Federal Court  Cour fédérale

Date: 20231201

Docket: IMM-11836-22

Citation: 2023 FC 1618

Ottawa, Ontario, December 1, 2023

PRESENT: The Honourable Mr. Justice Southcott

BETWEEN:

JENNIFER WOPHILL

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] This is an application for judicial review of a decision of an officer [Officer] of Immigration, Refugees and Citizenship Canada [IRCC], dated January 24, 2023 [Decision], refusing to reconsider a previous rejection of the Applicant's application for permanent residence.

[2] As explained in greater detail below, this application is dismissed, because the Applicant's arguments do not undermine the reasonableness or procedural fairness of the Decision.

II. Background

[3] The Applicant, a Nigerian citizen, submitted an application in 2011 for a permanent resident visa as a member of the Federal Skilled Worker class, claiming 15 points for having a qualifying relative who is a permanent resident of Canada. On February 2, 2022, an IRCC officer rejected her application, as the officer was not satisfied that the Applicant was entitled to those 15 points. The officer found that the Applicant had provided insufficient evidence to support a relationship with the individuals that her application identified as her siblings. The Applicant sought leave to apply for judicial review of that decision, but the Federal Court dismissed her application.

[4] On May 4, 2022, the Applicant submitted a request for reconsideration of the rejection of her application for permanent residence, supported by new evidence including birth certificates of the individuals she identified as her siblings. On January 24, 2023, in the Decision that is the subject of this present application for judicial review, the Officer refused the reconsideration request.

III. Decision under Review

[5] The Officer conveyed the Decision to the Applicant by letter dated January 24, 2023, advising that her request for reconsideration had been reviewed and that there were insufficient

reasons for reopening her application for permanent residence. Global Case Management System notes of the same date record that the Officer received and reviewed the Applicant's reconsideration request, was satisfied that there was no error in law, and would therefore not be reopening the application as the refusal decision remained the same.

IV. Issues and Standard of Review

[6] The Applicant raises the following issues for consideration by the Court:

A. Is the Decision reasonable on its merits?

B. Did the Officer breach the duty of procedural fairness owed to the Applicant?

[7] The procedural fairness issue is reviewable on a standard of correctness. As suggested by its articulation, the first issue is reviewable on the standard of reasonableness (see *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65).

V. Analysis

A. *Is the Decision reasonable on its merits?*

[8] Principally, the Applicant argues that the Decision is unreasonable, because the Officer failed to evaluate the new evidence that was submitted with the reconsideration request and explain why it was not sufficient to grant reconsideration and make a positive decision on the application for permanent residence. The Applicant submits that the new evidence was compelling, that it cured the evidentiary deficiencies in her application, and that it was therefore unreasonable for the Officer to refuse her reconsideration request.

[9] As the Respondent submits, the difficulty with this argument is that it overlooks the fact that the process for reconsideration of an administrative decision involves two steps: (a) first, the decision-maker determines whether to exercise discretion to proceed to reconsider the previous decision; and (b) if the decision-maker decides under the first step to reconsider, then it performs that reconsideration. Under the first step, there is no general obligation to grant reconsideration where new evidence is submitted. Rather, an applicant must show that reconsideration is warranted in the interests of justice or given unusual circumstances. The consideration of the new evidence arises only at the second step, i.e. the actual reconsideration, if the decision to reconsider is made under the first step (see *Hussein v Canada (Citizenship and Immigration)*, 2018 FC 44 [*Hussein*] at paras 55, 57).

[10] The Applicant submits that the Respondent's position overlooks paragraph 54 of *Hussein*, which explains that the decision-maker is required to take all relevant circumstances into account in deciding whether to exercise the discretion to reconsider. Also, the Applicant argues that paragraph 56 of *Hussein* demonstrates that, in that case, the conclusion that the interests of justice did not merit reconsideration was based on the fact that the evidence was not actually new and had previously been considered. Based thereon, the Applicant submits that evaluation of the new evidence should form part of the assessment under the first step of the reconsideration process.

[11] I cannot agree with that characterization of *Hussein*, as it is clearly inconsistent with the Court's explanation at paragraph 57 that the assessment of the new evidence arises in the second step. Rather, the portion of the *Hussein* analysis upon which the Applicant relies demonstrates

that the decision-maker in that particular case declined to reconsider because the evidence was not actually new. However, such an analysis is different from undertaking an evaluation of the probative value of the new evidence, which the Applicant argues the Officer should have done in the case at hand.

[12] Alternatively, the Applicant argues that the Officer did undertake analyses under both the first and second steps of the reconsideration process, as a result of which the Officer was required to engage in a substantive evaluation of the new evidence and to provide reasons why that evidence was insufficient to grant the permit residence application. This is the sort of conclusion that Justice Diner reached in *Gill v Canada (Citizenship and Immigration)*, 2018 FC 1202 [*Gill*] at paragraphs 15 to 17. In that case, the respondent argued that the officer stopped at the first step and refused to reconsider the relevant application for permanent residence. However, the Court concluded that the officer had conducted an analysis of the merits of the new evidence and that, in that context, the officer had provided inadequate reasons for refusing the application.

[13] In *Gill*, Justice Diner's conclusion that the officer had moved to the second step of the process was based on the officer having considered the sufficiency of the new evidence, including sending a procedural fairness email to the applicant and then weighing the explanation and supporting documentation provided in response (see para 16).

[14] In contrast, in the case at hand, the Decision states merely that, having received and reviewed the Applicant's request, there was no error in law and, as such, the application would

not be reopened and the refusal decision remained the same. The Applicant relies on the reference to having reviewed her request to support her position that the Officer conducted a substantive analysis of the new evidence. In the absence of any indications of the sort identified in *Gill* that the Officer substantively engaged with the proposed new evidence, I do not read this language in the decision as capable of supporting the interpretation the Applicant advocates.

[15] As such, I agree with the Respondent that the Officer did not move beyond step one of the reconsideration process and therefore was not required to conduct a substantive analysis of the proposed new evidence or provide reasons why that evidence did not support a positive result in the permanent residence application.

[16] In my view, the Applicant's arguments do not undermine the reasonableness of the Decision.

B. *Did the Officer breach the duty of procedural fairness owed to the Applicant?*

[17] The above analysis is also effectively dispositive of the Applicant's procedural fairness argument. She submits that, before concluding that the new evidence was insufficient to grant her permanent residence application, the Officer was obliged to alert her to the concern that the evidence was considered to lack credibility or to be otherwise insufficient and was obliged to afford her an opportunity to respond to that concern. As explained above, the Officer did not engage in a substantive analysis of the new evidence and conclude that it was lacking credibility or insufficient. As such, without commenting on whether such a set of circumstances would give

rise to a procedural fairness obligation of the sort the Applicant suggests, it is clear that no such obligation arises on the facts of this case.

[18] Finally, in support of her procedural fairness arguments, the Applicant seeks to invoke the doctrine of legitimate expectations. However, that doctrine serves to inform a procedural fairness analysis in circumstances where an administrative decision-maker has represented, or has represented by conduct, that a particular process would be followed in making a decision (see *Agraira v Canada (Public Safety and Emergency Preparedness*), 2013 SCC 36 at para 94). The Applicant has identified no such representation upon which she relies in the case at hand. I find this doctrine has no application to the circumstances of this case.

VI. Conclusion

[19] Having considered the Applicant's arguments and finding no reviewable error in connection with the merits of the Decision or the fairness of the process leading to the Decision, this application for judicial review must be dismissed. Neither party proposed any question for certification for appeal, and none is stated.

JUDGMENT IN IMM-11836-22

THIS COURT'S JUDGMENT is that this application for judicial review is dismissed.

No question is certified for appeal.

"Richard F. Southcott"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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