Federal Court  Cour fédérale

Date: 20240418

Docket: IMM-6092-23

Citation: 2024 FC 599

Ottawa, Ontario, April 18, 2024

PRESENT: The Honourable Madam Justice Kane

BETWEEN:

HOUMAN DAMANGIR,
SHAHRAM LALEH,
REZA DAMANGIR,
SHAHRAM MAHMOUDZADEH
HASHTROUDI AND HADI DADPOOR

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The Applicants – Houman Damangir, Shahram Laleh, Reza Damangir, Shahram Mahmoudzadeh Hashtroudi [Mr. Hashtroudi] and Hadi Dadpoor – seek judicial review of decisions of a Visa Officer [the Officer] refusing each of their applications for permanent residence as members of the Start-up Business Class.

[2] The applications for leave and for judicial review with respect to the five applicants in Court files IMM-6092-23, IMM-6096-23, IMM-6098-23, IMM-6099-23, and IMM-6101-23 were consolidated pursuant to Rule 105 of the *Federal Courts Rules*, SOR/98-106 and have been considered based on the same record.

[3] The Officer found that Mr. Hashtroudi failed to answer all questions truthfully as required by subsection 16(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the Act] and as a result, was inadmissible to Canada in accordance with paragraph 41(a) of the Act.

[4] The Officer refused the visas of the other four Applicants in accordance with subsection 98.08(2) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [the Regulations]. The Regulations provide that if one applicant in a group of applicants under the Start-up Business Class program is refused a permanent residence visa for any valid reason, the remaining applicants in the group do not meet the requirements of the Class and their permanent residence visas must be refused.

[5] For the reasons that follow, the Application is dismissed. The Officer did not breach the duty of procedural fairness owed in the circumstances and the Officer's decision is reasonable.

I. Background

[6] In May 2020, the Applicants received a Start-up Business Class Commitment Certificate and Letter of Support from a designated business incubator, Spark Commercialization and Innovation Centre, based in Oshawa, Ontario.

[7] In June 2020, each applicant submitted an application for a permanent residence visa under the Start-up Business Class program administered by Immigration, Refugees and Citizenship Canada [IRCC].

[8] In September 2020, the Applicants co-founded and incorporated their business in Canada, "Civil Costimator".

[9] On March 24, 2023, the Officer reviewing Mr. Hashtroudi's application sent him a letter identifying concerns about his application [the procedural fairness letter]. The Officer noted:

> - You did not declare any of your refusals to Canada in your Schedule A form.
>
> - Every refusal to Canada on file for you and your family had intent to reside in Quebec therefore we have concerns of your intent to reside outside of Quebec.
>
> - You did not provide a business plan sufficiently explaining essential operations to be conducted in Canada.
>
> - You did not provide any intent to actively and ongoingly manage the business in Canada as well as any intent to incorporate in Canada after attaining permanent residence status.
>
> - You may not meet the requirements of the start-up business class, because I am concerned that your primary purpose for entering into a commitment with the designated entity is for the purpose of acquiring a status or privilege under the Act. You have valid work permit which you have not actively used to start business operations in Canada although you are considered an essential member of the business.

[10] Mr. Hashtroudi's representative responded on his behalf. The representative noted that Mr. Hashtroudi had previously applied to the Quebec Investor program, however, the processing

of this application had been suspended (i.e., not refused) due to the large volume of applicants. The response stated:

> Our client applied for the Quebec Investor program and received a file number (KA000007085) on August 20, 2019. Subsequently, on November 01, 2019, he found out that the Quebec Investor program have been suspended due to nearly 20,000 applications to be processed. The application was not refused and still are waiting for a response from the Quebec government if an interview is needed or if the case will be processed further. Our client sent a request last year to his lawyer to close the file and get a refund for the processing fee. Our client has no intention of residing in Quebec.
>
> Question (d) in Schedule A specifically asks if any application for an immigrant or permanent residence visa including a CSQ (Certificate de Selection du Quebec) been refused, and in our client's case there have not been any refusals, or any decision made nor the process of his file. Schedule 5, the declaration of intent to reside in Quebec has not been submitted by the applicant, since this form is for federal processing.

[11] However, the response did not disclose that Mr. Hashtroudi had been refused a Temporary Resident Visa [TRV] in 2019.

II. The Decision

[12] By letters dated April 18, 2023, the Officer advised each applicant that their application for permanent residence was refused. The letter sent to Mr. Hashtroudi and the Global Case Management System [GCMS] notes constitute the decision and reasons with respect to his application.

[13] The Officer found that Mr. Hashtroudi was inadmissible to Canada for failing to comply with subsection 16(1) (obligation to answer truthfully) and paragraph 41(a) (non-compliance

with the Act is a ground for inadmissibility) of the Act due to his failure to disclose his TRV refusal in 2019.

[14] The Officer cited the applicable provisions of the Act, which are reproduced below:

Obligation — answer truthfully	**Obligation du demandeur**
16 (1) A person who makes an application must answer truthfully all questions put to them for the purpose of the examination and must produce a visa and all relevant evidence and documents that the officer reasonably requires.	**16 (1)** L'auteur d'une demande au titre de la présente loi doit répondre véridiquement aux questions qui lui sont posées lors du contrôle, donner les renseignements et tous éléments de preuve pertinents et présenter les visa et documents requis.
Non-compliance with Act	**Manquement à la loi**
41 A person is inadmissible for failing to comply with this Act	**41** S'agissant de l'étranger, emportent interdiction de territoire pour manquement à la présente loi tout fait — acte ou omission — commis directement ou indirectement en contravention avec la présente loi et, s'agissant du résident permanent, le manquement à l'obligation de résidence et aux conditions imposées.
(a) in the case of a foreign national, through an act or omission which contravenes, directly or indirectly, a provision of this Act; and	
(b) in the case of a permanent resident, through failing to comply with subsection 27(2) or section 28.	

[15] The Officer explained that their decision was based on Mr. Hashtroudi's failure to declare "any of [his] refusals to Canada" in Schedule A or in his response to the procedural fairness letter, and his lack of an explanation for his 2019 TRV refusal.

[16] The Officer noted that Mr. Hashtroudi was asked to provide:

> An explanation to address my concerns for your omission of prior refusal to Canada on your Schedule A form as per subsection 16(1) and 41(a) of the *Immigration and Refugee Protection Act*.

[17] The Officer then found:

> You did not provide any explanation on your TRV refusal in 2019/10/22.
>
> I am satisfied that you do not meet Start-up Business Class requirements prescribed by subsection 16(1) and 41(a) of the *Immigration and Refugee Protection Act*. I am therefore refusing your application.

[18] The GCMS notes also refer to subsection 16(1) and 41(a) of the Act and state:

> PA failed to provide an explanation to address my concerns of omission and untruthfulness in PFL response. ***FINAL DECISION*** Applicant does not meet IRPA requirements. Application refused.

[19] The Officer found that the other four Applicants were also inadmissible, noting for each:

> Another applicant in respect to the same business as yours (identified as essential to the business in the commitment) has been refused a permanent resident visa. Therefore, you have not met the requirements of subsection 98.01(2), as described in subsection 98.08(2) of IRPR. You are therefore not a member of the Start-up Business Class, and your application for permanent residence in Canada is refused.

III. Issues and Standard of Review

[20] The Applicants submit that the Officer's decision should be set aside because the Officer breached the duty of procedural fairness and that the decision is unreasonable.

[21] Issues of procedural fairness require the Court to determine whether the procedure followed by the decision-maker is fair having regard to all of the circumstances. The Court must ask "with a sharp focus on the nature of the substantive rights involved and the consequences for an individual, whether a fair and just process was followed" (*Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54). The scope of the duty of procedural fairness is variable and is informed by several factors established in *Baker v Canada (Minister of Citizenship and Immigration)*, 1999 CanLII 699 (SCC), [1999] 2 SCR 817 at para 21 [*Baker*]. The factors include, where applicable: the nature of the decision, the nature of the statutory scheme, the importance of the decision to the person affected, the legitimate expectations of that person, and the choice of procedure made by the decision-maker.

[22] The Supreme Court of Canada reiterated that procedural fairness is based on the principle that individuals affected by decisions should have the opportunity to present their case and to have decisions affecting their rights and interests made in a fair and impartial and open process "appropriate to the statutory, institutional, and social context of the decision" (*Baker* at para 28).

[23] Based on the application of the *Baker* factors, the jurisprudence has established that the duty of procedural fairness owed to applicants for visas is at the lower end of the spectrum. However, where there is a resulting finding of misrepresentation pursuant to section 40 of the Act, the jurisprudence has established that, given the consequences of a such a finding (i.e., a five-year ban on re-applying), the duty owed is somewhat elevated (see for example, *Chahal v Canada (Citizenship and Immigration)*, 2022 FC 725 at paras 21-22). No finding of misrepresentation was made in the present case.

[24] Whether the decision is reasonable is reviewed in accordance with the principles set out in *Canada (Minister of Citizenship and Immigration v Vavilov*, 2019 SCC 65 [*Vavilov*]. 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 paras 85, 102, 105–07). The court does not assess the reasons against a standard of perfection (*Vavilov* at para 91). A decision should not be set aside unless it contains "sufficiently serious shortcomings ... such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency" (*Vavilov* at para 100).

IV. The Applicants' Submissions

[25] The Applicants argue that a procedural fairness letter must give an applicant sufficient information to permit them to provide a meaningful response (citing *Kaur v Canada (Citizenship and Immigration)*, 2020 FC 809 at para 42; *Pham v Canada (Citizenship and Immigration)*, 2022 FC 793 at para 32 [*Pham*]; *Singh v Canada (Citizenship and Immigration)*, 2023 FC 904 at paras 22-23 [*Singh*]). They submit that the procedural fairness letter did not meet this standard.

[26] The Applicants submit that the Officer breached the duty of procedural fairness by failing to disclose the Officer's specific concern and, in turn, denying Mr. Hashtroudi an opportunity to meaningfully respond. They argue that the procedural fairness letter noted only a general concern and did not specifically mention Mr. Hashtroudi's TRV refusal and, as a result, Mr. Hashtroudi did not know "the case to meet". They submit that the Officer only raised the 2019 TRV refusal in the decision letter. They add that once alerted, Mr. Hashtroudi would have investigated this refusal and could have provided an explanation; however, the decision had already been made.

[27] The Applicants further argue that the Officer's decision was unreasonable because it lacks a rationale chain of analysis. They submit the Officer failed to assess Mr. Hashtroudi's response to the procedural fairness letter and merely copied the response.

[28] The Applicants also argue that the Officer erred by failing to assess whether the false or omitted information was material to the group's application (citing *Munoz Gallardo v Canada (Citizenship and Immigration)*, 2022 FC 1304 at para 34 [*Munoz Gallardo*]; *Patel v Canada (Citizenship and Immigration)*, 2017 FC 401 at para 23).

V. The Respondent's Submissions

[29] The Respondent submits that the Officer's decision was made in accordance with the relevant provisions in the Act and the Regulations. The Respondent notes that Schedule A asks applicants to list all previous refusals of any kind, including TRVs. The Respondent notes that Mr. Hashtroudi had two opportunities to disclose his 2019 TRV refusal; first in the initial application and again in his response to the procedural fairness letter. He failed to do so on both occasions.

[30] The Respondent adds that the Officer was not required to prompt Mr. Hashtroudi to comply with his duty to be candid and truthful.

VI. The Officer did not breach the duty of procedural fairness

[31] Applicants applying for permanent resident visas (and other similar applications) are required to be truthful and candid; this is a statutory requirement and a moral obligation. The

relevant form (Schedule A, Question 6(d)) clearly asked Mr. Hashtroudi whether he had ever been previously refused a visitor or temporary resident visa. The procedural fairness letter raised concerns about past refusals; i.e., any and all past refusals. Mr. Hashtroudi cannot now claim that he was not aware of what was being asked given his response, which cited *verbatim* the relevant question. Moreover, it was Mr. Hashtroudi's application and he had the onus to provide full and complete information without prompting by the Officer reviewing his application.

[32] Question 6(d) in Schedule A to the application form asks:

> 6. Have you, or, if you are the principal applicant, any of your family members listed in your application for permanent residence in Canada, ever:
>
> …
>
> (d) been refused refugee status, an immigrant or permanent resident visa (including a *Certificat de sélection du Québec* (CSQ) or application to the Provincial Nominee Program) or visitor or temporary resident visa, to Canada or any other country or territory?
>
> …
>
> [Emphasis added.]

[33] In the procedural fairness letter, the Officer expressed concerns about Mr. Hashtroudi's application – including that he had not declared any of his refusals in the Schedule A form – and provided an opportunity for Mr. Hashtroudi to respond to the Officer's concerns. The letter noted that Mr. Hashtroudi's visa application could be refused pursuant to subsection 16(1) and paragraph 41(a) of the Act.

[34] The response to the procedural fairness letter, submitted by Mr. Hashtroudi's representative, again failed to disclose his 2019 TRV refusal. The response clearly acknowledged Question 6(d), but referred only to Mr. Hashtroudi's application to the Quebec Investor program, noting that it had been suspended.

[35] The Applicants' reliance on *Kaur*, *Pham*, and *Singh* is not helpful to their argument that the procedural fairness letter was insufficient.

[36] In *Kaur* and *Pham*, the officer relied on additional issues not raised in the procedural fairness letter to justify the refusal (*Kaur* at para 45; *Pham* at para 32). In *Singh*, the applicant was deprived of the opportunity to make meaningful submissions about the authenticity of documents because the officer intentionally withheld information (in the procedural fairness letter and in the disclosure on the application for judicial review) about how the documents at issue were determined to be fraudulent (at paras 8-12).

[37] The Applicants' reliance on the more general proposition set out in *Kaur* regarding the content of a procedural fairness letter must be considered in the appropriate context and in light of other well-established principles. In *Kaur*, Justice Norris stated, at para 42:

> [42] It follows from the principles cited above that, when a procedural fairness letter has been sent, a functional approach should be taken to assessing its adequacy. The purpose of a procedural fairness letter "is to provide enough information to an applicant that a meaningful answer can be supplied" (*Ntaisi* at para 6). Thus, the question is: Does the letter inform the affected party of the decision maker's concerns? To serve this purpose, the letter must state more than general concerns. It must state the decision maker's concerns with sufficient clarity and particularity so that the affected party has a meaningful opportunity to address

> them. See *AB v Canada (Citizenship and Immigration)*, 2013 FC 134 at paras 53-54, and *Toki* at para 25.

[38] This proposition must take into account that the duty of procedural fairness owed to visa applicants is at the lower end of the spectrum. The onus is – at all times – on the applicant to provide a complete and truthful application, and to provide a complete and truthful response to any procedural fairness letter. Visa officers are not required to alert applicants to concerns that arise from the requirements of the Act (*Hassani v Canada (Minister of Citizenship and Immigration) (FC)*, 2006 FC 1283 at para 24; *Hamza v Canada (Minister of Citizenship and Immigration)*, 2013 FC 264 at paras 21-24; *Patel v Canada (Citizenship and Immigration)*, 2021 FC 573 at para 20 [*Patel*]). As noted in many cases, the Officer need not provide a "running score" to an applicant (see for example, *Prasad v Canada (Minister of Citizenship and Immigration)*, [1996] FCJ No 453, 34 Imm LR (2d) 91 at para 7; *Vikas v Canada (Citizenship and Immigration)*, 2009 FC 207 at para 18; *Baybazarov v Canada (Citizenship and Immigration)*, 2010 FC 665 at paras 11-12; *Patel* at para 20).

[39] In the present case, the Officer was not required to alert Mr. Hashtroudi again to the requirements of the Act. In any event, the procedural fairness letter informed Mr. Hashtroudi of the Officer's several concerns with sufficient clarity; including to disclose <u>any</u> previous visa refusals. As noted, Mr. Hashtroudi's response cited the question asked but his answer focused only on the application to the Quebec Investor program.

VII. The Officer's Decisions Are Reasonable

[40] The Officer's letter and the GCMS notes do not support the Applicants' argument that the Officer failed to assess Mr. Hashtroudi's response to the procedural fairness letter. The Officer set out the requirements of the Act, indicated that the decision was based on Mr. Hashtroudi's failure to declare his refusals in Schedule A, and found that Mr. Hashtroudi failed to provide an explanation for failing to disclose his 2019 TRV refusal in his application and in his response to the procedural fairness letter. The Officer cited Mr. Hashtroudi's response to the procedural fairness letter *verbatim* in support of the Officer's conclusion that the response was not sufficient to address the Officer's concerns. The chain of analysis is clear. The Officer's decision is based on Mr. Hashtroudi's failure to comply with the Act. The decision is justified in accordance with the facts and the law and is transparent and intelligible.

[41] The Applicants' argument that the Officer erred by failing to assess whether the false or omitted information was material to the group's application appears to be based on an incorrect assumption that the Officer made a finding of inadmissibility based on misrepresentation pursuant to section 40. A misrepresentation finding would result in inadmissibility to Canada for a five year period (pursuant to subsection 40 (2)).

[42] The Officer made no such finding; rather, the Officer found the Applicants to be inadmissible based on paragraph 41(a). Paragraph 41(a) provides that a foreign national is inadmissible to Canada due to "an act or omission" that contravenes another provision in the Act (in this case, subsection 16(1)). The Officer was not required to assess whether the failure to disclose the 2019 TRV was a material omission or failure. The statutory provisions are clear.

[43] All Applicants in the group are affected by Mr. Hashtroudi's failure to disclose his past refusal and by the finding pursuant to paragraph 41(a) of the Act. In accordance with subsection 98.08(2) of the Regulations, if one applicant in a group of applicants under the Business Start-up Class program is refused a permanent resident visa for any valid reason, the remaining applicants in the group do not meet the requirements and their applications must also be refused.

JUDGMENT in file IMM-6092-23

THIS COURT'S JUDGMENT is that:

1. The Application for Judicial Review is dismissed.

2. There is no question for certification.

"Catherine M. Kane"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-6092-23
STYLE OF CAUSE:	HOUMAN DAMANGIR, SHAHRAM LALEH, REZA DAMANGIR, SHAHRAM MAHMOUDZADEH HASHTROUDI AND HADI DADPOOR v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	TORONTO, ONTARIO
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APPEARANCES:

Amirhossein Zarei	FOR THE APPLICANTS
Kevin Doyle	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Zarei Law Professional Corporation Toronto, Ontario	FOR THE APPLICANTS
Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT