Federal Court Cour fédérale

Date: 20241031

Docket: IMM-12974-23

Citation: 2024 FC 1736

Ottawa, Ontario, October 31, 2024

PRESENT: Madam Justice Azmudeh

BETWEEN:

REZA OROUJI

Applicant

and

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant seeks judicial review of a decision made by a visa officer [Officer] on September 13, 2023, that denied his application for permanent residence under the Start-up Business Class program.

[2] One of the requirements of the program is that the Applicant obtains the support of a government approved designated entity [DE] for his start-up business in the form of a commitment certificate. Under subsection 98.01(2)(a) of the *Immigration and Refugee*

Protection Regulations [IRPR or *Regulations*], this commitment must be less than six months old, on the date which the application for permanent resident visa is made.

[3] On or about July 16, 2021, the Applicant obtained a commitment certificate from the DE Keiretsu Forum Canada [Keiretsu]. Less than six months later, on December 21, 2021, he applied for a permanent resident [PR] visa under the Start-up Business Class Program.

[4] While the Applicant's PR visa was pending, on April 12, 2023, the DE (Keiretsu) withdrew its commitment certificate. On April 17, 2023, the IRCC refused the Applicant's permanent resident Application since he did not have a valid commitment certificate issued by a designated entity and therefore did not meet the requirements of IRPR, s 98.01(2)(a). However, on the same day April 17, 2023, another DE, Apex Innovative Investments Ventures [Apex] issued a new commitment certificate to the Applicant.

[5] In May 2023, the Applicant made a request for reconsideration and on August 15, 2023, the request was granted and the Application was reopened. A procedural fairness letter (PFL) was sent to the Applicant, to which the Applicant responded with the information on the new commitment certificate from the second DE (Apex).

[6] However, on September 23, 2023, Immigration Refugees and Citizenship Canada [IRCC] refused the Applicant's PR application again. The Officer based their decision on s 98.01(2) of the IRPR and the fact that the new commitment certificate did not fulfill the

legislative requirements of this section. The following is an excerpt of the Officer's decision :

> "Applicant does not have a commitment certificate that is less than six months old on the date on which the application for a permanent resident was made. Upon careful consideration of all information on file, I am not satisfied that the PA is a member of the start-up business class."

[7] This is the decision under judicial review.

II. Issues

[8] The Applicant argues that the Officer's decision was unreasonable and was reached in a procedurally unfair manner.

III. Standard of Review

[9] The standard of review applicable in this case is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 23 [*Vavilov*]; *Singh v Canada (Citizenship and Immigration)*, 2022 FC 1645 at para 13; *Shah v Canada (Citizenship and Immigration)*, 2022 FC 1741 at para 15). 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). The reviewing court must ensure that the decision is justifiable, intelligible, and transparent (*Vavilov* at para 95). Justifiable and transparent decisions account for central issues and concerns raised in the parties' submissions to the decision maker (*Vavilov* at para 127).

[10] With respect to issues of procedural fairness, the standard of review is not deferential. It is for the reviewing court to ask, "with a sharp focus on the nature of the substantive rights involved and the consequences for an individual, whether a fair and just process was followed" (*Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54 [*CPR*]). Consequently, the reviewing court must determine whether, given the particular context and circumstances of the case, the process followed by the administrative decision maker was fair and gave the parties concerned the right to be heard, as well as a full and fair opportunity to be informed of the evidence to be rebutted and to have their case heard (*CPR* at para 56). Reviewing courts are not required to show deference to administrative decision makers on matters of procedural fairness (*Vargas Cervantes v Canada (Citizenship and Immigration)*, 2024 FC 791 at para 16).

IV. Analysis

A. *Legislative Framework*

[11] The following are the relevant legislative provisions:

Immigration and Refugee Protection Act, SC 2001, c 27	***Loi sur l'immigration et la protection des réfugiés, LC 2001, ch 27***
Economic immigration	**Immigration économique**
12 (2) A foreign national may be selected as a member of the economic class on the basis of their ability to become economically established in Canada	**12 (2)** La sélection des étrangers de la catégorie « immigration économique » se fait en fonction de leur capacité à réussir leur établissement économique au Canada.
Economic immigration	**Catégorie « immigration économique »**
14.1 (1) For the purpose of supporting the attainment of economic goals established by the Government of Canada, the Minister may give instructions establishing a class of permanent residents as part of the economic	**14.1 (1)** Afin de favoriser l'atteinte d'objectifs économiques fixés par le gouvernement fédéral, le ministre peut donner des instructions établissant des catégories de résidents permanents au sein de la catégorie «

class referred to in subsection 12(2) and, in respect of the class that is established, governing any matter referred to in paragraphs 14(2)(a) to (g), 26(a), (b), (d) and (e) and 32(d) and the fees for processing applications for permanent resident visas or for permanent resident status and providing for cases in which those fees may be waived.

Immigration and Refugee Protection Regulations, SOR/2002-227

Class

98.01 (1) For the purposes of subsection 12(2) of the Act, the start-up business class is prescribed as a class of persons who may become permanent residents on the basis of their ability to become economically established in Canada, who meet the requirements of subsection (2) and who intend to reside in a province other than Quebec.

Member of class

(2) A foreign national is a member of the start-up business class if

(a) they have obtained a commitment that is made by one or more entities designated under subsection 98.03(1), that is less than six months old on the date on which their application for a permanent resident visa is made and that meets the requirements of section 98.04;

(b) they have submitted the results of a language test that is approved under subsection 102.3(4), which results must be provided by an organization or institution that is designated under that subsection, be less than two years old on the date on which their application for a permanent resident visa is made and indicate that the foreign national has met at least benchmark level 5 in either official language for all four language skill areas, as set out in

immigration économique » visée au paragraphe 12(2) et, à l'égard des catégories ainsi établies, régissant les éléments visés aux alinéas 14(2)a) à g), 26a), b), d) et e) ainsi que 32d) et les frais d'examen de la demande de visa ou de statut de résident permanent, et prévoyant les cas de dispense de paiement de ces frais.

Règlement sur l'immigration et la protection des réfugiés, DORS/2002-227

Catégorie

98.01 (1) Pour l'application du paragraphe 12(2) de la Loi, la catégorie « démarrage d'entreprise » est une catégorie réglementaire de personnes qui peuvent devenir résidents permanents du fait de leur capacité à réussir leur établissement économique au Canada, qui satisfont aux exigences visées au paragraphe (2) et qui cherchent à s'établir dans une province autre que le Québec.

Qualité

(2) Appartient à la catégorie « démarrage d'entreprise » l'étranger qui satisfait aux exigences suivantes :

a) il a obtenu d'une ou de plusieurs entités désignées en vertu du paragraphe 98.03(1) un engagement qui date de moins de six mois au moment où la demande de visa de résident permanent est faite et qui satisfait aux exigences de l'article 98.04;

b) il a fourni les résultats datant de moins de deux ans au moment où la demande est faite — d'un test d'évaluation linguistique approuvé en vertu du paragraphe 102.3(4) provenant d'une institution ou d'une organisation désignée en vertu de ce paragraphe qui indiquent qu'il a obtenu, en français ou en anglais et pour chacune des quatre habiletés langagières, au moins le niveau 5 selon les *Niveaux de*

the *Canadian Language Benchmarks* or the *Niveaux de compétence linguistique canadiens*, as applicable;

(c) they have, excluding any investment made by a designated entity into their business, transferable and available funds unencumbered by debts or other obligations of an amount that is equal to one half of the amount identified, in the most recent edition of the publication concerning low income cut-offs published annually by Statistics Canada under the *Statistics Act*, for urban areas of residence of 500,000 persons or more, as the minimum amount of before-tax annual income that is necessary to support a group of persons equal in number to the total number of the applicant and their family members; and

(d) they have started a qualifying business within the meaning of section 98.06.

Form of commitment

98.04 (1) A commitment must be in a written or electronic form that is acceptable to the Minister and must be provided by a person who has the authority to bind the designated entity.

Documentation

98.07 (1) An applicant must provide documentation to establish that they are a member of the start-up business class, including
(a) written or electronic evidence, provided by an entity that was designated on the day on which the application is made, that indicates that the entity made a commitment with the applicant;
(b) the results of a language proficiency evaluation referred to in paragraph 98.01(2)(b); and
(c) written or electronic evidence that they have the funds required under paragraph 98.01(2)(c).

compétence linguistique canadiens ou le *Canadian Language Benchmarks*, selon le cas;

c) il dispose de fonds transférables, non grevés de dettes ou d'autres obligations financières, à l'exception de tout investissement fait par une entité désignée dans son entreprise, d'un montant égal à la moitié du revenu minimal nécessaire, dans les régions urbaines de 500 000 habitants et plus, selon la version la plus récente de la grille des seuils de faible revenu avant impôt publiée annuellement par Statistique Canada au titre de la *Loi sur la statistique*, pour subvenir pendant un an aux besoins d'un groupe de personnes dont le nombre correspond à celui de l'ensemble du demandeur et des membres de sa famille;

d) il a démarré une entreprise admissible au sens de l'article 98.06.

Forme de l'engagement

98.04 (1) L'engagement est présenté sous une forme écrite ou électronique que le ministre juge acceptable et est fourni par une personne autorisée à lier l'entité désignée.

Documents

98.07 (1) Pour établir qu'il appartient à la catégorie « démarrage d'entreprise », le demandeur fournit les documents suivants, entre autres :
a) une preuve écrite ou électronique, fournie par l'entité désignée à la date où la demande est faite, indiquant que l'entité a pris un engagement envers le demandeur;
b) les résultats de l'évaluation de la compétence linguistique visée à l'alinéa 98.01(2)b);
c) une preuve écrite ou électronique qu'il dispose des fonds exigés à l'alinéa 98.01(2)c).

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

[12] In effect, the Applicant argues that the Officer did not have the legal authority to disallow a change in the DE partway through their application process. I disagree with the Applicant's characterization. Section 98.01 through 98.13 of the IRPR fall under the heading "Start-up Business Class" and lay out the conditions attached to the necessary qualifications.

[13] In effect, the Start-up Business Class has set up an elaborate DE system as its condition precedent. Not only does the DE in question have to be designated by the Minister according to certain categories (IRPR, s 98.03), the commitment certificate must be related to that DE, and it must be obtained within six months of the date on which they make their PR application (IRPR, s 98.01 (2)(a)). This is to ensure that the DE meets the legislative requirement within the prescribed timeframe. The program's scheme does not allow for the replacement of the DE while the application is in process when the entire program is dependent on the specific DE and the timing of the commitment certificate.

[14] Looking at the timeframe of this case, it appears that the nature and the timing of Keiretsu's commitment certificate met the legislative requirement of the program. The Applicant received Keiretsu's commitment certificate and letter of support in July 2021, five months prior to when the Applicant applied for PR in December 2021. However, after Keiretsu withdrew, Apex provided the Applicant a commitment certificate in April of 2023, approximately 18 months after the Applicant had already applied for the PR visa under the program. The Officer simply applied the legislative requirement of the program to refuse the application and explained

it in a clear and intelligible manner. There is a clear chain of reasoning in why and how the decision was made.

[15] The Applicant may be frustrated that he could not use Keiretsu and Apex interchangeably, but the regulatory requirements are set up to make it company-specific and time sensitive, which is precisely to avoid an interchangeable system. Counsel for the Applicant framed this to be unfair, and that the Apex's commitment certificate was better funded and offered a higher chance of success. However, the colloquial sense of fairness does not apply to the Officer's interpretation of the legislative regime. Nor was the Officer obligated to engage with the details of Apex's commitment, when the commitment certificate was not obtained as prescribed by the Regulation prior to the application, so that the commitment certificate was not valid for the Applicant's already submitted PR application.

[16] At the judicial review hearing, the Applicant agreed that the regulatory regime set out under the "Start-up Business Class" framework of the IRPR (ss 98.01– 98.13) is silent on whether an Officer could look at multiple DEs. He argued that the silence must be interpreted in favour of some flexibility on the part of the Officers. The Applicant could not point to any authorities to support his proposal.

[17] I disagree with the Applicant's interpretation of the *Regulations*. The plain reading of IRPR, ss 98.01–98.13 creates a regulatory regime for the "Start-up Business Class" program where visas are tied to a specific DE and specific timing. In addition, this Court has interpreted

what it would take to qualify for the Class in *Bui v Canada (Citizenship and Immigration)*, 2019 FC 440 at para 4:

> [4] Subsection 2(1) of the Ministerial Instructions establishes the start-up business class and defines this class as "foreign nationals who have the ability to become economically established in Canada and who meet the requirements of this section". To qualify for the class, an applicant must:
>
> (i) have obtained a commitment from either a designated business incubator, a designated angel investor group or a designated venture capital fund, listed in schedules 1, 2 and 3 of the Ministerial Instructions; (ii) have attained a certain level of language proficiency; (iii) have a certain amount of transferable and available funds; and (iv) have a qualifying business (Ministerial Instructions, s 2(2)). Failure to meet these requirements results in a refusal of an application (Ministerial Instructions, s 9(1)).

[18] The applicant required a commitment certificate from the DE to show support for his potential immigration to Canada within six months of his application. Due to a change in the DE while the application was being processed, this requirement was not met. The Officer explained this in their reason.

[19] For reasons above, I find that the decision was reasonable.

C. *Did the Officer reach the decision in a procedurally unfair manner?*

[20] In May 2023 after the Applicant's PR visa was refused because Keiretsu withdrew its commitment certificate, the Applicant made a request for reconsideration. On August 15, 2023, the request was granted and the Application was reopened. A procedural fairness letter (PFL) was sent to the Applicant. In the PFL, the Officer set out his concerns about the application of IRPR s 98.01(2) and a change in the DE:

> I am concerned that you may not meet the requirements of the start-up business class. My concerns are based on the following:
>
> • Designated Entity Keiretsu Forum Canada sent an email to IRCC stating that they are withdrawing the commitment certificate for the applicant's company. I am concerned that you do not have a valid commitment certificate issued by a designated entity, and therefore, you do not meet 98.01(2) (a) requirement.

[21] The Applicant is arguing that the framing of the PFL is unfair because it signals that the Officer had closed their mind to the quality of Apex, and is solely focusing on why they should allow a change in the DE. In fact, at the hearing, the Applicant submitted that a fair PFL would have agreed with a change in in DE and would have asked for additional submissions on the quality of Apex.

[22] I disagree with the Applicant. The purpose of the PFL is to set out the Officer's concerns. In here, they had real and present concerns about how the regulation would not allow a change in the DE in a manner that would contravene the other requirements of the IRPR, namely the timing of it.

[23] On August 30, 2023, the Applicant responded to the PFL and submitted additional documents to IRCC, which included the commitment certificate from Apex. On September 33, 2023, the Officer refused it again because the new commitment certificate was not less than six months old on the date on which the Applicant applied for a PR visa.

[24] The Officer simply applied the facts of the case to the *Regulations*. This was their duty. They advised the Applicant of the regulatory regime in the PFL and considered the Applicant's reply. They therefore reached their decision in a procedurally fair manner. I fully acknowledge

that the Applicant felt that his rejection was unfair when he replaced Keiretsu's $75,000 commitment with Apex's $200,000 commitment before the IRCC had wasted any time to research Keiretsu. It is unfortunate that the *Regulations* did not allow the Officer to get into the merits of the Apex commitment, but the Officer did not reach the decision unfairly when they applied the *Regulations* to the facts.

(1) Certified Question

[25] Without any prior notice and at the end of the judicial review hearing, counsel for the Applicant proposed that a question needs to be certified on whether an Officer should have the discretion to engage with a new DE.

[26] First, the Applicant did not comply with the Federal Court's *"Consolidated Practice Guidelines for Citizenship, Immigration, and Refugee Protection Proceedings*" (October 31, 2023), which reads at para 36:

> **Certified questions**
> 36. Pursuant to paragraph 74(a) of the IRPA, "an appeal to the Federal Court of Appeal may be made only if, in rendering judgment, the judge certifies that a serious question of general importance is involved and states the question." [emphasis added] Parties are expected to make submissions regarding paragraph 74(a) in written submissions filed before the hearing on the merits and/or orally at the hearing. Where a party intends to propose a certified question, opposing counsel shall be notified at least five (5) days prior to the hearing, with a view to reaching a consensus regarding the language of the proposed question.

[27] Second, the Applicant agrees that the existing regulatory regime gives immigration officers no discretion, and that his argument is largely based on a desire to have a different, more

flexible regulatory regime. The Applicant also agreed that there is no authority to support his position, which I find to mean that there is no divergence in the legal question.

[28] The Federal Court of Appeal reiterated in *Lewis v Canada (Public Safety and Emergency Preparedness)*, 2017 FCA 130 at para 36 the criteria for certification. This was repeated *in Lunyamila v Canada (Public Safety and Emergency Preparedness)*, 2018 FCA 22 at para 46:

> The question must be a serious question that is dispositive of the appeal, transcends the interests of the parties and raises an issue of broad significance or general importance. This means that the question must have been dealt with by the Federal Court and must arise from the case itself rather than merely from the way in which the Federal Court disposed of the application. An issue that need not be decided cannot ground a properly certified question (*Lai v Canada (Public Safety and Emergency Preparedness)*, 2015 FCA 21, 29 Imm. L.R. (4th) 211, at paragraph 10). Nor will a question that is in the nature of a reference or whose answer turns on the unique facts of the case be properly certified (*Mudrak v Canada (Citizenship and Immigration)*, 2016 FCA 178, 485 N.R. 186, at paragraphs 15, 35).

[29] The inflexibility built into the IRPR is clear in this case, and the Applicant's argument that it could result in a similar unfortunate conclusion for thousands of applicants is irrelevant. The legislative body deemed it necessary to draft the current *Regulations* as they are, and it is not for the courts to question it. I find that even if the question were submitted in a timely fashion, it would be inappropriate to certify it when it does not meet the test.

V. Conclusions

[30] I find that the decision of the Officer was reasonable and reached in a procedurally fair manner. I, therefore, dismiss the judicial review.

[31] There is no certified question in this case.

JUDGMENT IN IMM-12974-23

THIS COURT'S JUDGMENT is that

1. The Judicial Review is dismissed.

2. There are no questions to be certified.

"Negar Azmudeh"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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STYLE OF CAUSE:	REZA OROUJI v. MIRC
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