Federal Court Cour fédérale

Date: 20231031

Docket: IMM-8629-22

Citation: 2023 FC 1448

Ottawa, Ontario, October 31, 2023

PRESENT: Mr. Justice McHaffie

BETWEEN:

LEELA NIMRANI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Leela Nimrani's application for a Grandparent Super Visa was rejected because a visa officer with Immigration, Refugees and Citizenship Canada [IRCC] was not satisfied she would leave Canada to return to India at the end of her authorized stay. On this application for judicial review, Ms. Nimrani asks the Court to set aside that decision.

[2] For the reasons that follow, I will grant Ms. Nimrani's application for judicial review and set aside the refusal of her Super Visa application. Having reviewed the factual record and the submissions made to the visa officer, I conclude that their decision does not meet the requirements of justification, transparency, and intelligibility required of a reasonable administrative decision. In particular, while recognizing that a written decision on a visa refusal need not be lengthy or detailed, I conclude that the officer's reasons considered only adverse factors in Ms. Nimrani's application while ignoring a number of relevant positive factors regarding her establishment in India and her travel history. In addition, the officer's refusal letter referred to a number of factors that are unexplained and difficult to comprehend given the nature of the application.

[3] Ms. Nimrani's visa application will therefore be remitted for a further redetermination by a different officer.

II. Issues and Standard of Review

[4] The parties agree that the visa officer's decision is to be reviewed on the reasonableness standard: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16–17, 23–25. The only issue before the Court is whether the officer's decision was reasonable. While Ms. Nimrani's written submissions also raised a concern about procedural fairness, she abandoned that argument at the hearing of this application.

[5] In reviewing decisions on the reasonableness standard, the Court is not deciding the matter for itself but assessing whether the person to whom Parliament has granted decision-

making authority has made their decision lawfully and reasonably: *Vavilov* at paras 82–83. A reasonable decision 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. The Court must defer to a decision that meets these criteria: *Vavilov* at para 85.

[6] The requirement that an administrative decision be "justified in relation to the facts and law" includes the requirement that written reasons given for a decision be responsive to the factual record and to the submissions made to the decision maker: *Vavilov* at paras 85, 125–128. A fundamental misapprehension of the evidence, a failure to account for material relevant evidence, or a failure to meaningfully grapple with central issues and concerns raised by a party may undermine the reasonableness of a decision: *Vavilov* at paras 126, 128. At the same time, the reasonableness standard is one that accounts for the context of an administrative decision, recognizing that the complexity and importance of an issue may affect the assessment of what is reasonable in a given situation: *Vavilov* at paras 88–90.

[7] Given the administrative context of visa decisions, this Court has confirmed that visa officers are not expected to provide extensive or voluminous reasons for refusals: *Patel v Canada (Citizenship and Immigration)*, 2020 FC 77 at paras 15, 17, citing *Vavilov* at paras 13, 67, 72, 127–128; *He v Canada (Citizenship and Immigration)*, 2021 FC 1027 at paras 19–20, citing *Vavilov* at paras 91, 103. Visa officers' decisions must also be reviewed in light of the record, which "may reveal that an apparent shortcoming in the reasons is not, in fact, a failure of justification, intelligibility or transparency": *Vavilov* at para 94. That said, reading the reasons in light of the record does not permit the Court to simply manufacture new reasons that are not

given by the visa officer, or speculate as to what they might have been thinking: *Vavilov* at paras 95–97, citing *Komolafe v Canada (Citizenship and Immigration)*, 2013 FC 431 at para 11; *He* at para 20. A visa officer's reasons must set out the key elements of their analysis and be responsive to the core of the applicant's submissions on the most relevant points: *Nesarzadeh v Canada (Citizenship and Immigration)*, 2023 FC 568 at para 7.

III. Analysis

A. *Legislative framework*

[8] The "Super Visa" is a form of temporary resident visa [TRV] available to foreign nationals seeking to visit a child or grandchild who is a citizen or permanent resident of Canada. It is a multiple-entry TRV that can last up to ten years, with periods of authorized stay for each individual entry of originally up to two years, and now up to five years.

[9] The Super Visa program was introduced through "Ministerial Instructions regarding the Parent and Grandparent Super Visa," issued by the Minister of Citizenship and Immigration and the Minister of Public Safety pursuant to subsection 15(4) of the *Immigration and Refugee Protection Act*, SC 2001, c 27. That subsection requires IRCC officers examining an application to do so "in accordance with any instructions that the Minister may give." The Ministerial Instructions in respect of the Super Visa were first issued in December 2011, and were amended in July 2022.

[10] The Ministerial Instructions set out eligibility criteria for a Super Visa, including a medical examination, private medical insurance, and financial support from the host child or grandchild. They also confirm that to be eligible, the applicant must meet "all legislative requirements for a TRV." Those legislative requirements include section 179 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [*IRPR*], which provides that an officer shall issue a TRV if, following an examination, it is established that the applicant meets a series of criteria. For the purpose of this application, the relevant criterion is in paragraph 179(b), which requires the foreign national to establish that they "will leave Canada by the end of the period authorized for their stay […]."

B. *Ms. Nimrani's visa application*

[11] Ms. Nimrani is a citizen of India and is now 72 years old. Her daughter and granddaughter are Canadian permanent residents and her son also lives in Canada. Ms. Nimrani first applied for a Super Visa to visit them in early 2020, shortly after returning to India from living and working in Cambodia. That application was refused in March 2020 owing to concerns about her travel history, her family ties, the purpose of her visit, her limited employment prospects in India, and her current employment situation.

[12] Ms. Nimrani applied again for a Super Visa in November 2021. That application indicated her intention to enter Canada in December 2021 and leave in September 2022 after a Hindu celebration of her son's marriage. In support of her application, her daughter filed an "Explanation Letter," addressing the various concerns raised in the earlier refusal. That letter explained Ms. Nimrani's love of travel and underscored her extensive past trips and "very clean

and strong history of travel," noting that she had never overstayed in any country. It also explained that Ms. Nimrani had returned to India at the outset of the COVID-19 pandemic, and had since retired there. It described her social, economic, religious, and financial ties to India and reiterated the purpose of her intended visit to Canada, while clarifying that as a retiree, Ms. Nimrani was not looking for employment.

[13] Ms. Nimrani's second Super Visa application was refused in March 2022. The refusal letter sent by IRCC at that time cited concerns about her personal assets and financial status, and the purpose of her visit. Ms. Nimrani filed an application for leave and judicial review of that refusal. The judicial review application was settled on the basis that the refusal would be set aside and the Super Visa application re-determined by a different officer.

[14] In keeping with the settlement, Ms. Nimrani was given an opportunity to submit updated and additional documentation in support of her application. She did so on Sunday, July 17, 2022, submitting a variety of updated financial information, another invitation letter from her daughter, and a further "Explanation Letter" responding to the concerns about her financial status and the purpose of her visit raised in the March 2022 refusal letter.

C. *The decision under review*

[15] The following day, July 18, 2022, a visa officer again refused Ms. Nimrani's application for a Super Visa. As is typical, the officer's reasons for decision are reflected in both a letter that was sent to Ms. Nimrani and in notes in the Global Case Management System [GCMS].

[16] The refusal letter indicates that the officer was not satisfied that Ms. Nimrani would leave Canada at the end of her stay based on four factors: (i) she did not have significant family ties outside Canada; (ii) she had significant family ties in Canada; (iii) the length of her proposed stay in Canada; and (iv) the purpose of her visit, which was said not to be consistent with a temporary stay given the details provided in the application.

[17] The officer's GCMS notes describe the purpose of Ms. Nimrani's application as being to visit family for a period of 7 months and to attend the wedding of her son. The officer noted that Ms. Nimrani had lived and worked in the United Arab Emirates between 2005 and 2017, and in Cambodia between 2017 and 2020. They noted that Ms. Nimrani did not have any family ties to India since her parents were deceased, she was separated from her husband, and her two children lived in Canada, which the officer described as "strong pull factors to Canada." The officer observed that "[g]iven family ties or economic motives to remain in Canada, the client's incentives to remain in Canada may outweigh their ties to their home country," finding that Ms. Nimrani "does not exhibit any degree of sufficient establishment" in India. The officer therefore concluded that Ms. Nimrani had not demonstrated sufficient establishment or sufficient ties to motivate her return, and was not satisfied on balance that she was a *bona fide* visitor to Canada who would depart at the end of her authorized stay.

D. *The decision is not reasonable*

[18] I conclude that the visa officer's decision is unreasonable. The combination of (1) the failure to address several relevant positive factors raised by Ms. Nimrani in her application; and (2) the reference to two unsupported and unexplained factors as the basis for decision leaves the

Court unable to determine whether the visa officer accounted for the evidence before them and reasonably assessed Ms. Nimrani's application as a whole.

(1) Failure to address relevant positive factors

[19] As this Court has held, a visa officer assessing whether an applicant has shown they will leave Canada at the end of their authorized stay must consider the various "push" and "pull" factors that could lead the applicant to overstay their visa and stay in Canada, or that would encourage them to return to their home country: *Nesarzadeh* at para 9, citing *Chhetri v Canada (Citizenship and Immigration)*, 2011 FC 872 at para 14 and *Ocran v Canada (Citizenship and Immigration)*, 2022 FC 175 at para 23. An officer need not recite every single factor raised or considered, but must address at least the central issues raised by the applicant and those that justify their decision: *Vavilov* at paras 126, 128; *Jalili v Canada (Citizenship and Immigration)*, 2018 FC 1267 at paras 11–12.

[20] In the present case, Ms. Nimrani's application stressed two issues in seeking to show that she would leave Canada at the end of her stay: her prior history of respect for immigration laws during the course of years of extensive travel; and her social, economic, religious, and financial ties to India, where she had retired after years of living and working abroad. These issues were raised in response to refusals of her prior and current Super Visa applications and were directed specifically to the concern raised about the likelihood of her leaving Canada. They were supported by evidence in the form of travel documents and financial documents showing property ownership and investments in India.

[21] In their decision, the visa officer addressed only Ms. Nimrani's family ties in Canada and her establishment in India. On the latter, the officer focused exclusively on Ms. Nimrani's prior work outside India and her lack of immediate family in India. Beyond a passing, and unexplained, reference to "economic motives to remain in Canada," the officer referred neither to Ms. Nimrani's identified financial ties to India, nor to the fact that she had shown extensive previous compliance with the immigration laws of the numerous countries she had visited.

[22] In my view, these were sufficiently central aspects of Ms. Nimrani's application that they required consideration by the officer. The officer's failure to consider these factors leads to the impression that they focused on aspects of the application that raised concerns about Ms. Nimrani's departure from Canada, to the exclusion of submissions and evidence pointing in the opposite direction. With respect to Ms. Nimrani's travel history, the officer referred only to the negative aspects of that travel, namely the extent to which it undermined her establishment in India, without considering her submission that it showed her lengthy history of compliance with the terms of her permitted stays in other countries. With respect to the issue of financial ties to India, including her new home purchased there in 2020, the officer ignored this issue entirely, instead referring vaguely to unidentified "economic motives to remain in Canada."

[23] In oral submissions, the Minister referred to the jurisprudence of this Court with respect to travel history, suggesting that it is largely a neutral factor. However, while the Court has recognized that a *lack* of travel history is "at best a neutral factor," a history of past travel and associated compliance with immigration laws can be a positive factor supporting an applicant's status as a "legitimate international traveller": *Obeng v Canada (Citizenship and Immigration)*,

2008 FC 754 at para 13; *Najmi v Canada (Citizenship and Immigration)*, 2023 FC 132 at paras 18–19; *Punia v Canada (Citizenship and Immigration)*, 2017 FC 184 at para 30. Here, Ms. Nimrani expressly put forward her extensive travel history and compliance as a positive factor for consideration, but the officer appears to have ignored this submission entirely: *He* at para 30. This was not a case where the applicant's prior travel history was modest, such that brief or no reference to it might be justified: see, *e.g.*, *Gupta v Canada (Citizenship and Immigration)*, 2019 FC 1270 at para 39. Rather, Ms. Nimrani referred to and itemized numerous trips to over a dozen different countries within the past five years, including for visits to friends, family and temples; meditation and yoga; weddings; business trips and meetings; work; and holidays.

[24] I note that Ms. Nimrani also argues that it was unreasonable for the officer to have placed emphasis on her family ties in Canada in the context of a Super Visa, which is available exclusively when an applicant has family ties in Canada, and is designed expressly to strengthen the ties between the visitor and their family in Canada by promoting family reunification. While I recognize a certain incongruity in relying on the very qualification for a category of visa as a basis to refuse that visa, I agree with the Minister that since paragraph 179(b) of the *IRPR* remains a condition of every TRV, including a Super Visa, a visa officer is required to consider all relevant facts and factors, including the existence of family ties in Canada and in the country of origin, to assess whether they are satisfied the visa applicant will leave Canada by the end of their authorized stay.

(2) Unexplained factors

[25] As set out above, the refusal letter sent to Ms. Nimrani on July 18, 2022, said that her application was refused because she had not established she would leave Canada at the end of her stay, based on four factors. The first two, namely the absence of significant ties outside Canada and the existence of significant family ties in Canada, are discussed above. The remaining two factors are identified as being "the length of your proposed stay in Canada" and that "[t]he purpose of your visit to Canada is not consistent with a temporary stay given the details you have provided in your application." Reading these identified factors in light of the underlying GCMS notes and the record, the Court is unable to understand why the officer identified either of them as supporting their assessment under paragraph 179(b).

[26] The GCMS notes correctly state that the purpose of Ms. Nimrani's proposed visit was "to visit family for a period of 7 months and during that time to attend the wedding of her son." Beyond this, the notes do not refer to the length of the proposed stay and do not give any indication why it might be a reason to conclude Ms. Nimrani would not leave Canada. This is particularly so in the context of an application for a Super Visa, which at the time of the decision could have an overall length of up to ten years, with individual stays of up to two years.

[27] Similarly, the officer gives no indication why the stated purpose of the visit—to visit family and attend a family celebration—was "not consistent with a temporary stay." Again, this conclusion is all the more difficult to understand in the context of an application for a Super Visa.

[28] I appreciate that the reasons given in a refusal letter tend to be brief, and must be read in light of the underlying GCMS notes, which are an "integral part of the reasons": *Ezou v Canada (Citizenship and Immigration)*, 2021 FC 251 at paras 17–20, citing *Rabbani v Canada (Citizenship and Immigration)*, 2020 FC 257 at para 35 and *Ziaei v Canada (Citizenship and Immigration)*, 2007 FC 1169 at para 21. However, this does not mean that the refusal letter can be disregarded, that the GCMS notes can form the entirety of the reasons for decision, or that inexplicable statements in the refusal letter can simply be ignored: *Ezou* at paras 18, 20–21, 25. This is particularly so since the refusal letter constitutes the only explanation that an unsuccessful applicant receives unless they subsequently obtain the GCMS notes, typically through the judicial review process: *Ezou* at para 26.

[29] The importance of the refusal letter to an applicant is seen in this case through Ms. Nimrani's explanation letters. Those explanation letters serially address each of the factors stated to be of concern in the prior refusal letters. Ms. Nimrani clearly, and reasonably, understood the refusal letters to set out the reasons for which her applications were refused.

[30] The Minister contends that the given reasons about the length of the stay and the temporary nature of it are simply restatements of the officer's concern that Ms. Nimrani would not leave at the end of her authorized stay. I cannot agree. Notably, the refusal letter states that Ms. Nimrani had not established she would leave Canada "based on" the four listed factors. If two of those factors were simply restatements of the conclusion that Ms. Nimrani would overstay her visit, then the given reasons would be circular and illogical.

[31] The existence of these unsupported and unexplained factors in the refusal letter might not alone render the officer's decision unreasonable. However, the officer's identification of unexplained negative factors, together with their failure to address relevant positive factors, leads to the conclusion that the decision as a whole lacks the justification, transparency, and intelligibility required of a reasonable decision.

IV. Conclusion

[32] The application for judicial review is therefore allowed, and Ms. Nimrani's application for a Grandparent Super Visa is returned for a further redetermination by a different visa officer.

[33] Neither party proposed a question for certification as a serious question of general importance. I agree that no such question arises in the matter.

JUDGMENT IN IMM-8629-22

THIS COURT'S JUDGMENT is that

1. The application for judicial review is allowed. The decision of an officer of Immigration, Refugees and Citizenship Canada refusing Leela Nimrani's application for a temporary resident visa is set aside and her application is remitted for redetermination by a different officer.

"Nicholas McHaffie"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-8629-22
STYLE OF CAUSE:	LEELA NIMRANI v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	HELD BY VIDEOCONFERENCE
DATE OF HEARING:	MAY 11, 2023
JUDGMENT AND REASONS:	MCHAFFIE J.
DATED:	OCTOBER 31, 2023

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