Federal Court  Cour fédérale

Date: 20221208

Docket: IMM-7651-21

Citation: 2022 FC 1690

Toronto, Ontario, December 8, 2022

PRESENT: The Honourable Madam Justice Furlanetto

BETWEEN:

KULWINDER KAUR

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] This is an application for judicial review of an October 14, 2021 decision [Decision] of an officer [Officer] of Immigration, Refugees and Citizenship Canada [IRCC] rejecting the Applicant's application for permanent residence under the *Temporary Public Policy: Temporary Resident to Permanent Resident Pathway* (TR to PR Pathway): International Graduates [Policy].

[2] The Policy allows temporary residents who have earned certain educational credentials in Canada to apply for permanent residence. The Policy accepted applications from May 6, 2021 to November 5, 2021 to a maximum of 40,000 applications.

[3] As set out further below, I find the Decision was unreasonable as it lacked sufficient transparency and justification. As such, it is my view this judicial review should be allowed.

I. Background

[4] On August 24, 2021, the Applicant applied for permanent residence under the Policy. In completing her application and supporting documents, she mistakenly uploaded another document in place of her education documents.

[5] The application was reviewed on September 29, 2021 and was noted in the Global Case Management System [GCMS] as being incomplete as it was missing proof of education documents.

[6] On October 6, 2021, the Applicant notified the IRCC of her error through a webform and attached her education documents requesting that they be added to her file. She received an automated reply. The documents became part of her file on October 12, 2021.

[7] On October 14, 2021, the Officer determined that the Applicant had not submitted a complete application and recorded in the GCMS notes that the application was refused as per section 25.2 of the *Immigration and Refugee Protection Act* SC 2001, c 27 [IRPA]. A decision

letter was sent to the Applicant on the same date stating that the Applicant did not satisfy the requirement of having completed a program of study at a qualifying "Designated Learning Institution". The letter indicated that the Applicant's fee would be refunded and that the decision was "the definitive and final decision" on the application.

[8] On November 9, 2021, an officer refused a reconsideration request from the Applicant. The refusal letter referenced the Decision and stated that the application was deemed incomplete at the time of submission.

II. Issues and Standard of Review

[9] This application raises two issues: a) whether the Decision was reasonable; and b) whether there was a breach of procedural fairness.

[10] The parties agree that the standard of review of the substance of the Decision is reasonableness: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*]. None of the situations that would rebut the presumption of reasonableness review for administrative decisions is present: *Vavilov* at paras 16-17.

[11] In conducting reasonableness review, the Court must determine whether the decision is "based on an internally coherent and rational chain of analysis" and is "justified in relation to the facts and law that constrain the decision maker": *Vavilov* at paras 85-86; *Canada Post Corp* v *Canadian Union of Postal Workers*, 2019 SCC 67 at paras 2, 31. A reasonable decision, when

read as a whole and taking into account the administrative setting, bears the hallmarks of justification, transparency, and intelligibility: *Vavilov* at paras 91-95, 99-100.

[12] Questions of procedural fairness ask whether the procedure was fair having regard to all of the circumstances with the ultimate question being whether the applicant knew the case it had to meet and had a full and fair chance to respond: *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at paras 54, 56.

III. Preliminary Matter – Style of Cause

[13] 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.

IV. Analysis

[14] The Applicant contends that she made an innocent mistake attaching the wrong document to her application. She asserts that when the Decision was made, the application was complete and should not have been rejected.

[15] The Respondent asserts that there is no onus on the Officer to consider updates to an application. It asserts that the application as filed was incomplete and was properly refused.

[16] Subsection 25.2(1) of the IRPA enables the Minister to grant permanent residence pursuant to public policy considerations:

Public policy considerations	**Séjour dans l'intérêt public**
25.2 (1) The Minister may, in examining the circumstances concerning a foreign national who is inadmissible or who does not meet the requirements of this Act, grant that person permanent resident status or an exemption from any applicable criteria or obligations of this Act if the foreign national complies with any conditions imposed by the Minister and the Minister is of the opinion that it is justified by public policy considerations.	**25.2 (1)** Le ministre peut étudier le cas de l'étranger qui est interdit de territoire ou qui ne se conforme pas à la présente loi et lui octroyer le statut de résident permanent ou lever tout ou partie des critères et obligations applicables, si l'étranger remplit toute condition fixée par le ministre et que celui-ci estime que l'intérêt public le justifie.

[17] The Policy states as a requirement for eligibility that an applicant must have submitted an application for permanent residence using the forms provided by the Department for the public policy and must include at the time of application all proof necessary to satisfy an officer that the applicant meets the conditions (eligibility requirements) of the public policy.

[18] The Policy provides discretion to the officer to request additional supporting documentation to confirm admissibility and eligibility throughout the process:

> While all supporting documentation necessary to assess whether a foreign national meets the conditions of this public policy must be included at the time of application, officers retain discretion to request additional supporting documentation to confirm admissibility and eligibility throughout the processing of the application.

[19] The Respondent submits that although not communicated until October 14, 2021, the application was reviewed and deemed incomplete on September 29, 2021. Thus, the submission of the educational documents on October 6, 2021 was too late to redeem the application. At the time the application was filed, there was incomplete documentation to meet the criteria for permanent residence.

[20] However, as a determination with reasons was not provided in the GCMS notes and a decision letter was not sent until October 14, 2022, it is my view that a decision was not made until October 14, 2021. Indeed, I note that it was a different officer that reviewed the file on September 29, 2021 than the officer that authored the Decision on October 14, 2021. The Officer that authored the Decision did not review the file until October 14, 2022, when the education documents were present.

[21] This is not a situation like *Karami v Canada (Citizenship and Immigration)*, 2018 FC 846 where the complete information (in that case, a valid passport) was not submitted or before the officer when the formal decision was made, but was only supplied after the decision was rendered. In this case, it is undisputed that the education documents were part of the file as at the date of the formal Decision on October 14, 2021.

[22] Similarly, I do not consider this case to be analogous to *Gennai v Canada (Citizenship and Immigration)*, 2017 FCA 29 as this is not a situation where the Applicant is seeking to preserve the conditions of a first refused application for a second application that was submitted

later. The education documents were provided before a formal decision was made and within the timeline prescribed under the Policy.

[23] In the October 14, 2021 entry in the GCMS notes, the Officer states: “After reviewing all of the information before me, I am not satisfied on balance of probabilities that the principal applicant submitted a complete TR-PR application per IRPA 25.2. At the time of application, the PA did not provide the following required information: Proof of completion of a program of study from a designated learning institution was not provided or was incomplete. Application refused as per A25.2.”

[24] It is not clear from the reasons in the GCMS notes or the decision letter whether the Officer considered the education documents that were submitted on October 6, 2021 and were then part of the file.

[25] While the Applicant submitted a reconsideration request after receiving the Decision on October 14, 2021, a response to the reconsideration request was not received until after the timeline provided by the Policy had expired and indicated only that the application was deemed incomplete at the time of submission.

[26] As noted in *Vavilov* at paragraph 135, the impact of a decision on an individual is a contextual factor that can be relevant in evaluating the reasonableness of a decision.

[27] In this case, the Officer's failure to acknowledge the education documents and to indicate if they had been considered with the application is particularly concerning where the Policy in question is temporary and provides a time-limited pathway for permanent residence to the Applicant: *Lakhanpal v Canada (Citizenship and Immigration)* 2021 FC 694 at para 24. This is particularly so as the Respondent conceded in argument that if the Applicant had refiled the entirety of the application again on October 6, 2021, instead of just the education documents, the application may not have been refused.

[28] I agree with the Respondent that there was no obligation on the Officer to request further documents from the Applicant. However, in the context of this application, where it is not disputed that an innocent mistake was made uploading the documents and that the Applicant took steps to correct the error within the timeline and before a formal decision was made, it is my view that the education documents should have been considered and addressed in the Decision. Either they should have been treated as part of the application, or an explanation given in the Decision advising the Applicant why they could not be treated as part of the application, and that the Applicant could resubmit the full package of documents again before the expiration of the timeline under the Policy. In not doing so, it is my view that the Decision lacked sufficient transparency and justification.

[29] For this reason, I consider the Decision to be unreasonable and that the application should be sent back to another officer for redetermination.

[30] There was no question for certification proposed by the parties and I agree that none arises in this case.

JUDGMENT IN IMM-7651-21

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 decision of the Officer set aside, and the matter is remitted back to be redetermined by a different officer with the full file documents before the officer, including the education documents.

3. No question of general importance is certified.

"Angela Furlanetto"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET	IMM-7651-21
STYLE OF CAUSE:	KULWINDER KAUR v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	HEARD BY VIDEOCONFERENCE
DATE OF HEARING:	NOVEMBER 30, 2022
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