Federal Court  Cour fédérale

Date: 20250703

Dockets: IMM-7432-24
IMM-12490-24

Citation: 2025 FC 1184

Toronto, Ontario, July 3, 2025

PRESENT: Madam Justice Whyte Nowak

BETWEEN:

HAFIZA AROOSA ALI
MUHAMMAD HAMZA SAEED
WANIYA MAIRAJ SAEED
MUHAMMAD ABDULLAH SAEED

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] This is a judicial review of both a first decision [First Decision] of an immigration officer [First Officer] refusing a family's Spousal Open Work Permit, study permit and visitor visa applications [collectively, the Applications] as well as a subsequent decision by a second officer

tasked with assessing a request for reconsideration of the First Decision [Reconsideration Decision].

[2] For the reasons that follow, I am granting the application related to the First Decision by reason that the First Officer unreasonably failed to account for the Applicants' evidence and to respond to their submissions. The application in respect of the Reconsideration Decision is dismissed, as the Applicants have not shown that it was brought within the timeline provided by paragraph 72(2)(b) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*Act*].

II. Facts

A. *The Applications and the First Decision refusing them*

[3] Hafiza Aroosa Ali [Principal Applicant] is a citizen of Pakistan who wanted to join her husband who came to Canada over two and a half years ago on a valid employer-specific work permit and has been employed in Canada as a sales supervisor ever since. The Principal Applicant filed a Spousal Open Work Permit application seeking an open work permit with an expiry date matching the expiry date of her spouse's work permit as contemplated under the *Immigration, Refugees and Citizenship Canada [IRCC] Guidelines – Open work permits for family members of foreign workers*. Their three dependent children Muhammad Hamza Saeed, Waniya Mairaj Saeed and Muhammad Abdullah Saeed [collectively, the Minor Applicants] filed study permit and visitor visa applications.

[4] The Applications were refused by the First Decision dated March 18, 2024, as the First Officer was not satisfied that the Applicants would leave Canada at the end of their authorized stay as required by subsection 200(1) and paragraphs 179(b) and 216(b) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227. The relevant excerpt from the Global Case Management System [GCMS] notes that accompany the First Decision reads as follows:

> I have reviewed the application. I have considered the following factors in my decision. The applicant has significant family ties in Canada, namely her spouse, and these ties will only be increased upon reaching Canada to where she intends to travel with her three children. Her ties to Pakistan would be significantly reduced. The applicant's current employment situation does not show that they are financially established in their country of residence. The applicant has limited employment possibilities in their country of residence. Weighing the factors in this application. [sic] I am not satisfied that the applicant will depart Canada at the end of the period authorized for their stay.

B. *The Reconsideration Decision*

[5] The Principal Applicant sought reconsideration of the First Decision through the Applicants' local Member of Parliament [MP]. No new evidence or submissions accompanied the request. The Reconsideration Decision was issued on March 25, 2024, and according to the GCMS notes, consists of the following statement relayed to the MP's office:

> Thank you for your submission. The Reconsideration request has been considered on its merits. No apparent error of fact, law or procedural fairness evident. Original decision stands.

[6] The Applicants' applications for judicial review of the First Decision and the Reconsideration Decision were consolidated on consent of the parties and by Order of the Court.

III. Preliminary Issues

[7] The Respondent has raised a preliminary issue with respect to the timeliness of the application for judicial review of the Reconsideration Decision and submits that the First Decision is moot.

A. *Is the judicial review application in respect of the Reconsideration Decision properly before the Court?*

[8] There is a dispute over when the Applicants were notified of the Reconsideration Decision or otherwise became aware of it, which determines whether their notice of application for leave and for judicial review was filed inside or outside of the 60 days they had to do so under paragraph 72(2)(b) of the *Act*. Given that the Applicants have not sought an extension of time, this would be fatal to their application for judicial review of the Reconsideration Decision.

[9] The date on which the Reconsideration Decision was communicated to the Applicants is a question of fact. The Respondent notes that the Applicants have not filed evidence addressing the question of when the First Decision was communicated to them, which is information solely within their possession. The only evidence available to the Court is an email exchange contained in the Certified Tribunal Record, which the Respondent relies on to show IRCC's communication of the Reconsideration Decision to the MP on March 25, 2024 and another email exchange, which the Applicants rely on to show IRCC's communication of the Reconsideration Decision to their representative on July 15, 2024.

[10] Reconsideration requests are informal and there are no formal set of rules or guidelines governing them, and based on judicial authority of this Court, it is not considered unreasonable for the Reconsideration Decision to have been communicated to the MP who made the request (*Xu v Canada (Citizenship and Immigration)*, 2024 FC 839 at para 27). I agree with the Respondent that the evidentiary burden was on the Applicants to show that, despite the earlier communication of the Reconsideration Decision to the MP, it was not communicated to them until the July 15, 2024 email from IRCC. As they have not done so, I find that the application for judicial review of the Reconsideration Decision is out of time, and it shall be dismissed.

B. *Is the First Decision moot by reason of the Reconsideration Decision?*

[11] The Respondent submits that there is no concrete dispute remaining between the parties as the Reconsideration Decision replaced the First Decision for the purposes of judicial review, citing *Vidéotron Télécom Ltée v Communications, Energy and Paperworkers Union of Canada*, 2005 FCA 90 at paragraph 12 [*Vidéotron*], which has been applied in the immigration context in *Moazeni v Canada (Citizenship and Immigration)*, 2008 FC 360 at paragraphs 8, 10 [*Moazeni*]. The Respondent argues that judicial review of the First Decision will have no practical effect because the Applicants already obtained exactly what was requested via the Reconsideration Decision, which was reconsideration of the First Decision. The Respondent submits that judicial review of the First Decision is therefore moot based on the well-recognized test in *Borowski v Canada (Attorney General)*, [1989] 1 SCR 342 at 353. I disagree.

[12] The decision of the Federal Court of Appeal in *Vidéotron* seeks to avoid the harm of conflicting decisions left to co-exist in respect of the same matter because a litigant has only

judicially reviewed one of the decisions (*Vidéotron* at para 13 , *Moazeni* at para 7). *Vidéotron* therefore instructs that where a reconsideration decision does not quash the first decision, a party is required to judicially review both decisions since judicial review of only the reconsideration decision would amount to a collateral attack of the first decision, and the possibility of conflicting decisions. Instead, the Federal Court of Appeal states that a party must seek judicial review of both the initial decision and the reconsideration decision, which should then be consolidated (*Vidéotron* at paras 12, 14, *Moazeni* at para 7). This is exactly what the Applicants have done in this proceeding.

[13] Nor does this Court's dismissal of the Reconsideration Decision render the First Decision moot. First, the Reconsideration Decision simply affirmed the First Decision and did not provide new or additional reasons, as was the case in *Moazeni*, with the result that there is no potential for the kind of harm *Vidéotron* seeks to avoid. Second, as the Applicants point out, the reconsideration request was made solely by the Principal Applicant such that the Reconsideration Decision cannot be taken to address the First Decision as it relates to the Minor Applicants.

[14] Therefore, as a tangible and concrete dispute continues to exist between the parties that was not decided in the Reconsideration Decision such that the issue of the reasonableness of the First Decision is not moot and shall be decided on the merits.

IV. Issue and Standard of Review

[15] I agree with the parties that issues going to the merits of a decision are reviewable on the standard of reasonableness as articulated in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paragraphs 15, 86, 99 [*Vavilov*].

[16] A reasonable decision "bears the hallmarks of reasonableness – justification, transparency and intelligibility," and the burden is on the challenging party to show that the decision is unreasonable (*Vavilov* at paras 99-100). Reasonableness review asks whether the decision reflects an internally coherent and rational chain of analysis that is justified in relation to the facts and law that constrained the decision maker (*Vavilov* at para 85).

V. Analysis

A. *Is the First Decision unreasonable?*

[17] While the Applicants make a number of arguments pointing to the unreasonableness of the First Decision, I find that the determinative issue is the First Officer's failure to engage with and account for the Applicants' evidence and submissions in respect of the Principal Applicant's financial establishment and employment possibilities and the Applicants' familial ties to Pakistan.

[18] On the issue of the Principal Applicant's financial establishment, there is no mention of the Principal Applicant's evidence showing that she has assets in Pakistan valued at $15,000

Canadian Dollars with an expected land inheritance valued at $31 million Canadian Dollars. The First Officer considers only what the Principal Applicant has not shown (no employment experience in Pakistan), with no reference to the evidence she did provide regarding her financial establishment in Pakistan.

[19] On the issue of the Applicant's family ties and the "push factors" that would incentivize the Applicants to return to Pakistan, the First Officer fails to refer to the Applicants' Family Information Form showing that the Principal Applicant's extended family (two siblings) live in Pakistan.

[20] The Respondent argues that the First Officer reasonably found that the Principal Applicant was not employed and did not show that she has employment prospects in Pakistan. The Respondent also argues that the Applicants provided no explanation to the First Officer as to how the funds in the Principal Applicant's bank account or her family ties to Pakistan would compel her return there, and that the only evidence before the First Officer supporting the Principal Applicant's employment prospect was the job she had secured in Canada. These might have been reasonable arguments for the First Officer to have made, but this justification is not found in the First Officer's reasons, which only serves to underscore the unreasonableness of the First Decision (*Vavilov* at para 15, 86).

VI. Conclusion

[21] For these reasons, I am granting the application in IMM-7432-24 and remitting the matter back for redetermination by a different officer. The application in IMM-12490-24 is dismissed.

JUDGMENT in IMM-7432-24 and IMM-12490-24

THIS COURT'S JUDGMENT is that:

1. The application for judicial review of the decision dated March 18, 2024 is granted and the matter shall be remitted back to a different decision maker for redetermination;
2. The application for judicial review of the reconsideration decision dated March 25, 2024, is dismissed; and
3. There is no question for certification.

"Allyson Whyte Nowak"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-7432-24, IMM-12490-24
STYLE OF CAUSE:	HAFIZA AROOSA ALI, MUHAMMAD HAMZA SAEED, WANIYA MAIRAJ SAEED, MUHAMMAD ABDULLAH SAEED v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	JUNE 26, 2025
JUDGMENT AND REASONS:	WHYTE NOWAK J.
DATED:	JULY 3, 2025

APPEARANCES:

Vakkas Bilsin	FOR THE APPLICANTS
Diane Gyimah	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Lewis & Associates LLP Barristers and Solicitors Toronto, Ontario	FOR THE APPLICANTS
Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT