Federal Court Cour fédérale

Date: 20250115

Docket: IMM-14913-23

Citation: 2025 FC 79

Toronto, Ontario, January 15, 2025

PRESENT: The Honourable Madam Justice Heneghan

BETWEEN:

KELLY GROBLER

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS AND JUDGMENT

[1] Ms. Kelly Grobler (the "Applicant") seeks judicial review of the decision of an Immigration Program Manager ("IPM"), refusing her application for a study permit and finding that she had misrepresented material facts.

[2] The Applicant is a citizen of South Africa. In 2019, she was granted a Multiple Entry Temporary Visitor Visa, valid until 2029.

[3] In March 2023, the Applicant applied for a study permit to study in Canada.

[4] In September 2023, the Applicant received a “procedural fairness” letter advising that following a review of her application, there was concern that she had not truthfully answered all questions on the form, specifically that she had failed to disclose a conviction in 2014 and that she had been refused a visa to enter the United States of America in 2019.

[5] The Applicant responded to that letter. In her response, she set out the circumstances surrounding the so-called “conviction” whereby the conviction was expunged by the High Court of South Africa Western Cape Division, Cape Town. The effect of the decision of that Court is that no conviction exists.

[6] The Applicant also provided an explanation about the so-called “refusal” of a visa to enter the United States. She said that she understood that her application for that visa was “cancelled” because she was unable to provide certain information during the early period of Covid.

[7] The Applicant said that she was unaware of the refusal of the American visa until she received the “procedural fairness” letter in connection with this application for the study permit.

[8] The IPM rejected the Applicant’s application on the grounds that she had misrepresented information material to the application and was thus inadmissible.

[9] The Applicant now argues that the IPM failed to consider the evidence she provided in her response to the "procedural fairness" letter. She submits that the Officer erred in fact in finding that she had been charged and arrested in South Africa, and in finding that her conviction had not been expunged.

[10] The Minister of Citizenship and Immigration (the "Respondent") argues that the IPM made a reasonable decision on the basis of the evidence submitted and that there is no basis for judicial intervention.

[11] By a Direction issued on November 6, 2024, the parties were given the opportunity to address the decision of *Bhatia v. Canada (Citizenship and Immigration)*, 2024 FC 698, which was introduced by the Applicant in oral argument.

[12] The Respondent submitted that *Bhatia*, *supra* is distinguishable on the facts, and that in any case it does not assist the Applicant. The Applicant, in reply, submitted that the Respondent was attempting to add a new reason to justify the refusal.

[13] The merits of the decision are reviewable on the standard of reasonableness, following the instructions in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, [2019] 4 S.C.R. 653.

[14] In considering reasonableness, the Court is to ask if the decision under review "bears the hallmarks of reasonableness – justification, transparency and intelligibility – and whether it is

justified in relation to the relevant factual and legal constraints that bear on the decision"; see *Vavilov, supra,* at paragraph 99.

[15] I agree with the Applicant that the decision does not meet the standard of reasonableness.

[16] The Applicant provided an explanation for the mistaken answer she had given in the visa application and she produced the supporting material that was available to her.

[17] The IPM made findings of fact that were not supported by the evidence provided by the Applicant in response to the "procedural fairness" letter. It appears that the IPM either did not consider this evidence, or misunderstood it.

[18] The IPM found that the Applicant's conviction had not been expunged, and that she had been charged and arrested in South Africa, both findings which were contradicted by the evidence before the IPM.

[19] Further, the IPM did not provide a sufficient rationale for rejecting the Applicant's "innocent mistake" explanation.

[20] In my opinion, the misrepresentation finding was unreasonable, and it follows that the decision to refuse the Applicant's study permit application was also unreasonable.

[21] In the result, the application for judicial review will be allowed, the decision will be set aside and the matter remitted to another officer for redetermination. There is no question for certification proposed.

JUDGMENT IN IMM-14913-23

THIS COURT'S JUDGMENT is that the application for judicial review is allowed, the decision is set aside and the matter is remitted to a different officer for re-determination. There is no question for certification.

"E. Heneghan"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-14913-23
STYLE OF CAUSE:	KELLY GROBLER v. THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	CALGARY, ALBERTA
DATE OF HEARING:	NOVEMBER 5, 2024
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