Federal Court  Cour fédérale

Date: 20220425

Docket: IMM-6148-21
IMM-6149-21

Citation: 2022 FC 595

Ottawa, Ontario, April 25, 2022

PRESENT: The Honourable Mr. Justice Mosley

BETWEEN:

PARVEIZ AKHTAR

Applicant

and

THE MINISTER OF IMMIGRATION, REFUGEES AND CITIZENSHIP

Respondent

AND BETWEEN:

ABDUL GHANI

Applicant

and

THE MINISTER OF IMMIGRATION, REFUGEES AND CITIZENSHIP

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] This Judgment and Reasons address two applications for judicial review of decision made by a Visa Officer from the Embassy of Canada in Abu Dhabi, United Arab Emirates (Officer) to refuse both Mr. Abdul Ghani and Ms. Parviez Akhtar's applications for temporary visitor visas (TRV). The Applicants are spouses and the facts and issues pertaining to each application are the same and the two applications were heard together. A copy of this Judgment and Reasons will be placed on each file.

[2] The Applicants challenge the refusals pursuant to *Immigration and Refugee Protection Act*, SC 2001, c 27, section 72(1) (*IRPA*).

[3] For the reasons that follow, the applications are dismissed.

II. Background

A. *Facts*

[4] The Applicants are citizens of Pakistan and have been living in the United Arab Emirates (UAE) with temporary resident status. Mr. Ghani was at one time employed in the UAE which allowed him and his wife to reside there. Lately, they have relied on the sponsorship of a son who lives and works in the UAE. They have two other adult children, both of whom live in

Canada as Canadian citizens. In June 2020 the Applicants applied for TRV's to visit their daughter in British Columbia.

[5] In a letter included in their applications, titled "Purpose of Travel", the Applicants write that they are planning to visit, and stay with, their daughter to assist her with childcare during the summer school break. They add that while Ms. Akhtar has visited her daughter before, it will be the first time for her husband, Mr. Ghani. In addition, they state that they have strong ties to the UAE, including community and family, as well as financial connections (investments) in Pakistan. They add that they are planning to visit their home country of Pakistan after visiting Canada.

B. *Decision under Review*

[6] Both applications were refused on the basis that the Officer was not satisfied that they would leave Canada at the end of their stays as temporary residents, as set out under paragraph 179(b) of the *Immigration and Refugee Protection Regulations,* SOR/2002-227 (*IRPR*).

[7] The refusal letter stated that the Officer was not satisfied that the Applicants would leave Canada based on: their personal assets and financial status, current employment, limited employment prospects in the UAE, family ties in Canada and the UAE, and finally, their immigration status.

[8] In the accompanying Global Case Management Notes (GCMS), which form part of the decision, the Officer notes that neither of the Applicants appear to be working at the time of their

application submissions, and that they had received two transfers from their son in the UAE (in March and May 2020), but do not have regular salary deposits. Additionally, the Officer notes that the Applicants appear to have limited funds, and were likely relying on their son in the UAE for financial support based on Mr. Ghani's advanced age. Given these issues, the Officer gives limited weight to the Applicants' economic and residency ties in the UAE. The Officer further observes in the GCMS notes for Ms. Akhtar that her husband has had a number of other visa refusals and one recent approval in 2015, at which time he was working and able to support their residency in the UAE. The Officer finds that the Applicants have not shown that they are genuine visitors who will depart Canada at the end of an authorized stay.

III. **Issues and Standard of Review**

[9] The issues raised by the parties are as follows:

A. Did the Officer breach the duty of procedural fairness owed to the Applicants?

B. Is the Officer's decision refusing the applications reasonable?

[10] Reasonableness is the presumptive standard of review of administrative decisions on their merits: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*]. There is no basis for departure from that presumption in this matter.

[11] To determine whether the decision is reasonable, the reviewing court must ask "whether the decision bears the hallmarks of reasonableness – justification, transparency and intelligibility

– and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision" (*Vavilov* at paras 86 and 99). Thus, a decision-maker's findings should not be disturbed as long as the decision "falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir v New Brunswick*, 2008 SCC 9, at para 47).

[12] In conducting a reasonableness review of factual findings, deference is warranted and it is not the role of the Court to reweigh the evidence or the relative importance given by the decision-maker to any relevant factor: *Kanthasamy v Canada (Minister of Citizenship and Immigration)*, 2015 SCC 61 at para 112; *Vavilov* at para 96. Perfection is not the standard. It is not for the Court to transform a review on the reasonableness standard to correctness review: *Canada (Citizenship and Immigration) v Mason*, 2021 FCA 156 at paras 36-40. The party challenging the decision bears the burden of showing that it is unreasonable: *Vavilov* at para 100. Respect for the role of the administrative decision maker requires a reviewing court to adopt a posture of restraint on review: *Vavilov*, at paras 24, 75.

[13] The standard applicable to issues of procedural fairness is whether, "having regard to all of the circumstances and focusing on the nature of the substantive rights involved and the consequences for the individual affected," the procedure followed by the decision-maker was fair: *Canadian Pacific Railway Company v Canada (Transportation Agency),* 2021 FCA 69 at paras 46-47. This standard involves no deference to the decision-maker.

IV. **Analysis**

A. *Did the Officer breach the duty of procedural fairness?*

[14] The Applicants submit that the Officer should have provided them with an opportunity to respond to the concerns raised in the review of their TRV applications, either in writing or by convoking an oral hearing. They submit that the Officer was required to interview the Applicants if a relevant supporting document is in issue, or to provide them with an opportunity to clear up ambiguities: *Sy v Canada (Minister of Citizenship and Immigration),* [2002] FCJ No. 1179 at para 12.

[15] Relying on *Baker v Canada (Minister of Citizenship and Immigration),* 1999 CanLII 699 (SCC) at paras 22-23, the Applicants contend that the circumstances required that the Officer, as the more sophisticated party, take additional steps to ensure that fairness was being observed. In that respect they submit that they should have been given an opportunity to address the concerns about the purpose of their visit to Canada and their financial status.

[16] The Respondent is correct to observe that the duty of fairness owed in this context falls within the low end of the spectrum. The Applicants have no right to enter and remain in Canada nor do they face any risk of detention or removal from Canada. Decisions dismissing TRV applications filed from abroad by foreign nationals are highly discretionary and the consequences for failed applicants, although no doubt greatly disappointing, do not engage any substantive rights: *Tuiran v Canada (Citizenship and Immigration)*, 2018 FC 324 at paras 14, 15 [*Tuiran*].

[17] This Court has consistently recognized that the onus is on an applicant in a TRV application to provide sufficient evidence: *Anand v Canada (Citizenship and Immigration),* 2019 FC 372 at para 37. Put another way, the Officer is under no obligation to ask for further

information if an applicant has not met their burden; the applicant must put their "best foot forward" : *Singh v Canada (Citizenship and Immigration),* 2019 FC 969 at para 23.

[18] A duty to inform an applicant may arise where the officer has concerns about possible misrepresentation or whether a particular piece of evidence is genuine: *De La Cruz Garcia v Canada (Citizenship and Immigration),* 2016 FC 784 at para 8; *Tuiran* at para 15. But where the question is whether the evidence is sufficient, a duty arising from the requirements of the *IRPR,* as here, the officer is not obliged to inform the applicant so that they may fill in the gaps. The onus is on the applicant to provide what is needed.

B. *Is the decision refusing the applications reasonable?*

[19] The Applicants argue that the Officer's decisions refusing the applications are unreasonable because the Officer relied on an erroneous finding of fact related to the purpose of their visit to Canada. In their view, the Applicants made clear that the purpose of their visit was to see their daughter in B.C. and their grandchildren. They argue that the Officer unreasonably questioned the intention of the male Applicant because he did not declare any plan to visit his other child in Ontario, but failed to point to why this was an issue leading to the refusal of his application.

[20] The Applicants also contend that the Officer's assessment of the financial and asset information they provided was unreasonable. They argue that the Officer failed to point to any issue regarding their finances, and that they provided proof that the Applicants have access to sufficient funds for the trip, including a detailed invitation letter from their daughter with her

proof of employment, savings, and a declaration that she would provide airfare and accommodations to the Applicants.

[21] The Applicants submit further that they have access to their own savings and financial resources, sufficient to cover the trip and their expenses. They argue that the Officer was overzealous to refuse the applications, and that the Officer's decision therefore lacks justification, transparency, and intelligibility.

[22] The nature of the analysis undertaken by an officer on a TRV application, includes the assessment of various factors. This includes the purpose of the visit, family ties in Canada and in the country of residence, the economic and employment situation abroad, past attempts to emigrate to Canada (or elsewhere), any absence of prior travel history and the capacity and willingness to leave Canada at the end of the stay.

[23] As stated by Justice Phelan in *Persaud v Canada (Citizenship and Immigration)*, 2021 FC 1252 at para 8:

> This Court, consistent with *Vavilov*, has recognized that decisions of this type do not have to be extensive and that where a record is clear, the Court can "connect the dots on the page where the lines and direction are headed may be readily drawn": see *Vavilov* at paras 97, 102, citing *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 and *Komalafe v Canada (Minister of Citizenship and Immigration)*, 2013 FC 431 at para 11. The reasons need not be extensive but there must be a rationale or a line to the rationale.

[24] Here, the Officer acknowledged and considered the evidence submitted of the Applicants' finances, including Mr. Ghani's account statement, and noted the limited number of deposits and transfers coming only from his son in the UAE and found that this demonstrated limited funds. The Officer was not required to discuss every factor in favour of the applications nor to refer to every piece of evidence. They are assumed to have weighed and considered all the evidence presented unless the contrary is shown.

[25] I am not persuaded that the Officer erred in assessing the evidence. The Officer considered multiple factors including the financial information, connections to Canada, the Applicants travel history, and their residence status in the UAE. The Applicants did not present a sufficiently strong case to demonstrate that they would return to the UAE, or alternatively to Pakistan, at the end of the TRV to satisfy the Officer. A finding that the Applicants do not intend to leave Canada after their visit is not inconsistent with their wish to visit their daughter and to assist with the care of the grandchildren. The rationale for the decisions is clear on the record.

V. **Conclusion**

[26] Having considered the written and oral submissions of the parties, I am satisfied that the Applicants have not established that they were denied procedural fairness or that the decision was unreasonable. It is not for the Court to reweigh the evidence and reach a different conclusion on judicial review. In the result, the application is dismissed.

[27] No serious questions of general importance were proposed and none will be certified.

JUDGMENT IN IMM-6148-19 AND IMM-6149-21

THIS COURT'S JUDGMENT is that the application is dismissed. No questions are certified.

"Richard G. Mosley"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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