Federal Court  Cour fédérale

Date: 20230612

Dockets: IMM-2785-22
IMM-2760-22

Citation: 2023 FC 835

Ottawa, Ontario, June 12, 2023

PRESENT: The Honourable Mr. Justice Ahmed

Docket: IMM-2785-22

BETWEEN:

MOHAMMAD KHALID PIRZADA

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

Docket: IMM-2760-22

BETWEEN:

HUMA KHALID PIRZADA

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicants seek judicial review of the decisions of a visa officer (the "Officer") of Immigration, Refugees and Citizenship Canada ("IRCC"), each dated January 27, 2022, refusing their applications for a parental super visa. The Officer was not satisfied that the Applicants would leave Canada at the end of their temporary stay, as per section 179(b) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 ("*IRPR*").

[2] The Applicants seek judicial review of these decisions in two separately filed but related applications for judicial review. On February 22, 2023, this Court ordered that the two applications be consolidated and heard together. Given that the reasons provided for both decisions are identical, my analysis will refer to them as a singular decision.

[3] The Applicants submit that the Officer's decision lacks a rational chain of analysis and was made without regard to the evidence.

[4] For the reasons that follow, I find that the Officer's decision is unreasonable. This application for judicial review is therefore granted.

II. Facts

A. *The Applicants*

[5] Mohammad Khalid Pirzada (Mr. "Pirzada") and his wife, Huma Khalid Pirzada (Ms. "Pirzada"), are citizens of Pakistan (collectively, the "Applicants"). They are 67 and 60 years old, respectively. The Applicants have two daughters, Mahaik and Paras, who were born in Pakistan and have permanent resident status in Canada.

[6] The Applicants travelled to the United States ("US") with their daughters in 1994. They claim that they left Pakistan due to the violence, insecurity, and difficulties in securing employment and quality education for their daughters. They sought refugee protection in the US but these claims were refused in 1996. The Applicants decided to remain in the US without status, claiming that they did not feel safe returning to Pakistan and did not know any other way to maintain their safety and provide for their daughters.

[7] The Applicants' daughters eventually obtained work permits under the US Deferred Action for Childhood Arrivals program. After completing their post-secondary and graduate education, Mahaik and Paras obtained permanent resident status in Canada through the Federal Skilled Worker Program in May 2018 and October 2019, respectively. Although Mahaik originally resided in British Colombia, both Mahaik and Paras eventually came to reside together in Ontario.

[8] The Applicants claim that their family is separated, since Mahaik and Paras resided without status in the US and are therefore unable to visit the Applicants in the US. In hopes of reuniting the family, Mahaik completed an Interest to Sponsor form for the Applicants in the Parents and Grandparents Program (the "Program"). In a letter from IRCC dated January 6, 2021, Mahaik received an invitation to apply to sponsor the Applicants as part of the Program. The Applicants retained counsel to assist them in preparing the sponsorship application.

[9] Due to the lengthy processing period for a parental sponsorship, in addition to the delays associated with the COVID-19 pandemic, the Applicants claim that they also applied for super visas to reunite with their daughters while the sponsorship application was being processed. The Applicants claim that the prolonged family separation has caused their family significant hardship, particularly for Paras, who allegedly suffers from anxiety and depression due to the separation from her parents.

[10] The Applicants submitted their applications for super visas on January 20, 2021, invited by Mahaik and Paras. Shortly thereafter, in March 2021, Mahaik also submitted her completed application to sponsor the Applicants for permanent residence under the Program. On May 10, 2021, the Applicants' counsel submitted an update to the Applicants' super visa applications, notifying IRCC that the sponsorship application had been submitted. After the Applicants' counsel submitted this update, no further correspondence was received from IRCC with respect to their super visa applications.

[11] On December 24, 2021, the Applicants' counsel submitted a request to IRCC, noting that the processing time had extended far beyond the estimated processing time posted on the IRCC website and requesting that it finalize the processing of the Applicants' super visa applications.

[12] The Officer's refusals of the Applicants' super visa applications were communicated to them in letters dated January 27, 2022.

B. *Decision Under Review*

[13] The decisions are largely contained in the Global Case Management System ("GCMS") notes, which form part of the reasons for the decisions. The GCMS notes for both decisions are the same and state as follows:

> I have reviewed the application. I am not satisfied that the applicant would leave Canada at the end of their stay as a temporary resident, I note that: - The client does not have status in their country of residence. - The client has strong family ties in Canada. - The client has provided insufficient evidence to indicate establishment in home country in the form of family ties, properties, and/or employment. - MP letters noted. Weighing the factors in this application. I am not satisfied that the applicant will adhere to the terms and conditions imposed as a temporary resident. For the reasons above, I have refused this application.

[14] The refusals were communicated to the Applicants in identical letters dated January 27, 2022. The letters stated that the Applicants' super visa applications were refused on the basis that the Applicants failed to satisfy that they would leave Canada at the end of their stay, based on their immigration status, their family ties in Canada, and the purpose of their visit. The letters

also stated that the Applicants did not provide sufficient evidence to indicate their establishment in their country of residence or their home country.

III. Issue and Standard of Review

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

[16] The applicable standard of review of the Officer's decision is reasonableness, in accordance with the Supreme Court of Canada's decision in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 ("*Vavilov*") at paragraphs 16-17.

[17] Reasonableness is a deferential, but robust, standard of review (*Vavilov* at paras 12-13; 75; 85). 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 decision that is reasonable as a whole 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). 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] For a decision to be unreasonable, the applicant must establish the decision contains flaws that are sufficiently central or significant (*Vavilov* at para 100). Not all errors or concerns about a decision will warrant intervention. A reviewing court must refrain from reweighing

evidence before the decision-maker, and it should not interfere with factual findings absent exceptional circumstances (*Vavilov* at para 125). Flaws or shortcomings must be more than superficial or peripheral to the merits of the decision, or a "minor misstep" (*Vavilov* at para 100; *Canada (Citizenship and Immigration) v Mason*, 2021 FCA 156 at para 36).

IV. Analysis

[19] The Applicants submit that the Officer's decision is unreasonable because it fails to demonstrate a rational chain of analysis, fails to meaningfully grapple with the Applicants' evidence, and fails to accord with the evidence available. I agree.

[20] The Applicants submit that the Officer's decision is not justified, intelligible, or transparent, as it contains peremptory conclusions without a rational chain of analysis. The Applicants acknowledge that visa officers deal with a high volume of applications, but submit they are nonetheless required to provide adequate reasons that demonstrate internal rationality in the decision-making process and allow the Applicants to understand the basis for the decision.

[21] The Applicants rely on *Niyongabo v Canada (Citizenship and Immigration)*, 2021 FC 1238 ("*Niyongabo*"), where this Court found that while extensive reasons are not required, a visa officer's decision is unreasonable where it fails to explain how a determination was made (at paras 13-14). The Applicants submit that the Officer committed the same error in their case and provided reasons that do not reveal how the Officer assessed their evidence or arrived at the decision to refuse their applications. For instance, the Applicants note that while the decision

letters state that the Officer was not satisfied that the Applicants would leave Canada based on their family ties in Canada and the country of residence, the GCMS notes merely state that the Applicants have "strong family ties in Canada." The GCMS notes do not provide any further information about how this factor was weighed against the totality of the evidence and led to the determination that the Applicants would not leave Canada at the end of their stay.

[22] The Applicants note that the Officer's decision also lacks justification and a rational chain of analysis with respect to the factor of establishment. The Officer found insufficient evidence of establishment in the Applicants' home country, but the Applicants submit that establishment is not a requirement for a super visa and that, nonetheless, the Applicants provided information in their application to explain their lack of establishment in Pakistan and their willingness to return there after their temporary stay in Canada. The Applicants submit that the decision similarly lacks justification in its brief conclusions regarding the purpose of the Applicants' visit and their immigration status in the US.

[23] The Applicants further submit that the Officer's decision unreasonably ignored substantial documentary evidence provided in support of their super visa applications, including evidence that directly contradicts the Officer's conclusions. The Applicants submit that although the Officer's decision letters state that the Applicants failed to satisfy that they would leave Canada at the end of their stay, the decision does not reveal any consideration of the Applicants' evidence demonstrating their motivation to leave Canada when required to do so, so as not to jeopardize their pending sponsorship application and their desire to be permanently reunited with their children.

[24] The Applicants note their applications also included evidence of family ties in Pakistan, their family's willingness to financially support their return to Pakistan, and a letter indicating the changes in conditions in Pakistan such that the Applicants are comfortable returning there at the end of their temporary stay in Canada. The Applicants submit that the Officer's decision fails to accord or grapple with this evidence.

[25] The Respondent maintains that the Officer's decision is reasonable. The Respondent submits that when viewed holistically, the GCMS notes provide a rational chain of analysis connecting the Applicants' evidence with the refusal of their super visa applications. For instance, the Respondent submits that the Officer's determination regarding the Applicants' family ties is explained in the GCMS notes by reference to the lack of immigration status in the US and the existence of strong family ties in Canada, in the form of the Applicants' daughters. The Respondent submits that this reveals a reasonable weighing of factors and evidence.

[26] The Respondent further submits that a mere claim that the Officer's decision is unintelligible on the basis of the evidence is insufficient to raise a reviewable error, noting that a decision-maker's reasons must be read holistically and that a reviewing court may "connect the dots on the page where the lines … may be readily drawn" (*Vavilov* at para 97). The Respondent submits that the Applicants' submissions regarding the Officer's failure to adequately review their evidence amounts to a request that this Court reweigh the evidentiary record, which is not this Court's role on reasonableness review.

[27] I agree with the Applicants. In my view, the Officer's decision lacks an internally coherent and rational chain of analysis, and does not reflect the requisite degree of justification in relation to the facts and evidence (*Vavilov* at para 85). The Respondent rightly notes that reasonableness review is sensitive to the institutional context of a decision and that in the immigration setting, visa officers are not required to provide extensive written reasons for their decisions (*Vavilov* at para 97; *Niyongabo* at paras 12-13). However, *Vavilov* is clear that this does not absolve a decision-maker from the central requirements of the reasonableness standard: that the decision be justified, transparent, and intelligible, and reveal a rational chain of analysis connecting the evidence with the final decision (*Vavilov* at paras 58, 99). The principles enumerated in *Vavilov* are as follows:

> [96] Where, even if the reasons given by an administrative decision maker for a decision are read with sensitivity to the institutional setting and in light of the record, they contain a fundamental gap or reveal that the decision is based on an unreasonable chain of analysis, it is not ordinarily appropriate for the reviewing court to fashion its own reasons in order to buttress the administrative decision. Even if the outcome of the decision could be reasonable under different circumstances, it is not open to a reviewing court to disregard the flawed basis for a decision and substitute its own justification for the outcome: *Delta Air Lines*, at paras. 26-28. To allow a reviewing court to do so would be to allow an administrative decision maker to abdicate its responsibility to justify to the affected party, in a manner that is transparent and intelligible, the basis on which it arrived at a particular conclusion. This would also amount to adopting an approach to reasonableness review focused solely on the outcome of a decision, to the exclusion of the rationale for that decision. To the extent that cases such as *Newfoundland Nurses* and *Alberta Teachers* have been taken as suggesting otherwise, such a view is mistaken.
>
> [Emphasis added]

[28] This Court has found that even in the context of the high volume of decisions seen by visa officers, the principles outlined in *Vavilov* still apply and "this cannot exempt their decisions from being responsive to the factual matrix put before them" (*Patel v Canada (Citizenship and Immigration)*, 2020 FC 77 at para 17).

[29] Reviewing the Officer's decision holistically, it fails to reveal any rational chain of analysis and contains fundamental gaps in reasoning that render the decision unreasonable. The Applicants' super visa applications included the following documents and information: the Applicants' immigration history in the US, with acknowledgement that they lack status in the US; a letter indicating how the country conditions in Pakistan had changed such that they were willing to return to Pakistan at the end of their stay; their enduring family ties to Pakistan, including their siblings; their family members' willingness to financially support them upon return to Pakistan; evidence of financial support throughout the entirety of their visit to Canada; a letter from Mahaik and Paras indicating their willingness to purchase return flights to Pakistan in advance of their parents' super visas being granted; and explicit recognition that the Applicants are highly motivated to leave Canada at the end of their stay, so as not to jeopardize the success of their pending sponsorship application. The Officer's cursory conclusions do not reveal any coherent connection to the Applicants' voluminous evidence.

[30] I further agree with the Applicants that the Officer's conclusions fail to accord with the evidence. For instance, the Officer impugns the Applicants for their strong family ties in Canada in the form of their daughters, but it is a requirement for a super visa that the applicant have a child in Canada who is either a permanent resident or a citizen. The Officer found that the

Applicants provided insufficient evidence of establishment in Pakistan, but they provided letters from family members in Pakistan who are willing and able to receive and support the Applicants upon their return. While the Officer is not required to mention every piece of evidence, a blanket statement that the evidence was considered "will not suffice when the evidence omitted from any discussion in the reasons appears squarely to contradict" the Officer's findings (*Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, [1999] 1 FC 53 at para 15). The Officer's reasons ultimately demonstrate a failure to grapple with key issues raised by the evidence, rendering the decision unreasonable (*Vavilov* at para 128).

V. Conclusion

[31] This application for judicial review is granted. The Officer's decision lacks the requisite degree of justification, transparency and intelligibility, and is therefore unreasonable (*Vavilov* at para 99). No questions for certification were raised, and I agree that none arise.

JUDGMENT in IMM-2785-22 and IMM-2760-22

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is granted. The decision under review is set aside and the mater remitted back for redetermination by a different officer.

2. There is no question to certify.

"Shirzad A."
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKETS:	IMM-2785-22 IMM-2760-22
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