Federal Court  Cour fédérale

Date: 20220614

Docket: IMM-5181-20

Citation: 2022 FC 888

Ottawa, Ontario, June 14, 2022

PRESENT: The Honourable Mr. Justice Pentney

BETWEEN:

NAGESHWAR RAO YENDAMURI

Applicant

and

IMMIGRATION CONSULTANTS OF CANADA REGULATORY COUNCIL

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondents

JUDGMENT AND REASONS

[1] The Applicant, Mr. Yendamuri, seeks judicial review of the decision of a Disciplinary Committee of the Immigration Consultants of Canada Regulatory Council (ICCRC) imposing disciplinary measures on him for breaching ICCRC's Code of Professional Ethics (Code).

[2] The Applicant was a Registered Immigration Consultant. He was convicted of two criminal offences committed during the course of his immigration consulting practice, both relating to a false letter he had created and submitted in support of a client's application for temporary residence. He admitted that he had breached the ICCRC's Code, and the only issue before the Disciplinary Committee was the appropriate penalty. The Committee found that the Applicant's misconduct warranted a penalty of revocation of his licence, with the opportunity to reapply after 18 months, as well as a fine and costs.

[3] The Applicant argues that the decision is unreasonable because the Disciplinary Committee failed to take into account his submissions and failed to provide an adequate explanation for the conclusion.

[4] For the reasons that follow, this application for judicial review will be dismissed.

I. Background

[5] On May 21, 2014, the Applicant prepared a false employment letter, which he submitted to Immigration, Refugee and Citizenship Canada in support of a client's application for a temporary resident visa extension. It turned out that the letter was never considered; the application was dismissed because it was filed beyond the time limit. That was not, however, the end of the matter.

[6] On April 1, 2015, the Applicant was charged with 88 offences - 44 under the *Criminal Code*, R.S.C. 1985, c C-46 [*Criminal Code*] and 44 under the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*]. Only 7 of the 88 charges proceeded to trial, and on

September 11, 2017, the Applicant was found guilty of two *Criminal Code* offences, both of which related to the false letter:

> (a) section 366(1)(a): making a false document with intent that it should in any way be used or acted on as genuine; and
>
> (b) section 368(1)(a): knowing or believing that a document is forged and using, dealing with or acting on it as if it were genuine.

[7] The Applicant was sentenced for these criminal offences on July 4, 2018, and among other terms, his sentence required him not to be employed in any immigration work or to represent any individuals in immigration matters. The sentence was later varied to allow him to practice under supervision if the ICCRC agreed, but it did not agree.

[8] ICCRC initiated a complaint against the Applicant based on the criminal charges, and he agreed to stop practicing until the matter was resolved. Following his conviction, the Applicant and ICCRC entered into an Agreed Statement of Fact for the complaint, in which the Applicant admitted that he had breached his professional and ethical obligations as a Registered Immigration Consultant, including breaches of the two Codes of Professional Ethics that were in force at the relevant times. In particular, the Applicant admitted to conduct unbecoming, breach of his duty of good faith, and failure to act with honesty and candour.

[9] In light of these admissions, the only issue for the Disciplinary Committee was the appropriate penalty. The parties agreed that the matter would be determined in writing, and both filed submissions to the Disciplinary Committee.

[10] ICCRC argued that the appropriate penalty was revocation of the Applicant's licence to practice, with a two-year prohibition on re-applying; it also sought a fine and costs.

[11] The Applicant submitted that the appropriate punishment was a reprimand, a fine and a period of suspension equivalent to the duration of his interim suspension, so that he would be allowed to return to practice immediately. He argued that his offence was not motivated by greed or profit, and that it was not as serious as other types of wrongdoing, especially because the false letter was not acted upon. He also argued that he was the sole breadwinner for his family, and that he had community support to continue his work as an immigration consultant.

[12] On July 29, 2020, the Disciplinary Committee found the following penalty to be appropriate:

a) revocation of the Applicant's licence to practice as an Immigration Consultant, with an 18-month prohibition of re-applying;

b) a fine of $10,000; and

c) costs payable to ICCRC in the amount of $12,441.

[13] The Applicant seeks judicial review of this decision.

II. Issues and Standard of Review

[14] The primary issue raised in this case is whether the Disciplinary Committee's decision is reasonable, in accordance with *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*]. Although the Applicant raised an argument about whether he was denied procedural fairness because of the inadequacy of the reasons, this is to be considered as part of the reasonableness analysis.

[15] Under the *Vavilov* framework, a reviewing court "is to review the reasons given by the administrative decision maker and determine whether the decision is based on an internally coherent chain of reasoning and is justified in light of the relevant legal and factual constraints" (*Canada Post Corp v Canadian Union of Postal Workers*, 2019 SCC 67 [*Canada Post*] at para 2). The burden is on the applicant to satisfy the Court "that any shortcomings or flaws relied on… are sufficiently central or significant to render the decision unreasonable" (*Vavilov* at para 100, cited with approval in *Canada Post* at para 33).

[16] There is one preliminary procedural issue, which relates to whether the Minister of Citizenship and Immigration should be removed as a Respondent in this proceeding. The Minister brought a motion to be removed, in light of the fact that the ICCRC operates as an independent body, and neither the Minister nor any officials of Immigration, Refugees and Citizenship Canada were involved in this matter.

[17] Although logic would seem to support the Minister's position on this point, and similar orders have been granted in the past (see, for example *Benito v Immigration Consultants of Canada Regulatory Council*, 2019 FC 1628), there may be a procedural problem giving effect to the Minister's request. This is because of the wording of Rule 5(2)(b) of the *Federal Courts Citizenship, Immigration and Refugee Protection Rules*, SOR/93-22 [Rules] (see the discussion in *Watto v Immigration Consultants of Canada Regulatory Council*, 2019 FC 1024 at paras 12-18, followed in *Immigration Consultants of Canada Regulatory Council v Rahman*, 2020 FC 832 at paras 27-32).

[18] In the end, it is not necessary to resolve this question here. The Minister will remain as a named Respondent, although it should be noted that counsel for the Attorney General – acting for the Minister – took no part in these proceedings. Nothing in these reasons or the judgment that will issue will affect or involve the Minister. The question of whether the Rules should be clarified in this respect is not a matter that can be resolved in the context of this hearing.

III. Analysis

[19] The Applicant argues that the Disciplinary Committee decision (Decision) is unreasonable in two ways: (A) because it fails to explain how it considered his submissions and the relevant case-law he cited; and (B) because it relies on unproven allegations relating to the 88 charges.

A. *The reasons for the decision are not fundamentally flawed*

[20] The Applicant underlines that a core element of the *Vavilov* framework is an emphasis on the importance of reasons and the justificatory purpose they serve. He argues that his livelihood and reputation are on the line, and notes that the Supreme Court in *Vavilov* found at paragraph 133 that a decision-maker's burden of justifying the outcome corresponds to the significance of the decision:

> Where the impact of a decision on an individual's rights and interests is severe, the reasons provided to that individual must reflect the stakes. The principle of responsive justification means that if a decision has particularly harsh consequences for the affected individual, the decision maker must explain why its decision best reflects the legislature's intention. This includes decisions with consequences that threaten an individual's life, liberty, dignity or livelihood.

[21] The Applicant submits that the reasons fall short of this standard in two primary ways: first, the bulk of the decision is a mere recitation of the parties' submissions, with the actual analysis only taking up 10 short paragraphs. He argues that the Committee thus failed to grapple with the submissions and key issues raised by the parties. For example, the Decision does not explain why the Disciplinary Committee concluded that the offences for which he was convicted were serious, in the face of his submissions regarding this issue. He also contends that the Disciplinary Committee failed to show that they took the impact on his family into account in reaching their decision. He points to the absence of any discussion of this point in the Decision. The Applicant submits that the combined effect of these errors amount to a fatal flaw in the Decision.

[22] I am not persuaded.

[23] The starting point of the analysis is the analytical framework set out in *Vavilov*. I agree with the Applicant that this emphasizes the importance of the reasons and the reasoning in a decision, but it also contains several other key elements. First, reasons must be understood in their context – both the evidence and arguments set out in the record, and the nature of the decision-maker. In this case, both of these factors indicate the reasonableness of the Decision.

[24] First, the Applicant is correct to state that the Decision includes a lengthy summary of the positions of the parties, but this is hardly a flaw. Rather, it demonstrates that the Disciplinary Committee was aware of the detailed submissions advanced by the Applicant, and these help to frame the key elements of its decision.

[25] Second, it is important to recall that the Disciplinary Committee is part of the apparatus of the regulatory body that sets the standards and governs the conduct of Immigration Consultants. It is not solely comprised of lawyers, and the expertise and experience it brings to the task goes beyond that which legal practitioners or judges will generally possess. As the Respondent points out, such discretionary decisions by regulatory bodies merit deference. The Respondent relies on case-law that establishes that a court should only overturn a penalty decision if it is demonstrably unfit (see *Reid v College of Chiropractors of Ontario*, 2016 ONSC 1041, leave to appeal denied: 2016 ONCA 779; *Mitelman v College of Veterinarians of Ontario*, 2020 ONSC 3039; *2099065 Ontario Inc. (c.o.b. as Chapman's Pharmacy) v Ontario (Ministry of Health and Long-Term Care)*, 2021 ONSC 4319). It is not necessary to explore the question of whether this approach merits reconsideration in light of *Vavilov*; for the purposes of this case, it

is sufficient to note that disciplinary decisions of professional regulatory bodies regarding the appropriate penalty should be given deference.

[26] Finally on this point, *Vavilov* emphasizes that a decision-maker's reasons are not to be held to a standard of perfection (*Vavilov* at para 91). It is sufficient if the reasons demonstrate to the person affected that their concerns have been taken into account, that the decision-maker grappled with the key questions framed by the relevant law as applied to the record, and that the decision-maker explained their reasoning in a manner that can be followed and that is not marred by any fundamental flaws in logic.

[27] In my view, the Decision must be upheld, applying this framework of analysis. The Disciplinary Committee took into account the nature of the allegations against the Applicant, based on the Agreed Statement of Fact and the underlying convictions. The Committee concluded that the offences were serious because they constituted fraud (para 63), related directly to the Applicant's work as an Immigration Consultant (para 59), and undermined the integrity of the profession, which the Panel was required to protect (para 11).

[28] In addition, the Committee took into account the mitigating factors cited by the Applicant, including the reasons of the sentencing judge, the impact on the Applicant and his family, and the support of the community (paras 61 and 66). It also commended the Applicant for taking responsibility for his actions, as demonstrated by his consent to the Agreed Statement of Fact (para 62).

[29] The Disciplinary Committee seriously grappled with its role as the regulator of the profession, and this informed its assessment of the Trial Judge's comments at sentencing (para 67). The Committee rightly noted that it had different responsibilities than the sentencing judge, and this was an important factor in its penalty Decision. This finding is unimpeachable.

[30] Viewed in its entirety, the Disciplinary Committee's Decision and conclusions reflect the issues raised by the parties, take into account both their submissions and the evidence in the record, and explain the outcome in a manner that is understandable and not based on any unexplained leaps of logic or other flaws in reasoning.

[31] While these reasons may not be structured in the same way as a decision written by a lawyer or judge, that in itself does not make it unreasonable (*Vavilov* at paras 92-94). Instead, a reviewing court is required to assess the reasons to determine whether it is possible to follow the decision-maker's analysis and to understand how it justifies the outcome (*Vavilov* at para 97). I find that this Decision meets this test.

B. *The Committee's reference to unproven allegations is not a fatal flaw*

[32] This aspect of the Applicant's arguments challenges the following statement by the Disciplinary Committee:

> 60. Although the [Applicant] was convicted on only 2 of the 88 charges, the panel is of the opinion that the charges seen in their totality suggest a pattern of unethical conduct, even though no previous complaints were made against the Respondent.

[33] The Applicant advances several points on this. First, *Vavilov* requires that a reasonable decision be justified in relation to the facts and the law; second, the reference to a "pattern of unethical conduct" is based on facts that were neither admitted nor proven, and the Disciplinary Committee had no information about 86 of these charges or any other unethical conduct allegedly committed by the Applicant. Next, the Applicant points out that the Committee failed to explain how it reached the conclusion that the two convictions supported its finding that the evidence suggested a "pattern" of unethical conduct, particularly since the convictions both stemmed from the same incident. He contends that the lack of any meaningful analysis on these points is sufficient to make the decision unreasonable.

[34] There is much force to the Applicant's arguments on this point. While I agree with the Respondent that other decisions indicate that it may not be unreasonable for a decision-maker to refer to charges that have not resulted in a conviction (see for example: *Buffone v Canada (Attorney General)*, 2017 FC 346; *Barret v Canada (Minister of Public Safety and Emergency Preparedness)*, 2017 FC 1030; *Sittampalam v Canada (Minister of Citizenship and Immigration)*, 2006 FCA 326), each case must be assessed in its particular circumstances. In addition, any such references must take into consideration the limited use that can be made of charges that do not result in conviction, or any other involvement with the criminal justice system (*Canada (Citizenship and Immigration) v Solmaz*, 2020 FCA 126).

[35] In this case, the Disciplinary Committee was clearly aware of the 88 charges, as well as the fact that only seven of these proceeded to trial; the Sworn Information setting this out was in the record. It may be that the Committee's review of that evidence lead it to observe that the other charges involved allegations of similar misconduct when compared with the submission of

the fraudulent letter for which the Applicant was convicted. However, this is not explained in the Decision, and is not otherwise apparent from the record.

[36] The fact is that the Applicant only admitted in the Agreed Statement of Fact to the two offences for which he was convicted. The Disciplinary Committee may be entitled to refer to other charges that were not proceeded with, but in doing so, it should have exercised due caution – and it should have clearly explained why it found these to be pertinent and how they factored into its analysis. The presumption of innocence did not necessarily serve to bar the Disciplinary Committee from considering other information including the charges that did not proceed to trial. The presumption does demand, however, that the Committee should only make such references with careful regard to the nature and extent of the evidence before it relating to the charges, including any police or other investigation as well as any explanations for why they did not proceed to trial or result in a conviction.

[37] The Disciplinary Committee failed to conduct this sort of analysis. That is unreasonable. Under *Vavilov*, however, this error is not enough to make the entire Decision unreasonable in these circumstances. The question is whether the shortcoming is sufficiently serious as to undercut the entire decision; if the remainder of the decision exhibits "the requisite degree of justification, intelligibility and transparency", the identified flaw will not be sufficient to make it unreasonable (*Vavilov* at para 100).

[38] Applying this framework to the instant case, I find that the reference to a "pattern of unethical conduct" is not sufficient to undermine the Decision. Most importantly, this finding is

not repeated elsewhere, nor does it appear to have resulted in a harsher penalty against the Applicant.

[39] The Disciplinary Committee's reasoning stands even if paragraph 60 is deleted from the Decision. The key references by the Disciplinary Committee to the Applicant's misconduct all refer to the admissions in the Agreed Statement of Fact. He was convicted of two criminal charges relating to fraud arising from the false letter he submitted; this was done in the course of his work as an Immigration Consultant; and it could have resulted in a person obtaining status in Canada based on deliberately falsified information. The Disciplinary Committee viewed the matter from its perspective as the profession's regulator. It took into account the impact of such conduct on public faith and confidence in the profession. None of this reasoning rested on the finding that the Applicant had engaged in a "pattern" of unethical conduct. The discussion of the factors that guided the Committee in reaching its penalty decision do not reflect any aspect of increasing the severity of the punishment to reflect a long-standing or ongoing pattern of misconduct.

[40] For these reasons, while I agree that the Committee's reference to the unproven allegations called for a greater explanation, I am unable to conclude that this is sufficient to make the entire Decision unreasonable.

IV. Conclusion

[41] For all of these reasons, the application for judicial review will be dismissed.

[42] There is no question of general importance for certification.

JUDGMENT in IMM-5181-20

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. There is no question of general importance for certification.

"William F. Pentney"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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