Federal Court Cour fédérale

Date: 20250910

Dockets: IMM-2101-24
IMM-5062-24
Citation: 2025 FC 1502

Toronto, Ontario, September 10, 2025

PRESENT: Mr. Justice Brouwer

Docket: IMM-2101-24

BETWEEN:

ABDULSEMIH ISEVI
FERDA ULUTAS ISEVI

Applicants

and
THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

AND BETWEEN:

Docket: IMM-5062-24

AYTEK OZVURAL

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Aytek Ozvural seeks judicial review of the decision of an Immigration, Refugees and Citizenship Canada [IRCC] Officer rejecting his applications for a work permit under the Temporary Public Policy [TPP] that exempted nationals of Türkiye and Syria from certain requirements of the *Immigration and Refugee Protection Regulations*, SOR/2002-227. Mr. Ozvural's case was heard together with that of Abdulsemih Isevi and Ferda Ulutas Isevi, whose own applications under the same program were likewise refused. For the reasons set out below, I am granting both their applications.

II. Background

[2] All three applicants are nationals of Türkiye who applied for work permits under the TPP while in Canada as visitors. Aytek Ozvural submitted his application on December 19, 2023; Abdulsemih Isevi and Ferda Ulutas Isevi submitted their applications on December 27, 2023.

[3] Mr. Ozvural's application was suspended by IRCC two weeks after it was filed. A note to file contained in the Global Case Management System dated January 4, 2024, states:

> Application is on hold for further guidance. [Exit/Entry search].
> 2023-12-30 11:00:00 PM Montreal – Pierre Elliot Trudeau International Air

[4] The next entry is the refusal decision, dated March 11, 2024. It sets out the requirement that applicants be "in Canada with valid temporary resident status at the time the decision is rendered" and concludes: "Client left Canada on December 30, 2023, and therefore, does not meet the requirements per A25.2 Application refused."

[5] The refusal letter of the same date states:

> 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.
> [X] As you are no longer in Canada you are not a person described in Immigration Legislation who can apply to change conditions or to extend your stay from within Canada.

[6] The application of Abdulsemih Isevi and Ferda Ulutas Isevi was processed slightly differently. In their case there is no indication of a suspension to seek guidance; there is simply the following decision dated January 9, 2024:

> Client is requesting an OWP as a FN from Turkey/Syria, under Turkey/Syria, special measures. However, to be an eligible FN from Turkey/Syria, client must remain in Canada.
> Our records showed that client exited Canada on 07January2024.
> Application refused.
> Letter sent advising client.

[7] The refusal letter issue to the Isevis on the same date states:

> 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.
> According to our records, you have exited Canada on 07January2024. To be eligible for the Work Permit under the Turkey/Syria Public Policy, client must remain in Canada.
> As you are no longer in Canada you are not a person described in Immigration Legislation who can apply to change conditions or to extend your stay from within Canada.

[8] The applicants, who are represented by the same law office, brought their applications for leave and for judicial review separately. A motion was filed on March 26, 2025, by the

Respondent on consent to hear both matters together in a single hearing due to the common legal issues between the files. This motion was granted by Justice Julie Blackhawk on April 11, 2025.

[9] In their further memorandum of fact and law, the Applicants jointly raised a number of arguments, including alleging that the Officers had erred in finding that physical presence in Canada at the time of the decision is a requirement under the TPP. They characterized the error variously as an error of law subject to review for correctness, an unreasonable decision, and a breach of their legitimate expectation that their applications would be processed and accepted while they were outside Canada. They also challenged the Officers' apparent reliance on entry/exit information from the Canada Border Services Agency [CBSA] as procedurally unfair.

[10] On August 8, 2025, my colleague Justice Patrick Gleeson rendered judgment in *Cetin v. Canada (Immigration and Citizenship)*, 2025 FC 1359 [*Cetin*], a case involving 16 applications raising the same issues as were raised here, on the basis of essentially the same evidence, and argued by the same counsel on both sides. Rather than attempt to persuade me not to follow Justice Gleeson's thorough and well-reasoned judgment, the Applicants stated before me that they had decided to limit their arguments to a single issue that they said was not foreclosed by *Cetin*: whether the Officers erred in their determinations that the Applicants had left Canada. Specifically, they asserted that:

> (a) the Officers breached their legitimate expectations and rendered an unreasonable decision by relying solely on "exit/entry" data compiled by the CBSA, contrary to an express prohibition contained in the to statements in the Regulatory Impact Analysis Statement for the *Exit Information Regulations*, SOR/2019-214, and

(b) procedural fairness required that the Officers give the Applicants an opportunity to respond to the Officer's concerns regarding their alleged departure from Canada.

[11] Although the Applicants also asserted in the course of oral argument that they had a legitimate expectation that they might be granted work permits under the TPP despite being outside of Canada because of inconsistent application of the TPP by immigration officers, they had conceded that this argument had been dismissed by Justice Gleeson in *Cetin* (paras 50-57) and identified no valid basis upon which I might come to a different conclusion (*R v Sullivan*, 2022 SCC 19 at paras 75-78 [*Sullivan*]). Indeed, the Applicants conceded that the record before me is even less persuasive on this point than what was before Justice Gleeson given their failure to adduce affidavit evidence directly so that it could be cross-examined. I therefore decline to consider that issue.

[12] Reasonableness review entails assessing administrative decisions to determine whether they bear the hallmarks of reasonableness — justification, transparency and intelligibility — and are justified in relation to the relevant factual and legal constraints that bear on the decisions (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 99 [*Vavilov*]). A reasonable decision is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the "constellation of law and facts that are relevant to the decision" (*Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 at para 66, *Vavilov* at 105,).

[13] Procedural fairness questions however, including those of legitimate expectations, attract no deference on judicial review. To the contrary, the role of a reviewing court when assessing allegations of procedural fairness is to assess for itself whether the process was fair in light of all the circumstances (*Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54).

III. Analysis

[14] The Applicants assert that the refusals were based entirely on entry/exit information collected by the CBSA under the *Exit Information Regulations.* They maintain that pursuant to the relevant Regulatory Impact Analysis Statement, this information should not have formed the sole basis for an administrative action:

> Entry/Exit information alone will never form the sole basis for an administrative action, and all employees or partners using this information must endeavour to verify its accuracy prior to administrative actions or decisions being taken against individuals

[15] The Respondent does not appear to challenge the Applicants' assertion that the Officer relied on the entry/exit information in determining that they had left Canada, nor that it would be a breach of procedural fairness to have relied solely upon this information to come to the determinations they did. Rather, the Respondent asks the Court to infer that, at least in Mr. Ozvural's case, corroboration was obtained before the decision was rendered.

[16] The basis of the proposed inference is that the Officer noted that the application was being placed on hold to obtain "guidance," and the decision was not rendered until two months later. The Respondent concedes, however, that there is no indication in the record that the Officer

obtained any such "guidance" before rendering a decision, and in any event, I do not interpret "guidance" to mean "evidence." In the Isevis' case, there was no delay to seek guidance, only a refusal because "Our records showed that client exited Canada on 07January2024."

[17] I find no valid basis upon which to adopt the inference proposed by the Respondent. I cannot help pointing out that if she were correct that the Officers did not rely solely on the exit/entry information she could have filed affidavit evidence from the Officers saying so and explaining what corroboration they had relied upon. This would have provided a complete answer to the Applicants' allegations. But that was not done, and I am not prepared to adopt an ill-founded inference in place of evidence.

[18] I find that the Officers' reliance solely on the entry/exit information was both unreasonable, in the sense that it was not a course of action within the bounds of the legal constraints on the Officers' delegated powers (*Vavilov* at para 105) and contrary to the Applicants' legitimate expectation that their applications would be processed in accordance with applicable legislation and regulations (*Agraira v. Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36 at paras 94-97).

[19] In coming to this conclusion, I am taking into account that Justice Gleeson rejected the same argument in *Cetin*. However, the records before him were different in a fundamental way: they included statements from each of the applicants in which they "independently confirmed they are not physically present in Canada," allowing him to find that "the decision-makers did not rely exclusively or solely on CBSA entry/exit information." The Respondent concedes that

the records before me contain no such statements, nor any other evidence to confirm that the Applicants had left Canada by the time the decisions were rendered. *Cetin* is therefore distinguishable on this issue.

[20] The Respondent argues further that because, in the context of this litigation, the Applicants have not disputed that they indeed left Canada, there can be no reviewable error. I have some sympathy for this straightforward proposition. The problem, however, is that it sidesteps the blatantly improper manner in which this conclusion was reached. While I am alive to the concern of placing form over substance, the obligation of administrative decision makers to adhere to the requirements of natural justice, including procedural fairness, in the exercise of their delegated discretion, cannot be simply swept away because the outcome seems right. The rule of law requires more.

[21] Having found that the decisions were procedurally unfair and unreasonable, I need not address the Applicants' further argument.

[22] While the Applicants seek costs against the Respondent, I find that they have not met their burden to establish special reasons for doing so (*Federal Courts Rules*, SOR/98-106, s 400).

[23] The parties have not identified a serious question of general importance for appeal, and I agree that none arises.

JUDGMENT in IMM-2101-24

THIS COURT'S JUDGMENT is that:

1. The application is granted.

2. The decision of January 9, 2024, is set aside and the matter is returned for redetermination by a different panel in accordance with these reasons. The Applicant shall be afforded a reasonable opportunity to confirm their presence in Canada prior to the redetermination.

3. No question is general importance is certified.

JUDGMENT in IMM-5062-24

THIS COURT'S JUDGMENT is that:

1. The application is granted.

2. The decision of March 11, 2024, is set aside and the matter is returned for redetermination by a different panel in accordance with these reasons. The Applicant shall be afforded a reasonable opportunity to confirm their presence in Canada prior to the redetermination.

3. No question is general importance is certified.

"Andrew J. Brouwer"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-2101-24
STYLE OF CAUSE:	ABDULSEMIH ISEVI, FERDA ULUTAS ISEVI v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	AUGUST 13, 2025
JUDGMENT AND REASONS:	BROUWER J.
DATED:	SEPTEMBER 10, 2025
DOCKET:	IMM-5062-24
STYLE OF CAUSE:	AYTEK OZVURAL v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	AUGUST 13, 2025
JUDGMENT AND REASONS:	BROUWER J.
DATED:	SEPTEMBER 10, 2025

APPEARANCES:

VAKKAS BILSIN SEYFI SUN	FOR THE APPLICANT
ALLISON ENGEL-YAN JENNIFER LUU	FOR THE RESPONDENT

SOLICITORS OF RECORD:

LEWIS & ASSOCIATES LLP BARRISTERS & SOLICITORS TORONTO, ONTARIO	FOR THE APPLICANT
ATTORNEY GENERAL OF CANADA TORONTO, ONTARIO	FOR THE RESPONDENT