Federal Court Cour fédérale

Date: 20250709

Docket: IMM-2440-24

Citation: 2025 FC 1215

Ottawa, Ontario, July 9, 2025

PRESENT: The Honourable Mr. Justice Duchesne

BETWEEN:

SERAY BAGDATLI PARLAKYIGIT

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The Applicant seeks judicial review of a January 26, 2024 decision by an Immigration, Refugee and Citizenship Canada (IRCC) officer that refused her application for a work permit pursuant to the *Temporary Public Policy for nationals of Türkiye and Syria* affected by the 2023 earthquake [the TPP] on the basis that the Applicant's application did not meet the requirements of the *Immigration and Refugee Protection Act* [IRPA] or of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [IRPR].

[2] This application is dismissed for the reasons that follow.

I. **Background**

[3] The Applicant is a citizen of Türkiye who entered Canada on August 13, 2023.

[4] On August 21, 2023, while in Canada, the Applicant submitted a work permit application under the TPP. The TPP set out eligibility requirements that IRCC officers must apply, including that an applicant be in Canada with valid temporary resident status.

[5] The TPP granted an exemption to certain immigration processing fees and other regulatory requirements in order to facilitate access to work and study permits for Turkish and Syrian nationals who may wish to prolong their stay in Canada before returning to their home country due to the earthquake.

[6] On August 31, 2023, the Applicant left Canada while her application was pending.

[7] On September 25, 2023, an IRCC officer refused the Applicant's work permit application.

[8] On October 11, 2023, the Applicant filed an application for leave and judicial review in this Court with a group of 107 other applicants in a proposed class proceeding that sought the redetermination of their work permit applications under the TPP. The group of applicants in the

proposed class proceeding commenced litigation as they believed that they did not need to be in Canada at the time of the determination of their TPP work permit application.

[9] On November 20, 2023, the Applicant and the Respondent settled the Applicant's dispute as framed by her October 11, 2023, application on the same terms as a significant number of the other applicants in the proposed class proceeding. The terms of settlement agreed upon by the Applicant and the Respondent are as follows:

> "1 IRCC will re-open the files of the applicants included in these proposed class proceedings where the eligibility for the Temporary Public Policy for nationals of Türkiye and Syria affected by the earthquakes of February 6, 2023, was the reason for refusal, unless they have already requested and obtained positive consideration under the public policy;
> 2 Applications refused on grounds outside of the public policy eligibility criteria will not be re-opened as part of this settlement;
> 3 IRCC will send these applicants a request letter giving them a 45-day deadline to provide proof of their physical presence in Canada and any other submissions they want reviewed;
> 4 IRCC will finalize the reassessment of the application within 30 days after the deadline (that is, within 75 days of the request letter), taking into consideration any new evidence if provided in the time required. If no new evidence is provided in the time required, IRCC will finalize the application based on what is on file;
> 5 Where applicants have received a letter re-opening their application and asking them to provide proof of their physical presence in Canada, IRCC will send a new letter per term #3 above, re-starting the 45-day deadline. As such, the proposed terms of settlement will apply to their applications, including the commitment to finalize the reassessment of their application within 30 days after the 45-day deadline and within 75 days of the new request letter; and
> 6 No costs to either party."

[10] On November 29, 2023, in apparent performance of the terms of settlement binding upon the Applicant and the Respondent, IRCC sent the Applicant a letter requesting that she provide proof of her eligibility for the work permit that she had applied for. Specifically, she was requested to provide proof of her physical presence in Canada with valid temporary resident

status. The key portions of the letter sent by IRCC in performance of the terms of settlement set out as follows:

> "This is in reference to your application for a work permit, under the Temporary Public Policy for nationals of Türkiye and Syria affected by the earthquakes of February 6, 2023 , which has been reopened pursuant to the terms of settlement reached in IMM-11812-23 (Bilsin et al.) and IMM-12822-23 (Yucak et al) and will be reconsidered.
>
> To be eligible under this temporary public policy, you must be in Canada at the time of application and when a decision is rendered on your application and meet all other eligibility requirements.
>
> The following documents are required to continue processing your application:
>
> [X] Any updated documents you wish to submit in support of your application, and;
>
> [X] Proof of Eligibility: Proof of your physical presence in Canada with valid temporary resident status, such as flight itineraries, boarding pass, entry stamps, etc. Please include any other information that you would like to be considered .
>
> This must be received at this office by January 13, 2024.
>
> […]
>
> Please note:
>
> […]
>
> Should you be unable to provide the information and/or other documents requested you must advise us in writing detailing the reasons why you cannot provide the document/information requested. You must upload this written explanation electronically through the MyCIC portal in lieu of the document requested.
>
> You must provide these document(s) within the timeframe indicated in your MyCIC account. You will not be able to submit your document electronically after this timeframe has expired.
>
> If you fail to comply with this requirement, a decision concerning your application will be made based upon the information already submitted with this application."

[11] The Applicant did not respond to IRCC. She did not provide any additional documents for IRCC's review within the time set out in the November 29, 2023, letter or as provided by the terms of settlement that she had entered into.

[12] On January 26, 2024, IRCC made the Decision to reject the Applicant's application. The Decision under review is worded as follows:

> "This letter refers to your application for a work permit.
>
> Based on your application and accompanying documentation that you have provided, I have carefully considered all information and I am not satisfied that you meet the requirements of the Immigration and Refugee Protection Act and Regulations. Your application as requested is therefore refused.
>
> Under A16(1), a person who makes an application must answer truthfully to all questions put to them for the purpose of the examination and must produce a visa and all relevant evidence and documents that the officer reasonably requires. A letter was sent to you on November 29, 2023 requesting updated information and proof of physical presence in Canada. These documents were required to be submitted by January 13, 2024. As we have not received any documentation, your application is refused."

II. **Issues**

[13] The Applicant argues that the Decision was made in breach of her rights of procedural fairness and in breach of her legitimate expectations because she was not treated in the same manner as other applicants who applied to the same program. She argues that the Decision ought to be reviewed on the standard of correctness, and that the Decision was incorrect.

[14] The Respondent argues that no procedural fairness issue is properly before the Court and that the Decision is to be reviewed on the standard of reasonableness as the only issue is whether the Decision is reasonable. The Respondent argues that the Decision is reasonable.

III. **The Standard of Review**

[15] The presumptive standard of review applicable to an administrative decision is the reasonableness standard as explained by the Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*].

[16] The Court summarized the analytical approach set out in *Vavilov* in *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 at paras 7-8 as follows:

> [7] In *Vavilov*, this Court revised the framework for determining the standard of review. The Court established a presumption that the standard of review of the merits of an administrative decision is reasonableness, subject to limited exceptions based on legislative intent or when required by the rule of law (paras. 10 and 17). The revised framework seeks to maintain the rule of law, while respecting a legislature's intent to entrust certain decisions to administrative decision makers rather than courts (paras. 2 and 14). It also aims to bring simplicity, coherence, and predictability to the law on the standard of review and to eliminate the unwieldy exercise of determining the standard of review based on contextual factors, as had been required by this Court's jurisprudence following *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190 (*Vavilov*, at paras. 7 and 10).
>
> [8] *Vavilov* also explained how a court should conduct reasonableness review. This Court stressed that reasonableness review and correctness review are methodologically distinct (para. 12). Reasonableness review starts from a posture of judicial restraint and focusses on "the decision the administrative decision maker actually made, including the justification offered for it, and not on the conclusion the court itself would have reached in the administrative decision maker's place" (paras. 15 and 24). When an administrative decision maker is required to provide reasons for

> its decision, reasonableness review requires a "sensitive and respectful, but robust" evaluation of the reasons provided (para. 12). A reviewing court must take a "reasons first" approach that evaluates the administrative decision maker's justification for its decision (para. 84). An administrative decision will be reasonable if it "is based on an internally coherent and rational chain of analysis and is justified in relation to the facts and law that constrain the decision maker" (para. 85). This Court also affirmed "the need to develop and strengthen a culture of justification in administrative decision making" (para. 2).

[17] It is the Applicant's onus to demonstrate that "any shortcomings or flaws are sufficiently central or significant to render the decision unreasonable" (*Vavilov* at para 100). Absent exceptional circumstances, reviewing courts must not interfere with the decision-maker's factual findings and cannot reweigh and reassess evidence considered by the decision-maker (*Vavilov* at para 125).

[18] By contrast, as noted by the Federal Court of Appeal in *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 55-56 [*CPR*], the review that might apply to an alleged breach of procedural fairness focusses on whether the applicant knew the case to meet and had a full and fair chance to respond and is reviewed on a standard that is closer to a correctness review

> [55] Attempting to shoehorn the question of procedural fairness into a standard of review analysis is also, at the end of the day, an unprofitable exercise. Procedural review and substantive review serve different objectives in administrative law. While there is overlap, the former focuses on the nature of the rights involved and the consequences for affected parties, while the latter focuses on the relationship between the court and the administrative decision maker. Further, certain procedural matters do not lend themselves to a standard of review analysis at all, such as when bias is alleged. As *Suresh* demonstrates, the distinction between substantive and procedural review and the ability of a court to tailor remedies appropriate to each is a useful tool in the judicial toolbox, and, in

> my view, there are no compelling reasons why it should be jettisoned.
>
> [56] No matter how much deference is accorded administrative tribunals in the exercise of their discretion to make procedural choices, the ultimate question remains whether the applicant knew the case to meet and had a full and fair chance to respond. It would be problematic if an *a priori* decision as to whether the standard of review is correctness or reasonableness generated a different answer to what is a singular question that is fundamental to the concept of justice—was the party given a right to be heard and the opportunity to know the case against them? Procedural fairness is not sacrificed on the altar of deference [*CPR* at paras 55-56].

[19] As with a reasonableness review, the onus lies with the Applicant to establish that their rights of procedural fairness were breached.

IV. **Arguments and Analysis**

A. ***The Applicant's Argument of Uneven Practice is Inadmissible***

[20] As noted above, the Applicant argues that the Decision was made in breach of her rights of procedural fairness and in breach of her legitimate expectations because she was not treated in the same manner as other applicants who applied to the same TPP program. She argues that the Decision ought to be reviewed on the standard of correctness, and that the Decision was incorrect. She does not, however, point to any part of the Decision or of the IRCC officer's decision-making process that led to the Decision as being procedurally unfair.

[21] The Applicant's argument is based on affidavit evidence from immigration consultants that are general in nature, do not mention the Applicant or her application, and are replete with opinion evidence and argument. These affidavits do not establish how the Applicant was treated

or whether or how she was treated differently than other applicants for work permits under the TPP, or whether there was any breach of procedural fairness following the implementation of the terms of settlement binding the Applicant and the IRCC.

[22] Assuming without determining that these affidavits are admissible evidence in this proceeding despite not readily falling within any of the exceptions to the prohibition against affidavit evidence on an application for judicial review (*Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency (Access Copyright),* 2012 FCA 22 at paras 19-20 [*Access Copyright 2012*]), it is clear that none of the affidavits set out any evidence of any probative value with respect to the issues before the Court.

[23] The other affidavit evidence led by the Applicant is set out in the affidavit and further affidavit of Busra Bilsin. This affidavit evidence similarly has nothing to do with the Applicant or her application save for the brief statement that the Applicant applied for a work permit and accepted the aforementioned terms of settlement on November 20, 2023.

[24] As is the case with the immigration consultant affidavits, assuming without determining that these affidavits are admissible evidence despite not apparently falling within any of the exceptions to the prohibition against affidavit evidence on an application for judicial review *Access Copyright 2012* at paras 19-20), it is also clear that these affidavits have no probative value with respect to the issues before the Court in this proceeding.

[25] The IRCC's alleged uneven practice in treating TPP applicants as referred to in the Applicant's memorandum of argument and apparently supported by the immigration consultants' affidavits and Ms. Bilsin's affidavits, discussed above, was briefly addressed during the hearing of this matter. The alleged uneven practice is not actually at issue in this proceeding. It does not form part of the grounds of review set out in the Applicant's Application for Leave and for Judicial Review and has no bearing on whether there was a breach of procedural fairness or disregard of the Applicant's expectations in IRCC's implementation of the settlement terms that bind it and the Applicant. It likewise does not bear on the Applicant's failure to respond to IRCC's November 2023 letter, or on the Decision under review that followed the Applicant's failure to respond to IRCC's November 29, 2023, letter.

[26] The Applicant's arguments about uneven practice by IRCC are therefore rejected in their entirety as they are inadmissible and irrelevant to the matters at issue.

B. ***No Evidence or Argument of a Breach of Procedural Fairness or Legitimate Expectations***

[27] The Applicant has not sworn any affidavit in this proceeding. She has not established what her legitimate expectations were, how she came to form them, and how those expectations were disregarded by IRCC in the implementation of the terms of settlement or in the Decision. As there is no evidence of any legitimate expectation on the part of the Applicant, the argument that a legitimate expectation was breached must be rejected.

[28] She also has not established how and when her rights of procedural fairness were breached after entering into terms of settlement with IRCC or during their performance by IRCC.

[29] The record, and in particular the evidence of the terms of settlement entered into by the Applicant, supports a finding that the Applicant must have known by way of these terms that IRCC would be sending her a letter of request for additional information to complete her application. That same evidence also reflects that the Applicant must have known that a decision would be made on her application within a defined timeframe whether she responded to the letter of request and completed her re-opened application or not. There is no breach of procedural fairness in IRCC conducting itself precisely as it had agreed it would pursuant to the terms of settlement accepted by the Applicant.

[30] The Applicant's argument that her rights of procedural fairness were breached is without factual or evidentiary foundation and must be rejected.

C. ***The Decision is Reasonable***

[31] The Decision reflects that the IRCC officer considered the information submitted by the Applicant in connection with her work permit application, found that she did not meet the requirements for the work permit sought, and offered her an opportunity to provide additional information to allow the continued processing of her application in accordance with the agreed upon and accepted terms of settlement.

[32] It also reflects the officer's consideration that the Applicant failed to provide any additional information despite the IRCC request. The Applicant's application was refused because she did not provide proof of her eligibility to the program as had been requested by IRCC.

[33] The Applicant let the time for her to establish her eligibility to the program expire without availing herself of the right and ability to do so as outlined in the terms of settlement and in IRCC's letter of request.

[34] The Decision is intelligible and reflects a sound chain of analysis by the IRCC officer that takes into account the legal and factual constraints applicable in the circumstances.

[35] I find that the Decision is reasonable and the Applicant has not met her burden to show that it is unreasonable or was reached in breach of her rights of procedural fairness.

V. **Conclusion**

[36] The Decision is reasonable and the Applicant has not met her burden of establishing that the Decision is unreasonable. No party suggested that there is any question to be certified in this proceeding.

[37] The Applicant's application for judicial review is dismissed.

JUDGMENT in IMM-2440-24

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is dismissed.

2. No costs are awarded to any party to this proceeding.

"Benoit M. Duchesne"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-2440-24
STYLE OF CAUSE:	SERAY BAGDATLI PARLAKYIGIT v. MCI
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	JUNE 25, 2025
ORDER AND REASONS:	DUCHESNE, J.
DATED:	JULY 9, 2025

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