Federal Court Cour fédérale

Date: 20250117

Docket: IMM-8237-23

Citation: 2025 FC 104

Ottawa, Ontario, January 17, 2025

PRESENT: The Honourable Mr. Justice Gleeson

BETWEEN:

MAHMUD HASAN KHAN

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant sought permanent residency in Canada under the Quebec Investor Class. A Migration Officer [Officer] at the High Commission of Canada in Singapore refused the Application, not being satisfied that the Applicant intended to reside in Quebec.

[2] The Applicant now seeks judicial review of the Officer's May 23, 2023 decision under subsection 72(1) of the *Immigration and Refugee Protection Act* [IRPA].

II. Issues and Standard of Review

[3] The Applicant submits the Officer acted unfairly by failing to provide adequate notice of the purpose of an interview and refusing the Applicant's request for an extension of time to provide the Officer with further evidence. The Applicant also argues the Officer erred in assessing the documentary evidence, this rendering the decision unreasonable.

[4] It is not disputed that questions of fairness are to be assessed with a focus on the nature of the substantive rights involved and by asking whether the procedure was fair having regard to all of the circumstances. While no standard of review applies *per se*, correctness best reflects the Court's approach (*Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54, citing *Eagle's Nest Youth Ranch Inc v Corman Park (Rural Municipality #344)*, 2016 SKCA 20 at para 20; see also *Yeager v Canada (Attorney General)*, 2020 FCA 176 at paras 21–23).

[5] The Officer's assessment and refusal of the Application is reviewable on the presumptive standard of reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 10 [*Vavilov*]). To succeed on a reasonableness review, the party challenging the decision must satisfy the Court that the decision's shortcomings cause it to lack the requisite degree of justification, intelligibility and transparency in relation to the relevant factual and legal constraints. A decision maker need not address every possible issue that might arise on the

record, but a failure to address central issues and concerns raised may undermine the reasonableness of a decision. Any alleged flaws or shortcomings must be more than merely superficial or peripheral missteps; instead, a reviewing court must be satisfied the flaws relied on by the challenging party are sufficient to render the decision unreasonable (*Vavilov* at paras 99-100 and 127-128).

III. Statutory Framework

[6] In *Qiao v Canada (Citizenship and Immigration)*, 2022 FC 247, Justice Sébastien Grammond helpfully sets out both the statutory framework that governs applications for permanent residence under the Quebec Investor Class and certain of the governing principles as identified in the jurisprudence:

> [12] The *Immigration and Refugee Protection Regulations*, SOR/2002-227 [Regulations], define, among other things, the classes of economic immigrants. For several of these classes, the selection process is delegated to certain provinces. The purpose of this mechanism is to confer greater powers to these provinces over immigration.
>
> [13] In Ms. Qiao's case, the relevant class is the Quebec investor class, defined as follows in subsection 90(2) of the Regulations:
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> | | |
> |---|---|
> | (2) A foreign national is a member of the Quebec investor class if they | (2) Fait partie de la catégorie des investisseurs (Québec) l'étranger qui satisfait aux exigences suivantes : |
> | (a) intend to reside in Quebec; and | a) il cherche à s'établir dans la province de Québec; |
> | (b) are named in a Certificat de sélection du Québec issued by Quebec. | b) il est visé par un certificat de sélection du Québec délivré par cette province. |

> [14] It bears emphasizing that the intention to reside in Quebec is a condition separate from being selected by Quebec. The intention to reside in the province is also a separate condition for the other provincial nominee classes. See, for instance, sections 86(2), 87(2), 87.3(2) and 101(2) of the Regulations. The purpose of this condition is obvious: provincial control over immigration would be undermined if immigrants selected by one province established themselves in another province. Because this condition is separate from the selection certificate issued by the relevant province, visa officers must themselves assess whether an applicant intends to reside in that province: *Ransanz v Canada (Public Safety and Emergency Preparedness)*, 2015 FC 1109.
>
> [15] In assessing an applicant's intention to reside in a province, visa officers are not bound by the applicant's statements. Rather, in *Dhaliwal v Canada (Citizenship and Immigration)*, 2016 FC 131 at paragraph 31 [*Dhaliwal*], my colleague Justice Alan Diner stated:
>
> > The assessment of intention, since it is a highly subjective notion, may take into account all indicia, including past conduct, present circumstances, and future plans, as best as can be ascertained from the available evidence and context.
>
> [16] Ms. Qiao relies on another excerpt from *Dhaliwal*, at paragraph 20, where Justice Diner noted that visa officers may be satisfied by a mere declaration, such as the one found in the application form. It is true that this may be so if the totality of the supporting materials provide a basis for the declaration. However, I do not take Justice Diner to have expressed any hard-and-fast rule that officers must accept a declaration of intention in certain categories of cases, despite the lack of evidentiary support.
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> [Emphasis added.]

IV. Analysis

A. *No breach of procedural fairness*

[7] The Applicant submits that although notice of the interview was given, that notice was inadequate. This, because it failed to inform the Applicant of the Officer's concern – the

intention to reside in Quebec. The unfairness was further exacerbated by the Officer's refusal to provide the Applicant further time to provide the requested evidence.

[8] As noted by Justice Denis Gascon in *Quan v Canada (Citizenship and Immigration)*, 2022 FC 576 [*Quan*], subsection 90(2) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [IRPR] require an Applicant under the Québec Investor Class to demonstrate two things (1) a certificat de sélection du Québec [CSQ], and (2) the intent of residing in Quebec (*Quan* at para 20). It is not disputed that the Applicant had been granted a CSQ.

[9] On December 15, 2022, the Applicant received a letter from Immigration, Refugees and Citizenship Canada [IRCC] requesting additional or updated documents to be included in the Applicant's Application. The Applicant responded to that letter with what he believed to be sufficient documentation to establish an intent to reside in Quebec. The Applicant notes that he received this letter approximately four years after submitting his initial Application, that in light of the delays he had no idea when the Application might be approved, and that he received no response to the additional evidence he provided until he received a second letter from IRCC on April 21, 2023, requiring he attend an interview on May 17, 2023. This second letter instructed the Applicant to bring certain documents to the interview relating to his assets and his personal background, but was silent on the issue of residency in Quebec.

[10] The letter requesting the Applicant attend an interview, advises that the interview is "required in order to complete the assessment of your application" and that "[t]he onus is on you

to satisfy the interviewing officer that you meet the eligibility requirements of the category in which you are applying."

[11] In my opinion, in the context of a pending application for permanent residence where the Applicant is advised in the letter convoking the interview that the purpose of the interview is to assess the application and that the applicant has the onus of satisfying the interviewing officer that the eligibility requirements have been met, and it is evident that only a single requirement remains in issue – in this case the Applicant's intent to reside in Quebec – the notice is sufficient and fair. This is particularly so where an applicant had been recently requested to provide evidence of intent to reside and where the duty of fairness owed the applicant is at the lower end of the spectrum. I also note that the jurisprudence has long recognized that concerns arising directly from the requirements of the IRPR do not trigger an obligation to provide notice to an applicant *(Quan* at paras 33-34).

[12] The Applicant argues that a higher duty of fairness is owed in this case because the Officer's concerns were credibility based. I am not persuaded. In *Dhaliwal v Canada (Citizenship and Immigration)*, 2016 FC 131 [*Dhaliwal*], Justice Diner does state that an Applicant's declared intent may satisfy a decision maker, however he also states that the assessment of intention is highly subjective and may take into account the totality of the evidence (*Dhaliwal* at paras 20 and 31). The Officer's concerns were not credibility based but, as the Officer's reasons demonstrate, arose in the context of the Officer's assessment of all of the evidence.

[13] *Yaman v Canada (Citizenship and Immigration)*, 2021 FC 584 [*Yaman*], upon which the Applicant relies, is to be distinguished from the present case. *Yaman* cites and relies upon *Toki v Canada (Immigration, Refugees and Citizenship)*, 2017 FC 606, which involved the adequacy of a procedural farness letter that left the applicant to guess as to the actual nature of the concern. In that case, the applicant requested additional details that were not provided. No such concern arises here. As previously noted, the Applicant was notified that the purpose of the interview was to satisfy the officer that the Applicant met the eligibility requirements as imposed by the IRPR.

[14] Nor am I convinced that the Officer's refusal to grant an extension of time was unfair in the circumstances.

[15] The Officer stated the following in refusing the request:

> The PA stated at interview that he could submit satisfactory evidence if given additional time, which I have considered. However, the PA has had the duration of application processing to make any submissions he wished, was sent a specific request for documents related to intent to reside in Canada and provided a response to that request, and was given a further opportunity to present any documents or make any statements in response to the stated concerns at the interview. As the PA has had a fair and reasonable opportunity to make submissions, I am not prepared to allow additional time for further submissions.

[16] The Applicant relies on *Gakar v Canada (Citizenship and Immigration)*, 2000 CanLII 15501 (FC) [*Gakar*] to argue the refusal demonstrates a lack of flexibility and understanding in the context of the Respondent's lengthy processing time. The processing delay left the Applicant in the uncertain position of not knowing whether or not he would be successful, and that an

extension of time was both reasonable and an attempt to comply with the Officer's request for further evidence.

[17] While it was certainly open to the Officer to grant the request for more time, whether a process was fair is not necessarily determined by the outcome where discretion is being exercised. The reasons demonstrate that the Officer acknowledged the requested extension of time and was alert and sensitive to the factors and substantive rights engaged – the adequacy of prior notices and the opportunities provided to respond. The refusal to provide the requested extension was not unfair.

B. *The Officer's assessment of the evidence was reasonable*

[18] The Applicant relies on the presumption that sworn testimony is to be recognized as true absent a valid reason to doubt the testimony (*Maldonado v Minister of Employment and Immigration* (1979), [1980] 2 FC 302, 1979 CanLII 4098 (FCA)) to argue that the Officer's failure to "mention whether they find the Applicant's [sworn] statement[s] credible" makes it impossible to know how that sworn statement was weighed in the Officer's assessment. The Applicant submits that the Officer failed to engage with the totality of the evidence that goes to the main issue that was before the Officer – i.e. the Applicant's intention to reside and run a business in Quebec – and that this renders the decision unreasonable and constitutes a reviewable error.

[19] Contrary to the Applicant's submissions, the Applicant's January 10, 2023, statutory declaration was reviewed in a Global Case Management System [GCMS] note entry dated

February 24, 2024, in which the Applicant's stated intent to purchase a home, the circumstances of his children in Canada, and his business intentions are canvassed. These statements are in turn considered in light of the other circumstances disclosed by the evidence, the Applicant's failure to visit Quebec, and the absence of detail in the provided business plan, among others.

[20] It is recognized in this Court's jurisprudence that GCMS notes form an integral part of the reasons in immigration matters (*Ziaei v Canada (Citizenship and Immigration)*, 2007 FC 1169 at para 21). In this case, the February 24, 2023 GCMS entry not only forms part of the broader reasons but is specifically referenced by the Officer in the May 23, 2023 GCMS entry, which sets out the Officer's reasons for refusal.

[21] As *Vavilov* teaches, an Officer's decision must be read holistically, in light of the record on judicial review (*Vavilov* at para 97). *Dhaliwal* acknowledges that the assessment of intention is subjective, and a decision maker may take into account all indicia, including past conduct, present circumstances, and future plans, as ascertained from the available evidence in assessing intent (*Dhaliwal* at para 31). In this case the GCMS notes demonstrate the Officer engaged with all of the evidence in assessing intent. Recognizing this to be so, I agree with the Respondent – the Applicant's arguments, as they relate to the assessment of the evidence, essentially reflect disagreement with the weight given to certain evidence and the Officer's decision. This is not a basis for intervention on judicial review.

V. Conclusion

[22] The Application for judicial review is dismissed. The Parties have not proposed a question for certification, and none arises.

JUDGMENT IN IMM-8237-23

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is dismissed.

2. No question is certified.

"Patrick Gleeson"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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