



Date: 20240130

Docket: IMM-12339-22

Citation: 2024 FC 149

[ENGLISH TRANSLATION]

Ottawa, Ontario, January 30, 2024

PRESENT: The Honourable Mr. Justice Régimbald

BETWEEN:

NATACHA NOEL ST-VALIERE

Applicant

and

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The applicant is seeking judicial review of the decision of Immigration, Refugees and Citizenship Canada [IRCC] to refuse her application for a permanent resident card.

[2] IRCC refused the application for a permanent resident card because the applicant did not meet the requirements set out in paragraph 59(1)(c) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [IRPR], in particular because the applicant did not provide a primary identity document.

[3] For the following reasons, the application for judicial review is allowed.

II. Facts

[4] Natacha Noel St-Valiere [the applicant] is a citizen of Haiti who became a permanent resident of Canada on July 16, 2006.

[5] On October 7, 2021, the applicant submitted to IRCC an application for a permanent resident card. As proof of identity, she submitted the following two documents: (1) a signed statutory declaration in which she attests to her identity, and (2) a statutory declaration attesting to her identity and signed by her former spouse, who knew her prior to her arrival in Canada.

[6] On February 14, 2022, IRCC sent a procedural fairness letter to the applicant notifying her that she had to attach to her application one of the documents listed in paragraph 56(2)(c) of the IRPR. The letter specified that the applicant could attach a copy of her passport or a copy of her certificate of identity or a travel document issued by IRCC. This type of identification is provided for in subsection 50(1) of the IRPR. However, the procedural fairness letter contained no information regarding subsection 178(1) of the IRPR. That subsection states that if the applicant

does not hold the identity documents described in subsection 50(1) of the IRPR, legal test can be met by attaching to the application a document containing a reasonable and objectively verifiable explanation related to circumstances in the applicant's country of nationality or former habitual residence for the applicant's inability to obtain any identity documents. In addition to this explanation, the applicant must also attach a statutory declaration attesting to the applicant's identity and include a second statutory declaration attesting to the applicant's identity made by a person who, before the applicant's entry into Canada, knew the applicant or a family member of the applicant.

[7] In correspondence dated November 1, 2022, IRCC informed the applicant that her application for a permanent resident card had been refused because it failed to meet the requirements of paragraph 59(1)(c) of the IRPR, as the applicant had not satisfied the requirements of sections 56 and 57 as well as subsection 58(4) of the IRPR and had not provided a primary identity document. The reasons do not contain any further details.

III. Issue and standard of review

[8] The sole issue before the Court is whether IRCC's decision to refuse the application for a permanent resident card was reasonable.

[9] The applicable standard of review is reasonableness. A decision is reasonable if it is justified, transparent and intelligible and falls within a range of possible outcomes in respect of the facts and the law (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65

at para 99 [*Vavilov*]; *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 at paras 59–60 [*Mason*]).

IV. Analysis

A. *IRCC's decision is not justified, transparent or intelligible with respect to the application of section 178 of the IRPR*

[10] Section 59 of the IRPR sets out the requirements for the issuance of a new permanent resident card. Paragraph 59(1)(c) of the IRPR reads as follows:

<p>Issuance of new permanent resident card</p> <p>59 (1) An officer shall, on application, issue a new permanent resident card if</p> <p>...</p> <p>(c) the applicant complies with the requirements of sections 56 and 57 and subsection 58(4);</p>	<p>Délivrance d'une nouvelle carte de résident permanent</p> <p>59 (1) L'agent délivre, sur demande, une nouvelle carte de résident permanent si les conditions suivantes sont réunies :</p> <p>...</p> <p>c) le demandeur satisfait aux exigences prévues aux articles 56 et 57 et au paragraphe 58(4);</p>
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[11] Paragraph 59(1)(c) of the IRPR refers to section 56, which states that the application for a permanent resident card must include the following:

<p>Application for a card</p> <p>56 (2) An application for a permanent resident card must be made in Canada and include</p> <p>...</p>	<p>Demande de carte</p> <p>56 (2) La demande de carte de résident permanent doit être faite au Canada et comporter :</p> <p>...</p>
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<p>(c) a copy of</p> <p>(i) any document described in paragraphs 50(1)(a) to (h) — or, if the applicant does not hold one of those documents, any document described in paragraphs 178(1)(a) and (b) — that is currently held by the applicant or was held by the applicant at the time they became a permanent resident,</p> <p>...</p>	<p>c) une copie de l'une des pièces suivantes :</p> <p>(i) le document mentionné à l'un des alinéas 50(1)a) à h) ou, à défaut, le document mentionné à l'un des alinéas 178(1)a) et b), que détient le demandeur ou qu'il détenait à la date à laquelle il est devenu résident permanent,</p> <p>...</p>
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[12] Subparagraph 56(2)(c)(i) therefore sets out two options, to submit one of the documents mentioned in paragraphs 50(1)(a) to (h) or, if the applicant does not hold any of these documents, one of the documents mentioned in paragraphs 178(1)(a) and (b).

[13] Paragraphs 178(1)(a) and (b) state the following with respect to identity documents:

<p>Identity documents</p> <p>178 (1) An applicant who does not hold a document described in any of paragraphs 50(1)(a) to (h) may submit with their application</p> <p>(a) any identity document issued outside Canada before the person's entry into Canada; or</p> <p>(b) if there is a reasonable and objectively verifiable explanation related to circumstances in the applicant's country of nationality or former habitual residence for the applicant's inability to obtain any identity documents, a statutory declaration made by the applicant</p>	<p>Pièces d'identité</p> <p>178 (1) Le demandeur qui ne détient pas l'un des documents mentionnés aux alinéas 50(1)a) à h) peut joindre à sa demande l'un ou l'autre des documents suivants :</p> <p>a) toute pièce d'identité qui a été délivrée hors du Canada avant son entrée au Canada;</p> <p>b) dans le cas où il existe une explication raisonnable et objectivement vérifiable, liée à la situation dans le pays dont il a la nationalité ou dans lequel il avait sa résidence habituelle, de son incapacité d'obtenir toute pièce</p>
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<p>attesting to their identity, accompanied by</p> <p>(i) a statutory declaration attesting to the applicant's identity made by a person who, before the applicant's entry into Canada, knew the applicant, a family member of the applicant or the applicant's father, mother, brother, sister, grandfather or grandmother, or</p> <p>(ii) a statutory declaration attesting to the applicant's identity made by an official of an organization representing nationals of the applicant's country of nationality or former habitual residence.</p>	<p>d'identité, une affirmation solennelle dans laquelle il atteste de son identité et qui est accompagnée :</p> <p>(i) soit d'une affirmation solennelle qui atteste l'identité du demandeur faite par une personne qui, avant l'entrée de celui-ci au Canada, a connu le demandeur, un membre de sa famille, son père, sa mère, son frère, sa sœur, son grand-père ou sa grand-mère,</p> <p>(ii) soit d'une affirmation solennelle qui atteste l'identité du demandeur faite par le représentant d'une organisation qui représente les ressortissants du pays dont le demandeur a la nationalité ou dans lequel il avait sa résidence habituelle.</p>
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[14] In accordance with subparagraph 56(2)(c)(i), and as the applicant did not hold any of the documents listed at paragraphs 50(1)(a) to (h), she submitted a statutory declaration attesting to her identity and a second statutory declaration made by a person, her former spouse, who had known her before her entry into Canada.

[15] The applicant also submitted a letter to address the condition set out in paragraph 178(1)(b) stating that a statutory declaration may be submitted as an identity document only if there is a reasonable and objectively verifiable explanation of her inability to obtain any identity documents. In that letter, the applicant explained that she suffers from mental health issues and that she was hospitalized at the Institut Philippe Pinel for a period.

[16] In her memorandum, counsel for the respondent submits that paragraphs 178(1)(a) and (b) are not applicable in this case, as they are found under Division 5 of the IRPR, entitled “Protected Persons — Permanent Residence”, and therefore apply only to protected persons and not to the applicant, who was sponsored in Canada by her former spouse.

[17] During oral submissions, counsel for the respondent altered course and indicated that paragraphs 178(1)(a) and (b) were incorporated into subparagraph 56(2)(c)(i) and as such also applied to paragraph 59(1)(c), therefore allowing for the issuance of the permanent resident card.

[18] In my view, Parliament clearly states in subparagraph 56(2)(c)(i) that an applicant for a permanent resident card may submit one of the documents mentioned in paragraphs 50(1)(a) to (h), or, if the applicant does not hold any of these documents, one of the documents mentioned in paragraphs 178(1)(a) and (b). Not only is subparagraph 56(2)(c)(i) sufficiently clear, but the interpretation proposed by the parties is consistent with the “modern principle” of statutory interpretation, is justified according to the context and the language chosen by the legislature (*Mason* at paras 67, 69; *Vavilov* at paras 68, 110), and also respects the terms of section 12 of the *Interpretation Act*, RSC 1985, c I-21, which requires provisions to be interpreted as remedial and to be given such fair, large and liberal construction and interpretation as best ensures the attainment of their objects.

[19] However, counsel for the respondent proposed a new argument in her memorandum in support of dismissing the application for judicial review.

[20] According to the respondent, the applicant failed to meet the requirements of paragraph 59(1)(d) because she neither returned her old permanent resident card nor submitted a statutory declaration attesting to the fact that her old card had been lost, stolen or destroyed, in accordance with the requirements listed on IRCC's website. The respondent therefore submits that the applicant did not satisfy the regulatory requirements for a new permanent resident card because her application was incomplete. Paragraph 59(1)(d) of the IRPR reads as follows:

Issuance of new permanent resident card	Délivrance d'une nouvelle carte de résident permanent
<p>59 (1) An officer shall, on application, issue a new permanent resident card if</p> <p>...</p> <p>(d) the applicant returns their last permanent resident card, unless the card has been lost, stolen or destroyed, in which case the applicant must produce all relevant evidence in accordance with subsection 16(1) of the Act.</p>	<p>59 (1) L'agent délivre, sur demande, une nouvelle carte de résident permanent si les conditions suivantes sont réunies :</p> <p>...</p> <p>d) le demandeur rend sa dernière carte de résident permanent, à moins qu'il ne l'ait perdue ou qu'elle n'ait été volée ou détruite, auquel cas il doit donner tous éléments de preuve pertinents conformément au paragraphe 16(1) de la Loi.</p>

[21] First, the impugned decision of November 1, 2022, is silent with respect to this requirement and, in particular, as to whether the documents filed were insufficient. The reasons for the decision cite paragraph 59(1)(c) of the IRPR, but not paragraph 59(1)(d), which contains the obligation to provide a statutory declaration when a permanent resident card is lost.

[22] However, at the hearing, it was demonstrated that the prescribed form (IMM 5444) to be completed in order to apply for a permanent resident card includes, in section “H”, an opportunity for the applicant to make a statutory declaration with respect to the loss of their permanent resident card and to provide any relevant details. In this case, the applicant had completed and signed this section.

[23] In an affidavit, the respondent filed in evidence a special form allowing an applicant to make a statutory declaration to the effect that their permanent resident card had been lost, stolen, destroyed or not received. The respondent submits that the applicant did not fill out this particular form. On the other hand, in an affidavit in response, the applicant filed the documents identified on IRCC’s website, which indicate the procedure to follow in applying for a permanent resident card. It appears from these documents that the form specifically prescribed for a statutory declaration concerning a permanent resident card that has been lost, stolen, destroyed or not received is only necessary if the person making the declaration has been waiting for more than six weeks for the permanent resident card (after applying) or if their card has been lost, stolen or destroyed but the person does not want a new card right away. As the applicant was applying for her card, it was open to her to make her declaration in section “H” of the application form, as she did, rather than using the prescribed form.

[24] Once again, IRCC’s reasons for the decision are silent on this point, with IRCC relying only on paragraph 59(1)(c) to refuse the applicant’s application for a permanent resident card,

while the requirement for a statutory declaration upon the loss of a permanent resident card is set out in paragraph 59(1)(d). The applicant therefore satisfied the test set out in paragraph 59(1)(d).

[25] The respondent then put forward another argument at the hearing. According to the respondent, the permanent resident card cannot be issued to the applicant because, it now being accepted that paragraph 178(1)(b) applies to her situation, the applicant did not attach to her application a document providing “a reasonable and objectively verifiable explanation related to circumstances in the applicant’s country of nationality or former habitual residence for the applicant’s inability to obtain any identity documents”. [Emphasis added.]

[26] In other words, for an applicant to have recourse to paragraph 178(1)(b) and attach a statutory declaration attesting to their identity, the person must first provide a reasonable and objectively verifiable explanation of why they cannot obtain proof of identity in their country of origin.

[27] It is undisputed that the applicant provided an explanation for why she was unable to obtain an identity document. However, the reasons given are not specifically related to the circumstances in her country of origin. In this respect, the application may be incomplete.

[28] However, the decision is solely based on the applicant’s failure to include an identity document. No reasons were provided as to whether the applicant could meet the criteria of paragraph 178(1)(b).

[29] The Court is puzzled by the respondent's initial position, namely that paragraphs 178(1)(a) and (b) of the IRPR are not applicable in this case. The respondent's position only changed at the beginning of the hearing. Absent specific reasons relating to this issue, it is impossible for the Court to determine whether IRCC analyzed the issue and considered the documents submitted in this light, or whether, like the respondent, IRCC was starting from the position that paragraph 178(1)(b) was unavailable to the applicant.

[30] For this reason, IRCC's reasons are insufficient, and the application for judicial review is allowed.

[31] Moreover, the Court notes that IRCC sent a procedural fairness letter to the applicant, asking her to provide an "identity document". The applicant did not respond to this, most likely believing that she had met the criterion set out in paragraph 178(1)(b), because she did not have any identity documents. However, the procedural fairness letter did not address all of the applicant's omissions with respect to the documents required by paragraph 178(1)(b), including the absence of a reasonable and objectively verifiable explanation related to the situation in the country of origin, and why it was impossible for the applicant to obtain an identity document. The failure to address this point in the procedural fairness letter suggests that IRCC did not consider this issue, possibly taking the position, like the respondent prior to the hearing, that paragraph 178(1)(b) was not applicable in this case. A procedural fairness letter offers a person an additional chance to complete their file. Such a letter must therefore inform the person of all the omissions that need to be remedied.

[32] In this case, IRCC informed the applicant that her application had to include an identity document. IRCC did not state that any information required to meet the criterion set out in paragraph 178(1)(b) was missing. It is up to IRCC, as the decision maker, to interpret paragraph 178(1)(b) and determine its scope. Insofar as IRCC was of the opinion that the documentation was incomplete in this respect because information was missing, IRCC was required to notify the applicant of this in its procedural fairness letter of February 14, 2022.

[33] Fortunately, because the Court is allowing the application for judicial review and remitting the decision to IRCC for reconsideration, IRCC will be able to interpret paragraph 178(1)(b) and provide specific reasons to the applicant. Also, to the extent that IRCC is of the opinion that the current documentation filed by the applicant is insufficient to meet the criterion set out in paragraph 178(1)(b), it is open to IRCC to issue a second procedural fairness letter if necessary, to allow the applicant to complete her file (as IRCC did previously to allow the applicant to attach an identity document).

[34] Accordingly, IRCC's decision is unreasonable because it refuses the application for a permanent resident card under subparagraph 56(2)(c)(i) of the IRPR on the grounds of the failure to provide an "identity document" (under paragraphs 50(1)(a) to (h)). On the other hand, the decision fails to explain how the criterion set out in paragraph 178(1)(b), applicable to situations in which an applicant does not have an "identity document", is not satisfied in this case.

[35] The failure to provide reasons regarding the application of paragraph 178(1)(b) means that IRCC's decision is not sufficiently justified, transparent or intelligible to allow the Court to ensure that all the criteria that could allow the applicant to obtain her permanent resident card were considered.

V. Conclusion

[36] For these reasons, the application for judicial review is allowed.

[37] No question of general importance for certification was proposed, and none will be certified.

JUDGMENT in IMM-12339-22

THIS COURT’S JUDGMENT is as follows:

1. The application for judicial review is allowed.
2. The file is returned to IRCC for redetermination by another decision maker.
3. No question is certified.

“Guy Régimbald”

Judge

Certified true translation
Francie Gow

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-12339-22

STYLE OF CAUSE: NATACHA NOEL St-VALIERE v MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: MONTRÉAL, QUEBEC

DATE OF HEARING: JANUARY 23, 2024

JUDGMENT AND REASONS: RÉGIMBALD J

DATED: JANUARY 30, 2024

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