Federal Court Cour fédérale

Date: 20250128

Dockets: IMM-14387-23
IMM-14389-23

Citation: 2025 FC 160

Ottawa, Ontario, January 28, 2025

PRESENT: The Honourable Madam Justice Turley

Docket: IMM-14387-23

BETWEEN:

YASFOON RAFIQ

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

Docket: IMM-14389-23

AND BETWEEN:

MUHAMMAD RAFIQ JETPURWALA

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

(Delivered orally from the Bench on January 28, 2025)

[1] The Applicants, Yasfoon Rafiq and Muhammad Rafiq Jetpurwala, seek judicial review of two decisions made by the same visa officer [Officer] dated November 1, 2023, refusing their temporary residence visas [TRV] and finding them inadmissible under paragraph 40(1)(a) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*]. I am addressing both decisions together as the Officer's reasons for each were identical.

[2] The Applicants were found inadmissible because the Officer was not satisfied that they had truthfully answered all questions on their TRV applications. Specifically, they answered "no" to the question "[h]ave you ever been refused a visa or a permit, denied entry to, or ordered to leave any country". However, Immigration, Refugees and Citizenship Canada's records indicated that the Applicants had overstayed United States visas until leaving pursuant to a voluntary departure order in 2008. They were later denied United States visas in 2012 and 2014.

[3] The Officer sent the Applicants procedural fairness letters allowing them the opportunity to address this concern. Applicants' counsel responded with detailed arguments, as well as

statutory declarations from the Applicants. In particular, counsel argued that the innocent mistake exception applied in their circumstances. The Officer did not address this in their decision. Rather, the Officer simply concluded that the Applicants had not "disabused" their concerns about misrepresentation.

[4] The Applicants challenge the Officer's decisions on various grounds. I am allowing the application because the Officer failed to engage with the Applicants' evidence and submissions concerning the innocent mistake exception. As the Supreme Court has made clear, administrative decision-makers are required to "meaningfully account for the central issues and concerns raised by the parties": *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 127 [*Vavilov*].

[5] This Court has consistently set aside decisions where officers failed to meaningfully assess whether the innocent mistake exception applied: *Aria v Canada (Public Safety and Emergency Preparedness)*, 2024 FC 1800; *Singh v Canada (Citizenship and Immigration)*, 2024 FC 1369; *Patel v Canada (Citizenship and Immigration)*, 2023 FC 614; *Rawat v Canada (Citizenship and Immigration)*, 2023 FC 476; *Markar v Canada (Citizenship and Immigration)*, 2022 FC 684; *Gill v Canada (Citizenship and Immigration)*, 2021 FC 1441.

[6] It was incumbent on the Officer to explain why the Applicants did not "disabuse" their concerns about misrepresentation. Justification in administrative decisions is even more important where the stakes are high: *Vavilov* at para 133. In this case, the Officer's decisions render the Applicants inadmissible to Canada for five years.

[7] This error is sufficient to allow the applications and remit the matters to a different officer. However, it is important to address another issue raised by the Applicants. The Certified Tribunal Records in both cases include an additional Global Case Management System [GCMS] entry dated after the Officer's decisions and the Applicants' applications for leave. The GCMS entry states:

> Correction received from the United States. The correction details are available in Admissibilities > Info Sharing 'Biographic – Correction'. Matched record(s) DOSVOKRC000004965300001NV was (were) deleted from the U.S. CLASS System. This information may have an impact on the officer's decision. This information could have an impact on the decision-making process. We kindly request that you disregard the initial match and derogatory information received from the U.S. CLASS system. No further action required from CISU.
>
> [Emphasis added]

[8] This new entry is concerning given that it specifically states that information received from the United States "may have an impact on the officer's decision" and that it should be disregarded. However, the Court lacks any further context and therefore does not know whether this information influenced the Officer's decisions. Though this is not an issue on judicial review, because the Officer's decisions are being set aside for lack of justification, the Court expects that the new decision-maker will not rely on the information referred to in this GCMS entry when reconsidering the Applicants' TRV applications.

[9] The parties did not raise a question for certification and I agree that none arises in these cases.

JUDGMENT in IMM-14387-23 and IMM-14389-23

THIS COURT'S JUDGMENT is that:

1. The applications are allowed.
2. The Officer's decisions dated November 1, 2023, are set aside and the matters are remitted for redetermination by another officer.
3. There is no question for certification.

"Anne M. Turley"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKETS:	IMM-14387-23 AND IMM-14389-23
DOCKET:	IMM-14387-23
STYLE OF CAUSE:	YASFOON RAFIQ v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
AND DOCKET:	IMM-14389-23
STYLE OF CAUSE:	MUHAMMAD RAFIQ JETPURWALA v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	HELD BY VIDEOCONFERENCE
DATE OF HEARING:	JANUARY 28, 2025
JUDGMENT AND REASONS:	TURLEY J.
DATED:	JANUARY 28, 2025

APPEARANCES:

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