Federal Court Cour fédérale

Date: 20231127

Docket: IMM-2427-22

Citation: 2023 FC 1583

Ottawa, Ontario, November 27, 2023

PRESENT: The Honourable Mr. Justice Ahmed

BETWEEN:

RAYKEL ADOLFO RODRIGUEZ ZAMBRANO

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Raykel Adolgo Rodriguez Zambrano, seeks judicial review of a decision of a visa officer (the "Officer") of Immigration, Refugees and Citizenship Canada ("IRCC") dated January 11, 2022, denying his temporary resident visa application pursuant to subsection 179(b) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 ("*IRPR*"). The Officer was not satisfied that the Applicant would leave Canada at the end of his stay.

[2] The Applicant submits that the Officer's decision failed to take into account the relevant evidence about his assets, family ties, and travel history.

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

II. **Facts**

A. *The Applicant*

[4] The Applicant is a 52-year-old citizen of Venezuela. He and his wife, Flor Maria Freites, married on February 2, 1990. They have two children: a daughter who lives with the family in Venezuela, and a son who lives and works in Ecuador.

[5] The Applicant has a 73-year-old mother who resides in Etobicoke, Ontario, and is a citizen of Canada. He also has a sister who resides in Canada.

[6] The Applicant sought to visit his mother in Canada from February 10 to February 28, 2022. In December 2021, the IRCC received his application for a temporary resident visa to Canada.

B. *Decision under Review*

[7] In a letter dated January 11, 2022, the Applicant's visa application was refused. The Officer's decision is largely contained in the Global Case Management System ("GCMS") notes, which form part of the reasons for the decision.

[8] On the Applicant's financial situation, the Officer states:

> …financial situation does not demonstrate that the applicant is sufficiently established that the proposed visit would be a reasonable expense. I note funds from inviter, however it is unusual in the region that 70+ parents pay for expenses for son who is grown up and married.

[9] On the Applicant's ties to Canada and Venezuela, the Officer states:

> - the client has strong family ties in Canada
> - the client is married, has dependents in their home country, but is not sufficiently established

[10] On the Applicant's travel history, the Officer states:

> … The applicant's travel history is not sufficient to count as a positive factor in my assessment.

[11] Weighing these factors, the Officer determined that the Applicant would not depart Canada at the end of his stay and refused his application.

III. **Issues and Standard of Review**

[12] The Applicant raises two issues: whether the Officer's decision is reasonable and procedurally fair. There is no merit to the procedural fairness argument. I will thus consider only the reasonableness of the Officer's decision.

[13] The standard of review is not disputed. The parties agree that the applicable standard of review for the merits of the decision is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16–17, 23–25) ("*Vavilov*"). I agree.

[14] Reasonableness is a deferential, but robust, standard of review (*Vavilov* at paras 12-13). 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 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 (*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).

[15] 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). The emphasis on reasonableness review is the reasons of the decision-maker, read "in light of the record and with due sensitivity to the administrative regime in which they were given" but not "assessed against a standard of perfection" (*Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 at para 61, citing *Vavilov* at paras 91, 103).

IV. **Analysis**

[16] The Applicant submits that the Officer's decision is unreasonable because it failed to take into account the relevant evidence of his family ties in Canada and Venezuela, personal assets and financial status, and his travel history. I agree. The decision is not justified in light of the law and facts that constrained it (*Vavilov* at paras 99-101).

[17] The Applicant submits that the Officer ignored the fact that he has a wife and daughter in Venezuela and a son in Ecuador, ignored guidance from the "Operational Manual 11 Regarding Temporary Residents" ("OP 11") in rendering the decision, and failed to consider the important objective of family reunification under the *Immigration and Refugee Protection Act*, SC 2001, c 27 ("*IRPA*").

[18] On the issue of financial status, the Applicant submits that the Officer's finding that the Applicant's mother would pay for his trip is unintelligible in light of evidence of her statement that she would not. He also submits the Officer ignored the fact that the Applicant submitted financial documents showing he had $5,000 to finance the trip.

[19] On the issue of past travel history, the Applicant submits that the Officer erred by not considering his trips to the Dominican Republic as a positive factor in his application. He cites jurisprudence from this Court and OP 11 in support of his contention.

[20] The Respondent submits that the Officer's decision is reasonable in light of the evidence on the record about the Applicant's family ties, finances, "Mothers from Latin America," and travel history.

[21] The Respondent submits that the Applicant is asking this Court to reweigh and reassess the evidence of family ties and that the Applicant had not established strong family ties to his wife and children that would sufficiently rebut the presumption that he would not leave at the end of his stay. The Respondent further maintains that the strength of family ties is but one consideration to be balanced in these applications, and that the Applicant's submissions about the relevant jurisprudence and the *IRPA* do not have merit.

[22] On the issue of finances, the Respondent submits that the Applicant is not correct about the record reflecting that he would pay for his own trip. The Respondent submits that the Applicant did not point to specific supporting documents proving that he would be the one paying for the trip. The Respondent further maintains the documents in the record are vague, outdated, and untranslated. The documents also do not, to the Respondent, reflect any financial obligations tying the Applicant to Venezuela.

[23] On the Respondent's issue of "Mothers from Latin America," the Respondent submits that visa officers are knowledgeable and expert in regional matters related to the assessment of visa applications from a specific region of the world, and thus the Officer's determination that mothers from this region do not generally pay their adult son's expenses does not represent a reviewable error. The Respondent also maintains that it is an unreasonable inference to state that the Officer was criticizing the family with this finding, and that this finding is nonetheless insufficiently central to the rationale of this decision such that it could represent a reviewable error.

[24] On the issue of travel history, the Respondent maintains that the Applicant is seeking to have this Court improperly reweigh and reassess evidence and that the Officer could reasonably find the travel history to be a "neutral factor."

(1) Family Ties in Venezuela and Canada

[25] The Officer acknowledges that the Applicant is married and has dependents in Venezuela, but concludes he is not "sufficiently established." I cannot see how this conclusion is justified and transparent. I adopt my colleague Justice McHaffie's holding that "[t]he Court, and Ms. Ali, are left to speculate as to why the officer concluded that Ms. Ali was 'not sufficiently established' in Bahrain after 15 years of marriage there. This does not demonstrate the justification, transparency, and intelligibility expected of an administrative decision" (*Ali v Canada (Citizenship and Immigration)*, 2023 FC 608 at para 9). The Court here too is left to speculate as to why this Officer concluded the Applicant was "not sufficiently established" after thirty-three years of marriage and having a family in Venezuela; and similarly, this conclusion

does not demonstrate the justification, transparency, and intelligibility required in an officer's decision.

[26] The Respondent contends that the Applicant "furnished nothing in his visa application to elaborate on the strength of those bonds [to his wife and children] or how they would help ensure he leaves." From this, and the fact that the children are adults, the Respondent maintains that it cannot be said that there was material obviously showing the Applicant would not depart Canada at the end of his stay. With respect, these submissions have no merit and deserves explicit repudiation. Accepting it would set a precedent divorced from reality, demanding an individual prove that having a wife of over three decades and two children together is not a sufficiently strong demonstration of family ties in-and-of-itself. I therefore disagree with the Respondent.

(2) Personal Assets and Financial Status

[27] The Officer's conclusion that the Applicant's financial situation does not demonstrate that he had sufficiently established that his trip to Canada would be a reasonable expense is similarly unjustified. In my view, two reviewable errors stem from the Officer's reasoning and conclusion on this matter.

[28] The first is that the Officer does not explain how this conclusion was reached. The record reflects that the Applicant had $5,000 in available funds for an eighteen-day trip to Canada. The record also contains banking information from the Applicant. If this evidence had not established that this trip was a reasonable expense, the Officer provides no explanation as to why. I note that the Respondent seeks to bolster the Officer's reasons, questioning the validity

and provenance of the bank statements and the $5,000. But this Court, in reviewing a decision, is evaluating what the reasons of that decision are (*Vavilov* at paras 83, 87), not what they could have been. And under *Vavilov*, a reviewing court must be satisfied that "there is [a] line of analysis within the given reasons that could reasonably lead the tribunal from the evidence before it to the conclusion at which it arrived" (*Vavilov* at para 102). In my view, no such analysis is given here.

[29] The second reviewable error is the Officer's characterization of what parents "in the region" do for their grown, married children. This reasoning represents a baseless characterization of the activity of a specific group of people, thereby approaching stereotyping. Such reasoning, by virtue of stereotyping relying upon no or discriminatory bases, can never be justified. I therefore find it troubling that the Respondent claims that such reasoning "as such, would not change the decision." In my view, the Officer deeming the mother's willingness to pay for the Applicant's visit to be "unusual," is done without fact and is acutely unreasonable.

(3) Travel History

[30] The Officer's conclusion that the Applicant's travel history was not sufficient to count as a positive factor in the assessment is unreasonable, as the reasons do not show how or why the Officer was reasonably lead from the Applicant's evidence of travel to and from the Dominican Republic on several occasions to the conclusion that this travel was insufficient to count as a positive factor (*Vavilov* at para 102). I also disagree with the Respondent's contention that the Officer appears to find the travel history as a neutral factor. The decision letter sent to the Applicant states that the Officer was not satisfied that he would leave Canada at the end of his

authorized stay based on, *inter alia*, his travel history. This Court has held that a prior history of leaving and returning to a country of residence may be a positive factor (*Afuah v Canada (Citizenship and Immigration)*, 2021 FC 596 at para 17, citing *Donkor v Canada (Citizenship and Immigration)*, 2011 FC 141 at para 9). Here, the Applicant has twice travelled to the Dominican Republic and returned to Venezuela. The Officer's reasons do not appear to take this fact into account in arriving at their conclusion and the decision in this regard is therefore unjustified (*Vavilov* at paras 99-101).

V. **Conclusion**

[31] This application for judicial review is granted. The Officer's decision is unreasonable, being unjustified with regard to the law and evidence that constrain it (*Vavilov* at paras 15, 99-101). No questions for certification were raised, and I agree that none arise.

JUDGMENT in IMM-2427-22

THIS COURT'S JUDGMENT is that:

1. The decision is set aside and the matter is to be returned for redetermination by a different officer.

2. There is no question to certify.

"Shirzad A."

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-2427-22
STYLE OF CAUSE:	RAYKEL ADOLFO RODRIGUEZ ZAMBRANO v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	BY VIDEOCONFERENCE
DATE OF HEARING:	SEPTEMBER 14, 2023
JUDGMENT AND REASONS:	AHMED J.
DATED:	NOVEMBER 27, 2023

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