

Federal Court



Cour fédérale

Date: 20250304

Docket: IMM-2862-24

Citation: 2025 FC 398

Ottawa, Ontario, March 4, 2025

PRESENT: The Honourable Madam Justice Strickland

BETWEEN:

EHAB MUSTAFA HUSSEIN AL-TINAWI

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] This is the judicial review of the decision of a visa officer [Officer] rejecting the application for a temporary residence permit [TRP] of the Applicant, Ehab Mustafa Hussein Al-Tinawi, under s 24(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

[2] The Applicant is a citizen of Jordan. He resided and worked in Dubai, United Arab Emirates [UAE] from 2001 until July 2018 when he came to Canada to visit a Canadian citizen

with whom he had a relationship. They married in January 2019. In September 2019, the Applicant applied for permanent residence via spousal sponsorship. That application was denied in January 2022 because the Applicant was unable to provide a police clearance certificate from the UAE and, therefore, Immigration, Refugees and Citizenship Canada [IRCC] was unable to determine that the Applicant was not inadmissible.

[3] The Applicant remained in Canada on a work permit, which expired on February 1, 2022. He submitted a request to extend the work permit, which was refused on April 22, 2022. His status in Canada lapsed on that date. In February 2023, the Applicant applied for a work permit and a Temporary Resident Permit [TRP] to remain in Canada, but the application was also refused. That refusal is the subject of this judicial review.

[4] The Applicant subsequently also made an application for permanent residence on humanitarian and compassionate grounds [H&C] in March 2023 and made a new application for permanent residence based on spousal sponsorship in May 2023. Both of those applications are pending.

Decision Under Review

[5] The Officer notified the Applicant that they were refusing his work permit and TRP by way of letter dated February 15, 2024. The letter states that, after reviewing the application, it did not appear that sufficient compelling grounds existed to warrant the issuance of a TRP. It listed some of the information considered prior to arriving at the decision, that being: the Applicant's

length of time spent in Canada; his level of establishment in Canada; the possibility of his returning to his home country; and, other available avenues to obtain permanent residence status.

[6] In the attached reasons for the decision, the Officer describes the Applicant's immigration history and states that the Applicant sought to remain in Canada to be with his Canadian citizen spouse and to work to pay off debt owed in the UAE. However, that the Applicant is unable to obtain a police certificate from that country unless the debt is paid. The Officer reiterated the Applicant's explanation concerning the debt, being that his UAE optician business fell into financial hardship and closed due to the collapse of the UAE economy, and that he subsequently abandoned his creditors as he and his business partner did not have the option to restructure their debts and arrange for a repayment plan. The Officer notes that in February 2018, the Applicant returned to Jordan, where his mother resides, and remained there until July 2018. Further, that according to his work permit applications, the Applicant was employed in Jordan as an optician throughout his time there.

[7] The Officer states that when IRCC requested the UAE police certificate in connection with the Applicant's permanent residence application under spousal sponsorship (which was refused), the Applicant advised that he did not believe that he would be able to obtain the certificate because he owed money from his failed business in the UAE. Further, that the Applicant had learned from the UAE Embassy in Toronto that a police certificate would not be released to foreign individuals if they owe money. The Officer states that the Applicant did seek legal counsel from the UAE in an effort to obtain the certificate and that legal documents provided indicate that there is an active arrest warrant against the Applicant due to the

outstanding debt. Further, that the Applicant cannot obtain a police certificate “due to the Commercial Cases which has been filed against his company and as per UAE Law, the police certificate will not be given if the person has a financial case with commercial courts”.

[8] The Officer states that the Applicant’s counsel had provided country condition reports of the UAE addressing its strict debt laws and justice system with respect to those who are unable to pay their debts. The Officer states that they recognize that these laws and penalizations are not equivalent to Canadian laws and may seem extreme by Canadian standards. However, considering the number of years the Applicant worked and was a business owner in the UAE, the Officer found that the Applicant was aware of the debt laws and the repercussions of unpaid debt in the UAE, although he may not have been aware that we would not be able to obtain a police certificate for such “illegal acts”.

[9] The Officer states that, after a review of the documentation before them, they were not satisfied that the Applicant's inability to produce a police certificate from the UAE and his falling out of status by failing to extend his stay were sufficient grounds to warrant the issuance of a TRP and work permit. The Applicant had not provided evidence that he attempted to pay back his debt or settle the matter since leaving the UAE until he required a police certificate from the UAE for his permanent residence application. Further, the Applicant consistently maintained his status in Canada through approved visitor record and work permit until his status expired on April 22, 2022. This indicated the Applicant's understanding of maintaining status. The Officer states “I recognize the applicant's want to remain in Canada with his spouse, however the applicant has demonstrated disregard to Canadian immigration law by remaining in Canada past

the validity date of his work permit, which I give serious considerations to. The applicant had the ability to leave Canada, but chose not to.”

[10] The Officer then notes the Applicant’s educational background, that he has been employed in Dubai as an optician since 2001 and, that he appeared to have had a successful eye care business in the UAE from 2014 to 2018, but for the “economic anomaly” the Applicant had explained. Further, on his return to Jordan, the Applicant was able to immediately obtain employment as an optician and remained employed until his departure to Canada. While he was in Canada, the Applicant also obtained his real estate license and was employed as a real estate agent. The Officer states that “with the years of work experience and entrepreneur skills the applicant possesses, he has the ability to successfully find employment in Jordan.”

[11] The Officer set out s 21(1) of the *IRPA*, explaining that the onus remains on the Applicant to provide the documents required for a permanent residence application for an officer to determine they are not inadmissible to Canada.

[12] The Officer then held:

I acknowledge the obstacles the applicant faces in rectifying his debt matter in the UAE and obtaining a police certificate from the UAE. I also recognize that there will be a period of adjustment being apart from his spouse, however they may utilize telecommunication applications such as Facetime, WhatsApp, Zoom, and so forth to maintain their relationship. I am not satisfied that a temporary separation will cause an irreparable harm to the applicants marriage. Mr. Al-Tinawi also has permanent residence and H&C applications pending. Should the application for H&C be approved overseas, he would have the ability to re-enter Canada. It is important to note that the purpose of a temporary resident permit is for a temporary stay. The applicant has been married 5 years and

has clearly demonstrated he does not want to live separately from his spouse. It appears that there are strong familial pull factors that would motivate his return overseas.

[13] Considering that “viable options are available” to the Applicant, the Officer was not satisfied that the factors advanced by the Applicant would warrant the issuance of a TRP.

Issue and Standard of Review

[14] The sole issue arising in this matter is whether the Officer’s decision was reasonable. The parties submit and I agree that the applicable standard of review is reasonableness.

[15] Reasonableness review asks this court to: “develop an understanding of the decision maker’s reasoning process in order to determine whether the decision as a whole is reasonable. To make this determination, the reviewing court asks whether the decision 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” (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 99).

Was the Officer’s Decision Reasonable?

Applicant’s position

[16] The Applicant submits that the Officer was required to determine whether the need for a foreign national to enter or remain in Canada is compelling, and whether that need outweighs any risk to Canadians or Canadian society (citing *Williams v Canada (Citizenship and*

Immigration), 2020 FC 8 at paras 36–37 [*Williams*]). However, the Officer failed to address why the Applicant’s reasons were not compelling. The Officer did not grapple with the Applicant’s hardship in not being able to obtain a police certificate from the UAE and the prospect of being separated from his wife. When this was mentioned, the Officer did not invoke the correct legal test under s 24 of the *IRPA*. In referring to the Applicant’s ability to find employment in Jordan and an adjustment period arising from being separated from his spouse, the Officer conflated the test for hardship under H&C grounds with the test for a TRP. The Applicant submits that it is unclear if the Officer rejected the TRP because his hardships could be ameliorated or because the need outweighs the risk, thus rendering the decision unreasonable (citing *Abdelrahma v Canada (Citizenship and Immigration)*, 2018 FC 1085 [*Abdelrahma*]).

[17] Further, the Officer did not properly analyze the Applicant’s need to stay in Canada and the low risk to Canadians and Canadian society. The Officer considered the fact that the Applicant remained in Canada beyond his authorized stay and his failure to show that the outstanding debt was repaid or settled and his understanding of maintaining status in Canada as factors which counted against him. However, these facts are relevant to his “need” to remain in Canada to be with his wife, to earn money to pay back the debt and to correct his temporary status with a TRP. The Officer should have turned their mind to the compelling circumstances that arose while in Canada, namely the “failure to obtain his permanent resident status, the efforts made to correct his temporary and permanent resident status together with the bona fides of his relationship to his wife, with the real risk he faced under the UAE laws”. The Officer also overemphasized the Applicant’s stay in Canada without status and failed to have regard to factors such as compassion, empathy and the Applicant’s particular circumstances.

Respondent's position

[18] The Respondent submits that the Applicant has failed to show both that the Officer did not consider the Applicant's compelling reasons or that they lacked empathy in arriving at their decision. Contrary to the Applicant's assertions, the Officer considered the Applicant's potential separation from his wife and the difficulties in obtaining a UAE police certificate. The Applicant simply disagrees with the Officer's weighing of the evidence. Moreover, the Applicant's submission that he had set out the grounds for his inadmissibility, the need to remain in Canada and the low risk to Canadians and Canadian society ignores that the Officer could not fully assess the Applicant's admissibility without a police certificate. In any event, the Officer need not have addressed all of the Applicant's submissions, but must only determine whether the issuance of a TRP is "justified in the circumstances", which the Officer did.

Analysis

[19] Section 24 of the *IRPA* states:

Temporary resident permit

24 (1) A foreign national who, in the opinion of an officer, is inadmissible or does not meet the requirements of this Act becomes a temporary resident if an officer is of the opinion that it is justified in the circumstances and issues a temporary resident permit, which may be cancelled at any time.

[20] IRCC operational instructions and guidelines shed additional light on how decisions on TRP applications are to be made. While such instructions and guidelines are not law and therefore not binding, they can "offer guidance on the background, purpose, meaning and

reasonable interpretation of legislation” (*Williams*, at para 36 citing *Mousa v Canada (Immigration, Refugees and Citizenship)*, 2016 FC 1358 at para 11). In his submissions to the Officer, the Applicant noted that, as directed in the operational processing manuals for TRPs [Guidelines], applicants seeking to remain in Canada must demonstrate that favourable consideration is warranted to overcome inadmissibility and that immigration officers weigh the need and risk factors in each case.

[21] In that regard, the Guidelines state that TRPs allow officers to balance the objectives of the *IRPA* (which include both family reunification in Canada and the maintaining of the integrity of Canada’s immigration system) to meet Canada’s social, humanitarian and economic commitments, while maintaining the health and security of Canadians.

[22] Officers may issue a TRP when both of the following apply:

- The purpose of the individual to enter or remain in Canada is balanced when the objectives of the Immigration and Refugee Protection Act (IRPA) are considered.
- The issuance outweighs any risks that might exist and is compelling and sufficient to overcome any risks that the individual might pose.

[23] Put differently, and as described elsewhere in the Guidelines, a visa officer may consider the following when determining whether to issue a TRP:

- whether the need for the foreign national to enter or remain in Canada is compelling
- whether the need for the foreign national’s presence in Canada outweighs any risk to Canadians or Canadian society

[24] This Court has found that the purpose of a TRP is “to provide some flexibility in cases where the strict application of the IRPA would lead to a person’s exclusion from Canada. Section 24 of the IRPA provides an officer with a broad discretionary power to be used in exceptional cases to allow such a person to enter into or to remain in Canada” (*Abdelrahma*, at para 5). Further, that “the ‘compelling reasons’ test and the needs versus risk assessment are appropriate considerations to determine whether a TRP should be granted. A TRP should only be granted where the reasons of the foreign national to be in Canada are compelling, and these reasons outweigh the risks posed to the health and safety of Canadians” (*Abdelrahma*, at para 9). The “compelling reasons” standard should guide the assessment, which must be holistic and consider all relevant circumstances put forth by the applicant (*Ogbonna v Canada (Citizenship and Immigration)*, 2024 FC 1467 at para 21 [*Ogbonna*], citing *Douglas v Canada (Citizenship and Immigration)*, 2019 FC 1101 at para 28; *Kazembe v Canada (Citizenship and Immigration)*, 2020 FC 856 at para 26).

[25] As the provision provides officers with broad discretion, TRP decisions should generally be afforded significant judicial deference. The onus is on an applicant who seeks a TRP to satisfy a visa officer that the circumstances justify granting it under the *IRPA* (*Ogbonna*, at para 14).

[26] It is against this backdrop that the Officer’s decision must be assessed for reasonableness.

[27] I note that the only reference to compelling reasons in the decision is found in the decision letter itself. The TRP “Reasons for Decision” form, section 5, “Factors for Consideration” contains a subheading entitled “Risk vs. Need: (i.e. is the applicant’s need to

remain in Canada compelling and sufficient enough to overcome the health or safety risks to Canadian society?)”. There, the Officer refers to section 6 of the form, “Conclusion and Recommendation”. However, the entries in that section do not appear to assess risk and make no explicit references to compelling reasons.

[28] With respect to risk, the Applicant submits that the Officer erred in failing to assess whether granting a TRP posed such a low risk to Canadians that it could be outweighed by compelling reasons for granting the TRP. I agree. Indeed, having reviewed the Officer’s reasons, it is not apparent to me that the Officer determined that there was no risk in these circumstances and, therefore, no need to assess and weigh same against the Applicant’s asserted compelling needs. Nor is there any indication that the Officer conducted such an assessment.

[29] It was not in issue that the reason the Applicant’s initial application for permanent residence was refused was because he could not provide the required police clearance certificate from the UAE due to outstanding debt. The reasons indicate that the initial application for permanent residence was refused because the Applicant could not provide a police clearance and, therefore, it could not be determined that he was not inadmissible to Canada. In his TRP application, the Applicant submitted that he does not have an inadmissibility that poses risk to Canadian society. He also provided country conditions information indicating, among other things, that unlike western countries, the UAE treats debt as a criminal rather than a civil matter. Thus, under Canadian law, the existence of debt would not render the Applicant guilty of a criminal offence.

[30] The Officer acknowledged the country conditions documents and that UAE debt laws are not equivalent to Canadian laws and may seem extreme by Canadian standards. However, the Officer does not address the UAE legal proceedings in the context of what, if any, risk this poses to Canadians. The Officer found instead that, given the time the Applicant spent in the UAE, he was aware of the debt laws and repercussions of unpaid debt but may not have been aware that he would not be able to obtain a UAE police clearance certificate for such “illegal acts”.

[31] The Respondent submits that the Officer could not fully assess admissibility – being risk due to debt in this circumstance – without a police certificate. Further, that even if the Applicant has no other pending court cases against him, that this does not fully answer the question of his admissibility to Canada. In my view, this ignores the purpose of s 24(1), which is to address circumstances where an applicant is inadmissible or cannot meet the requirements of the *IRPA*. Indeed, the IRCC guidelines pertaining to s 24(1) address considerations specific to inadmissibility on criminal grounds. That risk assessment requires officers to verify the time elapsed “since the sentence was served” to determine whether the client might be eligible for rehabilitation or is deemed rehabilitated and states that the onus is on the client to demonstrate their level of risk and that further criminal activity is unlikely. In that regard, officers are to assess listed factors including: the seriousness of the offence; the chances of committing further offences; evidence of reform or rehabilitation; if there is a pattern of criminal behaviour; if all sentences have been completed, fines paid or restitution made; if there are any outstanding criminal charges; time elapsed since the offence occurred; and controversy or risk caused by the presence of the person in Canada.

[32] Here, the record contains no evidence of a criminal conviction. Rather, my point is that, even if there had been a conviction for the outstanding debt, the IRCC Guidelines indicate how convictions are to be assessed by officers when determining whether to grant a TRP under s 24(1). Thus, I do not agree with the Respondent that the Officer was unable to assess risk with respect to the debt in this case.

[33] On this point, the Officer states that they acknowledge the obstacles the applicant faces in rectifying his debt and obtaining a police certificate from the UAE. However, that pursuant to s 21(1) of the *IRPA*, the onus remains on the Applicant “to provide documents required for a permanent residence application for an officer to determine they are not inadmissible to Canada”. Here, the Applicant’s application for permanent residence had been denied because he could not obtain a UAE police certificate. The inability to obtain the clearance certificate was the primary reason why he was compelled to seek a TRP. Yet the Officer did not assess any risk arising from the lack of a certificate.

[34] As to the existence of any other risk, the Officer refers to legal documents in the record. This is a legal opinion from counsel in UAE with respect to UAE laws as between lessors and leasees and the status of the commercial dispute between the Applicant, as the manager/director of Vista Vision Trading LLC, and the failure of the company in 2017 to make the lease payments owed to the Dubai Mall (Emaar Malls LLC). Counsel states that an instalment repayment plan was proposed to the court but was rejected by the lessor and that an arrest warrant was issued and remains active. Counsel certifies, based on an updated check of judicial records, that there are no

other civil, commercial, criminal or labour cases outstanding against the Applicant or his company.

[35] The Officer states that they are not satisfied that the inability to produce the police clearance certificate and the Applicant's falling out of status "are sufficient grounds" to warrant the issuance of a TRP and work permit. However, I agree with the Applicant that these were not the grounds for the TRP application, but the reasons for the request. In these circumstances, the Officer should have considered whether, under s 24(1), any risk arising from the lack of a police certificate outweighed any compelling need for the Applicant to remain in Canada. In my view, the Officer's assessment was unreasonable because it failed to either clearly find that there was no risk (which may well have been a reasonable determination given the evidence that there has been no conviction, the charges concern a rental debt, and there are no other outstanding civil, commercial, criminal or labour cases against the Applicant), or, if there was a finding of risk, to conduct the necessary risk analysis and weighing exercise.

[36] It may well have been open for the Officer to have found that the Applicant's desire to remain with his spouse and to work in Canada to repay his debt were not sufficiently compelling to overcome any risk, however, this was not a finding that the Officer made.

[37] I also have several other concerns with the decision.

[38] These include that, while the Officer acknowledged the UAE's strict debt laws and justice system with respect to debtors, they found that the Applicant was aware of the debt laws

and repercussions of same given how long he had worked and was a business owner in that country. It is unclear to me how this factors into the Officer's assessment – particularly as the Officer also finds that the Applicant may not have been aware that he would not be able to obtain the certificate because of the debt. This finding is unintelligible.

[39] Similarly, the Officer finds that the Applicant demonstrated a disregard for Canadian immigration laws by remaining in Canada after his work permit expired and afforded this “serious considerations”. Again, it is not clear from the reasons how this fits into the Officer's analysis in terms of risk verses needs, or otherwise. I appreciate that s 24(1) of the *IRPA* states that a TRP may be issued if an officer is of the opinion that “it is justified in the circumstances”. However, the difficulty here is that the Officer does not frame this finding – or their decision – in terms of justification in the circumstances.

[40] The Officer also finds that a temporary separation of the Applicant from his spouse will not cause “irreparable harm” to their marriage and that if his pending H&C and permanent residence applications are successful then this would permit the Applicant to return to Canada. The Officer then goes on to say that it is important to recall that the purpose of a TRP is for a temporary stay but that the Applicant is married, has demonstrated that he does not want to live apart from his spouse and thus there are “strong familial pull factors that would motivate his return overseas”. However, the consideration is of compelling reasons – not irreparable harm. In any event, in my view this is unintelligible. If the separation is likely temporary, then this would seem to favour the granting of a TRP, which I note can be cancelled at anytime such as in the

event that those applications were not successful. As to the “pull factors”, it may be that the Officer meant to say that they would motivate the Applicant’s return “from” overseas.

Conclusion

[41] The Officer did not determine that, in these circumstances, the Applicant did not pose a risk to Canadians or Canadian society and, therefore, that there was no need to assess and weigh same against his asserted compelling reasons to remain in Canada. In the absence of such a determination, the Officer erred in failing to assess the risk, if any, that the Applicant’s lack of a UAE police clearance certificate posed to Canadian society, and to weigh this against the asserted compelling reasons put forward by the Applicant in support of his TRP application. In other words, the Officer did not properly assess if the TRP was justified in the circumstances, as required by s 24(1) of the *IRPA*. Accordingly, the decision was not reasonable.

JUDGMENT IN IMM-2862-24

THIS COURT'S JUDGMENT is that

1. The application for judicial review is granted;
2. The decision is set aside and the matter shall be remitted to a different officer for redetermination;
3. There shall be no order as to costs; and
4. No question of general importance for certification was proposed or arises.

"Cecily Y. Strickland"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2862-24

STYLE OF CAUSE: EHAB MUSTAFA HUSSEIN AL-TINAWI v THE
MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: BY VIDEOCONFERENCE USING ZOOM

DATE OF HEARING: FEBRUARY 19, 2025

JUDGMENT AND REASONS: STRICKLAND J.

DATED: MARCH 4, 2025

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