Federal Court  Cour fédérale

Date: 20250207

Docket: IMM-2979-24

Citation: 2025 FC 246

Toronto, Ontario, February 7, 2025

PRESENT: The Honourable Mr. Justice Southcott

BETWEEN:

SADAF REHAN
SYED MOHAMMAD REHAN AKHTER

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] This is an application for judicial review of a decision by an officer [the Officer] of Immigration, Refugees and Citizenship Canada [IRCC] dated February 15, 2024 [the Decision] rejecting the Applicants' application for a temporary resident visa [TRV].

[2] In the Decision, the Officer refused the Applicants' TRV application because the Officer was not satisfied the Applicants would leave Canada at the end of their authorized stay as required by paragraph 179(b) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [IRPR], made under the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

[3] As explained in further detail below, this application for judicial review is dismissed, because the Applicants' arguments do not undermine the reasonableness of the Decision.

II. **Background**

[4] The Applicants are a married couple, both citizens of Pakistan. In April 2023, the Applicants applied for a TRV to visit Canada for a period of 45 days. The purpose of the trip was to visit their siblings who are Canadian citizens residing in Ontario, as well as the graduation ceremonies of two of the Applicants' nephews.

[5] IRCC initially rejected the Applicants' TRV application on June 5, 2023 [the First Decision]. The Applicants applied for judicial review of the First Decision, and the parties agreed to send the First Decision back for redetermination. The Applicants were given the opportunity to provide additional information to be considered in the redetermination and did so.

[6] On February 15, 2024, the Officer issued the Decision that is the subject of this application for judicial review. The Decision was communicated to the Applicants by separate, personally addressed letters.

III. **Decision under Review**

[7] In the Decision that is the subject of this application for judicial review, the Officer refused the Applicants' TRV application, because the Officer was not satisfied that the Applicants would leave Canada at the end of their authorized stay as required by paragraph 179(b) of the IRPR.

[8] In letters dated February 15, 2024, communicating the Decision, the Officer stated that their conclusion was based on the Applicants' family ties in Canada, length of proposed stay and, in relation to the female Applicant, that the purpose of her visit was not consistent with a temporary stay given the details provided in her application.

[9] The reasons for the Decision are also found in the corresponding Global Case Management System [GCMS] notes as follows (in which the term "HOF" refers to the male Applicant):

> The application was refused but has been re-opened following an application for judicial review. The applicant was given the opportunity to submit a new set of documents to enable a fresh assessment of the application. Application reassessed in its entirety, including additional submissions. I have considered the following factors in my decision. HOF & spouse, Pakistani citizens, residing in Pakistan. Purpose of TRV is a family visit to visit HOF's sisters and spouse's brother. Length of visit is 45 days. Visit was planned for in May/June 2023. Invitation letter, with copies of Canadian passports, provided from HOF's sister and brother-in-law in Canada. Funds appear sufficient. HOF is a Business Owner in Karachi, Pakistan since 2004. Business documents noted. Spouse declared she's unemployed. HOF & spouse have 5 daughters residing in Pakistan. Youngest daughter is 17 years old. Analysis: HOF & spouse both issued TRVs on March 7, 2000 in Islamabad. HOF states that due to the political situation in Pakistan at the time, he had made plans to travel to Canada with

> his wife to relax his mind. A few days before the trip, his wife changed her mind for travel due to some of her medical reasons, but she convinced HOF to travel alone. I note that both HOF & spouse declared twin daughters born on April 10, 2000 on their family information forms. Spouse was pregnant when they submitted their first TRVs in Mar 2000 and was due to travel to Canada with HOF, possibly during her last trimester. However, HOF traveled alone to Canada on April 17, 2000 and extended his stay until he claimed refugee status. The applicant's prior travel history is insufficient to count as a positive factor in my assessment. On the contrary, the previous overstay in Canada after expiry of TR status is a negative factor in assessing intent. Despite the fact that HOF's immigration history happened a long time ago and their circumstances might have changed during this period. However, though time has passed, it is still a factor in my decision and given their limited travel in the past serves as a reference point, albeit limited, to assess his eligibility based on past behavior. Family ties are demonstrably strong in Canada. As such, the applicant's incentives to remain in Canada may outweigh their ties to their home country. Based on the applicant's immigration status outside their country of nationality or habitual residence, I am not satisfied that they will leave Canada at the end of their stay as a temporary resident. Weighing the factors in this application. I am not satisfied that the applicant will depart Canada at the end of the period authorized for their stay. For the reasons above, I have refused this application.

IV. **Issue and Standard of Review**

[10] The Applicants' arguments challenge the reasonableness of the Decision. As is implicit in that articulation, the Court's review of the merits of the Decision is subject to the standard of reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16–17).

V. **Analysis**

[11] I will organize my consideration of the parties' arguments under the headings employed in the Applicants' Memorandum of Argument.

A. *Family Ties*

[12] The Applicants note that the letters communicating the Decision referenced the Applicants having significant family ties in Canada and that the related GCMS notes include the following finding:

> Family ties are demonstrably strong in Canada. As such, the applicant's incentives to remain in Canada may outweigh their ties to their home country.

[13] The Applicants argue that this finding is unreasonable, because the Officer failed to take into account the Applicants' family ties in Pakistan and failed to intelligibly explain the conclusion that their family ties in Canada may outweigh their ties to Pakistan. In that respect, the Applicants emphasize the presence in Pakistan of their daughters, parents, and other extended family, in contrast with three siblings and their relations in Canada.

[14] In support of their position, the Applicants note that IRCC's Operational Manual 11, regarding temporary residents, identifies factors to be considered in assessing whether an applicant for a temporary resident visa has ties to their home country sufficiently strong to ensure that they are motivated to return home after the visit to Canada. Such factors include family in the home country. Consistent with the relevance of that factor, *Groohi v Canada (Citizenship and Immigration)*, 2009 FC 837, found a visa officer's conclusion, that the applicants in that case had limited family ties to Iran, to be unreasonable when the applicants had parents, siblings and other relations living in Iran (at para 17).

[15] I agree with the Respondent's submissions in response to this argument. The Applicants' argument relies on a segmented interpretation of the Officer's analysis, focusing only upon family ties, when it is clear from the GCMS notes that the Decision was based on a weighing of the factors that the Officer considered determinative, including the male Applicant's negative Canadian immigration history. The reference to family ties immediately follows the Officer's review of the male Applicant's previous overstay in Canada, when he arrived in April 2000 as a temporary resident and subsequently claimed refugee protection. In the context of that history, and taking into account the Applicants' family ties in Canada, the Officer was not satisfied that the Applicants would leave Canada at the end of their authorized stay.

[16] Understood in that manner, the Officer's analysis is intelligible. The Decision does not read as a conclusion that the Applicants' family ties in Canada are stronger than those in Pakistan. Rather, the Officer concluded that the Canadian ties were sufficiently strong that, in combination with the male Applicant's previous overstay, the Applicants had not met their burden under paragraph 179(b) of the IRPR.

[17] Nor is it possible to conclude that the Officer overlooked the Applicants' family ties in Pakistan. I appreciate that those ties represent a pull factor in favour of a return to Pakistan. However, an administrative decision-maker is presumed to have considered all the evidence before them. That presumption can be rebutted where there is evidence, not mentioned by the decision-maker, that sufficiently contradicts the decision such that the Court can infer the evidence was overlooked (*Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, 1998 CanLII 8667 (FC) [*Cepeda-Gutierrez*] at paras 16–17). However, the GCMS

notes expressly reference the Applicants' principal family connections outside Canada, their five daughters.

[18] I also appreciate the Applicants' point that this reference appears in the portion of the GCMS notes that recite facts, not in the subsequent section labelled "Analysis". However, that reference precludes a conclusion that the Officer overlooked the family connections in Pakistan, particularly as the existence of those connections is not inconsistent with the Officer's reasoning, based on the combination of the Canadian family connections and the male Applicant's previous overstay.

B. *Purpose of Visit*

[19] The Applicants similarly argue that the Officer failed to properly consider the purpose of their intended visit to Canada, which was to spend time with their siblings. They note their and their siblings' explanations of this purpose, as well as the information they provided to the Officer surrounding their sound financial circumstances in Pakistan, which demonstrated both their ability to cover travel expenses during their stay in Canada and their financial ties to Pakistan.

[20] Again, the *Cepeda-Gutierrez* analysis applies. While appearing in the portion of the decision preceding the "Analysis" label, the Officer expressly references the purpose of the visit, as well as the male Applicant being a business owner in Pakistan since 2004 and having sufficient funds to support the visit. The record does not support an inference that the Officer

overlooked any of this information or otherwise arrived at conclusions that are unsupported in the context thereof.

C. *Previous Overstay*

[21] The Applicants argue that the Officer unreasonably based their entire assessment of the visa application on the male Applicant's previous overstay. However, as previously explained, the record does not support a conclusion that the overstay was the only factor assessed.

[22] The Applicants also emphasize their explanation to the Officer that the overstay occurred 23 years ago, in the context of the particular political circumstances in Pakistan at the time and when the Applicants' family and financial circumstances were considerably less established in Pakistan, and they submit that the Officer disregarded that explanation.

[23] Again, there is no basis for the Court to conclude that the Officer ignored the Applicants' explanation or the circumstances identified therein. The Officer expressly noted that the previous overstay occurred a long time ago and that circumstances may have changed since then. However, the Officer also noted that the male Applicant had chosen to come to Canada without the female Applicant and had then claimed refugee status here, notwithstanding that the couple's twin daughters had just been born. The Officer concluded that, despite the passage of time, the negative immigration history remained a factor underlying the Decision. This reasoning engages with the evidence before the Officer and is intelligible.

[24] The Applicants also refer the Court to subsection 24(4) of the IRPA, which precludes an unsuccessful refugee claimant from requesting a temporary resident permit for a 12-month

period. The Applicants submit that the Officer's reasoning, 23 years after the male Applicant's overstay, is inconsistent with the limited duration of the statutory ban or, at a minimum, required a cogent explanation. They also argue that any concern that the Applicants would make another refugee claim are baseless because, at least in relation to the male Applicant, the rejection of his previous claim would preclude him from doing so.

[25] I find no merit to these arguments. The Officer did not find that either of the Applicants was likely to make a refugee claim. Rather, the Officer considered the more general risk of the Applicants failing to leave Canada at the end of their authorized period of stay, pursuant to the Officer's mandate under paragraph 179(b) of the IRPR. The 12-month statutory bar does not preclude the Officer performing that mandate, regardless of the time period involved. Moreover, as explained above, the Officer's reasoning on this point is both express and intelligible.

[26] Finally, the Applicants argue that the Officer's analysis is unreasonable in relation to the female Applicant, because she has no history of overstay. However, the Applicants are a married couple, who applied together for TRVs. I find nothing unreasonable in the Officer taking the male Applicant's negative immigration history into account in assessing both spouses' applications.

D. *Travel History*

[27] In challenging the reasonableness of the Officer's treatment of the Applicants' travel history, they reference the following portion of the GCMS notes:

> … The applicant's prior travel history is insufficient to count as a positive factor in my assessment. On the contrary, the previous

> overstay in Canada after expiry of TR status is a negative factor in assessing intent. Despite the fact that HOF's immigration history happened a long time ago and their circumstances might have changed during this period. However, though time has passed, it is still a factor in my decision and given their limited travel in the past serves as a reference point, albeit limited, to assess his eligibility based on past behaviour. …

[28] The Applicants submit that the Officer erred by treating the Applicants' limited travel as a negative factor. They refer the Court to jurisprudence to the effect that absence of past travel ought to be considered at best a neutral indicator (meaning not a negative indicator) (*Momi v Canada (Citizenship and Immigration)*, 2013 FC 162; *Singh v Canada (Citizenship and Immigration)*, 2015 FC 1210 at para 16).

[29] I disagree with the Applicants' interpretation of the Decision. The Officer did not treat the lack of travel history as negative. Rather, the Officer treated the male Applicant's 2000 overstay as a negative factor and found that the Applicants did not have subsequent travel history capable of overcoming that factor. I find nothing unreasonable in that analysis.

VI. **Conclusions**

[30] Having considered the Applicants' arguments and finding no basis to conclude that the Decision is unreasonable, this application for judicial review must be dismissed.

[31] Neither party proposed any question for certification for appeal, and none is stated.

JUDGMENT IN IMM-2979-24

THIS COURT'S JUDGMENT is that this application for judicial review is dismissed.

No question is certified for appeal.

"Richard F. Southcott"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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