Federal Court  Cour fédérale

Date: 20241203

Docket: IMM-14695-23

Citation: 2024 FC 1952

Calgary, Alberta, December 3, 2024

PRESENT: The Honourable Mr. Justice Ahmed

BETWEEN:

MINGLI DA
TIANQING CHEN

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicants seek judicial review of a decision of the Immigration Appeal Division (the "IAD") dated October 31, 2023, which affirmed a visa officer's refusal of their applications for Permanent Resident Travel Documents ("PRTDs") due to breach of the minimum residency

requirement pursuant to section 28 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 ("*IRPA*").

[2] The Applicants submit that the IAD's decision is unreasonable, as the IAD misapprehended the evidence and erred in its conclusion that the Principal Applicant was not "assigned" on a full-time basis to a position outside Canada pursuant to subsection 61(3) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 (the "Regulations").

[3] For the reasons that follow, I find that the IAD's decision is reasonable. This application for judicial review is dismissed.

II. **Facts**

[4] The Applicants, Mingli Da (the "Principal Applicant") and Tianqing Chen (the "Associate Applicant"), are citizens of China. In 2014, the Applicants became permanent residents of Canada.

[5] Since 2017, the Principal Applicant has worked for Golden Life Immigration Services ("GLIS"), a Canadian company with an office in Toronto. As the Overseas Marketing Officer, the Principal Applicant worked at the GLIS contact office in Nantong, China. Although initially a one-year engagement, the Principal Applicant's contract was subsequently renewed on an indeterminate basis. The Principal Applicant and the owner of GLIS agreed that "[the Principal Applicant] would be given the position of Marketing Officer in the company" if she decided to return to Canada.

[6] While employed at GLIS, the Principal Applicant continued to hold property and pay taxes in Canada. She also occasionally returned to Canada for work trips and to visit her son, who remained in Canada following her departure to China.

[7] In October 2022, the Applicants' PRTD applications were refused.

[8] On October 31, 2023, the IAD upheld the refusal decision. The IAD determined that, although GLIS is a Canadian company and the Principal Applicant was employed there on a full-time basis, the Principal Applicant's position did not constitute an overseas assignment pursuant to section 61(3) of the Regulations. Finding that humanitarian and compassionate (H&C) factors did not warrant an exemption, the IAD affirmed the Officer's decision. This is the decision that is presently under review.

III. **Issue and Standard of Review**

[9] The sole issue in this application is whether the IAD's decision is reasonable.

[10] The standard of review on the merits of the decision is not disputed. The parties submit that the applicable standard of review is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16–17, 23–25 ("*Vavilov*")). I agree.

[11] Reasonableness is a deferential, but robust, standard of review (*Vavilov* at paras 12-13, 75, 85). The reviewing court must determine whether the decision under review, including both its rationale and outcome, is transparent, intelligible and justified (*Vavilov* at para 15). A

decision that is reasonable as a whole 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). Whether a decision is reasonable depends on the relevant administrative setting, the record before the decision maker, and the impact of the decision on those affected by its consequences (*Vavilov* at paras 88-90, 94, 133-135).

[12] 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. Flaws or shortcomings must be more than superficial or peripheral to the merits of the decision, or a "minor misstep" (*Vavilov* at para 100). A reviewing court must refrain from reweighing evidence before the decision maker, and it should not interfere with factual findings absent exceptional circumstances (*Vavilov* at para 125).

IV. **Analysis**

[13] The Applicants submit that the IAD's decision is unreasonable, as the IAD disregarded the evidence in determining that the Principal Applicant's role was an indefinite overseas position rather than a temporary overseas assignment. Consequently, the days that the Principal Applicant worked for GLIS in China should count toward her minimum residency requirement, and the Applicants' PRTD applications should be returned for redetermination.

[14] The Respondent submits that the decision contains no reviewable error. The Principal Applicant's role as an Overseas Marketing Officer in China was indeterminate in nature and the Principal Applicant's potential return to Canada was not guaranteed. Based on the record, the

IAD reasonably concluded that the Principal Applicant was not "assigned" to a position outside Canada and that she therefore did not satisfy the minimum residency requirement pursuant to section 28 of the *IRPA*.

[15] I agree with the Respondent.

[16] The determinative issue in this application is whether the Principal Applicant's position constituted an assignment pursuant to section 61(3) of the Regulations. Section 61(3) of the Regulations stipulates that, in order for employment outside Canada to count towards days of qualifying residency, a permanent resident must be "assigned" on a full-time basis to a position outside Canada (Regulations, s 61(3)(a)).

[17] The Court has interpreted "assigned" to refer to a discrete period during which a permanent resident is temporarily based abroad, with "evidence pointing to a firm commitment on the part of the employer to reintegrate the employee within a specified timeframe to a position in Canada" upon their return (*Baraily v Canada (Citizenship and Immigration)*, 2014 FC 460 at para 12 ("*Baraily*"); *Canada (Citizenship and Immigration) v Jiang*, 2011 FC 349 at para 52; *Bi v Canada (Citizenship and Immigration)*, 2012 FC 293 at para 15 ("*Bi*"); *Canada (Citizenship and Immigration) v Luo*, 2020 FC 543 at paras 24-26). The jurisprudence is clear that permanent residents cannot accumulate days of qualifying residency "simply by being hired on a full-time basis outside of Canada by a Canadian business. Instead…the permanent resident must be assigned temporarily, maintain a connection with his or her employer, and…continue working for his or her employer in Canada following the assignment" (*Bi* at para 15).

[18] Consequently, I find that the IAD did not err in determining that the Principal Applicant's role as an Overseas Marketing Officer fell outside the scope of an assignment per section 61(3) of the Regulations. As stated by the IAD, the temporal scope of the Principal Applicant's role as an Overseas Marketing Officer in China was "open ended" and the Principal Applicant would only take up the position of Marketing Officer in Canada "[i]f [she] decides to return." Notwithstanding GLIS's intent to re-hire the Principal Applicant and any similarity between the two roles, this arrangement fails to demonstrate "a firm commitment on the part of the employer to reintegrate the employee within a specified timeframe to a position in Canada" (*Baraily* at para 12 [emphasis added]). Consequently, the IAD's conclusion that "the [Principal Applicant] likely works in an indefinite overseas position" accords with the statutory and regulatory framework and the evidence brought by the Applicants, and is not unreasonable as the Applicants contend.

[19] I similarly find no merit in the Applicants' submission that the IAD disregarded the evidence before it. The Applicants assert that the IAD failed to account for the Principal Applicant's testimony, her employer's testimony, and her offer letter, which demonstrate that she would be employed "in the same position…doing the same work" upon her return to Canada. However, the IAD expressly acknowledged this evidence in its decision, noting that "the [Applicants] gave testimony…in support of their claim," that the owner of GLIS "testified at the hearing" about the details of the Principal Applicant's employment, and that "the [Principal Applicant] provided an employment offer to the [Officer]." According to the IAD, "[t]he evidence establishes that the [Principal Applicant] was a full-time employee of a Canadian company who was hired to run its Chinese operations from that country on an indefinite basis. The job of Overseas Marketing Officer required that she work overseas. It was not a temporary

assignment from a Canadian position." Although the Applicants may disagree with the IAD's conclusion, there is no basis for their claim that the IAD disregarded their evidence.

[20] I also find that the Applicants mischaracterize the IAD's findings. According to the Applicants, the IAD found that the Principal Applicant "was…working for a Chinese company in China" and that "the Canadian business had in fact set up full-fledged business operations in China." I do not find this to be the case. The IAD determined that "GLIS is a Canadian company" and that the Principal Applicant was tasked with "promoting the companies [*sic*] immigration services in the Chinese market."

[21] Furthermore, I find that the IAD reasonably determined that H&C factors did not militate in favour of reversing the refusal decision. In reaching this conclusion, the IAD considered several factors, including the Applicants' reasons for remaining abroad, the Principal Applicant's establishment and family ties in Canada, the Applicants' failure to return to Canada at their first opportunity, and the Applicants' concession that "H&C factors are rather weak in this case." The IAD's decision is coherent, intelligible, and rooted in the particular facts of the Applicants' appeal (*Vavilov* at para 102). There is no reviewable error on this ground.

[22] I acknowledge and am sympathetic to the Principal Applicant's submission that "she was aware of her residency obligations and the only reason she had agreed to take on" her position at GLIS was that "her residency obligations will not be compromised." However, I find no legal error in the IAD's decision. The Applicants' submissions do not derogate from the IAD's findings that the Principal Applicant was hired as an Overseas Marketing Officer on an

indeterminate basis, with no guarantee or specific time period within which she would return to Canada. As a result, I dismiss this application for judicial review.

V. **Conclusion**

[23] For these reasons, I find that the IAD's decision is reasonable. The IAD accounted for the evidentiary record and properly applied the statutory and regulatory framework pertaining to the minimum residency requirement for permanent residents in section 28 of the *IRPA* (*Vavilov* at para 85).

[24] No questions for certification were raised, and I agree that none rise.

JUDGMENT in IMM-14695-23

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is dismissed.

2. There is no question to certify.

"Shirzad A."
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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