Federal Court Cour fédérale

Date: 20250710

Docket: IMM-8908-24

Citation: 2025 FC 1231

Toronto, Ontario, July 10, 2025

PRESENT: The Honourable Mr. Justice Southcott

BETWEEN:

BONITA HARRIET FAUCHAN
HEZRON MICHAEL ATINGI

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 dated April 25, 2024 [the Decision] by an Immigration, Refugees and Citizenship Canada [IRCC] officer [the Officer], rejecting a temporary resident visa [TRV] application [the Application] submitted by the first-named Applicant [the Principal Applicant] on behalf of herself and her son [the Minor Applicant].

[2] The Officer rejected the Application because they were not satisfied the Applicants would leave Canada at the end of their stay, as required by paragraph 179(b) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [IRPR], finding that the Principal Applicant's financial situation was insufficient to support the stated purpose of travel for herself and the Minor Applicant, and that the Principal Applicant did not have significant family ties outside of Canada.

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

II. **Background**

[4] The Applicants are citizens of Uganda. In February 2024, the Principal Applicant submitted the Application on behalf of herself and the Minor Applicant to visit the Minor Applicant's aunt [the Host] and cousins in Ontario for a period of three weeks.

[5] By letter dated April 25, 2024 [the Decision Letter], the Officer issued the Decision that is the subject of this application. The Principal Applicant subsequently requested that IRCC reconsider the Decision by letter dated May 17, 2024 [the Reconsideration Request]. The Applicants submit that IRCC has not made a decision on the Reconsideration Request.

III. **Decision under Review**

[6] In the Decision Letter, the Officer rejected the 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, finding that the Principal Applicant's financial situation was insufficient to support the stated purpose of travel for herself and the Minor Applicant, and that the Principal Applicant did not have significant family ties outside of Canada.

[7] The Officer's corresponding Global Case Management System [GCMS] notes provide further explanation as follows:

> I have reviewed the application. I have considered the positive factors outlined by the applicant, including statements or other evidence: The applicant has some prior travel. However, I have given less weight to the positive factors, for the following reasons : I have considered the following factors in my decision. The applicant's assets and financial situation are insufficient to support the stated purpose of travel for themselves (and any accompanying family member(s), if applicable). Family group of two requesting TRVs to visit family member. Upon review of funds available, I am not satisfied travel to Canada for this purpose is a reasonable expense. The applicant does not have significant family ties outside Canada. 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. **Issues and Standard of Review**

[8] The parties' written submissions raise the following issues for the Court's determination:

A. Whether the Officer breached the Applicants' right to procedural fairness by:

i. making veiled credibility findings;

ii. failing to advise the Applicants of the Officer's concerns before refusing the Application; and

iii. failing to respond to the Reconsideration Request; and

B. Whether the Decision is reasonable.

[9] The first set of issues, relating to procedural fairness, is reviewable on a standard akin to correctness, requiring the Court to consider whether the procedure followed was fair, having regard to all the circumstances (*Canadian Association of Refugee Lawyers v Canada (Immigration, Refugees and Citizenship)*, 2020 FCA 196 at para 35, leave to appeal to SCC refused, 39522 (5 August 2021)). The second issue, regarding the merits of the Decision, is reviewable on the reasonableness standard as informed by *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*].

[10] At the hearing of this application, the Applicants' counsel raised an additional issue, identifying that the Certified Tribunal Record [CTR] in this matter does not include a copy of the Reconsideration Request. The Applicants wish to argue that the Decision is unreasonable based on a deficiency in the CTR.

V. **Analysis**

A. *Certified Tribunal Record*

[11] In relation to the issue surrounding the CTR raised by the Applicants at the hearing, the Respondent's counsel takes the position that it is not available to the Applicants at this juncture

to raise a new issue that was not identified in the Applicants' written submissions. However, the Respondent submits in any event that there is no merit to the Applicants' argument, as the Decision under review in this application is the Officer's Decision dated April 25, 2024, not any subsequent reconsideration decision, and the CTR would therefore include only information available to the Officer as of the date of the Decision.

[12] The Applicants' counsel argued at the hearing that this issue is raised in the record before the Court. I agree that the Applicants' record includes reference to the Reconsideration Request and a copy thereof. Indeed, as reflected in the list of issues I have articulated above, the Applicants' written submissions assert that the Officer breached the duty of procedural fairness by failing to respond to the Reconsideration Request. It is therefore available to the Applicants to advance that argument, including relying on the absence of a copy of the Reconsideration Request from the CTR if they consider that absence to support their position.

[13] However, to the extent the Applicants wish to raise the distinct issue of whether the Court should grant judicial review based on a deficient CTR, I agree with the Respondent's position that this issue was not raised in the Applicants' written submissions and therefore is not properly before the Court (see *Omomowo v Canada (Citizenship and Immigration)*, 2023 FC 78 at paras 26–29).

B. *Whether the Officer breached the Applicants' right to procedural fairness by making a veiled credibility finding*

[14] As reflected in the Decision Letter and the GCMS notes, the Officer's concerns with the evidence supporting the Application are expressed in terms of sufficiency of evidence. However,

as the Applicants submit, there are cases in which the Court has found that an analysis that a decision-maker describes as a matter of sufficiency is actually a concern about the credibility, veracity, or authenticity of the evidence, often described as a veiled credibility finding. In such a circumstance, the decision-maker has a duty to give the applicant an opportunity to address the credibility concern before making the decision (e.g., *Khodchenko v Canada (Citizenship and Immigration)*, 2015 FC 819 at para 10; *Girn v Canada (Citizenship and Immigration)*, 2015 FC 1222 at para 30).

[15] In the case at hand, the Applicants submit that the Officer made a veiled credibility finding in relation to the Principal Applicant's financial circumstances. The Applicants refer to the evidence before the Officer as to the Principal Applicant's salary and bank balance, as well as the Host's undertaking to provide for the Applicants while in Canada. The Applicants argue that, as these financial resources were sufficient for their travel, the Officer must have doubted the veracity of the evidence. The Applicants advance similar arguments in relation to the Officer's finding surrounding family ties and the Officer ultimately not being satisfied that the Applicants would leave Canada at the end of the period authorized for their stay.

[16] Later in these Reasons, I will turn to the question whether the Decision is reasonable based on the evidence provided to the Officer. However, for purposes of the Applicants' procedural fairness argument, I find no basis in the Officer's reasons to conclude that the Officer doubted the authenticity or veracity of any of the evidence.

[17] In relation to the Officer not being satisfied that the Applicants would leave Canada at the end of the period authorized for their stay, I agree with the Respondent as to the application of

jurisprudence that does not treat such a finding as one of credibility (*Mohamud v Canada (Citizenship and Immigration)*, 2021 FC 1140 at paras 14–16; *Semenushkina v Canada (Citizenship and Immigration)*, 2022 FC 1170 at paras 36–37). Rather, this finding relates to whether the Applicants met the burden imposed by paragraph 179(b) of the IRPR (*Ezeudu v Canada (Citizenship and Immigration)*, 2022 FC 582 [*Ezeudu*] at para 36).

C. *Whether the Officer breached the Applicants' right to procedural fairness by failing to advise the Applicants of the Officer's concerns before refusing the Application*

[18] The analysis of this argument is similar to that of the Applicants' veiled credibility argument. Absent a concern about the credibility or genuineness of the evidence, an officer has no procedural fairness duty to provide an applicant with notice of concerns as to the sufficiency of the evidence or an opportunity to respond to such concerns (*Jethi v Canada (Citizenship and Immigration)*, 2024 FC 1503 at paras 7, 10; *Ezeudu* at para 36).

D. *Whether the Officer breached the Applicants' right to procedural fairness by failing to respond to the Reconsideration Request*

[19] As observed earlier in these Reasons, it is available to the Applicants to advance the argument that the Officer breached the Applicants' right to procedural fairness by failing to respond to the Reconsideration Request, including relying on the absence of a copy of the Reconsideration Request from the CTR to support their position. That observation arises from the fact that the Applicants raised this issue in their written submissions in support of this application.

[20] However, I agree with the Respondent's position that this argument is not meritorious, because the Reconsideration Request is not relevant to the reasonableness or procedural fairness of the Decision under review in this application. Failure of an administrative decision-maker to consider an applicant's evidence or submissions can of course undermine the reasonableness of a decision, but this analysis clearly does not apply to material that postdates the decision and therefore was necessarily not before the decision-maker. The Reconsideration Request would no doubt be a relevant part of the underlying record if the Applicants were to present an application for *mandamus*, seeking to compel a reconsideration decision. However, it does not assist the Applicants with their arguments in the application at hand.

E. *Whether the Decision is reasonable*

[21] The Applicants' arguments seeking to impugn the reasonableness of the Decision focus upon the evidence that was presented to the Officer related to the Principal Applicant's financial and employment circumstances, family ties in Uganda, and travel history, as well as other elements of the Applicants' establishment in Uganda.

[22] In relation to travel history, the Applicants note that the Principal Applicant has travelled to Europe in the past and returned home. They submit that the Officer should have considered this travel history as evidence that the Applicants would leave Canada at the end of their stay. Similarly, the Applicants note the Principal Applicant's stable employment, a supporting letter from her employer, and the Minor Applicant's enrolment in school in Uganda as evidence that the Officer should have considered and found to support the Applicants' eligibility for a TRV.

[23] However, there is no basis to conclude that this evidence was overlooked. The GCMS notes expressly demonstrate that the Officer did consider the travel history among the positive factors underlying the Application. While other evidence on which the Applicants rely was not expressly referenced, the Officer is presumed to have considered all the evidence unless they have been silent on evidence clearly pointing to a result contrary to the Decision (*Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, 1998 CanLII 8667 (FCTD) [*Cepeda-Gutierrez*] at para 17). I do not regard any of the evidence upon which the Applicants rely to be sufficiently compelling to rebut the *Cepeda-Gutierrez* presumption.

[24] Rather, the GCMS notes demonstrate that the Officer considered positive factors in support of the Application but found that other negative factors, specifically insufficient assets and financial situation and a lack of significant family ties outside Canada, to outweigh the positive ones. As is trite law, it is not the Court's role to interfere with a decision-maker's weighing of evidence or factors relevant to an administrative decision.

[25] Turning to those negative factors, the Applicants take issue with the reasonableness of the Officer's conclusion that the Principal Applicant's financial resources were insufficient to support the stated purpose of travel. The Applicants reference the Principal Applicant's banking records as demonstrating a sufficient balance, in combination with the Host's undertaking to provide for the Applicants during their visit, to fund the intended trip. At the hearing, both parties referred to the Principal Applicant's bank balance as exceeding Canadian $5000. In the context of the Host's undertaking, the Applicants argue that $5000 would be sufficient to fund their travel, as the only expenses they would be required to bear themselves would be the cost of flights, which the Applicants submit would not exceed $800–$1200.

[26] However, as the Respondent argues, there is no evidence in the record identifying the cost of return travel from Uganda to Canada for two people. It is therefore not possible to conclude that the Officer's finding is unreasonable based on the figures advanced by the Applicants' counsel at the hearing. Moreover, the Officer's reasoning identified in the GCMS notes extends to whether the Applicants' assets and financial situation are sufficient to support the stated purpose of travel. Based on the funds available, the Officer was not satisfied that this travel was a reasonable expense for the Applicants. Again, the Court's role on judicial review is not to reweigh the evidence. Given the modest bank balance identified above, this aspect of the Decision is intelligible and withstands reasonableness review under the principles identified in *Vavilov*.

[27] In relation to the Applicants' family ties, they argue that it was unreasonable for the Officer to expect them to have provided additional detail as to the Applicants' family members in Uganda and their residence there. However, I do not read the Decision as indicating that the Officer had such an expectation.

[28] I acknowledge the Applicants' submission that the evidence before the Officer indicated that all their family members live in Uganda, with the exception of the Host (who the Applicants explain is the twin sister of the Minor Applicant's father). However, while the record provides little information on the relationship between the Principal Applicant and the Minor Applicant's father, the Application indicates that the Principal Applicant is single. As I interpret the Decision, in the context of the Principal Applicant and her only child coming to Canada, the Officer concluded that the remaining familial pull to Uganda was insufficient to establish that the Applicants would depart Canada at the end of the period authorized for their stay. Again, it is not

the Court's role in judicial review to reweigh the evidence before the Officer. The Officer's finding surrounding family ties is intelligible and therefore withstands review.

VI. **Conclusion**

[29] Having considered the Applicants' arguments, I find no reviewable error on the part of the Officer and will therefore dismiss this application for judicial review. Neither party proposed any question for certification for appeal, and none is stated.

JUDGMENT IN IMM-8908-24

THIS COURT'S JUDGMENT is that:

1. This application is dismissed.

2. No question is certified for appeal.

"Richard F. Southcott"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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