Federal Court Cour fédérale

Date: 20260303

Docket: IMM-12470-24

Citation: 2026 FC 32

Ottawa, Ontario, March 3, 2026

PRESENT: Madam Justice Gagné

BETWEEN:

SUKJIN LEE

Applicant

and

MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondent

AMENDED JUDGMENT AND REASONS

I. Background

[1] Mr. Sukjin Lee [the Applicant] is a citizen of South Korea — a visa-exempt country — who was found inadmissible to Canada for failing to comply with paragraph 20(1)(a) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA]. It was determined that the Applicant sought to enter or remain in Canada without first obtaining a permanent resident visa, as required under section 6 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [IRPR].

[2] The Applicant, together with his wife and children, entered Canada as permanent residents in 2001. Since then, his wife and children became citizens whereas he voluntarily abandoned his permanent resident status in 2016 because he was unable to comply with the residency requirement.

[3] The Applicant owns a home in South Korea while his wife owns a house in Canada.

[4] Upon arrival in Canada on June 26, 2024, for a 4-month stay, the Applicant was interviewed by an agent from the Canadian Border Services Agency [CBSA].

[5] The Applicant stated that since 2016, he has limited his visits to Canada to four or five months at the time, returning to South Korea for one month or two at the end of each stay. However, he acknowledged that he has spent approximately 70% of his time in Canada where his immediate family resides, and 30% in South Korea or elsewhere. The Applicant also stated that he was currently looking into reapplying for a permanent resident status in Canada or for a super visa.

[6] At the end of the interview, the CBSA agent issued a report under subsection 44(1) of IRPA recommending a one-year exclusion order be issued against the Applicant for not complying with the IRPA, that is, for having resided in Canada without prior authorization. This report was confirmed by a delegate of the minister of Immigration, Refugees and Citizenship Canada and a one-year exclusion order was issued against the Applicant.

II. Issues

[7] The parties agree that this case raises the following issues:

A. Whether the decision is reasonable (as per *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 10, 15-17, 25, 85-86, 99);

B. Whether there was a breach of procedural fairness; and

C. Whether costs should be awarded.

III. Analysis

A. *Was the decision reasonable?*

[8] Subsection 20(1) of the IRPA states that "every foreign national … who seeks to enter or remain in Canada must establish" that the foreign national has the proper visa or other documentation. To become a permanent resident under paragraph (a), the foreign national must hold a permanent resident visa. To be a temporary resident under paragraph (b), the foreign national must establish that the individual holds the requisite visa or other appropriate documentation and will leave at the end of the authorized stay.

[9] The order against the Applicant was issued pursuant to subparagraph 228(1)(c)(iii) of the IRPR, which reads as follows:

228 (1) For the purposes of subsection 44(2) of the Act, and subject to subsections (3) and (4), if a report in respect of a foreign national does not include any grounds of	**228 (1)** Pour l'application du paragraphe 44(2) de la Loi, mais sous réserve des paragraphes (3) et (4), dans le cas où elle ne comporte pas de motif d'interdiction de

inadmissibility other than those set out in the following circumstances, the report shall not be referred to the Immigration Division and any removal order made shall be	territoire autre que ceux prévus dans l'une des circonstances ci-après, l'affaire n'est pas déférée à la Section de l'immigration et la mesure de renvoi à prendre est celle indiquée en regard du motif en cause :
. . .	[…]
(c) if the foreign national is inadmissible under section 41 of the Act on grounds of	**c)** en cas d'interdiction de territoire de l'étranger au titre de l'article 41 de la Loi pour manquement à :
. . .	[…]
(iii) failing to establish that they hold the visa or other document as required under section 20 of the Act, an exclusion order,	**(iii)** l'obligation prévue à l'article 20 de la Loi de prouver qu'il détient les visa et autres documents réglementaires, l'exclusion,

[10] The order also cites non-compliance with section 6 of the IRPR, which reads as follows:

6 A foreign national may not enter Canada to remain on a permanent basis without first obtaining a permanent resident visa.	**6** L'étranger ne peut entrer au Canada pour s'y établir en permanence que s'il a préalablement obtenu un visa de résident permanent.

[11] As stated above, citizens of South Korea are from a "visa exempt" country. That is to say, citizens of South Korea do not need to apply for a visa before travelling to Canada (IRPR, paragraphs 7(2)(a) and 190(1)(a), as well as Schedule 1.1). However, when they seek to become a temporary resident, they are not exempt from establishing upon entry that they will leave Canada at the end of their stay, as contemplated by paragraph 20(1)(b) of the IRPA.

[12] In my view, the minister's delegate unreasonably disregarded relevant evidence in his assessment. The Applicant has a 25-year history of compliance with immigration laws in Canada; he abandoned his permanent resident status when unable to comply with the residency requirement, and since then, he has completed regular visits to Canada without overstaying his authorized stay period. The Applicant intended to be in Canada for four months, as evidenced by the return ticket in his possession. In fact, in all of his previous travels to Canada, the Applicant never remained in Canada without status. This is evidence that should have been considered in favour of finding that the Applicant had a temporary intent, thereby rebutting the presumption that the Applicant was seeking permanent status.

[13] The Applicant was very frank and transparent during his interview, and he confirmed that he was considering applying for a permanent resident status or a super visa, now that he is fully retired from his work in South Korea. If the Applicant rebutted the presumption that he was seeking permanent status and provided sufficient evidence that he would leave at the end of his authorized stay, the minister's delegate had to assess his expressed dual intent. Subsection 22(2) of the IRPA clearly provides that a future intent to apply for permanent residence while "living in Canada" as a visitor does not render a person inadmissible, if they intend to leave Canada or extend their status before their authorized stay expires.

[14] In my view, the decision by the minister's delegate is based on speculation, not on the evidence that was before him. Contrary to subsection 22(2) of IRPA, he found that an intention to become a permanent resident necessarily results in the inference that the Applicant will not

leave Canada by the end of his authorized period. This, in and of itself, renders the decision unreasonable and warrants the Court's intervention.

B. *Was the process procedurally fair?*

[15] Considering my previous finding, I do not need to assess the fairness of the process that led to the decision.

C. *Should costs be awarded?*

[16] Pursuant to Rule 22 of the *Federal Courts Citizenship, Immigration and Refugee Protection Rules*, SOR/93-22, costs are not to be awarded in an immigration proceeding unless the Court finds special reasons for so ordering. The threshold to establish special reasons is high. An award may be justified where a party has unreasonably prolonged legal proceedings or "acted in a manner that was unfair, oppressive, improper or actuated by bad faith" (*Shamloo Gorjaee v Canada (Citizenship and Immigration)*, 2025 FC 1224 at para 40).

[17] The Applicant establishes no special reasons for the Court to make such an award, and costs will not be granted.

IV. Conclusion

[18] For the above reason, I find that the minister's delegate failed to reasonably assess the evidence before him. The application is therefore granted and the decision of the minister's delegate is quashed~~, and the matter is sent back to the minister for a new determination~~. The

parties have proposed no question of general importance for certification and no such question arises from the facts of this case.

JUDGMENT IN IMM-12470-24

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is granted.

2. The decision of the Minister's Delegate is quashed.

3. ~~The file is sent back to the Respondent for a new determination by a different delegate.~~

3. No question is certified.

4. No costs are granted.

"Jocelyne Gagné"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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APPEARANCES:

Deanna Okun-Nachoff	FOR THE APPLICANT
Robert L. Gibson	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Beanna Okun-Nachoff Barrister and Solicitor Vancouver, British Columbia	FOR THE APPLICANT
Attorney General of Canada Vancouver, British Columbia	FOR THE RESPONDENT