Federal Court Cour fédérale

Date: 20241024

Dockets: IMM-6194-23
IMM-6195-23

Citation: 2024 FC 1675

Ottawa, Ontario, October 24, 2024

PRESENT: Madam Justice Azmudeh

IMM-6194-23

BETWEEN:

KRISHNABEN JASMINKUMAR POPAT
JASMINKUMAR VINODRAI POPAT
HITANSH JASMINKUMAR POPAT

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

IMM-6195-23

AND BETWEEN:

KRISHNABEN JASMINKUMAR POPAT
JASMINKUMAR VINODRAI POPAT
HITANSH JASMINKUMAR POPAT

Applicants

and

THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondent

JUDGMENT AND REASONS

I. Overview and Relevant Facts

[1] The Applicants seek judicial reviews of two decisions: one being a decision of Immigration, Refugee and Citizenship Canada [IRCC] to cancel the Applicants' permanent residence [PR] visas, the other decision being that of a Minister's Delegate from the department of Public Safety and Emergency Preparedness to issue an Exclusion Order to the Applicants. Pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 [IRPA], the Applicants are judicially reviewing two cases that are joined together because they largely rely on the same underlying facts.

[2] The Applicants are citizens of India. In May 2020, the Principal Applicant, Krishnaben Jasminkumar Popat, applied for a Labour Market Impact Assessment (LMIA)-based work permit to Canada. In August 2020, she applied for a Provincial Nomination Certificate from Saskatchewan, and in October 2020, she filed an application for permanent residence as a Provincial Nominee. The accompanying Applicants, Jasminkumar Vinodrai Popat and Hitansh Jasminkumar Popat, her spouse and child, were listed as dependents on this application for permanent residence.

[3] On August 2, 2022, the Principal Applicant's application for a work permit was refused on the basis that she was found to be inadmissible for misrepresentation in accordance with paragraph 40(1)(a) of the IRPA. The Principal Applicant unsuccessfully challenged that decision by way of an application to this Court (IMM-8841-22). The consequence of the inadmissibility

meant that the Applicants could not return to Canada for a period of five years (IRPA, s 40(2)(a)-(b)).

[4] Despite their undisputed inadmissibility, on March 24, 2023, the Applicants received a letter from the IRCC in relation to their PR application, advising them that their application was approved and instructing them to submit their passports. On April 11, 2023, they received their Confirmation of Permanent Residence (COPRs) and they wound up their affairs in India and travelled to Canada. The IRCC Global Case Management System (GCMS) notes, which constitute the reasons read as follows for the entry entered on 2023/02/24:

> All Requirements Met - Approved for Landing x 3 PA/Spouse/Dep. child) Security/Criminality - Passed (PA/Spouse) Biometrics - NRT (PA/Spouse) Biometrics - Age Exempt (Dep. child) Meds x 3 -Passed All Fees Paid RFV Letter sent this date
>
> No concerns with A34, 35 or 37 are evident at this time for PA No concerns with A34, 35 or 37 are evident at this time for DEP
>
> Satisfied that PA meets the requirements of the program R87 (1) **Previous refusals noted**. No adverse info to suggest PA will not reside or establish self in province. PA is currently employed within nominated NOC. PA has valid status until - Not in Status - Residence India Satisfied with the identity Immigration history reviewed: at present no adverse info that would affect admissibility or and eligibility for the program. Spouse: Satisfied with the evidence/documents provided to support relationship. Satisfied with the relationship. Satisfied that dependent meets the definition of family member as per R1(3). No concerns. Appears to be genuine Children: Birth certificate provided listing both PA and dependent spouse as parents. Satisfied that dependent meets the definition of family member as per R1(3).No concerns. *****ADMISSIBILITY***** Biometrics: Passed PC from India: edoc#: 516721919 No A 36(1) and (2) concerns at this time Criminality Passed
>
> (emphasis added)

[5] When the Applicants arrived at Vancouver International Airport on April 22, 2023, a Canada Border Services Agency [CBSA] officer advised them they were inadmissible to Canada and seized their passports. They were allowed to enter Canada for further examination and for CBSA to understand what transpired on their PR applications. The above noted GCMS note is now labelled "Entered in Error."

[6] On 4 May 2023, the Applicants received a letter from the Respondent stating IRCC approved the Principal Applicant's PR application in error. The letter explains that their COPRs are cancelled, and apologizes for the inconvenience. The officer explains the decision as follows:

> This decision was reached because, at a prior refusal, you were found inadmissible to Canada for misrepresentation and was determined to be a member of an inadmissible class of persons described in the Immigration and Refugee Protection Act. More specifically, on August 02, 2022, under application W305190676 you were found inadmissible to Canada for misrepresentation pursuant to section 40(1)(a) of the Act. You were advised that you are inadmissible to Canada for a period of five (5) years following the final determination of inadmissibility under subsection (1) as per A40(2)(a).
>
> In accordance with paragraph 40(2)(a) of the *Immigration and Refugee Protection Act* (IRPA), you remain inadmissible for a period of five years from the date of your prior refusal (August 02, 2022) or from the date a previous removal order was enforced.
>
> Subsection 11(1) of the *Act* states that the visa or document may be issued if, following an examination, the officer is satisfied that the foreign national is admissible and meets the requirements of this *Act*.
>
> Following an examination of your application, I am not satisfied that you meet the requirements of the *Act* and the regulations for the reasons explained above. I am therefore refusing your application.

[7] The GCMS notes, which constitute the reasons, read as follows:

> File review: Application was approved on March 24, 2023, in error. All COPRs and counterfoils have been cancelled. **Client's work permit W305190676 was refused on August 02, 2022, because the Applicant misrepresented** or withheld material facts relating to a relevant matter that either directly or indirectly induces or could induce an error in the administration of IRPA and are inadmissible to Canada pursuant to paragraph A(40)(1)(a). Therefore, in accordance with paragraph A40(2)(a), they will remain inadmissible to Canada for a period of five years from the date of WP refusal letter or from the date a previous removal order was enforced. **Applicants submitted APR application on October 13, 2020. Applicant is not eligible to apply for PR because they are still inadmissible to Canada as the 5 year ban has not elapsed**. Application refused per A(40)(2)(a) and subsection 11(1) of the Act. Refusal letter sent to clients rep on this date (emphasis by Applicants).

[8] Ten days after their PR visas were revoked, on May 14, 2023, the Minister's Delegate issued an Exclusion Order with a one-year prohibition to enter Canada against the Applicants for entering and remaining in Canada without valid PR visas, and for intending to remain Canada indefinitely. On May 17, 2023, the Applicants requested, and were granted, a one-month deferral to attempt to clarify what happened on their PR application. After the CBSA denied a further deferral request on June 7, 2023, the Applicants left voluntarily and paid for their travel expenses.

II. Decision

[9] For the reasons that follow, I find that the decision made on the revocation of the permanent resident visas to be reasonable and reached in a procedurally fair manner. I find the decision on the Exclusion Order to be unreasonable. I dismiss the Applicants' judicial review

application on the PR decisions. I grant the Applicants' judicial review application on the Exclusion Order.

III. The Issues and Standard of Review

[10] I summarize the issues articulated by the Applicants on each of the cases as follows:

i. Was the Officer's decision unreasonable?

ii. Did the Officer breach the principles of procedural fairness in reaching their decision?

[11] The standard of review applicable to visa decisions 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; S*hah 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).

[12] 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) at paras 21-28 (*Canadian Pacific Railway Company* at para 54).

[13] Regarding questions of procedural fairness, as Justice Régimbald recently wrote in *(Nguyen v Canada (Citizenship and Immigration),* 2023 FC 1617 at para 11:

> the reviewing court must be satisfied of the fairness of the procedure with regard to the circumstances (*Singh v Canada (Citizenship and Immigration)*, 2023 FC 215 at para 6; *Do v Canada (Citizenship and Immigration)*, 2022 FC 927 at para 4; *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54 [*Canadian Pacific Railway*]). In *Canadian Pacific Railway*, the Federal Court of Appeal noted that trying to "shoehorn the question of procedural fairness into a standard of review analysis is… an unprofitable exercise" (at para 55). Instead, the Court must ask itself whether the party was given a right to be heard and the opportunity to know the case against them, and that "[p]rocedural fairness is not sacrificed on the altar of deference" (*Canadian Pacific Railway* at para 56).

IV. Analysis

A. *Legal Framework: the applicable provisions of the IRPA*

[14] A foreign national wishing to reside in or visit Canada must, before entering the country, file an application for the appropriate visa. The visa will be issued if, after an examination, the visa officer is convinced that the foreign national complies with the requirements of the IRPA (subsection 11(a) of the IRPA). A visa may only be issued if the officer is satisfied the foreign national is not inadmissible pursuant to section 11 of the IRPA. Here is the applicable legislation to this case:

IRPA

Application before entering Canada 11 (1) A foreign national must, before entering Canada, apply to an officer for a visa or for any other document required by the regulations. The visa or document may be issued if, following an examination, the officer is satisfied that the foreign national is not inadmissible and meets the requirements of this Act. […]	**Visa et documents** 11 (1) L’étranger doit, préalablement à son entrée au Canada, demander à l’agent les visa et autres documents requis par règlement. L’agent peut les délivrer sur preuve, à la suite d’un contrôle, que l’étranger n’est pas interdit de territoire et se conforme à la présente loi. […]
Obligation — answer truthfully 16 (1) A person who makes an application must answer truthfully all questions put to them for the purpose of the examination and must produce a visa and all relevant evidence and documents that the officer reasonably requires. […]	**Obligation du demandeur** 16 (1) L’auteur d’une demande au titre de la présente loi doit répondre véridiquement aux questions qui lui sont posées lors du contrôle, donner les renseignements et tous éléments de preuve pertinents et présenter les visa et documents requis. […]

[15] Under section 40(1)(a) of the IPRA, a person is inadmissible to Canada if he or she “withholds material facts relating to a relevant matter that induces or could induce an error in the administration” of the Act:

IRPA

Misrepresentation

40 (1) A permanent resident or a foreign national is inadmissible for misrepresentation

(a) for directly or indirectly misrepresenting or withholding material facts relating to a relevant matter that induces or could induce an error in the administration of this Act;

(b) for being or having been sponsored by a person who is determined to be inadmissible for misrepresentation;

(c) on a final determination to vacate a decision to allow their claim for refugee protection or application for protection; or

(d) on ceasing to be a citizen under

(i) paragraph 10(1)(a) of the Citizenship Act, as it read immediately before the coming into force of section 8 of the Strengthening Canadian Citizenship Act, in the circumstances set out in subsection 10(2) of the Citizenship Act, as it read immediately before that coming into force,

(ii) subsection 10(1) of the Citizenship Act, in the circumstances set out in section 10.2 of that Act, or

(iii) subsection 10.1(3) of the Citizenship Act, in the circumstances set out in section 10.2 of that Act.

Fausses déclarations

40 (1) Emportent interdiction de territoire pour fausses déclarations les faits suivants :

a) directement ou indirectement, faire une présentation erronée sur un fait important quant à un objet pertinent, ou une réticence sur ce fait, ce qui entraîne ou risque d'entraîner une erreur dans l'application de la présente loi;

b) être ou avoir été parrainé par un répondant dont il a été statué qu'il est interdit de territoire pour fausses déclarations;

c) l'annulation en dernier ressort de la décision ayant accueilli la demande d'asile ou de protection;

d) la perte de la citoyenneté :

(i) soit au titre de l'alinéa 10(1)a) de la Loi sur la citoyenneté, dans sa version antérieure à l'entrée en vigueur de l'article 8 de la Loi renforçant la citoyenneté canadienne, dans le cas visé au paragraphe 10(2) de la Loi sur la citoyenneté, dans sa version antérieure à cette entrée en vigueur,

(ii) soit au titre du paragraphe 10(1) de la Loi sur la citoyenneté, dans le cas visé à l'article 10.2 de cette loi,

(iii) soit au titre du paragraphe 10.1(3) de la Loi sur la citoyenneté, dans le cas visé à l'article 10.2 de cette loi.

Application

(2) The following provisions govern subsection (1):

(a) the permanent resident or the foreign national continues to be inadmissible for misrepresentation for a period of five years following, in the case of a determination outside Canada, a final determination of inadmissibility under subsection (1) or, in the case of a determination in Canada, the date the removal order is enforced; and

(b) paragraph (1)(b) does not apply unless the Minister is satisfied that the facts of the case justify the inadmissibility.

Application

(2) Les dispositions suivantes s'appliquent au paragraphe (1) :

a) l'interdiction de territoire court pour les cinq ans suivant la décision la constatant en dernier ressort, si le résident permanent ou l'étranger n'est pas au pays, ou suivant l'exécution de la mesure de renvoi;

b) l'alinéa (1)b) ne s'applique que si le ministre est convaincu que les faits en cause justifient l'interdiction.

Inadmissible (3) A foreign national who is inadmissible under this section may not apply for permanent resident status during the period referred to in paragraph (2)(a).	**Interdiction de territoire** (3) L’étranger interdit de territoire au titre du présent article ne peut, pendant la période visée à l’alinéa (2)a), présenter de demande pour obtenir le statut de résident permanent.
20 (1) Every foreign national, other than a foreign national referred to in section 19, who seeks to enter or remain in Canada must establish, (a) to become a permanent resident, that they hold the visa or other document required under the regulations and have come to Canada in order to establish permanent residence; and	20 (1) L’étranger non visé à l’article 19 qui cherche à entrer au Canada ou à y séjourner est tenu de prouver : a) pour devenir un résident permanent, qu’il détient les visa ou autres documents réglementaires et vient s’y établir en permanence;
Permanent resident 21 (1) A foreign national becomes a permanent resident if an officer is satisfied that the foreign national has applied for that status, has met the obligations set out in paragraph 20(1)(a) and subsection 20(2) and is not inadmissible.	**Résident permanent** 21 (1) Devient résident permanent l’étranger dont l’agent constate qu’il a demandé ce statut, s’est déchargé des obligations prévues à l’alinéa 20(1)a) et au paragraphe 20(2) et n’est pas interdit de territoire.

B. *PR Visas: The Fairness and Reasonableness of the Decision to Revoke the COPRs*

[16] The parties do not dispute that when the Applicants applied for their PR visas in 2020, they were not inadmissible and when they met the “eligibility requirements” of the program under which they had applied, namely the Saskatchewan Immigrant Nominee Program. This application continued to be process, despite the finding of inadmissibility for misrepresentation in the interim in 2022, and resulted in the issuance of the PR visas in April 2023.

[17] The Officer’s decision to revoke the Applicants’ COPRs was reasonable and procedurally fair. Based on the entirety of section 40 of the IRPA, it is clear that the Officer approved the Applicants’ COPRs in error. The Officer had no discretion to approve the applications.

[18] Subsection 40(3) of the IRPA states that an applicant cannot apply for permanent residence during the period in which they are inadmissible. The Applicants are correct that they did not apply during their period of inadmissibility. However, section 40(3) must be read in unison with section 40(2)(a), which provides that a foreign national continues to be inadmissible for misrepresentation for a period of five years following the final determination of their admissibility (IRPA, s 40(2)(a)). In addition, the language of subsection 11(1) makes it only permissible for the visa officer to issue the visa if they are satisfied that the applicant is not inadmissible and meets the requirements of the IRPA. Due to the Applicant's undisputed inadmissibility for misrepresentation in 2022, this was not the case here, and the PR visas were issued despite the inadmissibility when the Applicants did not meet the admissibility requirements of the IRPA. I find that the Applicants erroneously point to subsection 40(3) of the IRPA in isolation from the rest of section 40, to contest that the IRPA is mute on the ability of the Officer to cancel the COPRs. The IRPA does not provide an officer with any discretion to grant a foreign national entry if they are inadmissible. The Officer who sent the letter on March 24, 2023 granting Applicants permanent residence application, leading to their COPRs, lacked the authority to do so under the IRPA, simply because they had no discretion to issue it in light of the Applicants' continued inadmissibility. The fact that they issued it was in error, one that proved unfortunate, expensive, and inconvenient to the Applicants.

[19] The Respondent argues that by the operation of the law, the Applicants were inadmissible to Canada, and they were owed no duty of procedural fairness. The Applicants argue they were denied an opportunity to meaningfully participate in the decision process and that there is a line of jurisprudence that establishes that before a decision is made to cancel a visa, the applicant is

entitled to be heard. For example, the Applicants rely on the case of *Sanif* v Canada *(Public Safety and Emergency Preparedness)*, 2010 FC 115 to explain that an applicant ought to be provided the opportunity to be heard before a decision is made. I find the case distinguishable. In *Sanif* the applicants' permanent residence application was accepted, and later their visa was cancelled and the applicant found inadmissible. The visa was cancelled because the Officer had concerns the applicant used a fraudulent employer to obtain the visa, and their opportunity to be heard could impact the fact finding exercise. In the Applicants' situation here, the Officer never had discretion to issue the visa in the first place. The decision to revoke the Applicants' COPRs was essential to remedy an error that would have been contrary to the IRPA, and the IRCC could not legally have reached a different decision. An interview regarding the decision to revoke the COPRs was irrelevant because the applicants were inadmissible to Canada as per the IRPA, and their input could not influence a different outcome.

[20] If there was any discretion on the part of the Officer to legally issue the PR Visas, a further examination and inviting the Applicants to make submissions before cancellation could reasonably affected the outcome. The denial of further engagement with the Applicants in those circumstances would have amounted to a breach of procedural fairness, particularly when the stakes were so high (*Vavilov* at para 101). However, this was not the case here.

[21] The Applicants are also saying that the decision is unreasonable because it was based on the Applicants' eligibility when they had already met all the eligibility requirements of the program for which they had applied. Again, reasonableness needs to be assessed in the context of the entirety of the evidence and the legal framework within which the Officer operated. When

the revocation of the visas was the only possible outcome, the potential misuse of the word “eligibility” (even if the Applicants are correct that it was improperly applied), does not render the decision to cancel the improperly issued visas unreasonable.

[22] I, therefore, dismiss the judicial review of the cancellation of the PR visas. I do this with full sympathy and empathy for the Applicants who incurred substantial time and expense to travel to Canada.

C. *The reasonableness of the decision to issue the Exclusion Order*

[23] Ten days after the decision to revoke the Applicants’ COPRs on May 4, 2023, the Applicants attended an interview with the Respondent on May 14, 2023. It is fair to assume that the interviewing officer had no reason to question the lawfulness or the fairness of the revoked COPRs. However, they should still understand the context in which they were interviewing the Applicants: that the family had applied for PR visas, the Respondent had issued it to them erroneously, and that is why the Applicants decided to come to Canada.

[24] These are excepts from the interview on May 14, 2023:

> Q: Since time of first entry circumstances have changed. COPR and visa have been cancelled due to the 5 year misrepresentation allegation from the previous work permit refusal. You were informed of the cancellation via your representative with whom you placed the application.
>
> Al: I did not get any kind of information of the COPR cancellation or the visa application before I came here:
>
> A2:
>
> Q: Do you mean before you came to the airport today?

> Al: No when I first came. I arrived in April, I was not informed that my COPR and visa was cancelled.
>
> A2:
>
> Q: based on your first allegation, you were ineligible to get a COPR. Do you understand?
>
> AI: I understand I did not enter the country illegally I had a COPR letter. And I had a valid visa for 11 months validity.
>
> A2:
>
> Q: Were you seeking entry into Canada to remain indefinitely?
>
> Al: Yes
>
> A2: Yes
>
> Q: Are you willing to return to India?
>
> Al: No
>
> A2: No

[25] The Officer asks the Applicants if they were seeking entry into Canada to remain indefinitely, and the Applicants understandably answer yes. They do answer that they are unwilling to return to India. Yet, further in the interview, the Applicants also said that their entire family was in Canada, that they thought their COPRs were issued when the Canadian government thought they were making a positive determination and that they "really want to stay here with them legally with them [*sic*]". They also stated that they believed that it was the inadmissibility finding that was made in error.

[26] The Respondent argues that the during the interview, the Principal Applicant had stated that she thought that the inadmissibility on the basis of misrepresentation was issued in mistake, which the Applicants' arguments ignore. I disagree with this characterization. While legally

incorrect, the IRCC's decision to issue the COPRs had supported the Applicants' mistaken belief. This was a material fact that formed the context in which the interview took place, and it was ignored by both the interviewing officer and the Minister's Delegate who ultimately issued the Exclusion Order.

[27] The purpose of the interview was to engage in a fact finding exercise, and by ignoring the context in which the facts took place, the logical chain of reasoning was broken. Based on the unreasonable inference that the Applicants had meant to illegally stay in Canada permanently, the interviewing officer prepared the section 44 Report and the Minister's Delegate issued an Exclusion Order that read as follows

> This report is based on the following information that the above named individual:
>
> - –Is not a Canadian Citizen;
> - Is not a Permanent Resident of Canada;
> - Sought entry to Canada on 2023 April 22 at the Vancouver International Airport
> - **Intends to reside in Canada indefinitely**;
> - -Is not in possession of a valid permanent resident visa.
>
> (emphasis added)

[28] In *Vavilov*, the Supreme Court held when reasons are read with a sensitivity to the institutional setting and in light of the record and still contain a "fundamental gap" or "an unreasonable chain of analysis" the decision is unreasonable (*Vavilov* at para 96). I find that the decision to issue the Exclusion Order was largely based on the Applicants' intention to reside in Canada indefinitely. There was undisputed evidence that this was what the Applicants thought the issuance of their COPRs meant, that they had not understood why they were cancelled, and told the Officer that they had hired a lawyer to understand it. Most importantly, the Applicants

explicitly stated they had no intention to stay illegally. There is nothing in the record to show that the CBSA Officer or the Minister's Delegate were alive and alert to any of this or engaged with the material evidence to the contrary. In fact, the reasons do not provide a reference to where the Minister's Delegate acknowledged the Applicants' original purpose of entry, the confusion expressed or the circumstances leading to the confusion, or that it was their intention to remain Canada only legally. By not engaging with the contrary evidence in any way, the decision to issue the Exclusion Order was arbitrary and ignores a fundamental gap in light of the record (*Seyedsalehi v Canada (Citizenship and Immigration)*, 2022 FC 1250). By ignoring the entire context, the reasons lack intelligibility and are not justified.

[29] The Applicants submit that the Respondent breached the principles of procedural fairness when they denied their explicit request to consult with their lawyer during the interview, and the Respondent submits that there was no absolute right to counsel in the Applicants' circumstances and when they were not detained. Given my finding that the decision is unreasonable, I decline to analyse the procedural fairness of the interview.

D. *Costs*

[30] The Applicants are seeking costs in the amount of $5,000.

[31] In immigration matters, an award of costs is subject to Rule 22 of the *Federal Courts Citizenship, Immigration and Refugee Protection Rules*, SOR/93-22 [Federal Court Immigration Rules], which provides that no costs shall be awarded on applications for leave and judicial review but for "special reasons." The provision reads as follows:

Costs	**Dépens**
22 No costs shall be awarded to or payable by any party in respect of an application for leave, an application for judicial review or an appeal under these Rules unless the Court, for special reasons, so orders.	22 Sauf ordonnance contraire rendue par un juge pour des raisons spéciales, la demande d’autorisation, la demande de contrôle judiciaire ou l’appel introduit en application des présentes règles ne donnent pas lieu à des dépens.

[32] The threshold for establishing the existence of “special reasons” is high (*Aleaf v Canada (Citizenship and Immigration)*, 2015 FC 445 at para 45). In *Almuhtadi* at paragraph 56, Justice Ahmed described the requirements for such order of costs as follows:

> [56] The threshold for establishing “special reasons” is high. It includes instances where one party has acted in a manner that may be characterized as unfair, oppressive, improper or actuated by bad faith (*Taghiyeva v Canada (Citizenship and Immigration)*, 2019 FC 1262 at paras 17-23; *Ndungu v Canada (Citizenship and Immigration*), 2011 FCA 208 at para 7)
>
> (*Almuhtadi v Canada (Citizenship and Immigration),* 2021 FC 712)

[33] The Applicants submit that in this case, costs should be awarded because of the unnecessary length and multiplicity of the proceedings as well as the hardships suffered by the Applicants (*Johnson v Canada (M.C.I.),* 2005 FC 1262 at para 26).

[34] I find that the jurisprudence of this Court is narrow in awarding costs, and it is limited to when special circumstances have been found, such as situations where unexplained and unjustified delay by the Respondent exists or an Immigration Official engaged in conduct that is misleading or abusive (*Ndungu v Canada (Citizenship and Immigration*), 2011 FCA 208), or where there has been reprehensible, scandalous or outrageous conduct on the part of a party (*Toure v Canada (Public Safety and Emergency Preparedness)*, 2015 FC 237 at para 16).

[35] I do not find that the Applicants' situation warrants special circumstances that would allow costs as per Rule 22. The Respondent made an error in granting the Applicants' PR applications. The Applicants were inadmissible to Canada when the PR visas were granted. Given that the error occurred, the Respondent had no other recourse than to revoke their permanent resident visas. The situation was unfortunate and it is regrettable that it occurred in the manner that it did. However, the Respondent did not act in bad faith, and once the error was discovered, they took corrective measures without delay.

[36] I, therefore, find the circumstances of this case do not justify the award of costs.

V. Conclusion

[37] The Application for Judicial Review is dismissed on the issue of the permanent residence visas. I grant the application for judicial review on the matter of the exclusion order. That matter is returned for redetermination by a different officer, and in accordance with this judgment.

[38] No costs are awarded.

[39] There is no question to be certified.

JUDGMENT IN IMM-6194-23

THIS COURT'S JUDGMENT is that

1. The application for Judicial Review is dismissed.
2. Costs are not awarded.
3. There is no question for certification.

JUDGMENT IN IMM-6195-23

THIS COURT'S JUDGMENT is that

1. The application for Judicial Review is granted. This matter is returned to the CBSA for redetermination by another Minister's Delegate;
2. If the matter will be redetermined, the Applicants will be given an opportunity to file further evidence and submissions;
3. There is no question for certification.

"Negar Azmudeh"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKETS:	IMM-6194-23 IMM-6195-23
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