Federal Court  Cour fédérale

Date: 20250117

Docket: IMM-3437-24

Citation: 2025 FC 103

Edmonton, Alberta, January 17, 2025

PRESENT: Madam Justice Go

BETWEEN:

Pal PJETRACAJ

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Mr. Pal Pjetracaj [Applicant], a citizen of Albania, applied for a Temporary Resident Visa [TRV] to visit his eldest son and the son's family in Canada.

[2] An Immigration, Refugees and Citizenship Canada [IRCC] officer [Officer] refused the Applicant's TRV application as the Officer was not satisfied the Applicant would leave Canada

at the end of his authorized stay as directed by paragraph 179(b) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [Decision].

[3] The Officer based their Decision on the following factors: (a) the Applicant's assets and financial situation are insufficient to support the stated purpose of travel; (b) the purpose of the Applicant's visit to Canada is not consistent with a temporary stay; and (c) the Applicant's current employment situation does not show he is financially established in his country of residence.

[4] The Officer further observed in the Global Case Management System [GCMS] notes that the Applicant had not provided the provenance of his funds, and that the Applicant was on a one-year contract as an operator. The GCMS notes also indicate that the file was processed with the assistance of Chinook 3+ [Chinook] software.

[5] The Applicant seeks judicial review of the Decision, arguing that the Officer improperly delegated their decision-making responsibility to Chinook and ignored relevant materials. For the reasons set out below, I dismiss the application.

II. Preliminary Issue

[6] There is one preliminary issue concerning the admissibility of new evidence filed by the Applicant. The Applicant did not pursue this issue diligently at the hearing before me. For the reasons set out below, I find the new evidence inadmissible.

[7] The Applicant includes in the Applicant's Record, several pages (pages 1-4, 8) of a paper entitled "Case Study: Developing guidance for the responsible use of artificial intelligence in decision-making at Immigration, Refugees and Citizenship Canada" [Paper]. The Applicant describes the Paper as "materials published [by] Immigration, Refugees and Citizenship Canada."

[8] The Applicant seeks to admit the Paper on the basis that it was presumably information before the Officer. In the alternative, the Applicant states that the Paper is admissible under "the 'general background' exception as non-argumentative orienting statements that assist the reviewing court in understanding the history and nature of the case that was before the administrative decision-maker:" *Delios v Canada (Attorney General)*, 2015 FCA 117 at para 45.

[9] The Respondent, on the other hand, submits the Applicant has improperly included in his record new evidence that was not before the Officer and asks the Court to strike out or give no weight to the Paper.

[10] In general, the Court will only consider evidence that was before the decision-maker. A decision cannot be impugned based on an issue or evidence that was not before the decision-maker, unless that issue is jurisdictional: *Singh v Canada (Citizenship and Immigration)*, 2009 FC 11 at para 29. However, limited exceptions exist to allow for introducing new evidence: *Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22 [*Access Copyright*] at para 20.

[11] I reject the Applicant's submission that the Paper was presumably before the Officer and that the Paper is evidence of guidance given to visa officers about the use of Chinook and is analogous to IRCC's publicly available operational instructions and guidelines.

[12] Contrary to the Applicant's assertion, the Paper does not appear to be an official policy paper issued by IRCC. Rather, the Paper contains a header that reads "Law Society of Ontario | Special Lectures 2019" and the Paper is authored by legal counsel and policy analysts from IRCC and the Department of Justice Canada. The "Acknowledgement and Notes" page indicates that the authors' "[v]iews expressed in relation to the law are personal and do not constitute the official views of Justice Canada." There is no evidence before me to confirm that the Paper was before the Officer at the time the Decision was rendered, nor is there any indication that the Officer consulted a paper presented at a Law Society of Ontario event before rendering the Decision.

[13] I also reject the Applicant's assertion that the Paper "provides contextual background information about the undisputed operation of Chinook, as utilized by IRCC" and is admissible as a "non-controversial orientation document" to provide to this Court with contextual information about Chinook's functions: *Bernard v Canada (Revenue Agency)*, 2015 FCA 263 at paras 13, 18.

[14] From the few pages that the Applicant has selectively submitted, it would appear that the Paper is not about Chinook, but about an IRCC 2018 pilot project to automate a portion of the

TRV business process for online applications from China and India. As such, I agree with the Respondent that the Paper has no bearing on the processing of a TRV application from Albania.

[15] In addition, as the Respondent points out, the Paper does not support the Applicant's assertion that the Officer delegated their decision-making responsibility to Chinook. If anything, the Paper expressly confirms that "[t]here are no auto-refusals."

[16] Finally, as to the Applicant's request to admit the Paper under the exception of uncontroversial general background information, I note the Federal Court of Appeal stated in *Access Copyright* at para 20 that the Court may admit information regarding issues "relevant to the judicial review." Given that the Paper is not an official policy document of IRCC, does not speak to the use of Chinook, and does not appear to support the Applicant's assertion, I find the Paper does not speak to any of the issues relevant to the judicial review.

III. Issues and Standard of Review

[17] The Applicant raises two main issues before me:

a. Did the Officer render a generic, perfunctory decision that failed to consider the countervailing evidence?

b. Did the Officer inappropriately delegate their decision-making power to Chinook?

[18] The parties agree that the standard of review is reasonableness: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at paras 10, 25. The Court should assess whether the decision bears the requisite hallmarks of justification, transparency

and intelligibility: *Vavilov* at para 99. The Applicant bears the onus of demonstrating that the decision was unreasonable: *Vavilov* at para 100.

IV. Analysis

A. *Did the Officer render a generic, perfunctory decision that failed to consider the countervailing evidence?*

[19] The Applicant submits the Officer ignored relevant countervailing evidence, and that the Officer provided generic conclusions without regard for the evidentiary record. In particular, the Applicant argues the Officer failed to consider the Applicant's materials regarding: (a) the cost of travel; (b) his family ties outside of Canada; and (c) barriers to travel for his son and purpose of travel.

[20] First, the Applicant observes the Officer raised concerns about the financial viability of his travel to Canada and about the deposits in his bank accounts. However, the Applicant contends the Officer showed no analysis nor recognition of the financial support offered by his son, and thereby ignored this evidence.

[21] Second, the Applicant notes that the Officer found he would not remain in Canada temporarily based on a lack of funds available for the proposed visit and the purpose of the visit, and that the Officer did not believe the Applicant's true motive for the visit is to see his son and his family. The Applicant argues the Officer showed no analysis as to the Applicant's family ties to his youngest son and mother in Albania but that these family ties in Albania is a critical factor in determining whether the Applicant will overstay in Canada or not: *Moradbeigi v Canada*

(Citizenship and Immigration), 2023 FC 1209 at paras 18−20; *Iyiola v Canada (Citizenship and Immigration)*, 2020 FC 324 at para 20; *Shohratifar v Canada (Citizenship and Immigration)*, 2023 FC 218. The Applicant stresses that his youngest son is a promising football player in Albania and will not be accompanying the Applicant to Canada.

[22] Third, the Applicant submits the Officer failed to provide any meaningful analysis of why a two-week visit to see one's first grandchild is an unreasonable purpose of travel, while knowing that the grandchild's mother cannot travel to Albania due to her Convention refugee status and the young age of the grandson.

[23] In essence, the Applicant's argument is that the Decision was unreasonable because the Officer focused on only one factor while ignoring other relevant factors.

[24] I reject the Applicant's arguments.

[25] To start, I disagree with the Applicant's characterization of the Officer's reasoning as being "generic language." The Decision contains specific reasons for refusing the Applicant's TRV, and references specific pieces of evidence in the record as the basis for the refusal.

[26] The Officer noted that the Applicant "deposited 10 000 $ USD in the account the day before the statement was issued," and that the "second bank account showing 1 490 650 ALL: no detailed account transactions provided." The Officer then went on to note the "absence of credible funds arrangement and lack of econommic [*sic*] establishment in Albania." Finally,

pointing to the Applicant's "1-year contract as an Operator," the Officer concluded that the Applicant's employment situation "does not show that they are financially established in their country of residence."

[27] The Applicant takes no issue with these findings, nor do I find any reviewable errors in light of the evidence before the Officer.

[28] Moreover, as this Court has confirmed, whether an applicant has sufficient financial resources is a relevant consideration as to whether the applicant would leave Canada at the end of his stay: *Salemi v Canada (Citizenship and Immigration)*, 2024 FC 1858 at para 33. The Court also found in *Bawa v Canada (Citizenship and Immigration)*, 2024 FC 1605 at paras 8-9 that a failure to provide documentation identified in visa office instructions or to provide an explanation for not doing so may allow an officer to reasonably conclude that an applicant has failed to establish a financial situation that is sufficient to support the stated purpose of travel.

[29] In other words, it was not unreasonable for the Officer to refuse the TRV based solely on concerns about the Applicant's financial resources. Further, the Officer's conclusions are consistent with the IRCC Rome Visa Office Instructions TRV checklist that requires the Applicant to include copies of bank statements covering the past three months and any additional relevant financial documentation. The Applicant simply failed to do so.

[30] As to the Applicant's argument that the Officer failed to consider his son's financial documents, I agree with the Respondent that this argument is not supported by the evidence the Applicant put before the Officer with respect to the son's finances.

[31] The Applicant cites several decisions from this Court to argue that the Officer erred by not considering his family ties in Albania: *Marzban v Canada (Citizenship and Immigration)* 2024 FC 2068; *Kazemi v Canada (Citizenship and Immigration)*, 2024 FC 2067.

[32] I agree with the Respondent that these cases do not assist the Applicant. As I noted in *Farhat v Canada (Citizenship and Immigration)*, 2024 FC 1323 at para 13, "when a TRV application involves ties to both countries, the Officer must weigh these ties and explain why the connections in Canada were considered to be more significant." Here, the Officer did not base their refusal on concerns about the presence of family ties in Canada.

[33] In conclusion, I find that it was not unreasonable for the Officer to conclude, based on the lack of provenance of the Applicant's funds, that the Applicant has not established a financial situation that supports the stated purpose of travel.

B. *Did the Officer inappropriately delegate their decision-making power to Chinook?*

[34] In his written submission, the Applicant submits the Decision appears to have been issued by Chinook and that the Officer's use of Chinook displaces the presumption that the Officer considered the evidence on file. The Applicant relies on the Paper, which I decline to admit, for these arguments.

[35] The Applicant did not make oral submission on this argument at the hearing. In any event, I reject the Applicant's argument for two reasons.

[36] First, the Applicant's assertion that the Decision was issued by Chinook is not based on any evidence.

[37] Second, this Court has repeatedly determined that an officer's use of Chinook to process an application does not, in itself and without clear evidence, raise an issue of reasonableness or procedural fairness, as recently confirmed in *Espinosa Cotacachi v Canada (Citizenship and Immigration)*, 2024 FC 2081 at para 23; see also *Jamali v Canada (Citizenship and Immigration)*, 2023 FC 1328 at para 43; *Khorasgani v Canada (Citizenship and Immigration)*, 2023 FC 1581 at para 6; *Kumar v Canada (Citizenship and Immigration)*, 2024 FC 81 at para 39; *Mehrara v Canada (Citizenship and Immigration)*, 2024 FC 1554 at para 68; *Shirkavand v Canada (Citizenship and Immigration)*, 2023 FC 1022 at paras 12-14.

[38] In the present case, the Respondent contends there is no evidence to the contrary. I agree.

V. Conclusion

[39] The application for judicial review is dismissed.

[40] There is no question for certification.

JUDGMENT in IMM-3437-24

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. There is no question for certification.

"Avvy Yao-Yao Go"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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