Federal Court  Cour fédérale

Date: 20240625

Docket: IMM-3365-23

Citation: 2024 FC 985

Ottawa, Ontario, June 25, 2024

PRESENT: The Honourable Madam Justice Blackhawk

BETWEEN:

MAORONG WANG

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 dated March 3, 2023, of an officer (Officer) with Immigration, Refugees and Citizenship Canada (IRCC), denying the Applicant's application for a temporary resident visa (TRV) pursuant to subsection 179(b) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [*IRPR*] (Decision).

[2] The Applicant asks this Court to set the Decision aside and to send the matter back for redetermination by a different officer.

[3] For the reasons that follow, this application is allowed.

II. Background

[4] The Applicant is self-represented. Her daughter, Lizhen Jing, an immigration consultant, represented her in these proceedings as she is not in Canada.

[5] The Applicant is a 73-year-old widowed homemaker. She is a citizen of China. She has three adult daughters, two are natural citizens of China and one is a permanent resident of Canada.

[6] The Applicant submitted her TRV application on February 17, 2023. She sought a TRV to permit her to come to Canada to care for her daughter, a permanent resident of Canada, as she recovered from a hysterectomy surgery in Regina, Saskatchewan, from May 21 to July 6, 2023 (a period of 46 days).

[7] The Applicant had previously applied for and been denied a TRV for Canada in 2019, 2020, and 2022.

[8] The Applicant's daughter had her surgery on December 8, 2023. The Applicant is proceeding with this judicial review because she is concerned about a pattern of refusals that may make it impossible for her to visit her daughter in Canada in the future.

[9] The Applicant's application was refused because the Officer was not satisfied that she would leave Canada at the end of her authorised stay period as required by subsection 179(b) of the *IRPR*. The Officer notes that the Applicant's financial information does not demonstrate that she has sufficient funds for the intended purpose of travel and that she has significant family ties in Canada that may motivate her to stay in Canada.

[10] The Officer's Global Case Management System (GCMS) notes, which form a part of their reasons (*Sedoh v Canada (Citizenship and Immigration)*, 2021 FC 1431) state as follows:

> I have reviewed the application. I have considered the following factors in my decision. The applicant's assets and financial situation are insufficient to support the stated purpose of travel for themselves (and any accompanying family member(s), if applicable). Funds submitted show lump sum deposits with little history submitted to demonstrate funds accumulation or provenance. In the absence of satisfactory documentation showing the source of these funds, I am not satisfied the applicant has sufficient funds for the intended proposed stay in Canada. The applicant has significant family ties in Canada. Given family ties or economic motives to remain in Canada, the applicant's incentives to remain in Canada may outweigh their ties to their home country. The applicant does not have significant family ties outside Canada. The applicant does not demonstrate sufficient establishment or sufficient family ties to motivate return. The purpose of the applicant's visit to Canada is not consistent with a temporary stay given the details provided in the application. Weighing the factors in this application. I am not satisfied that the applicant will depart Canada at the end of the period authorized for their stay. For the reasons above, I have refused this application.

[11] The Applicant commenced her application for leave and judicial review on March 10, 2023, and leave was granted by this Court on February 19, 2024.

III. Issues and standard of review

[12] The issues to be determined in this application are:

A. Was the Officer's Decision to refuse the Applicant's TRV unreasonable?

B. Did the Officer breach the duty of procedural fairness?

[13] The standard of review applicable to a visa officer's refusal of a TRV application is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at paras 10, 23).

[14] Reasonableness review is a deferential standard and requires an evaluation of the administrative decision to determine if the decision is transparent, intelligible, and justified (*Vavilov* at paras 12–15, 95). The starting point for a reasonableness review is the reasons for the decision. Pursuant to the *Vavilov* framework, 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" (*Vavilov* at para 85).

[15] To intervene on an application for judicial review, the Court must find an error in the decision that is central or significant to render the decision unreasonable (*Vavilov* at para 100).

[16] Officers are not required to respond to every argument or piece of evidence advanced in an application or make an explicit finding on each element; however, the reasons must demonstrate that the officer "meaningfully grapple[d]" with key issues or central arguments raised (*Vavilov* at para 128).

[17] Recently in *Patel v Canada (Citizenship and Immigration)*, 2020 FC 77 [*Patel*], Justice Alan Diner commented on the significant pressures on visa officers to review a large volume of applications on a daily basis, which does not permit officers to provide "extensive reasons." Despite this reality, decisions must be reasonable. Brief decisions are reasonable if they are responsive to the evidence (*Patel* at para 15).

[18] Finally I will note that the standard of review for procedural fairness issues is correctness, or akin to correctness (*Vavilov* at para 53; *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at paras 54–56). The Court must consider what level of procedural fairness is necessary in the circumstances and whether the "procedure followed by the

decision maker respects the standards of fairness and natural justice" (*Chera v Canada (Citizenship and Immigration)*, 2023 FC 733 at para 13 [*Chera*].

IV. Analysis

A. *Was the Officer's Decision to refuse the Applicant's TRV unreasonable?*

[19] Section 179 of the *IRPR* sets out that an officer shall issue a TRV to a foreign national if, following an examination, certain criteria are satisfied. The onus is on the applicant to satisfy the officer that they will not remain in Canada following the expiration of their visa (*Sayarbahri v Canada (Citizenship and Immigration)*, 2024 FC 131 at paras 9–10 [*Sayarbahri*]).

[20] A TRV applicant must establish that they satisfy the requirements of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*] and the *IRPR*. Visa officers have wide discretion in their assessment of applications and courts ought to give considerable deference to the decisions of officers, given their expertise (*Sayarbahri* at para 10, citing *Chera* at para 36 and *Singh v Canada (Citizenship and Immigration)*, 2022 FC 1745 at para 14).

(1) Financial means

[21] The Applicant submitted that the Decision was unreasonable because it lacked transparency, intelligibility, and justification. The Officer's Decision does not address contradictory financial evidence provided in support of the application.

[22] The evidence included in the application package illustrated that the Applicant had five deposit certificates at four financial institutions that amounted to $318,857.16 CAD, $185,050.46 of which with maturity dates that predated her visit. The evidence also demonstrated that she had other valuable assets and financial support from her daughter, a permanent resident in Canada, if

needed. The Officer's notes indicate that there are no details provided concerning the history, with respect the nature of these deposits. However, the Applicant rightly notes in her submissions that a deposit certificate is similar to a Guaranteed Investment Certificate, and transactional history is not available.

[23] It is not clear from the reasons provided how or why the Officer determined the Applicant's financial situation was insufficient despite evidence to the contrary. The Officer's Decision does not address the totality of the financial evidence related to the Applicant's means to pay for the proposed visit (*Bisiriyu v Canada (Citizenship and Immigration)*, 2023 FC 630 at paras 25 and 27; *Sangha v Canada (Citizenship and Immigration)*, 2021 FC 760 at para 27 [*Sangha*]).

(2) Significant ties to China and the purpose of her visit

[24] This Court has noted that visa officers must assess the strength of an applicant's ties to their home country against incentives, economic or other, that may induce a foreign national to overstay their authorized visitation period. While economic advantage is one component of this analysis, it is not the sole consideration. Evidence of strong social and economic links to their home country, which establishes intent to return, will discharge the onus on applicants (*Chhetri v Canada (Citizenship and Immigration)*, 2011 FC 872 at para 14 and *Ocran v Canada (Citizenship and Immigration)*, 2022 FC 175 at para 23).

[25] The evidence illustrates that the Applicant has a daughter in Canada, whom she intended to visit and assist while recovering from surgery. The reasons for Decision contain no reference to the fact that the Applicant intended to assist her daughter with her recovery. This was

supported by a letter from her daughter's gynecologist, explaining her medical condition, surgery, and the need for support during her recovery period.

[26] The Officer's reasons do not reference the evidence of her return trip flight tickets that were submitted with her application.

[27] The reasons for Decision state that the Applicant "does not have significant family ties outside of Canada," despite the fact that she has two daughters and two brothers in China, none of whom are mentioned in the Officer's reasons.

[28] Finally, as noted in her submissions, the Applicant does not speak English and apart from her daughter, has no significant ties in Canada. Conversely, she has family, social networks, and property in China, all of which are strong motivators to return.

[29] It is not clear from the reasons how or why the Officer determined that the Applicant did not have significant family ties in China, nor why the stated purpose of the trip was unreasonable. The Officer's Decision does not address any of the evidence set out in the application that addressed these considerations.

[30] In *Sangha*, a visa officer similarly neglected evidence of the applicant's ties to their home country. Justice Shirzad Ahmed noted, which I find applicable in the case at bar, that "[t]he Officer's reasoning is not justified in relation to the plethora of evidence that established the Applicants' ties to India (*Vavilov* at para 85)" (*Sangha* at para 34).

[31] In support of their position, the Respondent notes that officers are presumed to have considered and weighed all evidence presented in support of an application and an officer's reasons are not required to reference every piece of evidence. In other words, to assess the

reasonableness of a decision, courts should take a holistic approach by reference to the entire application and record and have proper deference to the reviewing officer's expertise.

[32] I agree that this Court has indicated that an officer's reasons may be brief and that the reasons need not reference every piece of evidence (*Badhan v Canada (Citizenship and Immigration)*, 2018 FC 704 at para 19, citing *Rahman v Canada (Citizenship and Immigration)*, 2016 FC 793 at para 17). I also note that officers are required to complete robust investigations of applications in an environment with a heavy volume of applications and limited resources. That said, an officer's reasons "may be concise and simple so long as it is responsive to the evidence" (*Ibekwe v Canada (Citizenship and Immigration)*, 2022 FC 728 at para 28, citing *Patel* at para 17).

(3) Summary

[33] The Officer's failure to address the totality of the evidence, namely, the contradictory evidence related to the Applicant's finances and her ties in China, makes the decision unreasonable (*Vavilov* at paras 127–128; *Rodriguez Martinez v Canada (Citizenship and Immigration)*, 2020 FC 293 at paras 15–16). The Decision, read with the GCMS notes and the application record, absent a clear reference to this contradictory evidence, is impossible to understand. In my opinion, the Officer failed to regard the factual constraints in the matter, as required by *Vavilov*.

[34] In my opinion, there is insufficient analysis provided in the Officer's reasons that would justify or explain the Decision. As such, the Officer's conclusion lacks transparency, intelligibility, and justification and is unreasonable.

B. *Did the Officer breach their duty of procedural fairness?*

[35] The Applicant also submits that the Officer breached the duty of procedural fairness owed to her by failing to consider principles of family reunification and a right to be informed of the Officer's concerns with her application.

[36] The level of procedural fairness owed to visa applicants is at the low end of the spectrum (*Al Aridi v Canada (Citizenship and Immigration)*, 2019 FC 381 at para 20). A visa officer is not required to provide an applicant the opportunity to address their concerns if they arose directly from the requirements of the *IRPA* or the *IRPR* (*Hassani v Canada (Citizenship and Immigration)*, 2006 FC 1283 at para 24).

[37] Applicants have an obligation to put their best foot forward in their application. Applicants do not have an automatic right to an interview or opportunity to address an officer's concerns. In this case, the Officer does not make any findings of credibility that would trigger a right to procedural fairness. The concerns raised by the Officer are in respect of the legislative requirements, and do not trigger the duty of procedural fairness. However, as noted above, the Officer's reasons are not reasonable.

V. Conclusion

[38] In light of the foregoing, this application for judicial review is granted.

[39] The parties did not pose any questions for certification, and I agree that there are none.

JUDGMENT in IMM-3365-23

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is granted.

2. The Applicant's application for a temporary resident visa shall be remitted back to the IRCC for reconsideration by a different officer.

3. No question is certified.

"Julie Blackhawk"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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