Federal Court  Cour fédérale

Date: 20240918

Docket: IMM-8206-23

Citation: 2024 FC 1463

Ottawa, Ontario, September 18, 2024

PRESENT: Madam Justice Azmudeh

BETWEEN:

AMANPREET SINGH DHALIWAL

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant is a citizen of India and seeking a Judicial Review under section 72(1) of the *Immigration and Refugee Protection Act* [IRPA] concerning the rejection of his temporary resident permit ("TRP") application.

[2] The Applicant applied for both a TRP and open work permit on May 24, 2022. His previous work permit expired on July 31, 2021 and was refused for extension on November 13, 2021 based on the refusal of his wife's corresponding study permit application. The Applicant

then failed to apply to extend his status within the 90-day restoration period prescribed by section 182 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 ("IRPR").

[3] With the TRP application, counsel for the Applicant filed a one-page submissions letter that briefly indicated that the Applicant's status expired because "he was not able to pay attention towards his status in Canada" due to his wife's "critical medical conditions during her first pregnancy". Doctor's notes and related documents were said to be attached, but they are not included in the Certified Tribunal Record (CTR). Counsel also noted that it would be in the best interests of the Applicant's Canadian citizen child to have the presence of both her parents. No additional submissions were made on this point. No information was provided to explain why the Applicant failed to take any steps to regularize his status after his work permit extension application was refused on November 13, 2021; until he applied for the TRP on May 24, 2022.

[4] The officer reviewing the TRP application [Officer] considered the Applicant's submissions, including those related to his wife's pregnancy and the best interests of the couple's minor daughter. Overall, the Officer concluded that the application lacked sufficient compelling grounds to warrant the issuance of a TRP. The following is part of the Officer's notes:

> **Factors for Consideration**
>
> On April 17, 2019, Amanpreet appeared at the Douglas/Pacific Highway Port of Entry, where he obtained an employer specific work permit valid from April 17, 2019 to April 16, 2021. The applicant most recently held an in-Canada open work permit as the spouse of a student valid until July 31, 2021. The applicant failed to apply within the restorable period of 90-days. Therefore, losing status within Canada. Council argues that the critical condition Mr. Dhaliwal's wife experienced during her pregnancy made it difficult for him, and he was not able to "pay attention towards his status". Counsel expressed that the compelling need of Mr. Dhaliwal to obtain a TRP and subsequent WP-EXT is on the basis of having

the presence of both parents in Canada, aligning with the best interest of the Canadian born child.

Having reviewed counsel's submissions, Mr. Dhaliwal made an agreement to abide by the regulations stipulated by the Immigration Refugees and Protection Regulations (IRPR), which states that applicants should leave by the end of the period authorized for their stay. IRCC realizing how common it is to not apply within the required timeframe implemented the rule of Restoration and implemented within the regulations, giving clients an additional 90 days to restore their status having lost status as per R182. Therefore, the onus is on the client to ensure that they are abiding by the conditions of their stay.

Additionally, counsel states that it is in the best interest of the child for Mr. Dhaliwal to remain in Canada with his wife and Canadian born child. Counsel provided no information on the status of Mr. Dhaliwal's spouse. However, having reviewed Mr. Dhaliwal's immigration history, it appears that his spouse, Rajandeep Kaur, lost status in Canada on November 13, 2021 and her TRP + SP-EXT were refused on May 31, 2023. Rajandeep does not hold status in Canada and is therefore, required to return to her country of Citizenship/Permanent Residence. Having noted Rajandeep's status, counsel's statement, "the presence of both the parents is [a] must for the best interest of their daughter, Amraj Kaur Dhaliwal, who is a Canadian citizen", is futile, as now it indicates that it would be best for Mr. Dhaliwal to leave Canada along with his wife and child to be with them both. Mr. Dhaliwal and his spouse are both citizens of India who hold valid passports, making it possible for them to return home together. The daughter of Mr. Dhaliwal was born on August 24, 2021; therefore, she is only two (2) years old as I am processing the application on June 14, 2023. At two years, Amraj has not yet established any significant bonds in Canada that would make adjusting to life with her parents in India difficult. Amraj, being a Canadian citizen will be able to freely enter and depart Canada. Mr. Dhaliwal is able to apply outside of Canada for a temporary resident visa or work permit in order to accompany her in the future.

Counsel provided no documentation that highlights that Mr. Dhaliwal and his family would face any risks or harm if they were to return home.

Hence, considering the aforementioned, I am not satisfied compelling reasons or extenuating circumstances to warrant the issuance of a TRP and subsequent work permit exist. The applicant is, therefore, refused—pursuant to A24(1).

[5] On February 23, 2024, I heard the judicial review of the Applicant's wife's negative TRP application and dismissed it on February 29th (*Kaur v Canada (Citizenship and Immigration*), 2024 FC 337 [*Kaur*]). I find that the reasoning in that case to be relevant to my analysis here.

[6] The Judicial Review is dismissed for the following reasons.

II. Issues and Standard of Review

[7] This Application for Judicial Review raises two main issues:

a) Was the Officer's decision unreasonable?

b) Was there a breach of procedural fairness?

[8] Reasonableness review is a deferential and disciplined evaluation of whether an administrative decision is transparent, intelligible and justified: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65, [2019] 4 SCR 653 [*Vavilov*], at paras 12-13 and 15; *Mason v Canada (Citizenship and Immigration),* 2023 SCC 21[*Mason*], at paras 8 and 60.

[9] I started by reading the reasons of the decision-maker in conjunction with the record that was before them holistically and contextually. As guided by *Vavilov*, at paras 83, 84 and 87, as the judge in reviewing court, I focused on the reasoning process used by the decision-maker. I have not considered whether the decision-maker's decision was correct, or what I would do if I were deciding the matter itself: *Vavilov*, at para 83; *Canada (Justice) v D.V.*, 2022 FCA 181, at paras 15 and 23.

[10] A reasonable decision is based on an internally coherent and rational chain of analysis and is justified in relation to the facts and law that constrained the decision-maker: *Vavilov*, see especially at paras 85, 91-97, 103, 105-106 and 194; *Canada Post Corp v Canadian Union of*

Postal Workers, 2019 SCC 67, at paras 2, 28-33 and 61; *Mason*, at paras 8, 59-61 and 66. For a decision to be unreasonable, the Applicant must establish the decision contains flaws that are sufficiently central or significant (*Vavilov* at para 100). Not all errors or concerns about a decision will warrant intervention.

[11] The issue of procedural fairness is to be reviewed on the correctness standard (*Mission Institution v Khela*, 2014 SCC 24 at para 79; *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 [*Canadian Pacific Railway Company*] at paras 37-56; *Canadian Association of Refugee Lawyers v Canada (Immigration, Refugees and Citizenship)*, 2020 FCA 196 at para 35). The central question for issues of procedural fairness is whether the procedure was fair having regard to all of the circumstances, including the factors enumerated in *Baker v Canada (Minister of Citizenship and Immigration)*, 1999 CanLII 699 (SCC), [1999] 2 SCR 817 at paras 21-28 (*Canadian Pacific Railway Company* at para 54).

III. Preliminary Issue: Self-represented Applicant not present

[12] While the Applicant used the services of a lawyer to file his written materials, he informed the Court at a later date that he was representing himself. At the time prescribed for the start of the judicial review, the Applicant was absent. He did not communicate with the Court to signal any potential problems with his presence. The Court delayed the start of the hearing by half an hour during which a registry officer tried to reach the Applicant by phone and email. The Court's attempts to reach the Applicant remained unsuccessful.

Rule 38 of the *Federal Courts Rules*, SOR/98-106 provides:

38. Where a party fails to appear at a hearing, the Court may proceed in the absence of the party if the Court is satisfied that notice of the hearing was given to that party in accordance with these Rules.

[13] In this case, the Court had provided the parties with a notice of the hearing in a timely manner and in accordance with the Rules. Under the circumstances, the Court's proceeding cannot come to a halt. I, therefore, decided to proceed with the Applicant's written representations only. The Respondent also largely relied on their written materials.

IV. Preliminary Issue: New Evidence

[14] At the Judicial Review stage, the Applicant filed an affidavit that contained evidence of his wife's ongoing health issues after their daughter was born. This information was not before the Officer and I have therefore not considered it.

[15] The evidentiary record before this Court on judicial review is restricted to the evidentiary record that was before the administrative decision maker. The limited exceptions to this general rule include: (1) when the evidence provides general background information that does not add new evidence on the merits; (2) when the evidence draws attention to procedural defects that cannot be found on the decision maker's evidentiary record; and (3) when the evidence highlights the absence of evidence before a decision-maker on a particular finding (*Sharma v Canada (Attorney General)*, 2018 FCA 48 at para 8 and *Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22 at paras 19-20). The background information exception does not permit the Applicant to provide new

evidence relevant to the merits of the case before the Officer (*Bernard v Canada (Revenue Agency)*, 2015 FCA 263 at paras 20-23), and I did not allow it into the record.

V. Legislative Overview

[16] The following sections of the IRPA are relevant:

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

VI. Analysis

A. *Was the Officer's decision reasonable?*

[17] Section 24(1) of IRPA is designed to make TRP an exception to the rule. TRPs are designed to temper the potentially harsh application of the IRPA when there are compelling circumstances; they are not designed as an alternative path for foreign nationals to apply for study permits (*Kaur* at paras 13-14, 18; *Farhat v Canada (MCI)*, 2006 FC 1275 at para 2). TRPs provide a way for otherwise inadmissible foreign nationals to enter or remain in Canada if they are able to satisfy an officer that their presence in Canada is justified. The TRP regime is therefore exceptional.

[18] In *Sun v Canada (Citizenship and Immigration)*, 2024 FC 944 at para 8, Justice Gleeson recently summarized the guiding principles concerning TRP applications as follows:

> [8] TRP decisions are highly discretionary, are to be afforded deference and are intended to target short-term, pressing concerns that require an exceptional measure to permit an individual to obtain temporary residence in Canada despite their inadmissibility or other failure to comply with Canadian immigration laws (*Kaur v Canada (Citizenship and Immigration)*, 2024 FC 337 at para 13). A TRP provides a means of mitigating "harsh consequences that may arise from a strict application of the IRPA" where compelling reasons to do so exist (*Nagra* at para 2; *Emmanuel v Canada (Citizenship and Immigration)*, 2023 FC 1694 at para 18; *Bhamra v Canada (Citizenship and Immigration)*, 2020 FC 482 at para 22; *El Rahy v Canada (Citizenship and Immigration)*, 2018 FC 1058 at para 9; *Farhat v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1275 at para 22; *Shabdeen v Canada (Citizenship and Immigration)*, 2014 FC 303 at para 23).

[19] To meet the high threshold required to grant a TRP, the onus is on the Applicant to provide sufficient evidence to show that applying an exception to the rule is justified. The material must provide compelling reasons for the Applicant to be in Canada (*Singh v Canada (Citizenship and Immigration)*, 2024 FC 826 at paras 19-21). Even the most generous interpretation of this section by this Court have required something more than mere inconvenience (*Ju v Canada (MCI)*, 2021 FC 669 at paras 21-22; *Bhamra v Canada (MCI)*, 2020 FC 482 at para 22).

[20] TRPs must be "issued cautiously, as they grant their bearers more privileges than other temporary statuses". Accordingly, the decision to grant a TRP involves a high degree of discretion and considerable deference is owed to the deciding officer. A decision regarding a TRP must be "highly irregular" to justify intervention on judicial review (*Friesen Letkeman v*

Canada (MCI), 2022 FC 1396 at para 38; *Vaguedano Alvarez v Canada (MCI)*, 2011 FC 667 at paras 16-18; *Arora v Canada (MCI)*, 2018 FC 448 at para 4).

[21] The reasonableness of the Officer's decision, including on how the best interest of the child (BIOC) was considered, must therefore be assessed in the legal context of the TRP being temporary and being exceptional. Here is a summary of relevant facts and omissions before the Officer that formed the basis of their decision to refuse the TRP:

- Applicant had a work permit that expired on July 21, 2021. Its extension application was rejected on November 13, 2021.
- The Applicant failed to apply to extend his status within the 90-day restoration period prescribed by s. 182 of IRPR.
- The wife's pregnancy resulted in the birth of their daughter on August 24, 2021, well within the 90-day restoration period.
- The Applicant had provided a marriage certificate to his wife, also born in India, and a birth certificate for their daughter.
- There was very minimal information before the Officer. The one-page submissions letter from the Applicant's counsel briefly indicated that the Applicant's status expired because "he was not able to pay attention towards his status in Canada" due to his wife's "critical medical conditions during her first pregnancy". Doctor's notes and related documents were said to be attached, but they are not included in the CTR. Counsel also noted that it would be in the best interests of the Applicant's Canadian citizen child to have the presence of both her parents. No additional submissions were made on this point.

[22] I find that it was reasonable for the Officer to expect to see compelling reasons to grant the TRP. However, in this case, there is little evidence to form the basis of an exception to the rule even with the lower threshold in mind. The Officer carefully reviewed the totality of the evidence and provided a detailed rationale for how they reached this conclusion. They took the Applicant's evidence into account. The BIOC was assessed in the context of a TRP being exceptional, and whether compelling reasons existed. It would have been unreasonable for the Officer to apply the legal jurisprudence developed on the BIOC in the context of permanent residence applications.

[23] The Officer provided a transparent, justifiable and intelligible set of reasons. The decision was therefore reasonable.

B. *Did the Officer reach the decision in a procedurally fair manner?*

[24] The Applicant argues that the Officer ought to have issued a fairness letter when the Officer commented that they did not know about the spouse's status in Canada or about his daugther's bonds in Canada or her best interest. This is because the Applicant had answered all the relevant questions on the TRP application. I disagree. There is no factual dispute that the spouse is a foreign national and that the Officer's reference to the Applicant's status was in the context of assessing whether there are exceptional circumstances contemplated by the TRP application. In this context, the onus is on the Applicant to provide the relevant evidence and the Officer did not have a duty to solicit further information. I agree with the Respondent that these are concerns about the sufficiency of the Applicant's own evidence that did not require further inquiry from the Officer.

[25] Therefore, I find that the Officer reached their decision in a procedurally fair manner.

VII. Conclusion

[26] The Officer's decision is reasonable and reached in a procedurally fair manner. The application for judicial review is therefore dismissed.

[27] Neither party proposed a question for certification. I agree that none arise in this matter.

JUDGMENT IN IMM-8206-23

THIS COURT'S JUDGMENT is that

1. The Judicial Review is dismissed.

2. There is no certified question.

"Negar Azmudeh"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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APPEARANCES:

Amanpreet Singh Dhaliwal	ON OWN BEHALF
Suzy Flader	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Department of Justice Canada Vancouver, BC	FOR THE RESPONDENT