

Federal Court



Cour fédérale

Date: 20251114

Docket: IMM-13267-24

Citation: 2025 FC 1820

Ottawa, Ontario, November 14, 2025

PRESENT: The Honourable Mr. Justice Ahmed

BETWEEN:

SALIM AHMED BATHIA

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Salim Ahmed Bathia, applied for authorization to return to Canada (“ARC”) under subsection 52(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (“IRPA”) on March 11, 2022, to visit his brother and two nieces who are Canadian citizens. A departure order was previously issued against the Applicant in 1997 after he abandoned his refugee claim in Canada.

[2] In a decision dated May 29, 2024, a visa officer (the “Officer”) of Immigration, Refugees and Citizenship Canada refused the Applicant’s ARC application.

[3] The Applicant submits that the decision is unreasonable, as the Officer failed to consider the evidence weighing in favour of granting the ARC.

[4] For the reasons that follow, I find the Officer’s decision is reasonable. This application for judicial review is dismissed.

II. Background

[5] The Applicant is a citizen of the United States of America (“U.S.”).

[6] In February 1996, he arrived in Canada on a fraudulent passport and made a refugee claim in April that year. In November 1996, the Applicant failed to appear for his hearing and a departure order was issued. In October 1997, a warrant for the Applicant’s arrest was issued, which was cancelled in 2006.

[7] The Applicant states that he left Canada in 1996 while his asylum claim was being processed. At that time, he entered the U.S. as a lawful permanent resident and, in 2021, he became a U.S. citizen.

[8] The Applicant states that he visited his brother in Canada without an ARC in 2016 and 2017.

[9] On July 20, 2018, the Applicant attempted to cross the border from the U.S. to Canada, and, at customs, he declared clothing and cigarettes at a value of \$200. An agent of Canadian Border Services Agency (“CBSA”) conducted additional screening and found that the Applicant was transporting 120 pounds of cheese and \$6,000 in cash. That day, CBSA issued a certificate of departure and removed the Applicant back to the U.S.

[10] In September 2019, the Applicant applied for an ARC pursuant to subsection 52(1) of the *IRPA*, but his application was refused.

[11] In March 2022, the Applicant applied again for an ARC. In a decision dated May 29, 2024, the Officer refused his application. This is the decision presently under review.

[12] In the Global Case Management System, the Officer identified the purpose of subsection 52(1) of the *IRPA* as sending a strong message for individuals to comply with removal orders. In this context, the Officer noted that the Applicant infringed on several *IRPA* provisions, including using a fraudulent passport, failing to appear for an asylum hearing and removal proceedings, failing to confirm his departure from Canada, and returning to Canada without an ARC.

[13] Although the Officer did not challenge the Applicant’s explanation that he was unaware of the removal order against him, the Officer also did not find it credible that the Applicant was unaware of surpassing the customs allowance when he crossed the border in 2018. The Applicant had claimed the cheese was a gift for his brother’s family, but the Officer stated, “it is not reasonable to believe that he was intending to gift 120 lbs of cheese to two adults and two young children.”

[14] Considering that there was no known impediment for the Applicant's family to visit him in the U.S, the Officer found that the Applicant's history of non-compliance with the *IRPA* from "1996 to 2018" outweighed the alleged purpose of the visit to see his brother's family.

III. Issue and Standard of Review

[15] The sole issue in this application for judicial review is whether the Officer's decision is reasonable.

[16] The standard of review for this decision is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 ("Vavilov") at para 25).

[17] Reasonableness is a deferential, but robust, standard of review (*Vavilov* at paras 12-13). The reviewing court must determine whether the decision under review, including both its rationale and outcome, is transparent, intelligible, and justified (*Vavilov* at para 15). 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 facts and law that constrain the decision-maker (*Vavilov* at para 85). Of note, a reviewing court must refrain from reweighing evidence before the decision-maker (*Vavilov* at para 125). Whether a decision is reasonable depends on the relevant administrative setting, the record before the decision-maker, and the impact of the decision on those affected by its consequences (*Vavilov* at paras 88-90, 94, 133-135).

[18] In the context of ARC applications, an officer must consider the circumstances of the case holistically and in light of the underlying objectives of the *IRPA*, especially the rationale

supporting subsection 52(1) of the *IRPA* (*Dheskali v Canada (Citizenship and Immigration)*, 2021 FC 1191 (“*Dheskali*”) at para 14). An officer’s decision is highly discretionary because there are no legislated criteria for issuing an ARC (*Dheskali* at para 14; *Ghadimi v Canada (Citizenship and Immigration)*, 2022 FC 1006 (“*Ghadimi*”) at para 10). Thus, for an ARC decision to be unreasonable, the applicant must establish the decision contains flaws that are sufficiently central or significant despite this wide discretion (*Vavilov* at paras 100, 108).

IV. Analysis

[19] The Applicant submits that the Officer’s decision is unreasonable because the Officer recognized that it was “plausible” the Applicant was unaware of the departure order against him but still gave significant weight to his infringements of the *IRPA* that were due to his unawareness. The Applicant’s position is that the Officer based their decision solely on his failure to claim goods at the border in 2018 instead of considering the totality of the evidence. The Applicant further submits that the Officer unjustifiably ignored various contextual factors that weighed in favour of granting an ARC.

[20] I disagree. Despite the Officer’s finding that it was “plausible” the Applicant was unaware of the departure order against him, the Officer did not err in considering the Applicant’s immigration history (*Ghadimi* at para 13; *Dheskali* at para 15). I accept the Respondent’s submissions that the Officer considered the departure order against the Applicant in the context of other instances where the Applicant would have been aware that he infringed the *IRPA*. For example, the Applicant would have been aware of using a fraudulent passport and failing to appear for hearings.

[21] I note that the Court has ruled that false documents, in themselves, do not necessarily and categorically undermine refugees' claims, as refugees face particular obstacles in obtaining proper documents (*Gulamsakhi v Canada (Citizenship and Immigration)*, 2015 FC 105 at para 9; *Benthy v Canada (Citizenship and Immigration)*, 2022 FC 235 at para 15). However, as the Respondent brought to the Court's attention during the hearing, nothing in the evidence suggests that the Applicant was, in fact, a Convention refugee or a person in need of protection. The Applicant abandoned his refugee claim in Canada and was admitted as a lawfully permanent resident in the U.S.

[22] Considering this context, the Officer reasonably weighed the Applicant's non-declaration of goods as a further example of non-compliance. The Officer also reasonably assessed that the volume of cheese the Applicant sought to transport undermined his explanation that it was a gift.

[23] Moreover, the Applicant submits that the Officer ignored that he was required to obtain an ARC based on a technicality, left Canada voluntarily, had no criminal record, had not infringed the *IRPA* in the four years prior to his ARC application, and was visiting Canada to reunite with family. I find that the Applicant's concerns do not constitute a reviewable error.

[24] The Applicant relies on *Umlani v Canada (Citizenship and Immigration)*, 2008 FC 1373 ("*Umlani*"), to argue that the Officer should have been more lenient because the Applicant was required to apply for an ARC based on a mere technicality: failing to inform authorities about his departure from Canada. I do not find that this case assists the Applicant. In *Umlani*, the applicant went "out of his way" to address his mistake and keep authorities fully informed. In

addition, the evidence indicated that the applicant in *Umlani* dealt openly with immigration authorities (at para 67).

[25] This is not the case here. The Applicant never informed Canada's immigration authorities when he abandoned his refugee claim or when he left Canada. Further, the Officer found that the Applicant had not dealt honestly with immigration authorities when he failed to declare goods at the Canadian border.

[26] Furthermore, the Applicant's submission that the Officer did not consider the time passed between his previous infraction and current ARC application is baseless. The Officer clearly stated that the Applicant's non-compliance occurred from "1996 to 2018".

[27] The Officer further justifiably considered the Applicant's reasons for visiting Canada: to visit his brother and two nieces. The Officer accepted that it may be preferable for the Applicant to visit his family in Canada, but there was no evidence showing that his family could not visit him in the U.S. This finding does not contradict the *IRPA*'s objective to reunite families in Canada, as the Applicant submits. Rather, it is informed by the guidance in the relevant delivery instructions, *OP 1 Procedures* (IRCC, *OP 1 Procedures*, (Program Delivery Instructions), (Ottawa: IRCC, 2017) ("OP1") at 37).

[28] According to OP1, the onus is on the Applicant to show that the circumstances justify granting an ARC. In this case, the Officer weighed significantly the Applicant's history of non-compliance with the *IRPA* and found that his reason for visiting Canada was insufficient to

outweigh this history. I find no basis to interfere with this finding given the Officer's reasoning and the evidence before them.

V. Conclusion

[29] For these reasons, I find the Officer's decision reasonable. The decision was justified in light of the relevant factual and legal circumstances (*Vavilov* at para 99). This application for judicial review is dismissed.

[30] No questions for certification were raised, and I agree that none arises.

JUDGMENT

THIS COURT’S JUDGMENT is that:

1. This application for judicial review is dismissed.
2. There is no question to certify.

“Shirzad A.”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-13267-24

STYLE OF CAUSE: SALIM AHMED BATHIA v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

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