Federal Court Cour fédérale

Date: 20240604

Docket: IMM-3736-23

Citation: 2024 FC 842

Toronto, Ontario, June 4, 2024

PRESENT: The Hon Mr. Justice Henry S. Brown

BETWEEN:

RENYROSE ALEGROSO

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Nature of the matter

[1] The Applicant seeks judicial review of a decision dated February 7, 2023, rejecting her Temporary Resident Permit [TRP] application [Decision]. The Applicant previously held a work permit, however her legal status in Canada elapsed because she was unable to obtain a new Labour Market Impact Assessment [LMIA] from her employer in time to apply for a new work permit.

[2] A TRP allows a person who is otherwise inadmissible to Canada or who does not meet the requirements of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*] to become a temporary resident if it is "justified in the circumstances." The Applicant applied for a TRP to overcome her inadmissibility issues she faces in applying for a new work permit (i.e., that she has remained in Canada without status).

[3] The Officer found the Applicant's circumstances did not warrant the issuance of a TRP under *IRPA*. In addition, the Officer was not convinced the Applicant would depart Canada at the end of her stay. While this last point was alleged to have been in error, that argument was abandoned by counsel for the Applicant who brought recent jurisprudence to the Court's attention, which was appreciated.

II. Facts

[4] The Applicant is a caregiver from the Philippines who came to work in Canada under the "Home Child Care Provider Program" in March 2018. While in Canada, she had financially supported her husband and two children in the Philippines by sending home approximately $1,000 per month.

[5] The Applicant's original work permit was valid until March 27, 2020. She submitted an application to change her employment conditions to work as an in-home caregiver with an updated LMIA, which was approved and valid until March 20, 2021.

[6] The Applicant's employer failed to obtain a new LMIA before her work permit extension expired. In fact, the employer did not file for a new LMIA until September 23, 2021, six months

after the expiry of the previous LMIA. No explanation was provided in this respect. As a result of the delay, the Applicant lost her status in Canada.

[7] Nothing suggests this was the fault of the Applicant.

[8] The Applicant submitted a TRP and new work permit application in March 2022 with an updated LMIA, dated November 10, 2021. The record indicates the delay after she received the new LMIA in November 2021 was occasioned by here lack of funds, some shame in relying on relatives for support in Canada, and the lack of professional advice at least until she filed in March 2022.

[9] The Applicant's application was accompanied by a letter advising that the Applicant's employer promised to obtain a new LMIA but she did not receive her new LMIA until after her work permit expired. The letter explains the Applicant has been unable to work due to her loss of status and has been unable to send money back to her family. She attests to relying on a relative for food and shelter. The letter also states the Applicant applied for the TRP "to overcome her inadmissibility to Canada" and upgrade her education, and requested that the Officer consider her "unfortunate circumstances that have occurred and the fact that the Applicant has taken steps to try and restore her status though her lack of status was not her fault."

III. Decision under review

[10] The Officer rejected the Applicant's TRP application, finding she did not have "compelling grounds" to warrant the issuance of a TRP under subsection 24(1) of the *IRPA*. The Decision states:

> Your application as requested is refused. After reviewing all of the information presented it does not appear that sufficient compelling grounds exist to warrant the issuance of a temporary resident permit.lt [*sic*] does not appear that sufficient compelling grounds exist to warrant the issuance of a temporary resident permit under A24(1). The following was some of the information that I considered prior to arriving at my decision:
>
> 1. Current inadmissibility
>
> 2. Reason to remain in Canada
>
> 3. Available options
>
> …
>
> You are presently in Canada without legal status. Please use the enclosed Voluntary Departure form to confirm your departure from Canada. Enforcement action may be taken if your departure is not confirmed in the next 30 days. This letter is being copied to the Canada Border Services Agency.

[11] In the "Case Summary" section of the accompanying reasons, the Officer made note of the following relevant factors in the application:

> -The applicant, Ms. Alegroso, entered Canada in March 2018 as a worker under the Home Child Care Provider program
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> -Ms. Alegroso's work permit was valid until March 27th, 2020
>
> -She submitted a new work permit application to change her employment conditions, to working as an 'In home caregiver-nanny'. The LMIA based closed work permit was approved and valid until, 2021/03/20
>
> -As per the representative's statement, "She has ben working as a nanny at the Soliman Family looking after 3 children ages 7, 5, and 2."
>
> -The applicant's representative states, "She was promised by her employer that they have been working on her LMIA to be able to extend her work permit however it took too long for the LMIA to be released." "..it consequently resulted in her loss of her status."

> -The applicant has submitted an LMIA dated November 10th, 2021 as well an [*sic*] Temporary Foreign Worker Program In-Home caregiver Employer/Employee Contract
>
> -Ms. Alegroso has a family in the Philippines whom she has been financially supporting. The representative states, "Her family relies heavily on her for all their financial needs."
>
> - As per the representative's notes, Ms. Alegroso currently resides with and financially depends on her sister in law Rufina Natividad.
>
> -The representatives requests, "Due to the compelling reasons stated, Ms. Alegroso now submits this application for a Temporary Resident Permit to Overcome her inadmissibility to Canada alongside her Work Permit application to further her Canadian education and add to her skill set."

[12] In the "Risk vs. Need" section, the Officer wrote:

> Risk: To facilitate the entry of visitors, students and temporary workers for purposes such as trade, commerce, tourism, international understanding and cultural, educational and scientific activities
>
> vs.
>
> Need:; to permit Canada to pursue the maximum social, cultural and economic benefits of immigration;

[13] In the "Conclusion and Recommendations" section, the Officer wrote:

> The applicant, Ms. Alegroso, is a 43 year old female from the Philippines, requesting a Temporary Resident Permit (TRP) in order to get a Work Permit (WP), to legalize her immigration status in Canada. The request for a TRP surrounds the issue that the applicant has been out of status for an extended period, and is no longer restorable. Ms. Alegroso was noncompliant of the Canadian immigration system when she remained in Canada without legal status, by overstaying her Work Permit, which expired March 20th, 2021.
>
> Ms. Alegroso originally entered Canada in March 28th, 2018 as a worker under the Home Child Care Provider program. The applicant last entered Canada September 10th, 2019. She submitted

a new work permit application to change her employment conditions, to working as an ‘In home caregiver-nanny’. The LMIA based closed work permit was approved with the expiry March 30th, 2021. As per the representative's statement, “She has ben working as a nanny at the Soliman Family looking after 3 children ages 7, 5, and 2.”

Ms. Alegroso last held status on March 30th 2021. The applicant's representative states, “She was promised by her employer that they have been working on her LMIA to be able to extend her work permit however it took too long for the LMIA to be released”, “...it consequently resulted in her loss of her status.” The applicant has submitted an LMIA dated November 10th, 2021, along with an [*sic*] Temporary Foreign Worker Program In-Home caregiver Employer/Employee Contract. Applicants are encouraged to apply prior to the expiry of their temporary status, and to submit pending documents as they receive them, specifically in LMIA related applications as we are aware of the processing times. In this instance the applicant failed to submit a Work permit application prior to the end of their authorized period of stay.

It is noted, Ms. Alegroso has a family in the Philippines whom she has been financially supporting. The representative states, “Her family relies heavily on her for all their financial needs.” As per the representative's notes, Ms. Alegroso currently resides with and financially depends on her sister in law Rufina Natividad. The representative adds, “Ms. Alegroso will immediately return home to the Philippines at the end of her work permit validity.” However, I am not convinced she will depart Canada at the end of the authorized period of stay as she never departed after the expiry of her previous work permit.

As per A24(1), a TRP may be issued to individuals who have not complied with the act (IRPA) and yet may have compelling reasons to be issued a TRP. The onus is on the client to demonstrate to an officer that the applicant is in a unique circumstance with compelling reasons to overcome the inadmissibility. After reviewing the submitted documents, I am not satisfied that there are compelling grounds to issue a TRP. It is noted, the applicant entered Canada as a temporary resident and it is reasonable to expect that they would leave Canada at the end of the period authorized for their stay. The TRP and WP applications are therefore refused.

IV. Issues

[14] The Applicant raises the following issues on judicial review, namely, whether:

1. The Officer fettered their discretion by imposing a requirement that the Applicant show "compelling reasons" to justify granting the TRP;
2. The Officer's decision was unreasonable;
3. The Officer breached the principles of procedural fairness; and
4. The Officer employed the wrong legal test by requiring the Applicant to demonstrate that she would leave by the end of her authorized stay.

[15] The Respondent submits that the only question on judicial review is whether the Officer's decision was reasonable.

[16] Respectfully, this matter raises the following issues:

1. Was the Officer's decision reasonable?
2. Did the Officer breach their duty of procedural fairness?

V. Statutory Framework

[17] The issuance of TRPs is governed by subsection 24(1) of *IRPA*:

Temporary resident permit	**Permis de séjour temporaire**
24 (1) A foreign national who, in the opinion of an officer, is inadmissible or does not meet the requirements of this Act becomes a temporary resident if an officer is of the opinion that it is justified in the	**24 (1)** Devient résident temporaire l'étranger, dont l'agent estime qu'il est interdit de territoire ou ne se conforme pas à la présente loi, à qui il délivre, s'il estime que les circonstances le justifient, un

circumstances and issues a temporary resident permit, which may be cancelled at any time.	permis de séjour temporaire — titre révocable en tout temps.

[18] The rights of temporary residents are established in section 29 of *IRPA*:

Right of temporary residents	**Droit du résident temporaire**
29 (1) A temporary resident is, subject to the other provisions of this Act, authorized to enter and remain in Canada on a temporary basis as a visitor or as a holder of a temporary resident permit.	**29 (1)** Le résident temporaire a, sous réserve des autres dispositions de la présente loi, l'autorisation d'entrer au Canada et d'y séjourner à titre temporaire comme visiteur ou titulaire d'un permis de séjour temporaire.
Obligation — temporary resident	**Obligation du résident temporaire**
(2) A temporary resident must comply with any conditions imposed under the regulations and with any requirements under this Act, must leave Canada by the end of the period authorized for their stay and may re-enter Canada only if their authorization provides for re-entry.	**(2)** Le résident temporaire est assujetti aux conditions imposées par les règlements et doit se conformer à la présente loi et avoir quitté le pays à la fin de la période de séjour autorisée. Il ne peut y rentrer que si l'autorisation le prévoit.

[19] The issuance of a TRP is also governed by section 179 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [*IRPR*]:

Temporary Resident Visa	**Visa de résident temporaire**
Issuance	**Délivrance**
179 An officer shall issue a temporary resident visa to a foreign national if, following	**179** L'agent délivre un visa de résident temporaire à l'étranger si, à l'issue d'un

an examination, it is established that the foreign national

(a) has applied in accordance with these Regulations for a temporary resident visa as a member of the visitor, worker or student class;

(b) will leave Canada by the end of the period authorized for their stay under Division 2;

(c) holds a passport or other document that they may use to enter the country that issued it or another country;

(d) meets the requirements applicable to that class;

(e) is not inadmissible;

(f) meets the requirements of subsections 30(2) and (3), if they must submit to a medical examination under paragraph 16(2)(b) of the Act; and

(g) is not the subject of a declaration made under subsection 22.1(1) of the Act.

contrôle, les éléments suivants sont établis :

a) l'étranger en a fait, conformément au présent règlement, la demande au titre de la catégorie des visiteurs, des travailleurs ou des étudiants;

b) il quittera le Canada à la fin de la période de séjour autorisée qui lui est applicable au titre de la section 2;

c) il est titulaire d'un passeport ou autre document qui lui permet d'entrer dans le pays qui l'a délivré ou dans un autre pays;

d) il se conforme aux exigences applicables à cette catégorie;

e) il n'est pas interdit de territoire;

f) s'il est tenu de se soumettre à une visite médicale en application du paragraphe 16(2) de la Loi, il satisfait aux exigences prévues aux paragraphes 30(2) et (3);

g) il ne fait pas l'objet d'une déclaration visée au paragraphe 22.1(1) de la Loi.

VI. Standard of Review

A. *Standards of review*

(1) Reasonableness

[20] With regard to reasonableness, in *Canada Post Corp v Canadian Union of Postal Workers*, 2019 SCC 67, issued at the same time as the Supreme Court of Canada's decision in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65, [2019] 4 S.C.R. 653 [*Vavilov*], the majority per Justice Rowe explains what is required for a reasonable decision, and what is required of a court reviewing on the reasonableness standard:

> [31] 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). Accordingly, when conducting reasonableness review "[a] reviewing court must begin its inquiry into the reasonableness of a decision by examining the reasons provided with 'respectful attention' and seeking to understand the reasoning process followed by the decision maker to arrive at [the] conclusion" (*Vavilov*, at para. 84, quoting *Dunsmuir*, at para. 48). The reasons should be read holistically and contextually in order to understand "the basis on which a decision was made" (*Vavilov*, at para. 97, citing *Newfoundland Nurses*).
>
> [32] A reviewing court should consider whether the decision as a whole is reasonable: "what is reasonable in a given situation will always depend on the constraints imposed by the legal and factual context of the particular decision under review" (*Vavilov*, at para. 90). The reviewing court must ask "whether the decision bears the hallmarks of reasonableness – justification, transparency and intelligibility – and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision" (*Vavilov*, at para. 99, citing *Dunsmuir*, at paras. 47 and 74, and *Catalyst Paper Corp. v. North Cowichan (District)*, 2012 SCC 2, [2012] 1 S.C.R. 5, at para. 13).
>
> [33] Under reasonableness review, "[t]he burden is on the party challenging the decision to show that it is unreasonable" (*Vavilov*,

> at para. 100). The challenging party must satisfy the court "that any shortcomings or flaws relied on ... are sufficiently central or significant to render the decision unreasonable" (*Vavilov*, at para. 100).
>
> [Emphasis added]

[21] The Supreme Court of Canada in *Vavilov* at paragraph 86 states, "it is not enough for the outcome of a decision to be justifiable. Where reasons for a decision are required, the decision must also be justified, by way of those reasons, by the decision-maker to those to whom the decision applies." *Vavilov* provides further guidance that a reviewing court decide based on the record before them:

> [126] That being said, a reasonable decision is one that is justified in light of the facts: *Dunsmuir*, para. 47. The decision maker must take the evidentiary record and the general factual matrix that bears on its decision into account, and its decision must be reasonable in light of them: see *Southam*, at para. 56. The reasonableness of a decision may be jeopardized where the decision maker has fundamentally misapprehended or failed to account for the evidence before it. In *Baker*, for example, the decision maker had relied on irrelevant stereotypes and failed to consider relevant evidence, which led to a conclusion that there was a reasonable apprehension of bias: para. 48. Moreover, the decision maker's approach would *also* have supported a finding that the decision was unreasonable on the basis that the decision maker showed that his conclusions were not based on the evidence that was actually before him: para. 48.
>
> [Emphasis added]

[22] Moreover, *Vavilov* requires the reviewing court to assess whether the decision is subject to judicial review meaningfully grapples with the key issues:

> [128] Reviewing courts cannot expect administrative decision makers to "respond to every argument or line of possible analysis" (*Newfoundland Nurses*, at para. 25), or to "make an explicit finding on each constituent element, however subordinate, leading

> to its final conclusion" (para 16). To impose such expectations would have a paralyzing effect on the proper functioning of administrative bodies and would needlessly compromise important values such as efficiency and access to justice. However, a decision maker's failure to meaningfully grapple with key issues or central arguments raised by the parties may call into question whether the decision maker was actually alert and sensitive to the matter before it. In addition to assuring parties that their concerns have been heard, the process of drafting reasons with care and attention can alert the decision maker to inadvertent gaps and other flaws in its reasoning: *Baker*, at para. 39.
>
> [Emphasis added]

(2) Procedural fairness

[23] Questions of procedural fairness are reviewed on the correctness standard: *Canada (Minister of Citizenship and Immigration) v Khosa*, 2009 SCC 12, per Binnie J at paragraph 43. That said, I note in *Bergeron v Canada (Attorney General)*, 2015 FCA 160, per Stratas JA at paragraph 69, the Federal Court of Appeal says a correctness review may need to take place in "a manner 'respectful of the [decision-maker's] choices' with 'a degree of deference': *Re: Sound v Fitness Industry Council of Canada*, 2014 FCA 48, 455 N.R. 87 at paragraph 42." But see *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 [per Rennie JA].

[24] In this connection, and while there is ongoing debate, I follow the Federal Court of Appeal which relied on "the long line of jurisprudence, both from the Supreme Court and" the Federal Court of Appeal itself, that "the standard of review with respect to procedural fairness remains correctness": *Canadian Association of Refugee Lawyers v Canada (Immigration, Refugees and Citizenship*), 2020 FCA 196 per de Montigny JA (as he then was):

> [35] Neither *Vavilov* nor, for that matter, *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190, have addressed the standard for determining whether the decision-maker complied with the duty of procedural fairness. In those circumstances, I prefer to rely on the long line of jurisprudence, both from the Supreme Court and from this Court, according to which the standard of review with respect to procedural fairness remains correctness.
>
> [Emphasis added]

[25] In *Dunsmuir v New Brunswick*, 2008 SCC 9 at paragraph 50, the Supreme Court of Canada explains what is required on the correctness standard of review:

> [50] When applying the correctness standard, a reviewing court will not show deference to the decision maker's reasoning process; it will rather undertake its own analysis of the question. The analysis will bring the court to decide whether it agrees with the determination of the decision maker; if not, the court will substitute its own view and provide the correct answer. From the outset, the court must ask whether the tribunal's decision was correct.

VII. Analysis

A. *The Officer did not err in requiring the Applicant to demonstrate "compelling reasons"*

[26] The Applicant submits the Officer erred in stringently applying a standard not found in *IRPA*. She submits that subsection 24(1) of *IRPA* asks only whether "an Officer is of the opinion that it is justified in the circumstances" to issue a TRP. She argues that, in her case, the Officer required her to demonstrate "compelling reasons" to justify granting the TRP.

[27] The Applicant argues that the standard in the legislation is flexible; it can be met by demonstrating compelling reason to remain in Canada, or by showing the lack of

blameworthiness of an applicant and that their infringement of *IRPA* was minor. The Applicant suggests that in *Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 at paragraph 32, the Supreme Court of Canada instructs that applying guidelines too stringently prevents an officer from examining all of the relevant factors, which constitutes a fettering of their discretion:

> [32] There is no doubt, as this Court has recognized, that the Guidelines are useful in indicating what constitutes a reasonable interpretation of a given provision of the *Immigration and Refugee Protection Act*: *Agraira*, at para. 85. But as the Guidelines themselves acknowledge, they are "not legally binding" and are "not intended to be either exhaustive or restrictive": Inland Processing, s. 5. Officers can, in other words, consider the Guidelines in the exercise of theirs. 25(1) discretion, but should turn "[their] mind[s] to the specific circumstances of the case": Donald J. M. Brown and The Honourable John M. Evans with the assistance of Christine E. Deacon, *Judicial Review of Administrative Action in Canada* (loose-leaf), at p. 12-45. They should not fetter their discretion by treating these informal Guidelines as if they were mandatory requirements that limit the equitable humanitarian and compassionate discretion granted by s. 25(1): see *Maple Lodge Farms Ltd. v. Canada*, 1982 CanLII 24 (SCC), [1982] 2 S.C.R. 2, at p. 5; *Ha v. Canada (Minister of Citizenship and Immigration)*, 2004 FCA 49 (CanLII), [2004] 3 F.C.R. 195 (C.A.), at para. 71.

[28] The Applicant submits that requiring applicants to demonstrate "compelling reasons" has been determined by this Court to be a reviewable error (citing *Krasniqi v Canada (Citizenship and Immigration)*, 2018 FC 743 at para 19; *Kazembe v Canada (Citizenship and Immigration)*, 2020 FC 856; *Palmero v Canada (Citizenship and Immigration)*, 2016 FC 1128; and in reply, citing *Liao v Canada (Citizenship and Immigration)*, 2021 FC 857 at para 24; *Kadye v Canada (Citizenship and Immigration)*, 2022 FC 865).

[29] The Applicant also draws attention to paragraph 14 of *Shabdeen v Canada (Citizenship and Immigration)*, 2020 FC 492, where Justice McHaffie summarized the divergence in the case law:

> [14] As Ms. Shabdeen points out, there is some divergence in this Court's case law as to the standard applicable to a TRP application under section 24. Some decisions have concluded that an applicant must show "compelling reasons" or a "compelling need" to enter Canada: see, e.g., *Osmani v Canada (Citizenship and Immigration)*, 2019 FC 872 at paras 15, 19; *Abdelrahma v Canada (Citizenship and Immigration)*, 2018 FC 1085 at paras 8–9; *César Nguesso v Canada (Citizenship and Immigration)*, 2015 FC 880 at paras 93–97, each quoting *Farhat v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1275 at para 22. Other decisions conclude that imposing a "compelling reasons" standard inappropriately goes beyond the language of the *IRPA*: see, e.g., *Krasniqi* at para 19, quoting *Palmero v Canada (Citizenship and Immigration)*, 2016 FC 1128 at para 21. I need not address this divergence in the present application, as neither the officer's decision nor Ms. Shabdeen's arguments turn on the applicable standard or the question of "compelling reasons."

[30] However, and in my respectful view, the preponderance of jurisprudence is against the Applicant in this respect, as recently determined by Justice Southcott in *Lovepreet Singh v Canada (Citizenship and Immigration)*, 2024 FC 826 at paragraph 19:

> [19] I agree with the Respondent's position that the prevailing jurisprudence supports the conclusion that the Officer did not err when approaching the Applicant's TRP application by assessing whether there were compelling reasons to grant the TRP. Recent decisions of the Court, in *Khandakar v Canada (Citizenship and Immigration)*, 2024 FC 38 at para 21; *Patel v Canada (Citizenship and Immigration)*, 2024 FC 16 at para 17; and *Kaur v Canada (Citizenship and Immigration)*, 2024 FC 337 at para 11, all endorse this approach. Moreover, in *Abdelrahma v Canada (Citizenship and Immigration)*, 2018 FC 1085 [*Abdelrahma*], the Court expressly considered the conflict in the jurisprudence (including *Palermo* and *Krasniqi* upon which the Applicant relies) and endorsed the compelling reasons test (at paras 5-9).

[31] I also note, as is often the case, that the ‘compelling reasons’ argument was in fact actually raised and addressed by the Applicant in her submissions. This is another reason why the Officer addressed this aspect of the case. Officers may not be faulted for addressing issues raised by a claimant. Nor may an officer be criticized for following the Court’s jurisprudence. It is also incontestable that this Court is entitled to supplement statutory bones with interpretative jurisprudential flesh, which is what all courts do, and this Court is likewise entitled to adjust over time.

[32] That said, because the law in this respect was in a state of some flux, I considered certifying a question of general importance so the matter may be resolved at a higher level. However, I decided against doing so because neither party requested one, and because judicial review is granted for other reasons.

B. *The Officer’s decision was unreasonable*

[33] The Applicant submits the Decision is unreasonable due to its unintelligibility and lack of transparency (citing *Vavilov* at paras 99, 128). In particular, the Applicant submits the Officer failed to grapple meaningfully with the fact that she had been relying on her employer to obtain an LMIA, and the loss of her status was outside of her control (citing *Vavilov* at para 102). The Applicant submits that the Officer’s reasons and analysis are unrelated to her submissions regarding why obtaining a TRP is necessary for her. She argues that the Officer’s Decision is therefore unreasonable. I agree.

[34] The Applicant notes that under the "Risk vs. Need" section, the Officer incorrectly identifies her need as an applicant as the following: "to permit Canada to pursue the maximum social, cultural and economic benefits of immigration." She argues that the Officer's reasons in this section are completely unintelligible. I again agree.

[35] I am also of the view the Officer did not justify their Decision to the Applicant to deny relief under section 24 of the *IRPA*. The grounds advanced by the Applicant might in the circumstances have sufficed. The record does not say how they were not suffient; the conclusion to that is not justified. As *Vavilov* instructs at paragraph 128, a decision maker's failure to meaningfully grapple with key issues or central arguments raised by the parties may call into question whether the decision maker was actually alert and sensitive to the matter before it. *Vavilov* at paragraph 86 states, "it is not enough for the outcome of a decision to be justifiable. Where reasons for a decision are required, the decision must also be justified, by way of those reasons, by the decision-maker *to those to whom the decision applies*" [emphasis added]. Here the Officer provided a conclusion but the Decision was, in my respectful view, not justified to the Applicant. There are no dots one way or the other that allow supplementary reasons from the Court.

[36] In addition, it seems to me the Officer's primary reason for rejecting her TRP application was why she needed to seek a TRP in the first place, namely that the Applicant was without status in Canada and otherwise inadmissible. Section 24 of *IRPA* is remedial. It is problematic to deny relief because of why relief is sought in the first place. Rather than focusing on the reasons either for or against granting her a TRP, as they should have, it seems to me that the Officer

focused on *why* the Applicant was inadmissible in the first place (i.e., her employer failed to obtain a new LMIA before her work permit expired).

C. *The Officer did not breach the duty of procedural fairness*

[37] The Applicant submits the Officer's Decision appears to suggest applicants should re-apply for status prior to receiving an LMIA and later submit the LMIA once received. She argues that this is in opposition to the publicly available instructions on Immigration, Refugees and Citizenship Canada's [IRCC] websites, which instruct applicants to ensure their employer's have completed all required steps prior to submitting an application. The parties referred to various websites but, and with respect, the evidence is insufficient for me to conclude the websites cited were online at the relevant times in 2021 and 2022.

[38] I agree the duty of procedural fairness requires an applicant be afforded an opportunity to respond to truly extrinsic information relied on by an officer. However, that does not apply in the case of online information contemporaneously and publicly made available on IRCC's website which parties acting reasonably may have been able to access, and to which they therefore should have paid attention.

VIII. Conclusion

[39] This application for judicial review will be granted.

IX. Certified Question

[40] No question will be certified.

JUDGMENT in IMM-3736-23

THIS COURT'S JUDGMENT is that: the application for judicial review is granted, this matter is remanded for redetermination by a differently constituted decision maker in a process at which new evidence may be filed, no question of general importance is certified and there is no order as to costs.

"Henry S. Brown"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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