Federal Court Cour fédérale

Date: 20230519

Docket: IMM-5379-22

Citation: 2023 FC 704

Vancouver, British Columbia, May 5, 2023

PRESENT: Justice Andrew D. Little

BETWEEN:

GULNOZA BAZAROVA

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] This is an application for judicial review of a decision by a Migration Officer at the Embassy of Canada in Warsaw, Poland, dated April 10, 2022. The officer refused the applicant's request for permanent residence under the Québec Skilled Worker class because the officer was not satisfied that the applicant intended to reside in Québec, as required by paragraph 86(2)(a) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227.

[2] The applicant asked the Court to set aside the decision as unreasonable, applying the principles in *Canada (Minister of Citizenship and Immigration) v Vavilov,* 2019 SCC 65, [2019] 4 SCR 653.

[3] For the reasons below, the application is dismissed.

I. Facts and Events Leading to this Application

[4] The applicant is a citizen of Uzbekistan. She holds a Bachelor's degree in German and a Bachelor's degree with honours in Marketing. The applicant is married and has two children.

A. *First Refusal*

[5] In 2017, the applicant applied for permanent residence under the Québec Skilled Worker Class. On January 31, 2018, the applicant was notified that her case was under review and was asked to submit evidence of her intention to reside in Québec. In response to that request, on March 5, 2019, the applicant submitted the following (as recorded by the officer in the Global Case Management System ("GCMS")):

a) a letter of explanation on how the applicant is preparing for relocation to Québec (since 2010);

b) results of two French certification exams taken by the applicant in June 2014 and in October 2012, respectively;

c) a copy of the applicant's Québec Selection Certificate as proof that her French oral skills had been assessed by the *Ministère de l'Immigration, de la Diversité et de l'Inclusion* (MIDI) as "francophone";

d) comparative evaluation of the applicant's diploma delivered by the MIDI in 2014; and

e) proof of job market research, which the applicant conducted in 2016 - 2017 with the help of her friends residing in Montreal.

[6] On October 21, 2019, the applicant was notified that she "may not meet the requirements for issuance of a Permanent Resident visa." The visa officer had reasonable grounds to believe that her spouse was inadmissible under paragraph 35(1)(a) of the *Immigration and Refugee Protection Act,* SC 2001, c 27 (*"IRPA"*), because he had served in the National Security Service of Uzbekistan from 1992 to 2005. Consequently, the applicant would also be inadmissible under paragraph 42(1)(a) of the *IRPA.* The applicant was given 30 days to respond.

[7] On November 19, 2019, the applicant and her spouse made further submissions describing the "circumstances under which he started working for the National Security Service of Uzbekistan in 1992, his duties over the years of service and circumstances of his voluntary resignation in 2005." The applicant also requested that the officer consider the information provided by the applicants and evaluate her spouse's case based on the "nature of his activities within the organization and not based on acts committed by some components of the National Security Service of Uzbekistan, as well as to take into consideration that [her spouse] disassociated himself from the organization 14 (fourteen) years ago."

[8] By decision dated February 14, 2020, the visa officer concluded that the applicant's spouse was inadmissible under section 35 of the *IRPA* and denied the applicant's PR application:

> I have reviewed submission. Rustamjon Babaev served in the Uzbekistan National Security Service from 1992 through 2005.

> Applicant's narrative fails to address concerns of humans rights abuses carried out by National Security Service. Given his length of service applicant must have been aware of the nature of this organization. Moreover, his decision to leave the National Security Service was premised on lack of leave, monotony, etc. No mention was made that the human rights abuses performed by this organization may have had a role. Accordingly, I have concluded that due to applicant' s continued service in Uzbekistan National Security Service from 1992 through 2005 that he is inadmissible under Paragraph 35 (1)(a) of IRPA. Refused.

[9] On February 24, 2020, the applicant applied for leave and judicial review of the visa officer's decision. In October 2020, the respondent agreed to settle the application for judicial review by setting aside the decision of the visa officer and remitting the matter back for redetermination by another officer.

B. ***Second Refusal***

[10] On May 31, 2021, the officer asked the applicant to "submit additional/updated information which [the applicant] would like [the officer] to take into consideration before the final decision is made. The requested documents should include but not be limited to: updated evidence of intent to reside in Québec and updated French language test results."

[11] In June 2021, the applicant submitted an updated statement of her efforts to prepare for relocation to Québec, a reference from a friend in Montreal, a reference from her employer between 2015 and 2016, and a letter from Alliance Française Tashkent. The letter stated that the applicant's scheduled language test in June 2021 was cancelled due to insufficient test takers and the next test was scheduled for October 2021. The applicant also made submissions pertaining to her spouse's previously determined inadmissibility.

[12] In September 2021, the applicant was granted an extension for French language test results until October 30, 2021. A second extension was granted until December 13, 2021, at the applicant's request.

[13] On January 6, 2022, the officer reviewed the applicant's updated information, including her most recent French language results and had concerns about her intention to reside in Québec. The officer's GCMS entry stated:

> […] Upon review of updated docs re: intent to reside in Québec, I note the following: PA initially applied 2017 / 05, but PA and spouse have no GCMS history, and therefore no history of exploratory visits either before submission of application or during application process. Appears PA and spouse have no family in Québec, no financial ties to Québec, and no job offer on file. Only noted tie to Québec is PA's friend / realtor in Montreal. No evidence of communication submitted from any employers, school, organizations. PA states speaks English (no test results submitted), and holds Bachelors in German. I note French scores of PA have changed since initial application, from an average of CLB 5 - 6 with exception of reading (CLB 0), to an average of CLB 4 in every category except speaking. The Canada.ca website describes CLB 4 as follows: "Basic Language Ability, Basic language ability encompasses abilities that are required to communicate in common and predictable contexts about basic needs, common everyday activities and familiar topics of immediate personal relevance. In the CLB, these are referred to as non - demanding contexts of language use." I also note that PA stated that began French classes at same time began preparing for immigration to Québec. According to all information on file and as noted, I have concerns that PA does not intend to reside in Québec as declared. It does not appear that PA has taken any concrete steps or preparations towards immigration to and / or integration within Québec, or to have a concrete plan to prepare for your life in Québec. Ties to Québec appear very weak. The PA does not appear to have any experience working in a French language environment, and at current level of French language ability, it is unclear if PA would be employable in French language environment, or that job prospects would not be limited. In the absence of a job offer in Québec, ties to Québec, or a higher French ability, it is unclear why the PA intends to reside in Québec. Although PA states in

> declaration that intent is to reside in Québec, I do not find it credible that PA's language ability would decline in listening and writing if this was indeed the intention. Therefore, I am not satisfied that PA would follow through on declared intention to reside in Québec, as required by R 86 (2) (a). PFL required to allow PA opportunity to respond to concerns.

[14] On February 10, 2022, the officer sent the applicant a procedural fairness letter seeking a response to these concerns.

[15] In March 2022, in response to the procedural fairness letter, the applicant provided a number of additional documents, including (and noted by the officer in the GCMS notes): a statement explaining concrete steps taken for immigration to Québec; a reference letter from Alliance Française in Uzbekistan stating that the applicant joined a French conversation club; evidence of her job search on the Québec labour market; evidence of her communication with two organizations in Québec; and an undated letter from a friend of the applicant, stating he can offer her spouse employment as a handyman.

[16] By letter dated April 10, 2022, the application was denied, on the basis that the migration officer was not satisfied the applicant intends to reside in Québec:

> […] Therefore, response to PFL and considered in conjunction with all previous information in file, I am not satisfied that PA intends to reside in Québec, as declared. It does not appear that PA has taken sufficient concrete steps or preparations towards immigration to and/or integration within Québec, or to have a concrete plan to prepare for life in Québec. Ties to Québec appear very weak. The PA does not appear to have any experience working in a French language environment, and at current level of French language ability, it is unclear if PA would be employable in French language environment, or that job prospects would not be limited. In the absence of a job offer in Québec, ties to Québec, or a higher French ability, it is unclear why the PA intends to reside

> in Québec. Although PA states in declaration that intent is to reside in Québec, I do not find it credible that PA's language ability would decline in listening and writing if this was indeed the intention. Therefore, I am not satisfied that PA would follow through on declared intention to reside in Québec, as required by R 86 (2)(a). Eligibility failed. Application refused.

[17] On June 1, 2022, the applicant applied for leave and judicial review of the migration officer's decision dated April 10, 2022. That is the decision under review in this proceeding.

II. Standard of Review

[18] The parties both agree that the standard of review of the officer's substantive decision is reasonableness, as described in *Vavilov.* The onus is on the applicant to demonstrate that the decision is unreasonable: *Vavilov*, at paras 75 and 100.

[19] A reasonable decision is internally coherent, contains a rational chain of analysis and is justified in relation to the facts and law that constrained the decision maker: *Vavilov*, esp. at paras 85, 99, 101, 105-106 and 194. The reviewing court must read the reasons holistically and contextually, and in conjunction with the record that was before the decision-maker: *Vavilov,* at paras 91-96, 97, and 103; *Canada Post Corp. v Canadian Union of Postal Workers*, 2019 SCC 67, [2019] 4 SCR 900, at para 31.

[20] Not all errors or concerns about a decision will warrant the Court's intervention. To intervene, a reviewing court must be satisfied that there are "sufficiently serious shortcomings" in the decision such that it does not exhibit sufficient justification, intelligibility and transparency. Flaws or shortcomings must be more than superficial or peripheral to the merits of

the decision, or a “minor misstep”. The problem must be sufficiently central or significant to render the decision unreasonable: *Vavilov*, at para 100.

[21] The Supreme Court in *Vavilov*, at paragraph 101, identified two types of fundamental flaws: a failure of rationality internal to the reasoning process in the decision; and when a decision is in some respect untenable in light of the relevant factual and legal constraints that bear on it.

[22] This Court’s role is not to agree or disagree with the decision under review, to reassess the merits, or to reweigh the evidence: *Vavilov*, at para 126.

III. Analysis

[23] The applicant made three arguments in her written submissions.

[24] First, the applicant submitted that the officer erred by faulting the applicant for not visiting Canada during the previous three years since submitting the application. According to the applicant, it was an unreasonable expectation to travel given the COVID-19 pandemic. The respondent’s position was that the applicant’s interest in immigrating to Canada traced back to 2010. The respondent maintained that the officer was entitled to consider that the applicant did not make an exploratory visit to Canada during the nine years from the time she first became interested in Québec to the time she was notified of her spouse’s inadmissibility (citing *Ebrahimshani v. Canada (Minister of Citizenship and Immigration)*, 2020 FC 89, at para 49).

The respondent further submitted that the applicant did not address why she did not visit Québec in response to the procedural fairness letter.

[25] Second, the applicant claimed that she submitted an offer of employment as a handyman, whereas the officer determined that there was "no evidence of offers/interviews." The respondent submitted that the applicant did not demonstrate that she had any concrete employment prospects in Québec. According to the respondent, the applicant was only able to provide a letter of offer of temporary employment from a friend (submitted only after the officer raised concerns regarding her employment prospects) as a "handyman for repair and construction work in private homes," with few details on the duties and responsibilities of the position. There was no start or end date, and no information on pay or hours. The respondent argued that in response to the procedural fairness letter, the applicant only filed evidence of job search results and inquiries that did not lead to interviews.

[26] Third, the applicant argued that the determination by the officer that there was "no evidence of communications from employers or schools" was unintelligible because there were communications with schools in the record. The respondent emphasized that the communications were unilateral; there was no evidence that the schools replied to her inquiries.

[27] During the hearing in this Court, the applicant argued that the officer's conclusions regarding her French language tests were unreasonable because (1) it was difficult to know what score level would qualify as an indication of an intention to reside in Québec; (2) the applicant's language skills diminished given the lengthy processing time of her permanent residence

application; and (3) the applicant was not yet exposed to the population and language in Québec and settlement services, which would enhance her language skills upon arrival. On this issue, the respondent observed that the result of the applicant's French language test was not the determinative factor for the officer's decision and that it may not, on its own, evidence an intention to reside in Québec. The respondent acknowledged that a reduction in language test scores may be acceptable in some circumstances. However, the applicant was aware that her file was being reconsidered but filed insufficient evidence to show that she maintained her language abilities. The respondent also pointed to the officer observations in the GCMS notes that the applicant did not appear to have any experience working in a French language environment, and that it was unclear if the applicant would be employable in French language environment. The officer noted that in the absence of a job offer in Québec, ties to Québec, or a higher French ability, it was unclear why the applicant intended to reside in Québec.

[28] In my view, the applicant's submissions do not permit the Court to intervene on a judicial review application. Her arguments seek to re-argue the merits of her application and ask the Court to either come to its own view or reweigh the evidence, which the Court is not permitted to do: *Vavilov* at paras 83 and 125. The task of the reviewing court is not to assess the correctness of the officer's decision, but whether the officer's reasoning process was flawed in a manner that rendered the decision unreasonable under *Vavilov* principles.

[29] In addition, the officer's decision bears the three hallmarks of reasonable administrative decision-making – transparency, intelligibility and justification*: Vavilov*, at paras 12-13 and 15. The officer's GCMS notes are detailed and thorough. The GCMS notes confirm that during the

redetermination, the officer understood the history of the applicant's file, including the submissions received to date. The GCMS notes also demonstrate that the officer considered a large number of issues, including: any concrete steps or preparation towards immigration to and/or integration within Québec, ties to Québec, travel history to Québec either before the submission of the application or during the application process, absence of job offers and interviews, and declining French language ability.

[30] Considering what the officer considered and expressed in response to the evidence submitted by the applicant, the applicant has not demonstrated that the officer's conclusions were untenable on the evidence, or that the officer fundamentally misapprehended the evidence or otherwise ignored or failed to account for any material evidence: *Vavilov,* at paras 101 and 126. Given the evidence of the applicant's diminished French language test scores, lack of any concrete job interviews or offers in Québec, minimal connection to Québec, and no travel history to Québec, it was open to the officer to conclude that the applicant had not shown an intent to reside in Québec. During the hearing in this Court, the applicant did not identify any evidence in the record that contradicted the officer's statements in the GCMS notes.

[31] For these reasons, and applying the principles in *Vavilov,* I am not persuaded that the officer's decision was unreasonable.

IV. Conclusion

[32] The application is therefore dismissed. Neither party proposed a question to certify for appeal and none will be stated.

JUDGMENT in IMM-5379-22

THIS COURT'S JUDGMENT is that:

1. The application is dismissed.

2. No question is certified under paragraph 74(*d*) of the *Immigration and Refugee Protection Act*.

"Andrew D. Little"
Judge

APPENDIX - IMM-5379-22

LEGISLATIVE PROVISIONS

Immigration and Refugee Protection Regulations (SOR/2002-227)	**Règlement sur l'immigration et la protection des réfugiés (DORS/2002-227)**
Québec Skilled Worker Class	**Travailleurs qualifiés (Québec)**
Class	**Catégorie**
86 (1) For the purposes of subsection 12(2) of the Act, the Québec skilled worker class is hereby prescribed as a class of persons who may become permanent residents on the basis of their ability to become economically established in Canada.	**86 (1)** Pour l'application du paragraphe 12(2) de la Loi, la catégorie des travailleurs qualifiés (Québec) est une catégorie réglementaire de personnes qui peuvent devenir résidents permanents du fait de leur capacité à réussir leur établissement économique au Canada.
Member of the class	**Qualité**
(2) A foreign national is a member of the Québec skilled worker class if they	**(2)** Fait partie de la catégorie des travailleurs qualifiés (Québec) l'étranger qui satisfait aux exigences suivantes :
(a) intend to reside in the Province of Québec; and	**a)** il cherche à s'établir dans la province de Québec;
(b) are named in a *Certificat de sélection du Québec* issued to them by that Province.	**b)** il est visé par un certificat de sélection du Québec délivré par cette province.
(3) and (4) [Repealed, SOR/2008-253, s. 9]	**(3) et (4)** [Abrogés, DORS/2008-253, art. 9]
Requirements for accompanying family members	**Exigences applicables aux membres de la famille qui accompagnent le demandeur**

(5) A foreign national who is an accompanying family member of a person who makes an application as a member of the Québec skilled worker class shall become a permanent resident if, following an examination, it is established that

(a) the person who made the application has become a permanent resident; and

(b) the foreign national is not inadmissible.

(5) L'étranger qui est un membre de la famille et qui accompagne la personne qui présente une demande au titre de la catégorie des travailleurs qualifiés (Québec) devient résident permanent si, à l'issue d'un contrôle, les éléments ci-après sont établis :

a) la personne qui présente la demande est devenue résident permanent;

b) il n'est pas interdit de territoire.

FEDERAL COURT

SOLICITORS OF RECORD

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