Federal Court  Cour fédérale

Date: 20230712

Docket: IMM-7663-22

Citation: 2023 FC 945

[ENGLISH TRANSLATION]

Ottawa, Ontario, July 12, 2023

PRESENT: The Honourable Mr. Justice Pamel

BETWEEN:

GLORIA LUCY CAMACHO PINZON AND OSVALDO JAVIER ARREGOCES USTATE

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The applicants, Gloria Lucy Camacho Pinzon [female applicant] and her spouse, Osvaldo Javier Arregoces Ustate [male applicant], are seeking judicial review of a decision made

by a visa officer at the Canadian Embassy in Bogota on July 13, 2022 [decision], rejecting their joint application for a temporary visitor visa (parent and grandparent super visa).

[2] The applicants argue that the officer made many errors, which made the decision unreasonable. They also allege that their visa applications have been systematically rejected and therefore demand that the Court order a visa officer to immediately issue a temporary multiple-entry visa for each applicant for a period of 10 years.

[3] The respondent concedes that the decision is unreasonable and must be set aside; his submissions therefore relate to the issue of the appropriate remedy.

II. Background

[4] The applicants are citizens of Colombia. Their three children live in Canada: one of them is a permanent resident, and the others are citizens. Between 2017 and 2021, the applicants submitted three visa applications to visit their children, all of which were rejected.

[5] In March 2021, the applicants filed their fourth visa application, for a parent and grandparent super visa. This visa application was originally rejected on July 20, 2021. The applicants applied for judicial review of the July 20, 2021 decision but ultimately accepted an offer to settle, and their visa application was reconsidered. On August 4, 2021, the visa application was rejected for a second time. However, the applicants accepted another offer to settle, and their visa application was reconsidered again. It was rejected for the third time in the impugned decision made on July 13, 2022.

III. Impugned decision

[6] The reasons for the decision consist of two rejection letters, one for each applicant, and the Global Case Management System [GCMS] notes. The relevant portion of the GCMS notes reads as follows:

> [TRANSLATION]
> Application reopened following a decision of the court. The applicant was given 30 days to submit new documents in support of his/her application. As of July 13, no documents had been received. I have reviewed the application and all supporting documents. A couple is asking to visit children and a grandchild who live in Canada. I note that two other children and two siblings live in Canada. The applicant provided an invitation letter from one of his/her children, a letter explaining the reason for the visit, the child and the grandchild's birth certificate, a letter of employment for the child and his/her spouse, several certificates showing properties in Colombia, personal bank statements showing a balance of approximately CAD$1,750, a health insurance policy, and a declaration of common-law union. Although the applicant has provided many sources of income for his/her child, the child's spouse, and his/her own properties, he/she has not provided sufficient evidence that the funds are actually accessible and sufficient for the trip. I am afraid the funds will not be easily accessible for the trip. In addition, I have considered the properties owned by the applicant in Colombia, but they do not outweigh the family ties in Canada, as the applicant's three children live there. The applicant states that he/she has an elderly parent in his/her country of residence but appears to have brothers and sisters who live in the country of residence and can take care of that parent. I am concerned that the applicant is not a bona fide visitor planning to travel for a temporary period. The application is rejected.

IV. Issues

[7] This application for judicial review raises two issues:

A. Is the decision reasonable?

B. If the decision is unreasonable, what is the appropriate remedy?

V. Standard of review

[8] The reasonableness standard applies to the review of the merits of a decision *(Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at para 23). 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). The Court can intervene only if the applicants demonstrate that "there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency" (*Vavilov* at para 100).

[9] The applicants mentioned a procedural fairness issue in their written representations but did not make separate submissions on this issue at the hearing, other than the submission that if the officer had any doubts about the applicants' credibility, he should have invited them to an interview. The issue of procedural fairness is essentially subject to the correctness standard. The Court must ask, with a "sharp focus on the nature of the substantive rights involved and the consequences for an individual," whether a fair and just process was followed (*Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54).

VI. Analysis

A. *Is the decision reasonable?*

[10] The applicants first argue that the officer did not read their update. Although the officer stated that he did not receive any documents within the 30-day time limit given to the applicants to file new documents in support of their application, the applicants replied that they filed the update within that time limit. The respondent concedes that the decision must be set aside because the officer did not receive the update submitted by the applicants, mostly for technical reasons, and made his decision without considering the evidence contained therein. As noted above, the respondent's submissions are related primarily to the question of the appropriate remedy.

[11] The applicants allege that the officer erred in concluding that they could not pay for their trip because of their financial situation. I agree. The evidence before the officer shows that the applicants together had approximately CAD$40,000 at the time they filed their visa application in March 2021. The amount of "approximately CAD$1,750" to which the officer refers appears out of the blue. They also argue that the officer erred in concluding that the sources of income provided by the applicants were not available for the trip in the absence of evidence to that effect. In fact, the applicants stated in their update that their daughter and her spouse were paying for their round-trip airline tickets and their daily expenses such as food and transportation, which the officer failed to mention. Similarly, the update states that the applicants purchased a new property in Colombia, which demonstrates their intention to remain in Colombia, and that they regularly receive income from their properties. Finally, the applicants argue that, even if the officer disregarded their update and relied only on the evidence filed previously, their financial

situation was considered adequate in the August 4, 2021, decision. In my opinion, I do not see how it would be reasonable to conclude that the applicants do not have enough funds to pay for their trip, particularly in light of the fact that their daughter and her spouse would cover the expenses for the applicants' airline tickets and their stay. I do not see why the officer found that these funds would not be readily available: this finding is not supported by a reference to the evidence and is not justified in the decision.

[12] Furthermore, the applicants consider that the fact that they have three children in Canada cannot justify a rejection of their super visa application. On this point, I also agree with the applicants: the very purpose of the super visa is to maintain ties between parents, grandparents, and children. The applicants argue that the officer considered the applicants' status as parents and grandparents to be a negative factor, contrary to the "OP-11 Manual" policy on the issuance of temporary resident visas to parents and grandparents of Canadians and permanent residents of Canada. For my part, I find it illogical to consider the fact that the applicants' children reside in Canada to be a valid ground for rejecting a parent and grandparent super visa application. The applicants must necessarily have children or grandchildren in Canada, otherwise they would not be able to get the super visa given that they would not be parents or grandparents. That this factor was treated as a negative element is a failure in the internal rationality of the decision (*Vavilov* at paras 101–102).

[13] In addition, the applicants allege that the officer erred in concluding that their family ties outside of Canada are not significant. The applicants state that they submitted two letters asking why family ties continued to be the reason for the rejection; both letters were ignored. Citing

Dhillon v Canada (Minister of Citizenship and Immigration), 2003 FC 1446, the applicants allege that they were entitled to receive a response. They also argue that the officer failed to explain why, in his view, the relationships between the applicants and their family members in Colombia are not significant, despite the new evidence regarding their family ties, which had been attached to their update. For my part, I agree with the applicants, who state that their situation is similar to *Azam v Canada (Citizenship and Immigration)*, 2020 FC 115 [*Azam*], in which the Court concluded that the officer was unreasonable in "simply adding 'familial pull factors' as a negative factor without considering the full context" that included family ties in the applicant's country (*Azam* at para 56). They argue that, even considering their family ties in Canada, there was evidence before the officer linking the applicants to Colombia.

[14] From what I see in the decision, there is no balancing in the assessment of the applicants' family ties in Canada and in Colombia. Apart from the financial reasons, the decision seems to be based entirely on the presence of the applicants' children in Canada, a consideration that has already been established as unreasonable. However, the applicants' family ties in Colombia are almost completely overlooked. The fact that the applicants have an elderly parent and brothers and sisters in Colombia is considered only briefly by the officer, in a sentence at the end of the reasons. In addition, the officer uses the presence of the brothers and sisters in Colombia to downplay the importance of the elderly parent living there. The officer erred in relying on "pull factors" for the applicants in Canada without considering the full context, namely, significant pull factors in Colombia (*Azam* at paras 55–56).

[15] Overall, I agree with the parties that the decision is unreasonable and must be set aside as it is not based on an internally coherent and rational chain of analysis, nor is it justified in relation to the facts and law that constrained the visa officer (*Vavilov* at para 85).

B. *What is the appropriate remedy?*

[16] As noted above, the respondent concedes that the decision must be set aside, and most of his submissions relate to the appropriate remedy. As part of a settlement offer refused by the applicants, the Minister had previously offered that the file be referred to another decision maker and transferred from the Immigration, Refugees and Citizenship Canada [IRCC] office in Bogota to an IRCC visa officer in Mexico, and that the file be processed on a priority basis. While I am aware of the need to avoid an endless merry-go-round of judicial reviews and subsequent reconsiderations (*Vavilov* at para 142), I agree with the respondent that it would not be appropriate for the Court to order the new decision maker to reach a specific outcome.

[17] I am aware that this would be at least the eighth time that the applicants would have to present their case to a visa officer. Since I conclude that the decision must be reconsidered by another officer, I expect that such a consideration would necessarily contain a detailed and justified assessment that would demonstrate that elements validly considered to be negative were balanced against the significant positive elements in this case; automatic rejections based solely on the number of previous decisions rejecting the issuance of a visa to the applicants would seem unreasonable in these circumstances.

[18] That said, I must also comment on the fact that I note that the question of the [TRANSLATION] "irregular but legal migration" of the applicants' children was raised in previous decisions but not mentioned in the decision in issue. I do not see how the fact that the applicants' children arrived in Canada, legally at that, would in any way be a valid factor in a reconsideration by a visa officer. If the officer had any doubts about the applicants' credibility, absent a clear explanation, it would have been reasonable for the officer to invite the applicants to an interview to resolve those doubts.

[19] The applicants' case evokes a great deal of sympathy. They have been trying to visit their children and grandchildren for at least seven years. They have already had to miss the wedding of one of their daughters, as well as the birth of their grandchild. One of the applicants' children is currently pregnant and due in December 2023. The applicants do not want to miss the birth of another of their grandchildren.

[20] I therefore order that this matter be referred to a new decision maker and transferred from the IRCC office in Bogota to an IRCC officer in Mexico for priority treatment and that the new decision be shared with the applicants within 90 days from the date of this judgment. The reviewing officer will need to be informed of the reasons for this judgment to avoid repeating the same errors that made the impugned decision and previous decisions unreasonable.

JUDGMENT in IMM-7663-22

THIS COURT ORDERS that:

1. The application for judicial review is allowed.

2. The matter is referred to an Immigration, Refugees and Citizenship visa officer in Mexico, who must consider the concerns raised in this decision.

3. The new decision must be shared with the applicants within 90 days of the date of this judgment.

4. No questions are certified.

"Peter G. Pamel"
Judge

Certified true translation
Johanna Kratz

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	NO. IMM-7663-22
STYLE OF CAUSE:	GLORIA LUCY CAMACHO PINZON and OSVALDO JAVIER ARREGOCES USTATE v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
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