Federal Court  Cour fédérale

Date: 20230802

Docket: IMM-5807-19

Citation: 2023 FC 1061

[ENGLISH TRANSLATION]

Ottawa, Ontario, August 2, 2023

PRESENT: The Honourable Mr. Justice Pentney

BETWEEN:

PETER SINGH
SARABJEET KAUR

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] This is an application for judicial review of a decision by a visa officer denying the applicants' application for a temporary resident visa (TRV) because he was not convinced they would leave Canada at the end of the authorized period of stay.

I. Background

[2] The applicants, Mr. Singh and his wife, Ms. Kaur, are citizens of India. They have two children who are Canadian citizens, aged 19 and 15. The applicants allegedly had permanent residence in Canada, which was cancelled, and they were subsequently deported to India in 2010. However, their children stayed in Canada at that time and they are still in Canada.

[3] On June 18, 2019, the applicants submitted a TRV application to visit their two children. On July 25, 2019, a visa officer in New Delhi denied their TRV application because he was not convinced the applicants would leave Canada at the end of the authorized period of stay. The notes in the Global Case Management System (GCMS) explain this denial as follows:

> Application and (supplemental documents) reviewed. Applicant and spouse are seeking to visit their (Canadian citizen) children . . . (Applicants) had their (permanent residence) vacated, which resulted in deportation from Canada… I have considered that the family has children in Canada, also considered the submission and the doctors' note. (The Applicants) left their children behind at the time of departure. No information provided with regards to possible efforts made to bring children to India. Furthermore, the deportation happened in 2010 and the family first started looking to be reunited about 6 years later. There is little evidence before me to evaluate the relationship between the children and their parents in the last 9 years. (The Applicants) have weak family ties to (India) and strong pull factor to Canada. Having considered the circumstances of the applicants and having considered all of the submitted documentation and [the Applicants'] history with the department, I'm not satisfied that the applicants are genuine temporary resident (sic) and that they will depart Canada after the authorized stay.

[4] The applicants are seeking judicial review of this decision.

II. Issues and standard of review

[5] First, the applicants submit that there was a breach of procedural fairness. They submit that the officer's decision was based on an unfavourable finding about their credibility, when he had not given them the opportunity to provide more information in response to the doubts raised.

[6] The respondent alleges that there is no issue of procedural fairness and that the applicable standard should be reasonableness, pursuant to *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*].

[7] With regard to the issues of procedural fairness, the applicable standard of review is similar to correctness. In fact, no standard applies. However, "the ultimate question remains whether the applicant knew the case to meet and had a full and fair chance to respond" (*Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 [*Canadian Pacific*] at para 56). The court must review this question with "a sharp focus on the nature of the substantive rights involved and the consequences for an individual" (*Canadian Pacific* at para 54).

[8] Moreover, the applicants submit that the standard of reasonableness applies for the other issue, namely whether it was reasonable for the officer to refuse to issue a TRV because he was not convinced that the applicants would leave Canada at the end of their period of stay: *Patel v Canada (Citizenship and Immigration)*, 2017 FC 401 at para 14; *Solopova v Canada (Minister of Citizenship and Immigration)*, 2016 FC 690 at para 12; *Aghaalikhani v Canada (Citizenship and Immigration)*, 2019 FC 1080 at para 11; *Mekhissi v Canada (Citizenship and Immigration)*, 2020 FC 230 at para 11).

[9] This standard requires the administrative decision to be internally coherent, justified, intelligible and transparent in light of the record before the decision maker who must also consider the submissions of the parties: *Vavilov* at paragraphs 99, 105-107, 125-128. When the decision maker has fundamentally misapprehended or failed to account for the evidence before it, the reasonableness of a decision may be jeopardized (*Vavilov* at para 126). To intervene, the reviewing court must be satisfied that the decision has sufficiently "serious shortcomings" such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency. The flaws or shortcomings must not be merely superficial or peripheral to the merits of the decision. They must constitute more than a "minor misstep." The issue must be sufficiently central or significant to render the decision unreasonable: *Vavilov* at paragraph 100.

III. Analysis

[10] The applicants submit that this is a very simple case. They note that the officer did not believe their statement that they would leave Canada at the end of the period of stay authorized by their TRV, and that this determination involves an assessment of their credibility. According to the applicants, the officer should have informed them that he had reservations about their credibility and consequently have given them the opportunity to provide more information about their relationship with their children.

[11] The applicants submit that the following statement by the Court in *Hassani v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1283, supports their argument:

> [24] Having reviewed the factual context of the cases cited above, it is clear that where a concern arises directly from the requirements of the legislation or related regulations, a visa officer will not be under a duty to provide an opportunity for the applicant

> to address his or her concerns. Where however the issue is not one that arises in this context, such a duty may arise. This is often the case where the credibility, accuracy or genuine nature of information submitted by the applicant in support of their application is the basis of the visa officer's concern . . .

[12] According to the applicants, the officer's doubts in this case involve credibility, and the sufficiency of the evidence provided is not questioned. Moreover, they note that the obligation to leave Canada at the end of their authorized stay is a forward-looking legislative requirement, and satisfying a visa officer that this requirement will be met turns on the applicants' credibility and motivations for seeking the permit: *Egheoma v Canada (Citizenship and Immigration)*, 2016 FC 1164.

[13] The respondent submits that the decision is reasonable, and that the applicants' credibility is not being questioned. The respondent alleges that the officer noted the lack of evidence regarding the essential issue of the relationship between the applicants and their children (who are in Canada). The respondent submits that the decision is based on insufficient evidence on this matter and that the officer's assessment was therefore reasonable.

[14] The applicants' submissions have not convinced me. I find that in this case, credibility is not a determinative issue. The officer's decision is merely an application of the criteria established by the legal framework that applies in this case.

[15] The applicants had the onus of establishing that they will leave Canada by the end of the period authorized for their stay pursuant to section 20 of the *Immigration and Refugee Protection Act*, S.C. 2001, c 27, and section 179 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227. The officer's determination on this issue stems directly from the legal

framework, and the applicants knew they had to submit sufficient evidence to meet this onus at the time of their visa application.

[16] In this case, the officer's notes are clear: there is no mention of credibility. The officer did, however, note the lack of evidence regarding the relationship between the applicants and their children: "No information provided with regards to possible efforts made to bring the children to India… There is little evidence before me to evaluate the relationship between the children and their parents in the last 9 years." Considering the applicants' history, specifically the fact their children remained in Canada after the applicants were deported to India, this is a key element in the officer's assessment. It is clear that the officer's conclusion on this fundamental element was based on the insufficiency of the evidence on the subject.

[17] I agree with the applicant that leaving Canada at the end of the period authorized by the TRV is a forward-looking legislative requirement. However, I do not see the relevance of *Egheoma v Canada (Citizenship and Immigration)*, 2016 FC 1164 in the current circumstances. The officer in that case did not believe the applicant's statement about his studies in his country of origin, and those doubts led the officer to question the applicant's underlying motivations for the visa application: "Concerns applicant is using study permit as a means to facilitate entry to Canada rather than educational advancement" (*Egheoma* at para 9). The reasoning in that case is not similar to the officer's approach in the present case.

[18] For all these reasons, I am not convinced that there was a breach of procedural fairness in this case. The officer's analysis arises directly from the legislative framework. The applicants simply did not provide sufficient evidence on the crucial issue of their relationship with their children, which is a key consideration in the assessment of the pull factors for staying in Canada

that are relevant in this situation. The officer's decision is reasonable, considering the facts and the applicable legal framework. The officer's analysis is clear and transparent. There is no basis to find that the decision is unreasonable.

[19] The application for judicial review is dismissed. There is no question of general importance to certify.

JUDGMENT in IMM-5807-19

THE COURT'S JUDGMENT is as follows:

1. The application for judicial review is dismissed.

2. There is no question of general importance to certify.

"William F. Pentney"
Judge

Certified true translation
Elizabeth Tan

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-5807-19
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