

Federal Court



Cour fédérale

Date: 20240229

Docket: IMM-7539-23

Citation: 2024 FC 337

Ottawa, Ontario, February 29, 2024

PRESENT: Madam Justice Azmudeh

BETWEEN:

RAJANDEEP KAUR

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Rajandeep Kaur [the “Applicant”] is seeking a Judicial Review under section 72(1) of the *Immigration and Refugee Protection Act* [IRPA] concerning the rejection of her temporary resident permit (“TRP”) application. The Judicial Review is dismissed for the following reasons.

[2] The Applicant is a 24-year-old citizen of India. She initially arrived in Canada on a study permit valid from June 2018 to July 2021. Her plan was to study Health Sciences at Langara College in BC. She became pregnant around December 2020. After unsuccessfully trying to

renew her study permit, in May 2022, the Applicant applied for a TRP so that she could pursue a new two-year program of studies at a new college. She sought the TRP on the basis that due to her difficult pregnancy, she was unable to complete her studies, maintain her status in Canada, and that the TRP would be in the best interest of her child (“BIOC”), a daughter born in Canada on August 24, 2021. The Applicant had provided no information about her spouse, with the exception that he was born in India and that he was neither a Canadian citizen nor a permanent resident.

[3] An immigration officer (the “Officer”) refused the TRP application. The Officer referenced all the documents that they had reviewed and noted that there was little information regarding the Applicant’s past studies and little evidence regarding the spouse’s circumstances. The Officer found that there was no indication that the Applicant and her spouse could not return to India with their child and for her to apply for a study permit outside Canada. The Officer also noted that the baby was born three years after the Applicant first entered Canada for studies, but that there was no evidence of any study. Ultimately the Officer decided that “I find no exceptional or compelling reasons exist to justify a temporary stay or the issuance of a temporary resident permit, pursuant to A24(1)”.

[4] In addition, in the TRP Decision, the Officer provided the following reasons for refusal:

- The Applicant was seeking the TRP so that she could study at Coquitlam College; however, the Officer was concerned that there was no evidence regarding the Applicant’s previous studies at Langara and whether she had followed the conditions of her previous study permit by attending her program; and
- With respect to BIOC considerations, there was no evidence submitted in respect of the spouse’s circumstances in Canada. The Officer found that there was no evidence indicating that the Applicant’s family could not return to India together and that the child’s best interest would be for the family to return to India where they both have authorization to live.

II. Issues and Standard of Review

[5] This Application for Judicial Review raises two main issues:

- a) Was the Officer's decision unreasonable?
- b) Was there a breach of procedural fairness?

[6] Reasonableness review is a deferential and disciplined evaluation of whether an administrative decision is transparent, intelligible and justified: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65, [2019] 4 SCR 653 [*Vavilov*], at paras 12-13 and 15; *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21[*Mason*], at paras 8 and 63.

[7] I have started by reading the reasons of the decision-maker in conjunction with the record that was before them holistically and contextually. As guided by *Vavilov*, at paras 83, 84 and 87, as the judge in reviewing court, I have focused on the reasoning process used by the decision-maker. I have not considered whether the decision-maker's decision was correct, or what I would do if I were deciding the matter itself: *Vavilov*, at para 83; *Canada (Justice) v D.V.*, 2022 FCA 181, at paras 15 and 23.

[8] A reasonable decision is based on an internally coherent and rational chain of analysis and is justified in relation to the facts and law that constrained the decision-maker: *Vavilov*, esp. at paras 85, 91-97, 103, 105-106 and 194; *Canada Post Corp v Canadian Union of Postal Workers*, 2019 SCC 67, [2019] 4 SCR 900, at paras 2, 28-33 and 61; *Mason*, at paras 8, 59-61 and 66. 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.

[9] The issue of procedural fairness is to be reviewed on the correctness standard (*Mission Institution v Khela*, 2014 SCC 24 at para 79; *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 [*Canadian Pacific Railway Company*] at paras 37-56; *Canadian Association of Refugee Lawyers v Canada (Immigration, Refugees and Citizenship)*, 2020 FCA 196 at para 35). The central question for issues of procedural fairness is whether the procedure was fair having regard to all of the circumstances, including the factors enumerated in *Baker v Canada (Minister of Citizenship and Immigration)*, 1999 CanLII 699 (SCC), [1999] 2 SCR 817 at paras 21-28 (*Canadian Pacific Railway Company* at para 54).

III. Legislative Overview

[10] The following sections of the IRPA are relevant:

Temporary resident permit

24 (1) A foreign national who, in the opinion of an officer, is inadmissible or does not meet the requirements of this Act becomes a temporary resident if an officer is of the opinion that it is justified in the circumstances and issues a temporary resident permit, which may be cancelled at any time.

Permis de séjour temporaire

24 (1) Devient résident temporaire l'étranger, dont l'agent estime qu'il est interdit de territoire ou ne se conforme pas à la présente loi, à qui il délivre, s'il estime que les circonstances le justifient, un permis de séjour temporaire — titre révocable en tout temps.

IV. Analysis

A. *Was the Officer's decision reasonable?*

[11] Section 24(1) of IRPA is designed to make TRP an exception to the rule. TRPs are designed to temper the potentially harsh application of the IRPA when there are compelling

circumstances; they are not designed as an alternative path for foreign nationals to apply for study permits (*Farhat v Canada (MCI)*, 2006 FC 1275 at para 2).

[12] The onus is on the Applicant to provide sufficient evidence to show that applying an exception to the rule is justified. The material must provide compelling reasons for the Applicant to be in Canada that outweigh any risks posed to the health and safety of Canadians. Even the most generous interpretation of this section by this Court have required something more than mere inconvenience (*Ju v Canada (MCI)*, 2021 FC 669 at paras 21-22; *Bhamra v Canada (MCI)*, 2020 FC 482 at para 22).

[13] TRPs provide a way for otherwise inadmissible foreign nationals to enter or remain in Canada if they are able to satisfy an officer that their presence in Canada is justified. The TRP regime is therefore exceptional. Under this regime, TRPs must be “issued cautiously, as they grant their bearers more privileges than other temporary statuses”. Accordingly, the decision to grant a TRP involves a high degree of discretion and considerable deference is owed to the deciding officer. A decision regarding a TRP must be “highly irregular” to justify intervention on judicial review (*Friesen Letkeman v Canada (MCI)*, 2022 FC 1396 at para 38; *Vaguedano Alvarez v Canada (MCI)*, 2011 FC 667 at paras 16-18; *Arora v Canada (MCI)*, 2018 FC 448 at para 4).

[14] The reasonableness of the Officer’s decision must therefore be assessed in the legal context of the TRP being temporary and being exceptional. Here is a summary of relevant facts and omissions before the Officer that formed the basis of their decision to refuse the TRP:

- Applicant had a study permit since June 2018 that was valid until July 2021. As a student, she was expected to study at Langara during this period. Her daughter was born in August 2021, meaning that she was not pregnant until late fall 2020. Yet, she did not file a single document to substantiate her studies even before the start of her difficult pregnancy.
- The Applicant had provided a marriage certificate to her husband, also born in India, and a birth certificate for their daughter.
- The Applicant provided a number of medical invoices from Abbotsford Maternity Group and the billing dates of August 6, 13, 23 and 24, 2021 and September 1, 2021. Evidence of prescription medication was also provided.
- The Applicant filed a medical certificate for Employment Insurance showing that pregnancy back spasms were present and that she could not work from January 1 to June 15, 2021. There was no information on whether she had asked Langara for any accommodation due to her condition.
- The Applicant filed a document showing that she was accepted to attend Coquitlam College and that she had paid the first semester's tuition fee.
- On her husband, the Applicant had only provided that he was also a foreign national born in India. The Applicant had also provided a note by Dr. Grover who had indicated she had minimal support in Canada and that the doctor worried about adverse clinical outcomes without much support for six months after delivery.
- On the BIOC, the only evidence the Applicant had provided were the following statements, which were to be assessed in the context of a TRP application requesting status from May 10, 2022, to November 10, 2022:

- On the letter by her representative: “at this time, we would like to seek your compassion and consideration in providing our client a TRP and study permit so t hat she can stay in Canada with her daughter who is a Canadian Citizen.”

[15] On her letter: “Moreover, the presence of both the parents is must for the best interest of our daughter who is a Canadian Citizen.” The Applicant argued that the Officer refusing the TRP had applied the unreasonably high threshold of “compelling reasons” as opposed to assessing whether it would be “reasonably justifiable”. I find that this is a mischaracterization of the Officer’s reasons who has clearly stated: “I find no exceptional or compelling reasons exist to justify temporary stay or the issuance of a temporary resident permit, pursuant to A24(1)” (my emphasis).

[16] Moreover, in this case, there is little evidence to form the basis of an exception to the rule even with the lower threshold in mind. The Officer carefully reviewed the totality of the evidence and provided a detailed rationale for how they reached this conclusion. They took the Applicant’s evidence into account, including on her difficult pregnancy and weighed it against lack of any evidence on her studies, including for the period well before the pregnancy. The BIOC was assessed in the context of evidence on lack of support in Canada and both parents being from India. I agree with the Respondent that it would have been unreasonable for the Officer to apply the legal jurisprudence developed on the BIOC in the context of permanent residence applications.

[17] The Officer provided a transparent, justifiable and intelligible set of reasons. The decision was therefore reasonable.

B. *Did the Officer reach the decision in a procedurally fair manner?*

[18] The Applicant argues that the Officer ought to have issued a fairness letter when they commented that they did not know about the spouse's status in Canada. This is because the Applicant had answered to all the relevant questions on the TRP application. I disagree. There is no factual dispute that the spouse is a foreign national and that the Officer's reference to his status was in the context of assessing whether there are exceptional circumstances contemplated by the TRP application. In this context, the onus is on the Applicant to provide the relevant evidence and the Officer did not have a duty to solicit further information.

[19] The Applicant also argues that the officer ignored the evidence on her acceptance into Coquitlam College and the fact that she had paid the tuition fee of her first semester. In fact, the Officer explicitly mentions Coquitlam College but does not give it much weight. It is not for this Court to reweigh the evidence. In any event, in light of the Applicant's lack of evidence for her past studies, it was neither unreasonable nor procedurally unfair not to give it much weight.

[20] The Applicant also argues that the delay of more than one year in deciding the TRP application amounted to a breach of procedural fairness. If anything, the Applicant benefited from this delay and she has not shown any evidence of prejudice.

[21] I therefore find that the Officer reached their decision in a procedurally fair manner.

V. Conclusion

[22] The Officer's decision is reasonable and reached in a procedurally fair manner. The application for judicial review is therefore dismissed.

[23] Neither party proposed a question for certification and I agree that none arises in this matter.

JUDGMENT IN IMM-7539-23

THIS COURT'S JUDGMENT is that

1. The Judicial Review is dismissed.
2. There is no certified question.

"Negar Azmudeh"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-7539-23

STYLE OF CAUSE: RAJANDEEP KAUR v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: VANCOUVER, BRITISH COLUMBIA

DATE OF HEARING: FEBRUARY 23, 2024

**REASONS FOR JUDGMENT
AND JUDGMENT:** AZMUDEH J.

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