Federal Court Cour fédérale

Date: 20240207

Docket: IMM-10911-22

Citation: 2024 FC 193

Toronto, Ontario, February 7, 2024

PRESENT: The Honourable Mr. Justice Gleeson

BETWEEN:

ABDULRAOUF R A ALMADHOUN

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant is a Palestinian citizen who lives in and is a permanent resident of Saudi Arabia. The Applicant has submitted a number of unsuccessful study permit applications. His most recent application was submitted on June 23, 2022.

[2] In a decision dated September 7, 2022, the application submitted on June 23, 2022 was refused. The Designated Migration Officer [Officer] was not satisfied the Applicant had established he would leave Canada, citing (1) the Applicant's immigration status in Saudi Arabia, (2) the Officer's concern that the purpose of the visit was not consistent with a temporary stay in light of the details provided, and (3) the Applicant's significant family ties to Canada. The Officer's reasons for refusal are brief and I have reproduced them in full:

> Male, Palestine, 29, single. PA going for International Business. LOa [*sic*] provided. Father sponsoring - employment unknown. Funds SAR 77K (approx.CAD 25.6K). PA is in KSA on temporary status. Status unstable. The purpose of visit does not seem reasonable at this time. I am not satisfied that PA would adhere to the terms and conditions of the TR in Canada. Weakened family ties to CoR/CoN - PA is single and not established. Given the current political issues in CoN, I am not satsified that PA will be able to return to Palestine. Refused.

[3] The Applicant brings this Application for Judicial Review of the September 7, 2022 decision under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

II. The Applicant's history

[4] The Affidavit of Charlene Cho sworn on February 22, 2023 [Cho Affidavit] and filed by the Respondent details the Applicant's study permit application history:

A. On April 29, 2021, the Respondent received application number S303849439. Application S303849439 was refused on May 26, 2021.

B. On July 4, 2021, the Respondent received application number S304221831. Application S304221831 was refused on August 3, 2021.

C. The Applicant filed an Application for Leave and for Judicial Review (Court docket IMM-6643-21) seeking leave to review the refusal of application S304221831. The Application for Leave was discontinued following an offer from the Respondent to set aside the refusal, provide the Applicant the opportunity to provide additional submissions and have the matter re-determined by a different officer (Applicant's Record at page 14, as marked). The Court's record of recorded entries indicates a discontinuance was filed in IMM-6643-21 on December 1, 2021.

D. On redetermination, application S304221831 was again refused on May 29, 2022 as the Applicant failed to file an updated Letter of Acceptance.

E. On June 23, 2022, the Applicant submitted application number S305076392 and attached the following material:

   i. An application for a study permit made outside of Canada (Certified Tribunal Record [CTR] page 4, as marked);

   ii. A copy of the Applicant's Palestinian Authority passport bio page (CTR page 20, as marked);

   iii. Letter of Acceptance from Niagara College Canada, dated June 15, 2022 (CTR page 15, as marked);

   iv. Copy of Proof of Funds (CTR page 23, as marked);

   v. Family Information Form (CTR page 10, as marked); and

   vi. Letter of Explanation from the Applicant, dated June 15, 2022 (CTR page 22, as marked).

[5] In support of this Application for Judicial Review, the Applicant filed an Affidavit sworn on January 18, 2023 [Applicant's Affidavit]. The Applicant's Affidavit includes an exhibit [Exhibit "A"], which is described by the Applicant as "documents concerning this application."

[6] The Respondent filed an Affidavit affirmed by the Officer on November 7, 2023 [Officer's Affidavit]. The Officer's Affidavit identifies the documents that the Applicant submitted and that were before the Officer in respect to application number S305076392. The Officer affirms that Exhibit "A" to the Applicant's Affidavit was not before the Officer. This is consistent with the Applicant's Affidavit, which only affirms that Exhibit "A" contains documents "concerning this application."

[7] The Applicant relies on the June 15, 2022 letter of explanation (see para 4(E)(vi) above) to argue the Officer had a duty to obtain the Exhibit "A" information from his prior application when considering application number S305076392.

[8] Although the Cho Affidavit states the June 15, 2022 letter was attached to application number S305076392, the Officer affirms that the June 15, 2022 letter of explanation was not before them. The Officer does not explain why or how the June 15, 2022 letter now forms part of the CTR produced by the Respondent but does note that the letter had been submitted in support of a prior application (application S304221831).

[9] As the Applicant's counsel noted in oral submissions, the Respondent's evidence with respect to whether the June 15, 2022 letter was before the Officer is inconsistent.

[10] Having considered the conflicting evidence, I prefer the evidence of the Officer. It was the Officer who actually dealt with the application and reviewed the documents submitted in support of the application. The June 15, 2022 letter makes no reference to the application that

was before the Officer, but instead references application S304221831. It is reasonable to conclude that, upon receipt of the June 15, 2022 letter, the Respondent would have attached the letter to the application referenced in it.

[11] While this leaves unresolved how the letter ultimately was included as part of the CTR, I am satisfied the June 15, 2022 letter was not before the Officer when application S305076392 was decided.

[12] Relying on the Officer's November 7, 2023 Affidavit, the Respondent submits that, because the material at Exhibit "A" of the Applicant's Affidavit was not before the Officer, it is not properly before the Court on this Application. The Respondent therefore submits that Exhibit "A" and any arguments relying upon it should be struck, that information was not before the decision-maker and cannot be relied upon to impugn the decision on judicial review.

III. Issues and standard of review

[13] The Applicant submits the Court's intervention is warranted on two grounds: (1) the Officer's refusal decision was unreasonable; and (2) the Officer erred in not providing the Applicant a procedural fairness letter.

[14] I have framed the issues as follows:

A. Was the record before the Officer incomplete, and if so, does this constitute a breach of fairness?

B. Is Exhibit “A” properly before the Court on this Application?

C. Was the Officer’s refusal, on the basis of the record that was before them, unreasonable or unfair?

[15] Issues of procedural fairness do not necessarily lend themselves to a particular standard of review analysis. Rather, the Court is to determine whether the proceedings were fair with regard to all of the circumstances — “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 at paras 54-56).

[16] The Officer’s decision is to be reviewed against the presumptive standard of reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 23, 25 [*Vavilov*]). On reasonableness review, the reviewing Court must consider the reasoning process and whether the decision as a whole is reasonable by asking if the decision demonstrates the hallmarks of reasonableness — justification, transparency and intelligibility — and whether it is justified in relation to the relevant factual and legal constraints (*Vavilov* at para 99).

IV. Analysis

A. *The CTR is not incomplete*

[17] As I understand it, the Applicant argues the Officer was required to consult the prior application and obtain the Exhibit “A” information because the relevance of this information was

brought to the Officer's attention in the June 15, 2022 explanation letter. The Officer's failure to obtain and consider that information resulted in the refusal decision being rendered on an incomplete record and this in turn was a breach of procedural fairness. I disagree.

[18] In *Togtokh v Canada (Citizenship and Immigration)*, 2018 FC 581 [*Togtokh*], Justice Keith Boswell summarized three distinct scenarios where deficiencies in a CTR may arise and in turn engage the question of whether there was a breach of fairness:

> [16] As noted above, the determinative issue in this case is whether the deficiencies in the CTR constitute a breach of procedural fairness. The case law in this Court has dealt with at least three distinct types of scenarios raised by a deficient CTR, including the following:
>
> 1. A document does not appear in the CTR and it is unknown whether it was submitted by an applicant. In cases such as these, the Court will presume that the materials in the CTR were the materials before the immigration officer, barring some evidence to the contrary (see *Adewale v Canada (Citizenship and Immigration*), 2007 FC 1190 at para 11; 161 ACWS (3d) 790; *Varadi v Canada (Citizenship and Immigration*), 2013 FC 407 at paras 6 to 8, 431 FTR 198; *El Dor c Canada (Citoyenneté et de l'Immigration)*, 2015 FC 1406 at para 32, 263 ACWS (3d) 187; and *Ogbuchi v Canada (Citizenship and Immigration*), 2016 FC 764 at paras 11 to 12, 268 ACWS (3d) 420).
>
> 2, A document is known to have been properly submitted by an applicant but is not in the CTR, and it is not clear whether that document, for reasons beyond an applicant's control, was before the decision-maker. In this situation, the case law suggests that the decision should be overturned (see *Parveen v Canada (Minister of Citizenship and Immigration)* (1999), 1999 CanLII 7833 (FC), 168 FTR 103 at para 8 to 9, 88 ACWS (3d) 452 (Fed TD) [*Parveen*]; *Vulevic* at para 6; *Agatha Jarvis c Canada (Citoyenneté et de l'Immigration)*, 2014 FC 405 at paras 18 to 24, 240 ACWS (3d) 955 [*Jarvis*]).
>
> 3. A document is known to have been before the tribunal but is not before the Court and cannot be reviewed. In such a

> case, unless the document is otherwise available to the Court, such as in an applicant's record (see *Torales Bolanos* at para 52; *Patel v Canada (Citizenship and Immigration)*, 2013 FC 804 at paras 29 to 32, 437 FTR 138; and *Aryaie v Canada (Citizenship and Immigration)*, 2013 FC 469 at paras 19 to 27, [2013] FCJ No 498), the Court will be unable to determine the legality of the decision and the decision will be set aside if the missing document was central to the finding under review (see *Kong v Canada (Minister of Employment & Immigration)*, [1994] FCJ No 101 at para 21, 73 FTR 204 (Fed TD); *Ahmed v Canada (Minister of Citizenship and Immigration)*, 2003 FCT 180 at paras 24 and 25, 120 ACWS (3d) 1023; *Gill v Canada (Minister of Citizenship and Immigration)*, 2003 FC 1003 at paras 8 and 9, 125 ACWS (3d) 130; *Machalikashvili v Canada (Minister of Citizenship and Immigration)*, 2006 FC 622 at para9, 149 ACWS (3d) 482; *Li* at para 15).

[19] In this instance, the June 15, 2022 letter that the Applicant relies on was found in the CTR; however, the Officer has affirmed the letter was not in the material that was before them when the decision was made. Scenario two described in *Togtokh* most closely describes the circumstances that arise in this case.

[20] The June 15, 2022 explanation letter that the Applicant argues triggered the Officer's duty to seek out and consider documentation contained in the prior application was not, in my view, properly submitted by the Applicant. As noted above, the June 15, 2022 letter indicates on its face that it was submitted in respect of a separate and distinct application. On this basis alone, I am not persuaded that the CTR was incomplete or that there was a breach of fairness.

[21] I am also of the opinion that the June 15, 2022 letter, even if it had been properly brought to the Officer's attention, did not and could not impose a duty on the Officer to seek out information provided by the Applicant in an earlier application. The onus is on the Applicant to

submit a complete application. I agree with the following paragraphs from Justice Henry Brown's decision in *Sharafeddin v Canada (Citizenship and Immigration)*, 2022 FC 1269:

> [25] In my view, this case is one in which the Applicant failed to satisfy the onus on her to establish her application was relevant, convincing and unambiguous. Her application was, with respect, incomplete in material respects as noted above: *Rezvani v. Canada (MCI)*, 2015 FC 951:
>
> > [21] However, it is also true that the burden is on the applicant to provide a complete application. Concerns arising out of sufficiency of the evidence do not have to be communicated to the applicant, given that this is part of the initial burden of providing a complete application. In *Obeta*, a case in which the visa officer noted that the tasks listed in employment letters had been copied directly from the relevant NOC codes, Justice Boivin stated as follows, at para 25:
> >
> > > …The applicant has the burden to put together an application that is not only "complete" but relevant, convincing and unambiguous *(Singh v. Canada (Minister of Citizenship & Immigration)*, 2012 FC 526, [2012] F.C.J. No. 548 (F.C.); *Kamchibekov*, above, at para 26). Despite the distinction that the applicant attempts to make between sufficiency and authenticity, the fact of the matter is that a complete application is in fact insufficient if the information it includes is irrelevant, unconvincing or ambiguous.
>
> [26] In coming to my determination I am also mindful of Justice McHaffie's reasons in *Iriekpen v Canada (Citizenship and Immigration)*, 2021 FC 1276:
>
> > [7] The "administrative setting" of the visa officer's decision includes the high volume of visa and permit applications that must be processed in the visa offices of Canada's missions: *Canada (Minister of Citizenship and Immigration) v Khan*, 2001 FCA 345 at para 32; *Patel v Canada (Citizenship and Immigration)*, 2020 FC 77 at paras 15, 17. Given this context and the nature of a visa application and refusal, the Court has recognized

> that the requirements of fairness, and the need to give reasons, are typically minimal: *Khan* at paras 31–32; *Yuzer* at paras 16, 20; *Touré v Canada (Citizenship and Immigration)*, 2020 FC 932 at para 11. [Emphasis in original.]

B. *Exhibit "A" is not properly before the Court*

[22] Subject to limited and narrow exceptions, none of which apply here, judicial review is to be undertaken on the basis of the record that was before the decision-maker (*Afolayan v Canada (Citizenship and Immigration)*, 2022 FC 1625 at para 20; *Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22 at paras 20-21). The documents that were before the Officer are found at pages 4-26 of the CTR, as marked, with the exception of page 22, which I have previously concluded was not before the Officer (see paras 9 and 20 above). I have not considered the documentation at Exhibit "A", and the arguments the Applicant has advanced in respect of the reasonableness of the decision have been assessed on the basis of the record before the Officer.

C. *The Officer's decision is reasonable and fair*

[23] The Applicant argues the Officer either failed to read or to understand the Applicant's study plan and similarly failed to consider the Applicant's circumstances when concluding that the Applicant had not satisfied the Officer he would leave Canada upon the expiration of his visa.

[24] The limited documentation before the Officer was simply insufficient to demonstrate the ties to Saudi Arabia that the Applicant now argues the Officer failed to consider. Faced with

limited supporting documentation, it was not an error for the Officer to reference the Applicant's single status and lack of establishment in his country of residence or country of nationality, and to note weakened family ties to those countries due to the evidence that two of the Applicant's siblings reside in Canada.

[25] In oral submissions, counsel for the Applicant took issue with the Officer's references to Palestine in relation to the Applicant's country of nationality. I simply note in this regard that judicial review is not a treasure hunt for error and that this does not undermine the reasonableness of the decision.

V. Conclusion

[26] For the above reasons, the Application is dismissed. The parties have not identified a question of general importance and none arises.

JUDGMENT IN IMM-10911-22

THIS COURT'S JUDGMENT is that:

1. The Application is dismissed.

2. No question is certified.

"Patrick Gleeson"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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