Federal Court  Cour fédérale

Date: 20250124

Docket: IMM-688-24

Citation: 2025 FC 155

Vancouver, British Columbia, January 24, 2025

PRESENT: The Honourable Madam Justice Kane

BETWEEN:

MARIAN-SEVASTIAN TIRGOVETU
and
IOANA TIRGOVETU-DUMITRIU

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The Applicants, Marian-Sevastian Tirgovetu [Mr. Tirgovetu] and his spouse, Ioana Tirgovetu-Dumitriu [Ms. Dumitriu] seek judicial review of the decision of an Immigration Officer [the Officer] dated January 3, 2024, refusing to restore the Applicants' temporary resident status and refusing to issue work permits. The Officer also found that Mr. Tirgovetu is inadmissible to Canada pursuant to section 41 of the *Immigration and Refugee Protection Act,*

SC 2001, c 27 [the Act]. Although the Officer was not satisfied that Mr. Tirgovetu had truthfully answered the questions asked of him, the Officer did not find that Mr. Tirgovetu was inadmissible to Canada pursuant to section 40 of the Act.

[2] For the reasons that follow, the Application is dismissed. The Officer's decision is reasonable, and no breach of procedural fairness has been established.

I. Background

[3] The Applicants are a married couple and citizens of Romania. Both Applicants had been issued work permits which expired on January 24, 2022. The Applicants' applications for an extension of their work permits were refused on September 15, 2022.

[4] On December 12, 2022, they reapplied for work permits and restoration of their temporary resident status.

[5] On April 1, 2023, Immigration, Refugees and Citizenship Canada [IRCC] sent Mr. Tirgovetu a letter requesting specific documents to permit the processing of his application, including his IELTS scores (for language testing), Canada Revenue Agency [CRA] T4 documents for 2020, 2021, and 2022, CRA Notice of Assessment for 2020, 2021 and 2022, pay stubs and bank statements. The letter also noted that the location of Mr. Tirgovetu's employment is a residential address that cannot be located on open sources, and requested that he provide an updated residential address. The letter also requested information from Mr. Tirgovetu's employer.

[6] Prior to the determination of their request for restoration of their status and extension of their work permits, the Applicants left Canada for a period of time and returned on December 26, 2023.

[7] In the meantime, and after reviewing the documents submitted on December 15, 2023, the Officer sent Mr. Tirgovetu a procedural fairness letter [PFL] noting the requirements of section 16 of the Act to answer all questions truthfully. The letter notes the Officer's concerns about the authenticity of the letter of offer of employment and the Labour Market Impact Analysis [LMIA] provided with the work permit application. The letter states "[a]s per LMIA 8955398 and letter of offer the business Mario & Valentino Automotive is said to be located at [address]… Upon conducting an open source search it appears that [address] is a residential house and as such there it does not appear to be equipped for an Automotive Repair Shop. You have stated that [address] is both your residential and address of employment. An open search has not yielded any information on the business. For example, telephone, website, email etc." The PFL notes the Officer's serious concerns that the business was incorporated to provide a non-genuine LMIA to gain temporary status.

[8] The PFL further notes that Mr. Tirgovetu has been without status since September 15, 2022, and requested that he provide a detailed explanation of what he has been doing for the 13-month period.

[9] The PFL notes the consequences of misrepresentation pursuant to section 40 of the Act and requests a response within seven days. IRCC did not receive a response from Mr. Tirgovetu.

II. The Decision under Review

[10] The Officer provided separate decisions for the applications of Mr. Tirgovetu and Ms. Dumitriu. The Officer's letters dated January 3, 2024, and the Global Case Management System [GCMS] notes constitute the reasons for the decisions.

[11] The Officer's letter to Mr. Tirgovetu states that the Officer had reviewed his application seeking to remain in Canada as a worker and the supporting documents and has determined that the application does not meet the requirements of the Act and of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [Regulations]. The letter states that the application is refused on the following grounds:

> - I am not satisfied that you have truthfully answered all questions asked of you.
>
> - You are found inadmissible to Canada under paragraph 41(a) of the IRPA through an act or omission which contravenes, directly or indirectly, a provision of this Act.
>
> - You have not complied with an imposed condition, and, as a result, you have lost your status as a permanent resident because the time period you were allowed to stay in Canada has expired.
>
> - Kindly note that a Voluntary Departure Form is attached to this refusal.

[12] The GCMS notes indicate that Mr. Tirgovetu was issued a work permit and authorized to remain in Canada until January 25, 2022. His application to extend his work permit, submitted on January 19, 2022, was refused on September 15, 2022. Mr. Tirgovetu applied for an extension and restoration on December 12, 2022. The notes indicate that the application was submitted within 90 days of losing status and "appears to meet initial requirements for stay. However, PA

has failed to remain in Canada until a decision is made". The notes indicate that Mr. Tirgovetu re-entered Canada on December 26, 2023, at Douglas Port of Entry and that he "is therefore not eligible for restoration as he did not remain in Canada until a decision was rendered."

[13] The GCMS notes also state that a PFL was issued on December 15, 2023, and that Mr. Tirgovetu was given until December 22, 2023, to address the identified concerns. The GCMS notes state, "[t]o date PA provided a response to alleviate my concerns. Application is therefore refused A 16(1), A 41 (a) and R 182(1)" [Emphasis added].

[14] The Officer's letter to Ms. Dumitriu states that the Officer has reviewed the application to remain in Canada as a worker and the supporting documents and has determined that the application does not meet the requirements of the Act and of the Regulations. The letter states that the application is refused on the following grounds:

> - You have not complied with an imposed condition, and, as a result, you have lost your status as a temporary resident because the time period you were allowed to stay in Canada has expired.
> - You are not eligible for a work permit in this category.
> - Your spouse's WP has been refused and therefore you do not meet the eligibility under R205 (c) (ii).
> - Kindly note that a Voluntary Departure Form is attached to this refusal.

[15] The GCMS notes indicate Ms. Dumitriu was issued a work permit and authorized to remain in Canada until January 25, 2022. Her application to extend her work permit, submitted on January 19, 2022, was refused on September 15, 2022. Ms. Dumitriu applied for an extension and restoration on December 12, 2022. The notes indicate that the application was within 90

days of losing status and "appears to meet initial requirements for stay. However, PA has failed to remain in Canada until a decision is made". The notes indicate that Ms. Dumitriu re-entered Canada on December 26, 2023, at Douglas Port of Entry and that she "is therefore not eligible for restoration as she did not remain in Canada until a decision was rendered."

[16] The GCMS notes indicate that Ms. Dumitriu's spouse was issued a PFL on December 15, 2023, and "has failed to provide a response to alleviate my concerns" [Emphasis added]. The GCMS notes state, "[a]s PA's spouse's WP has been refused the PA is not eligible for a OWP under C41. Application is therefore refused R182 (1) & R 205 (c) (ii)."

[17] As noted, the letter and GCMS notes cite subsection 16(1) and paragraph 40(1)(a) of the Act and subsection 182(1) and paragraph 205(c)(ii) of the Regulations.

III. The Standard of Review

[18] The standard of review of a decision refusing a work permit, and of a finding of inadmissibility pursuant to section 41 or paragraph 40(1)(a) of the Act, which are factual determinations, is reasonableness (*Bains v Canada (Citizenship and Immigration)*, 2020 FC 57 at para 49; *Lin v Canada (Citizenship and Immigration*), 2019 FC 1284 at para 23 [*Lin*]; *Ocran v Canada (Citizenship and Immigration)*, 2022 FC 175 at para 16; *Mehmi v Canada (Citizenship and Immigration)*, 2021 FC 1012 at para 20; *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16–17 [*Vavilov*].

[19] 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 the law that constrain the decision-maker (*Vavilov* at paras 85, 102, 105–07). A decision should not be set aside unless it contains "sufficiently serious shortcomings ... such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency" (*Vavilov* at para 100).

[20] Reasons are not held to a standard of perfection (*Vavilov* at para 91). In the context of decisions for work permits and similar applications, it is understood that the reasons are brief (*Patel v Canada (Citizenship and Immigration)*, 2020 FC 77 at para 17 [*Patel*]); nonetheless, the reasons must permit the Court to understand why the application was refused and to determine that the conclusion falls within the range of reasonable outcomes.

[21] In *Vavilov* at para 103, the Supreme Court of Canada reiterated that the reasons should be read with the record:

> While, as we indicated earlier (at paras. 89-96), formal reasons should be read in light of the record and with due sensitivity to the administrative regime in which they were given, a decision will be unreasonable if the reasons for it, read holistically, fail to reveal a rational chain of analysis or if they reveal that the decision was based on an irrational chain of analysis: see *Wright v. Nova Scotia (Human Rights Commission)*, 2017 NSSC 11, 23 Admin. L.R. (6th) 110; *Southam*, at para. 56. A decision will also be unreasonable where the conclusion reached cannot follow from the analysis undertaken (see *Sangmo v. Canada (Minister of Citizenship and Immigration)*, 2016 FC 17, at para. 21 (CanLII)) or if the reasons read in conjunction with the record do not make it possible to understand the decision maker's reasoning on a critical point (see *Blas v. Canada (Minister of Citizenship and Immigration)*, 2014 FC 629, 26 Imm. L.R. (4th) 92, at paras. 54-66; *Reid v. Criminal Injuries Compensation Board*, 2015 ONSC 6578; *Lloyd v. Canada (Attorney General)*, 2016 FCA 115, 2016

D.T.C. 5051; *Taman v. Canada (Attorney General)*, 2017 FCA 1, [2017] 3 F.C.R. 520, at para. 47).

[22] Where issues of procedural fairness arise, the Court must determine whether the procedure followed by the decision-maker is fair having regard to all of the circumstances; this is akin to a standard of correctness (*Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54). The scope of the duty of procedural fairness owed varies depending on the circumstances and is informed by several factors (*Baker v Canada (Minister of Citizenship and Immigration)*, 1999 CanLII 699 (SCC), [1999] 2 SCR 817 at para 21). Where a breach of procedural fairness is found, no deference is owed.

[23] The duty of procedural fairness owed to an applicant for a temporary work permit is at the low end of the spectrum (*Singh Grewal v Canada (Citizenship and Immigration)*, 2013 FC 627 at para 19; *Sulce v Canada (Citizenship and Immigration)*, 2015 FC 1132 at para 10; *Kaur v Canada (Citizenship and Immigration)*, 2017 FC 782 at para 19; *Li v Canada (Citizenship and Immigration)*, 2012 FC 484 at para 31). However, where there is a resulting finding of misrepresentation pursuant to paragraph 40(1)(a) of the Act (which is not the case here), the jurisprudence has established that, given the consequences of a such a finding (i.e., a five-year ban on re-applying), the duty owed is somewhat elevated and is more than the minimum duty owed (see for example, *Chahal v Canada (Citizenship and Immigration)*, 2022 FC 725 at paras 21–22).

[24] A decision-maker is not required to provide an applicant with an opportunity to address their concerns that arise from the requirements of the Act or from the documents submitted by an

applicant. The onus is on an applicant to provide a complete and truthful application. The exception is where the concerns are about the authenticity or veracity of the evidence—for example, if the officer questions the credibility, accuracy or genuine nature of the information provided (*Kong v Canada (Citizenship and Immigration)*, 2017 FC 1183 at para 24; *Perez Enriquez v Canada (Citizenship and Immigration)*, 2012 FC 1091 at para 26; *Hassani v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1283 at para 24).

IV. The Relevant Statutory Provisions

[25] Subsection 16(1) of the Act sets out the duty to be truthful, subsection 40(1) sets out the criteria for a finding of inadmissibility based on misrepresentation and the consequences, and section 41 provides for inadmissibility due to non compliance:

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.	**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.
[…]	[…]
29 (1) A temporary resident is, subject to the other provisions of this Act, authorized to enter and remain in Canada on a temporary basis as a visitor or as a holder of a temporary resident permit.	**29 (1)** Le résident temporaire a, sous réserve des autres dispositions de la présente loi, l'autorisation d'entrer au Canada et d'y séjourner à titre temporaire comme visiteur ou titulaire d'un permis de séjour temporaire.
(2) A temporary resident must comply with any conditions imposed under the regulations	**(2)** Le résident temporaire est assujetti aux conditions imposées par les règlements et

and with any requirements under this Act, must leave Canada by the end of the period authorized for their stay and may re-enter Canada only if their authorization provides for re-entry.	doit se conformer à la présente loi et avoir quitté le pays à la fin de la période de séjour autorisée. Il ne peut y rentrer que si l'autorisation le prévoit.
[…]	[…]
40 (1) A permanent resident or a foreign national is inadmissible for misrepresentation	**40 (1)** Emportent interdiction de territoire pour fausses déclarations les faits suivants :
(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;	**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) for being or having been sponsored by a person who is determined to be inadmissible for misrepresentation;	**b)** être ou avoir été parrainé par un répondant dont il a été statué qu'il est interdit de territoire pour fausses déclarations;
(c) on a final determination to vacate a decision to allow their claim for refugee protection or application for protection; or	**c)** l'annulation en dernier ressort de la décision ayant accueilli la demande d'asile ou de protection;
(d) on ceasing to be a citizen under	**d)** la perte de la citoyenneté :
(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	**(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*

Citizenship Act, as it read immediately before that coming into force,	*la citoyenneté*, dans sa version antérieure à cette entrée en vigueur,
(ii) subsection 10(1) of the *Citizenship Act*, in the circumstances set out in section 10.2 of that Act, or	**(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) subsection 10.1(3) of the *Citizenship Act*, in the circumstances set out in section 10.2 of that Act.	**(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.
(2) The following provisions govern subsection (1):	(2) Les dispositions suivantes s'appliquent au paragraphe (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	**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) paragraph (1)(b) does not apply unless the Minister is satisfied that the facts of the case justify the inadmissibility.	**b)** l'alinéa (1)b) ne s'applique que si le ministre est convaincu que les faits en cause justifient l'interdiction.
(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).	**(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.
[…]	[…]
41 A person is inadmissible for	**41** S'agissant de l'étranger, emportent interdiction de

failing to comply with this Act	territoire pour manquement à la présente loi tout fait — acte ou omission — commis directement ou indirectement en contravention avec la présente loi et, s'agissant du résident permanent, le manquement à l'obligation de résidence et aux conditions imposées.
(a) in the case of a foreign national, through an act or omission which contravenes, directly or indirectly, a provision of this Act; and	
(b) in the case of a permanent resident, through failing to comply with subsection 27(2) or section 28.	

[26] The Regulations set out the criteria for restoration of status and eligibility for a work permit:

182 (1) On application made by a visitor, worker or student within 90 days after losing temporary resident status as a result of failing to comply with a condition imposed under paragraph 185(a), any of subparagraphs 185(b)(i) to (iii) or paragraph 185(c), an officer shall restore that status if, following an examination, it is established that the visitor, worker or student meets the initial requirements for their stay, has not failed to comply with any other conditions imposed and is not the subject of a declaration made under	**182 (1)** Sur demande faite par le visiteur, le travailleur ou l'étudiant dans les quatre-vingt-dix jours suivant la perte de son statut de résident temporaire parce qu'il ne s'est pas conformé à l'une des conditions prévues à l'alinéa 185a), aux sous-alinéas 185b)(i) à (iii) ou à l'alinéa 185c), l'agent rétablit ce statut si, à l'issue d'un contrôle, il est établi que l'intéressé satisfait aux exigences initiales de sa période de séjour, qu'il s'est conformé à toute autre condition imposée à cette occasion et qu'il ne fait pas l'objet d'une déclaration visée

subsection 22.1(1) of the Act.	au paragraphe 22.1(1) de la Loi.
[…]	[…]
Work permits	**Permis de travail — demande préalable à l'entrée au Canada**
200 (1) Subject to subsections (2) and (3) — and, in respect of a foreign national who makes an application for a work permit before entering Canada, subject to section 87.3 of the Act — an officer shall issue a work permit to a foreign national if, following an examination, it is established that	**200 (1)** Sous réserve des paragraphes (2) et (3), et de l'article 87.3 de la Loi dans le cas de l'étranger qui fait la demande préalablement à son entrée au Canada, l'agent délivre un permis de travail à l'étranger si, à l'issue d'un contrôle, les éléments ci-après sont établis :
(a) the foreign national applied for it in accordance with Division 2;	**a)** l'étranger a demandé un permis de travail conformément à la section 2;
(b) the foreign national will leave Canada by the end of the period authorized for their stay under Division 2 of Part 9;	**b)** il quittera le Canada à la fin de la période de séjour qui lui est applicable au titre de la section 2 de la partie 9;
(c) the foreign national	**c)** il se trouve dans l'une des situations suivantes :
(i) is described in section 206 or 208,	**(i)** il est visé aux articles 206 ou 208,
(ii) intends to perform work described in section 204 or 205 but does not have an offer of employment to perform that work or is described in section 207 or 207.1 but does not have an offer of employment,	**(ii)** il entend exercer un travail visé aux articles 204 ou 205 pour lequel aucune offre d'emploi ne lui a été présentée ou il est visé aux articles 207 ou 207.1 et aucune offre d'emploi ne lui a été présentée,
(ii.1) intends to perform work described in section 204 or 205 and has an offer of employment to perform that	**(ii.1)** il entend exercer un travail visé aux articles 204 ou 205 pour lequel une offre d'emploi lui a été présentée ou

work or is described in section 207 and has an offer of employment, and an officer has determined, on the basis of any information provided on the officer's request by the employer making the offer and any other relevant information, that the offer is genuine under subsection (5), or

il est visé à l'article 207 et une offre d'emploi lui a été présentée, et l'agent a conclu, en se fondant sur tout renseignement fourni, à la demande de l'agent, par l'employeur qui présente l'offre d'emploi et tout autre renseignement pertinent, que l'offre était authentique conformément au paragraphe (5),

(iii) has been offered employment, and an officer has made a positive determination under paragraphs 203(1)(a) to (g); and

(iii) il a reçu une offre d'emploi et l'agent a rendu une décision positive conformément aux alinéas 203(1)a) à g);

(d) [Repealed, SOR/2004-167, s. 56]

d) [Abrogé, DORS/2004-167, art. 56]

(e) the requirements of subsections 30(2) and (3) are met, if they must submit to a medical examination under paragraph 16(2)(b) of the Act.

e) s'il est tenu de se soumettre à une visite médicale en application du paragraphe 16(2) de la Loi, il satisfait aux exigences prévues aux paragraphes 30(2) et (3).

[…]

[…]

(5) A determination of whether an offer of employment is genuine shall be based on the following factors:

(5) L'évaluation de l'authenticité de l'offre d'emploi est fondée sur les facteurs suivants :

(a) whether the offer is made by an employer that is actively engaged in the business in respect of which the offer is made, unless the offer is made for employment as a live-in caregiver;

a) l'offre est présentée par un employeur véritablement actif dans l'entreprise à l'égard de laquelle elle est faite, sauf si elle vise un emploi d'aide familial;

(b) whether the offer is consistent with the reasonable

b) l'offre correspond aux besoins légitimes en main-

employment needs of the employer;	d'œuvre de l'employeur;
(c) whether the terms of the offer are terms that the employer is reasonably able to fulfil; and	**c)** l'employeur peut raisonnablement respecter les conditions de l'offre;
(d) the past compliance of the employer, or any person who recruits the foreign national for the employer, with the federal or provincial laws that regulate the employment or recruitment of employees, including foreign nationals, in the province in which it is intended that the foreign national will work.	**d)** l'employeur – ou toute personne qui recrute l'étranger en son nom – s'est conformé aux lois et aux règlements fédéraux et provinciaux régissant le travail ou le recrutement de main-d'œuvre, y compris d'étrangers, dans la province où il est prévu que l'étranger travaillera.
201 (1) A foreign national may apply for the renewal of their work permit if	**201 (1)** L'étranger peut demander le renouvellement de son permis de travail si :
(a) the application is made before their work permit expires; and	**a)** d'une part, il en fait la demande avant l'expiration de son permis de travail;
(b) they have complied with all conditions imposed on their entry into Canada.	**b)** d'autre part, il s'est conformé aux conditions qui lui ont été imposées à son entrée au Canada.
(2) An officer shall renew the foreign national's work permit if, following an examination, it is established that the foreign national continues to meet the requirements of section 200.	**(2)** L'agent renouvelle le permis de travail si, à l'issue d'un contrôle, il est établi que l'étranger satisfait toujours aux exigences prévues à l'article 200.

V. The Applicants' Submissions

[27] The Applicants submit that the Officer's decision with respect to Mr. Tirgovetu's application is not reasonable and that the Officer breached the duty of procedural fairness.

[28] The Applicants submit that the Officer failed to provide any justification for the concerns identified by the Officer and the reasons are inadequate to explain why the work permit was refused and why a finding of inadmissibility was made. The Applicants submit that the PFL is not part of the reasons and that they should not have to guess what the Officer based the refusal on.

[29] The Applicants more generally dispute the principle that the reasons are to be read along with the record to determine the reasonableness of the decision. They argue that the reasons should stand on their own.

[30] The Applicants argue that the Respondent, in referring to the documents in the CTR, is embellishing the reasons of the Officer.

[31] The Applicants further submit that they provided all the documents requested in the initial request and that these documents should not have raised any concerns about the address of the business, or the legitimacy of the business, the LMIA or offer of employment. In other words, they argue there was no reason for the Officer to have any concerns. They appear to suggest that the Officer should not have conducted the open-source search which revealed that

the business address and residential address were the same and that there was no information about the business. The Applicants acknowledge that the business was co-owned by Mr. Tirgovetu and his father and the "business" made the offer of employment to Mr. Tirgovetu.

[32] The Applicants argue that the Officer erred by ignoring evidence, failing to consider the positive evidence they provided in support of their applications and failing to identify the specific act or omission that led to the Officer's finding that Mr. Tirgovetu is inadmissible. The Applicants also argue that the GCMS notes are contradictory and inconsistent with the refusal.

[33] The Applicants assert that the Officer committed a "significant reviewable error" by referring to an application for permanent residence in the PFL, given that the Applicants were applying for work permits. They argue that this error raises doubts about whether the Officer properly considered the facts and details of the application and suggests that the Officer made incorrect assumptions.

[34] The Applicants argue that the Officer breached the duty of procedural fairness for the same reasons—because the PFL inaccurately referred to an application for permanent residence and also because the seven-day period to respond was unfairly short.

[35] The Applicants also argue that the Officer breached procedural fairness by making a finding of inadmissibility pursuant to section 41 of the Act, without informing them of the specific "act" or "omission" and without providing an opportunity to respond. The Applicants note that the PFL cited section 40, not section 41, and only raised a concern about the

open-source search of the employer's address. They add that the GCMS notes regarding Mr. Tirgovetu state that the Officer's concerns were alleviated.

VI. The Respondent's Submissions

[36] The Respondent submits that the decision is reasonable and procedurally fair. The Respondent notes that the decision addresses both the applications for restoration and for work permits. The Respondent points to the documents in the CTR, including those submitted by Mr. Tirgovetu in response to the April 1, 2023 request and to the relevant provisions of the Act and Regulations.

[37] The Respondent submits that the Officer refused the Applicants' restoration application because they failed to comply with a condition of the restoration of temporary resident policy, contrary to subsection 182(1) of the Regulations. The Respondent points to the policy that requires an applicant to apply within 90 days, meet the initial requirements for their stay and remain in Canada until a decision is made. The applicable guidelines for Officers, accessible on the website, explain that if a foreign national leaves Canada they will be deemed to be seeking a new entry upon their return and the previous non-compliance with imposed conditions may make them inadmissible to Canada pursuant to section 41 or subsection 29(2) of the Act.

[38] The Respondent notes that the policy provides that if the Officer determines that the applicant has left Canada during the processing of the restoration application, the Officer must refuse the application because the applicant is no longer eligible.

[39] The Respondent notes that pursuant to subparagraph 200(1)(c)(ii.1) of the Act, work permits are issued only if the applicant has a genuine offer of employment; and, pursuant to paragraph 200(5)(a) of the Act, genuineness is based on whether the offer is made by an employer that is actively engaged in the business in respect of which the offer is made, among other factors. IRCC's concerns about the authenticity of the letter of offer and LMIA were material to the decision. The Respondent submits that the Officer reasonably found that Mr. Tirgovetu had misrepresented the legitimacy of his offer of employment and LMIA.

[40] The Respondent points to the documents submitted by Mr. Tirgovetu in response to the April 1, 2023 letter, including his letter of offer of employment signed by his spouse, Ms. Dumitriu, and other documents indicating that the residential address and business address were the same and other documents indicating different addresses.

[41] The Respondent notes that the PFL set out concerns about the genuineness of the letter of offer of employment and the LMIA from the employer. The PFL also noted concerns about Mr. Tirgovetu's activities since September 15, 2022, when his status ended.

[42] The Respondent disputes the Applicants' argument that the Officer's mistaken reference in the PFL to an application for permanent residence renders the decision unreasonable or breaches the duty of procedural fairness, noting that the PFL was clearly about the work permit application.

[43] The Respondent also disputes the Applicants' argument that the failure to cite section 41 of the Act in the PFL or to specify the act or omission at issue is a breach of procedural fairness.

[44] The Respondent submits that the PFL clearly identified the Officer's concerns regarding the genuineness of the offer of employment to Mr. Tirgovetu and the LMIA, both of which were material to the Officer's decision regarding the work permit application.

[45] The Respondent submits that there was no breach of procedural fairness; the PFL set out specific concerns and provided Mr. Tirgovetu with an opportunity to respond to the Officer's concerns about the genuineness of his letter of offer and LMIA, but he did not respond and did not request additional time to do so.

[46] The Respondent disputes any suggestion that the Applicants made an "innocent mistake", noting that this exception is for extraordinary circumstances where an applicant honestly believed they were not misrepresenting facts.

VII. The Officer's Decision is Reasonable

[47] As noted above, *Vavilov* guides the Court in reviewing the reasonableness of decisions. Contrary to the Applicants' submission, the record before the decision maker may be considered—and should be considered—by the Court in determining whether the decision is justified, transparent and intelligible. In the present case, the record before the Officer and before this Court fully supports the Officer's decision.

[48] And as also noted above, reasons are not held to a standard of perfection. The Officer did make errors or typos in the PFL and GCMS, but these errors are not significant or serious shortcomings resulting in any reviewable error. The reasons, read with the record, permit the Applicants to know why their applications were refused and permit the Court to find that the decision is reasonable.

[49] Contrary to the Applicants' submission, the PFL was noted in the GCMS notes and is part of the record. The Officer was not required to reiterate the content of the PFL in the GCMS notes or letter.

[50] Also, contrary to the Applicants' submissions, the Officer was not required to accept the documents provided by them in support of their applications at face value. An Officer would be remiss in not assessing the documents to determine if they supported the application in accordance with the criteria in the Act and Regulations. In this case, the Officer reasonably had concerns about the LMIA, letter of offer of employment (signed by Mr. Tirgovetu's wife) and the nature of the business and its location. These concerns were squarely put to Mr. Tirgovetu. Given that the Officer did not receive a response or explanation, the Officer was left with the same concerns.

[51] The Applicants also inconsistently argue that the Officer failed to identify the specific concerns but also argue that the "refusal letter and the GCMS notes mention the Officer's concerns, but such concerns are not justified or contradicted by the evidence provided in the Applicant's application". The record before the Court does not support either assertion.

[52] The letters and the GCMS notes clearly state the reasons for the refusal. As noted above, for Mr. Tirgovetu the letter states that, “I am not satisfied that you have truthfully answered all questions asked of you” referring to the misrepresentation concern. This concern was put to the Applicants with specificity in the procedural fairness letter, and the GCMS notes refer to that letter: “[a] PFL was issued to PA 2023/12/15 and was given until 2023/12/22 to address my concerns as outlined in the PFL. To date PA provided a response to alleviate my concerns.” The letter also noted that “[y]ou are found inadmissible to Canada under paragraph 41(a) of the IRPA: through an act or omission which contravenes, directly or indirectly, a provision of this Act.” The accompanying GCMS notes explain why: “…PA has failed to remain in Canada until a decision is made. As per entry/exit data PA has since re-entered Canada on 2023/12/26 at Douglas POE. PA is therefore not eligible for restoration as he did not remain in Canada until a decision was rendered.”

[53] The GCMS notes for Ms. Dumitriu make the same findings, and the letter states, “[y]our spouse’s WP has been refused and therefore you do not meet eligibility under R205(c)(ii).”

[54] The Applicants’ submission that they are unaware of the act or omission at issue is therefore meritless: the Officer clearly conveyed that both misrepresentation (which relates to section 40 of the Act as noted in the PFL) and their failure to remain in Canada (which relates to section 41 of the Act) were the basis for the finding.

[55] The Applicants’ argument, in their written submission, that the Officer erred by ignoring their ties to their home country and intention to return, relying on *Rajasekharan v Canada*

(Citizenship and Immigration), 2023 FC 68 at paras 23, 25 [*Rajasekharan*] is also without merit. In *Rajasekharan*, the study permit had been denied because of concerns that the applicant would not leave Canada at the end of her study. The Court found that the decision was silent on the contradictory evidence that showed the applicant's intent to leave (*Rajasekharan* at para 25). In other words, the decision-maker overlooked evidence directly related to the basis for the refusal. That is not the case here. The Officer's basis for refusing the work permit was not related to the Applicants' ties to their country of origin or intentions to leave Canada at the end of a temporary stay but rather due to concerns about the genuineness of the letter of offer and the LMIA in addition to the fact that the Applicants left Canada before a decision was rendered. Moreover, their submissions suggest that they want to remain in Canada to continue their business.

[56] The Officer was also not required to consider the innocent misrepresentation exception. The Applicants only raised this argument in oral submissions and simply argue that jurisprudence cited by the Respondent should be distinguished. The Applicants cannot point to any evidence to establish the narrow exception.

[57] Although the Applicants argue that they uploaded a response to the PFL, the record does not show that any such response was submitted to or received by the Officer. The Applicants did not provide an explanation to address the Officer's concerns about the genuineness of the letter of offer of employment or the LMIA to the Officer or to this Court. The Applicants also argue that the seven-day period to provide a response was too short, which tends to contradict their argument that they provided a response that was not received.

[58] In any event, the jurisprudence establishes that the "innocent misrepresentation exception" is narrow and that an applicant must show that they subjectively believed they are not misrepresenting the facts and that this belief is objectively reasonable (*Gill v Canada (Citizenship and Immigration)*, 2021 FC 1441 at paras 18–19). The Applicants have not established a subjective or objective belief.

[59] The Applicants' novel argument that the PFL is not part of the decision and that the "Officer's conclusions must be readily available from the GCMS notes and the Refusal Letter" is also without merit. As noted above, in *Vavilov*, the Supreme Court of Canada confirmed, at para 103, that the reasons are to be read with the record, and at para 94, again noted that a reviewing court must "read the decision maker's reasons in light of the history and context of the proceedings in which they were rendered". In the present case, a key part of the history and context of the decision is the PFL, which sets out the specific concerns about the information submitted by the Applicants. The Court cannot overlook the circumstances that led to the letter, which led to the decision, in assessing reasonableness.

[60] The PFL was very specific; it provided more than sufficient information for the Applicants to know the Officer's concerns and provided a meaningful opportunity to address those concerns. Although the Applicants argue that seven days was too short a time frame, they did not request an extension.

[61] The Applicants' assertion that there was a "significant reviewable error" arising from the Officer stating "permanent residence" in the heading of the procedural fairness letter, and arising

from the inconsistency in the GCMS notes overstates the nature of the error. The mistaken reference or typo, referring to “permanent residence” is far from a “significant reviewable error”. The content of the PFL is clearly about the application for the work permit and states, “[s]pecifically, I am concerned with the authenticity of the letter of offer and LMIA you have provided with your Work Permit Application” [Emphasis added].

[62] Similarly, it is apparent that the Officer made a typographical error in stating in the GCMS notes, “[t]o date PA provided a response to alleviate my concerns”. When read in context, especially given that Mr. Tirgovetu did not provide a response to the procedural fairness letter to alleviate the concerns, and given that the GCMS notes for Ms. Dumitriu indicate that her spouse (i.e. Mr. Tirgovetu) “has failed to provide a response….”, it is obvious that the Officer intended to state that Mr. Tirgovetu had not, or failed to, provide a response. These are typos or clerical errors that do not detract from the overall content, which is clear; these are not “serious shortcomings” (*Vavilov* at para 100).

[63] The reasons read in context permit the Court to understand why the Officer refused the application to restore status and the work permit and found Mr. Tirgovetu to be inadmissible pursuant to section 41.

VIII. The Officer did not breach the duty of procedural fairness.

[64] The PFL clearly stated the Officer’s concerns and provided sufficient time for the Applicants to respond; the Applicants knew “the case to meet”.

[65] The Applicants' argument that the PFL did not refer to section 41 of the Act and that they did not have an opportunity to address this issue is misplaced. The Officer's finding that the Applicants are inadmissible pursuant to section 41 of the Act is because the Applicants did not comply with subsection 182(1) of the Regulations; they did not comply with the condition to remain in Canada pending the decision on their application. As the Respondent notes, subsection 182(1) of the Regulations provides that if a temporary resident applies within 90 days after losing their temporary resident status, an officer shall restore that status if the temporary resident meets the initial requirements for their stay and they have "not failed to comply with any other conditions imposed".

[66] The Officer was therefore not required to inform the Applicants about the concern arising from them having left the country as this concern relates to a failure to meet a requirement of the Act or Regulations (see for example, *Hassani v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1283 at para 24; *Hamza v Canada (Minister of Citizenship and Immigration)*, 2013 FC 264 at paras 21-24; *Patel v Canada (Citizenship and Immigration)*, 2021 FC 573 at para 200).

JUDGMENT in file IMM-688-24

THIS COURT'S JUDGMENT is that:

1. The Application for Judicial Review is dismissed.

2. There is no question for certification.

"Catherine M. Kane"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-688-24
STYLE OF CAUSE:	MARIAN-SEVASTIAN TIRGOVETU and IOANA TIRGOVETU-DUMITRIU v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	VANCOUVER, BRITISH COLUMBIA
DATE OF HEARING:	JANUARY 21, 2025
REASONS FOR JUDGMENT AND JUDGMENT:	KANE J.
DATED:	JANUARY 24, 2025

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