examination, it is established that the foreign national	**179** L'agent délivre un visa de résident temporaire à l'étranger si, à l'issue d'un contrôle, les éléments suivants sont établis :
…	…
(b) will leave Canada by the end of the period authorized	b) il quittera le Canada à la fin de la période de séjour

for their stay under Division 2;	autorisée qui lui est applicable au titre de la section 2;
Federal Courts Rules, SOR/98-106	**Règles des Cours fédérales, DORS/98-106**
Limited to single order	**Limites**
302 Unless the Court orders otherwise, an application for judicial review shall be limited to a single order in respect of which relief is sought	**302** Sauf ordonnance contraire de la Cour, la demande de contrôle judiciaire ne peut porter que sur une seule ordonnance pour laquelle une réparation est demandée.

V. Issues and Standard of Review

[13] The parties raise the following issues:

A. *Preliminary issue: does s. 302 of the Rules preclude the Applicants from seeking judicial review of both decisions?*

B. *Are the decisions reasonable?*

C. *Are the decisions procedurally fair?*

VI. Submissions of the Parties and Analysis

A. *Does s. 302 of the Rules preclude the Applicants from seeking judicial review of both decisions?*

[14] The Respondent submits that s. 302 of the *Rules* precludes the Applicants from seeking judicial review of two decisions in a single judicial review. The Respondent says that the exception to this rule, which permits an applicant to challenge two or more “continuing acts or

courses of conduct" does not apply (*David Suzuki Foundation v Canada (Health*), 2018 FC 380 ["*David Suzuki*"] at para 173).

[15] The Applicants contend they have complied with s. 302 of the *Rules* by challenging each individual decision by way of a separate judicial review.

[16] The Respondent's argument is without merit.

[17] Section 302 of the *Rules* reads as follows:

302 Unless the Court orders otherwise, **an application** for judicial review shall be limited to a single order in respect of which relief is sought. [Emphasis added]	**302** Sauf ordonnance contraire de la Cour, la demande de contrôle judiciaire ne peut porter que sur une seule ordonnance pour laquelle une réparation est demandée.

[18] The prohibition set out in s. 302 of the *Rules* only applies in cases where an applicant seeks to judicially review two or more decisions in a single application for judicial review (*Singh v Canada (Immigration, Refugees and Citizenship*), 2018 FC 225 ["*Singh*"] at paras 4 to 8; *Lessard-Gauvin v Canada (Attorney General*), 2016 FC 227 at para 5). Section 302 of the *Rules* does not apply in the circumstances. The Applicants do not seek judicial review of the First Decision and the Second Decision in the same application for leave and for judicial review ("ALJR"). The Applicants filed four separate ALJRs. Two of them related to the First Decision. Two related to the Second Decision. All four ALJRs were attributed a different docket number by the Court. The Court, by Order dated February 18, 2022, ordered that all four applications be

heard together. This procedure has been followed by the Court on numerous occasions, including in *Khakh v Canada (Minister of Citizenship and Immigration*), 2008 FC 710 and in *Pacheco v Canada (Citizenship and Immigration*), 2010 FC 347 (see *Singh, supra*, at paras 6-7), and does not contravene the limitation set out in s. 302 of the *Rules*.

B. *Are the decisions reasonable?*

[19] The Officer's decisions are subject to review on the reasonableness standard (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 CSC 65, 441 DLR (4th) 1 ["*Vavilov*"] at para 25). None of the exceptions to the presumption of reasonableness review apply in the circumstances (*Vavilov* at para 17).

[20] "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). To set aside a decision, the reviewing court must be convinced that there are sufficiently serious shortcomings in the decision, such that any superficial or peripheral flaw will not suffice to overturn the decision (*Vavilov* at para 100). Most importantly, the reviewing court must consider the decision as a whole, and must refrain from conducting a line-by-line search for error (*Vavilov* at paras 85 and 102).

C. *The First Decision*

[21] The Applicants contend that the Officer's reasons are not responsive to their evidence (*Patel v Canada (Citizenship and Immigration*), 2020 FC 77 at para 15. They acknowledge that,

in the visa context, reasons may be concise, but submit that the Officer's conclusions are not supported by any analysis which connects their circumstances with those conclusions. The Applicants submit that the Officer merely provides a series of generic factors and conclusions that could apply to any applicant.

[22] The Applicants argue that there is no elaboration or analysis as to why the ground of "family ties in Canada and in country of residence" supported a finding that they would not leave Canada at the end of their stay. They note this leaves them and the Court to speculate as to why this ground formed a basis for the refusal. They contend that this is especially so given the evidence that they have an extensive international travel history, individually and as a family, and that they have never overstayed or otherwise breached any immigration laws.

[23] The Applicants plead that the same argument applies to the Officer's reliance on the "purpose of the visit" as a ground for refusal. They contend that the Officer simply fails to articulate why the Applicants' detailed explanation for their desire to come to Canada is not satisfactory. They submit that the Officer also does not explain why she is concerned with the Applicants' "socio-economic situation". The Applicants note that they are well established in Russia, which is demonstrated by evidence of property ownership, extensive savings, and stable, well-paying jobs as corporate lawyers. In the same vein, the Applicants contend the Officer's conclusion regarding "limited employment prospects" lacks any coherent justification.

[24] The Respondent contends the Applicants are simply requesting this Court reweigh the evidence that was before the Officer. Counsel for the Respondent pleads that the Officer was

entitled to rely on common sense in coming to the conclusion that the Applicants failed to establish that they would leave Canada at the end of their stay. Counsel says that the GCMS notes show that the Officer weighed "the relevant factors in the application". The Respondent contends that given the specialized knowledge of Visa Officers, it was reasonable to assess the Applicants' socioeconomic status and employment prospects in Russia, along with noting that the entire family will be travelling together, in according less weight to their ties to their country of residence.

[25] Visa Officers enjoy a high degree of discretion (*Wang v Canada (Citizenship and Immigration*), 2019 FC 284 at para 5). That said, administrative decisions must not only be justifiable, they must also be justified (*Vavilov* at para 86). A reviewing court must be satisfied that there is a line "of analysis within the given reasons that could reasonably lead the tribunal from the evidence before it to the conclusion at which it arrived" (*Vavilov*, at para 102, citing *Law Society of New Brunswick v Ryan*, 2003 SCC 20, [2003] 1 SCR 247 at para 55 and *Canada (Director of Investigation and Research) v. Southam Inc*., [1997] 1 SCR 748, 144 DLR (4th) 1 at para 56). While the reasons are sparse, they nonetheless demonstrate the concerns of the Officer. She was concerned about a lack of history of the whole family traveling together; the fact the whole family would be traveling together on this occasion (including a 3 year old), and the socio-economic circumstances of the Applicants.

[26] Decision-makers are presumed to have considered the entirety of the evidence before them. The Officer possesses special knowledge regarding country conditions, economic circumstances and employment prospects in countries of origin. For example, an officer is

expected to know more about employment opportunities of lawyers in Russia, including their socio-economic circumstances, than this Court. The Officer is owed deference on these and other matters.

[27] While sparse, the decision is reasonable.

D. *The Second Decision*

[28] The Applicants contend that the Second Decision also lacks the requisite responsiveness and justification to meet the reasonableness standard. They contend that while different, the reasons for refusal are similarly generic.

[29] The Applicants take issue with the Officer's finding that they have "insufficient travel together as a family". They also contend that the Officer does not explain why this history of international travel and of compliance with immigration laws is not sufficient evidence that they would similarly obey Canadian immigration laws.

[30] The Respondent says that the Officer engaged with the totality of the evidence, and reasonably concluded that the Applicants failed to provide satisfactory evidence that they would leave Canada at the end of their authorized stay. Once again, the Respondent says the Applicants essentially disagree with how the Officer engaged with, and weighed, the evidence.

[31] The Respondent also contends the Officer reasonably assessed that there was no compelling reason for the family to travel in light of the current global COVID-19 pandemic,

especially considering that two of the Applicants are particularly vulnerable persons (a 3-year-old minor and a 72-year-old). According to the Respondent, this observation becomes more relevant given the lack of history of the whole family traveling together.

[32] As was the case with the First Decision, I consider the reasons in the Second Decision to be sparse. They are, nonetheless, reasonable. The Officer's reference to travel during a pandemic, which includes draconian mandates in many countries, including Canada, is an entirely reasonable observation. The Officer's reference to "weak family ties in home country, as family travelling together" must be considered within the context of all immediate family members in the Batysheva/Batyshev family traveling together (mother, father and minor 3 year old). If one compares that cohesive family unit to the relationship with other family members living in Russia, the Officer's reference to "weak" family ties in Russia becomes more understandable. While the Court might disagree with the conclusion about "weak" family ties to Russia, that is not the Court's decision to make.

E. *Are the decisions procedurally fair?*

[33] In the alternative to their reasonableness arguments, the Applicants contend that the decisions are the result of an unfair procedure. On issues pertaining to procedural fairness, the standard of review is correctness (*Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12, [2009] 1 SCR 339 at para 43).

[34] The Applicants contend that taken on its face, the evidence established a reasonable and genuine purpose for their proposed visit. They say that the decisions amount to a finding that the

Applicants are lying and, contrary to their declarations, they intend to use their admission to Canada for fraudulent purposes. They plead that this constitutes a credibility finding, which triggers the duty of fairness (*Hassani v Canada (Minister of Citizenship and Immigration*), 2006 FC 1283, [2007] 3 FCR 501 at para 24). In this context, they claim they should have been afforded an opportunity to respond to the Officer's concerns.

[35] The Respondent contends that contrary to the Applicants' assertions, this matter raises no issue of credibility. Counsel argues that in both cases, the Officer demonstrated concern about the sufficiency of the evidence. Counsel advances that the Officer was neither under an obligation to alert the Applicants about concerns regarding the unsatisfactory nature of the evidence provided, nor was she obligated to notify the Applicants of concerns arising directly from the requirements of paragraph 179(b) of the *IRPR* (*Singh v Canada (Citizenship and Immigration*), 2019 FC 969 at paras 23-26).

[36] The duty of fairness owed to TRV applicants is at the low end of the spectrum (*Hamad v Canada (Citizenship and Immigration*), 2017 FC 600 at para 21). A Visa Officer is not required to inform an applicant of concerns regarding the sufficiency of the materials submitted in support of an application. However, if the credibility, accuracy or genuine nature of information submitted by an applicant is the basis of the Visa Officer's concern, he or she has an obligation to allow the applicant to respond (*Al Aridi v Canada (Citizenship and Immigration*), 2019 FC 381 at para 20).

[37] I do not share the Applicants' view that the Officer made veiled credibility findings. The Officer referred to the sufficiency of the evidence and stated she was not satisfied the Applicants would leave Canada at the end of their authorized stay. I further note that the Officer does not make the explicit finding that the Applicants may not be bona fide visitors. These are indicators that the Officer's concern was with the sufficiency of the evidence and not credibility (Abbas v Canada (Citizenship and Immigration), 2022 FC 378 at paras 22-23 and 25).

VII. Conclusion

[38] For these reasons, I dismiss the judicial reviews of the January 27, 2021 and the March 2, 2021 Visa Officer's decisions. No question was proposed for consideration by the Federal Court of Appeal and none appears from the record.

JUDGMENT in IMM-2012-21, IMM-2025-21, IMM-2026-21, IMM-2027-21

THIS COURT'S JUDGMENT is that the applications for judicial review are dismissed without costs. No question is certified for consideration by the Federal Court of Appeal.

"B. Richard Bell"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKETS:	IMM-2012-21, IMM-2025-21, IMM-2026-21 AND IMM-2027-21
DOCKET:	IMM-2012-21
STYLE OF CAUSE:	IRINA SEMENUSHKINA v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
AND DOCKET:	IMM-2025-21
STYLE OF CAUSE:	IRINA SEMENUSHKINA v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
AND DOCKET:	IMM-2026-21
STYLE OF CAUSE:	ANDREY BATYSHEV, ALEKSANDRA BATYSHEVA, MIKHAIL BATYSHEV v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
AND DOCKET:	IMM-2027-21
STYLE OF CAUSE:	ANDREY BATYSHEV, ALEKSANDRA BATYSHEVA, MIKHAIL BATYSEHV v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	OTTAWA, ONTARIO
DATE OF HEARING:	MAY 18, 2022
REASONS FOR JUDGMENT AND JUDGMENT:	BELL J.
DATED:	AUGUST 5, 2022

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