Federal Court  Cour fédérale

Date: 20250219

Docket: IMM-3105-24

Citation: 2025 FC 320

Ottawa, Ontario, February 19, 2025

PRESENT: Madam Justice Go

BETWEEN:

MELANIE NICOLAS

Applicant

and

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Melanie Nicolas [Applicant], a citizen of the Philippines, seeks judicial review of a decision by an Immigration Officer from the Case Processing Centre in Edmonton [Officer] dated February 13, 2024, refusing her application for a Temporary Resident Permit [TRP] pursuant to subsection 24(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*].

[2] The Applicant arrived in Canada on July 9, 2019, as an in-home caregiver. She had a work permit valid until July 8, 2021.

[3] Sometime before her work permit expired, the Applicant retained Norilyn Oligo-Sarma, an immigration consultant, to apply for permanent residency [PR] under the Temporary Resident to Permanent Resident Pathway [TR to PR] program. The same immigration consultant obtained the Labour Market Impact Assessment [LMIA] underlying the Applicant's work permit. As it turned out, the immigrant consultant's licence was suspended during the Applicant's retainer. Regardless of the suspension, the immigration consultant sought more money from the Applicant to help her file another PR application for which the Applicant was not eligible, and in the meantime, the Applicant's immigration status expired and was not renewed.

[4] In May 2023, the Applicant applied for a TRP. The Officer refused the TRP application on February 13, 2024 [Decision]. The Officer cited, among other reasons, that TRP applicants are responsible for following the law and for the actions of their representatives.

[5] The Applicant seeks a judicial review of the Decision. I find the Decision unreasonable and I grant the application.

II. Preliminary Issues

[6] First, the Applicant submitted new evidence and arguments on judicial review about age discrimination in the Philippines. I agree with the Respondent that the new materials are inadmissible as they were not before the Officer. Furthermore, these materials do not fall under

the recognized exceptions for receiving new evidence on judicial review: *Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22 at paras 19-20.

[7] Second, the Applicant's last name was spelled incorrectly in the materials she filed with the Court. The style of cause is amended to reflect the correct spelling of the Applicant's last name.

III. Analysis

[8] Applying the reasonableness standard of review per *Canada (Citizenship and Immigration) v Vavilov*, 2019 SCC 65, I find the Decision unreasonable because the Officer did not properly account for the reasons why the Applicant lost her status and her reasons for submitting the TRP application.

[9] In her TRP application, the Applicant provided detailed information along with supporting documents confirming that she signed a retainer with the immigration consultant on June 29, 2021. The immigration consultant charged $4,928 for the PR application, which the Applicant paid by several installments between June and August 2021.

[10] The Applicant then contacted the immigration consultant a few months later to ask about the status of her PR application as she was concerned about losing status, considering her work permit had expired. The immigration consultant told the Applicant that she was waiting for a

reply from Immigration, Refugees and Citizenship Canada and that the Applicant should just wait. The immigration consultant also told the Applicant there were a lot of delays at that time.

[11] On December 31, 2022, the immigration consultant requested an additional payment of $1,635, and submitted a new PR application, knowing full well that the Applicant was no longer eligible as she no longer had status. At the time the immigration consultant applied for the PR application, her licence as an immigration consultant was already suspended, a fact that was not shared with the Applicant.

[12] The Applicant eventually sued the immigration Consultant in Small Claims Court for negligence.

[13] After realizing all these facts, and recognizing that she had no way of restoring her status as a work permit holder, the Applicant retained new counsel to assist her to apply for a TRP, hoping to correct her status and regain her work permit.

[14] In refusing the TRP application, the Officer stated in the Global Case Management System notes as follows:

> Applicant also asserts that she was victim of an incompetent representative. While I sympathize with applicant, I point out that ultimately the applicant is responsible for following immigration law, including maintaining her status in Canada, and that using a representative is not mandatory and does not absolve an applicant of mistakes committed by the representative.

[15] The Applicant submits that the Officer did not properly account for the fact that the reason why she lost status, and was unable to restore it, was because she was defrauded.

[16] The Applicant cites *Dela Pena v Canada (Citizenship and Immigration)*, 2021 FC 1407 and *Marshall v Canada (Citizenship and Immigration)* 2017 FC 72 in support. Both of these cases dealt with humanitarian and compassionate applications under subsection 25(1) of the *IRPA* and are of limited relevance to the case before me.

[17] As the Respondent points out, section 24 of the *IRPA*, which pertains to TRPs, does not require a full-scale humanitarian and compassionate analysis akin to that demanded under subsection 25(1). Instead, the regime for granting a TRP is exceptional and highly discretionary, and its purpose is to provide some degree of flexibility if an officer is of the opinion that it is justified in the circumstances in cases where a strict application of the *IRPA* would result in a person's exclusion from Canada: *Bhairon v Canada (Citizenship and Immigration)*, 2022 FC 739 [*Bhairon*] at para 26.

[18] The Court in *Bhairon* also noted at para 27 that an applicant's burden on judicial review is to convince the Court that the officer's decision was unreasonable, and that the applicant should provide evidence of "something more than inconvenience to an applicant to justify the issuance of a TRP," citing *Bhamra v Canada (Citizenship and Immigration)*, 2020 FC 482 at para 22.

[19] The Court in *Bhairon* did not elaborate on what would qualify as “more than inconvenience.” I am of the view that, where an applicant is placed in a situation where she has to apply for a TRP or be forced to leave Canada because of actions taken by an unscrupulous immigration consultant whose licence has been suspended, the applicant is facing “more than inconvenience.”

[20] I also consider *Alegroso* v *Canada (Citizenship and Immigration)*, 2024 FC 842 [*Alegroso*], a case cited by the Applicant. In *Alegroso*, the applicant came to Canada to work as a caregiver. Her employer failed to obtain a new LMIA before her work permit extension expired and did not file for a new LMIA until six months after the expiry of the previous LMIA. As a result, the applicant lost her status in Canada through no fault of her own. The officer found the applicant did not have “compelling grounds” to warrant the issuance of a TRP. Before the Court, the applicant argued that the officer's reasons and analysis were unrelated to her submissions regarding why obtaining a TRP was necessary for her. Justice Brown agreed, noting that the officer’s primary reason for rejecting her TRP application was why she needed to seek a TRP in the first place, namely that the Applicant was without status in Canada and otherwise inadmissible: *Alegroso* at para 36.

[21] While the Applicant points to para 36 of *Alegroso*, I also find para 35 applicable to the case at hand:

> [35] … As *Vavilov* instructs at paragraph 128, a decision maker’s failure to meaningfully grapple with key issues or central arguments raised by the parties may call into question whether the decision maker was actually alert and sensitive to the matter before it. *Vavilov* at paragraph 86 states, “it is not enough for the outcome of a decision to be justifiable. Where reasons for a decision are

> required, the decision must also be justified, by way of those reasons, by the decision-maker *to those to whom the decision applies*" [emphasis added]. Here the Officer provided a conclusion but the Decision was, in my respectful view, not justified to the Applicant. There are no dots one way or the other that allow supplementary reasons from the Court.

[22] While the facts differ, I find the Officer in this case similarly provided a conclusion not justified to the Applicant, and failed to grapple with key issues and central arguments the Applicant made.

[23] In her TRP submission, the Applicant pointed out that she was "totally misled" by the immigration consultant who handled her work permit application. She worked until she realized that no PR application was ever filed during the period when she was eligible for the TR to PR Pathway program. Instead, the immigration consultant submitted a PR application sometime in January 2023 when the Applicant no longer had status.

[24] The Officer did not address the Applicant's allegation of being misled by the immigration consultant. The Officer's comment about the Applicant not being absolved of the "mistakes committed by the representative" completely missed the point about the potentially fraudulent action undertaken by an immigration consultant whose licence was under suspension.

[25] I do not find persuasive the Respondent's argument that the Officer expressed sympathy for the Applicant's plight, but that ultimately the Applicant bears responsibility for maintaining her status: *Singh v Canada (Citizenship and Immigration)*, 2016 FCA 96 [*Singh*] at para 66. While the Applicant "must live with the consequences of the actions of her counsel:" *Singh* at

para 66, the issue remains whether the Officer properly considered the facts and submissions the Applicant put before them: *Vavilov* at para 106. I find the Officer failed to do so.

[26] I also reject the Respondent's submission that the Applicant's reliance on the immigration consultant to apply for PR for her is a distinct issue as to maintaining her temporary status as a worker. The Officer did not make this distinction in their reasons.

[27] I note that the Applicant did address the issue of losing status in her TRP submission, explaining why her loss of immigration status cannot be attributed to her, given that she satisfied the requirements for the TR to PR Pathway program. Other than stating that the Applicant must follow immigration law and must live with her representative's mistakes, the Officer did not break down where these mistakes lay, and whether they only went to the Applicant's PR application but not to the Applicant losing her immigration status.

[28] For these reasons, I find the Decision unreasonable.

IV. Conclusion

[29] The application for judicial review is granted.

[30] There is no question for certification.

JUDGMENT in IMM-3105-24

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is granted and the matter sent back for redetermination by a different officer.
2. The Style of Cause is amended to reflect the correct spelling of the Applicant's last name.
3. There is no question for certification.

"Avvy Yao-Yao Go"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-3105-24
STYLE OF CAUSE:	MELANIE NICOLAS v MINISTER OF CITIZENSHIP AND IMMIGRATION
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