Federal Court  Cour fédérale

Date: 20200128

Docket: IMM-3057-19

Citation: 2020 FC 158

Ottawa, Ontario, January 28, 2020

PRESENT: The Honourable Mr. Justice Brown

BETWEEN:

RAJINDER KUMAR WATTS,
SARITA WATTS

Applicants

and

THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Nature of the matter

[1] This is an application for judicial review of decisions of a Visa Officer [Officer] refusing the Applicants' temporary resident visa [TRV] applications; both were rejected on April 29, 2019 in separate but substantially identical letters and case management notes [Decisions].

II. Facts

[2] The Applicants are a husband and wife, both nationals of India. The Applicants sought multiple entry visas to travel to Ontario, Canada in the summer of 2019. They intended to travel for 15 days from June 1, 2019 to June 15, 2019 in and around Toronto for tourism and vacation reasons.

[3] They had been refused visas two times before. The evidence before the Officer was that the Applicants ran two small milk dairies in India. In submissions by counsel they provided a statement of assets prepared by chartered accountants and supporting documentation in the form of bank statements, income tax filings and other documents. In these submissions, counsel also stated the Applicants owned a combined property worth "1,93,30,000.00 Indian Rupee which is equivalent to approximately CAD$3,72,315.00" and held a combined deposit of at least "15,16,000.00 Indian Rupees as of March 19, 2019….equivalent to approximately CAD$29,150.00.00."

[4] Unfortunately these numbers are not accurately reported in the manner in which Canadian funds are properly denominated. That said, it appears their total bank deposits were $29,150, and the total value of all their assets in India including the dairies, 7 small properties (rental income $410 a month aggregate), gold and jewellery was $434,500.

[5] Their combined annual income of the two Applicants was about $14,800. The trip was for 15 days and they planned to see many major tourist sites in and around Toronto from Niagara

Falls to Cobourg, Ontario. The Respondent estimated the cost of the trip at around $7,000, without objection by the Applicants.

[6] Their two children live in India aged 6 and 14.

III. Decision under review

[7] On April 29, 2019, each was sent a letter indicating the Officer determined their applications did not meet the requirements of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*] and the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [*IRPR*]. Specifically, each letter stated:

> I am refusing your application on the following grounds:
>
> - I am not satisfied that you will leave Canada at the end of your stay as a temporary resident, as stipulated in paragraph 179(b) of the IRPR, based on the purpose of your visit.
>
> - I am not satisfied that you will leave Canada at the end of your stay as a temporary resident, as stipulated in paragraph 179(b) of the IRPR, based on your personal assets and financial status.

[8] The Global Case Management System [GCMS] notes form part of the Decisions:

> I have reviewed all the documentation provided for this application. Summary of key findings below: - Insufficient proof of financial status / funds on file do not appear sufficient to facilitate the trip to Canada and its duration; based on the documentation on file to support the applicant's level of economic establishment and considering the purpose of the visit, I do not consider that the proposed trip to Canada is a reasonable or affordable expense; see proof of funds on file -PA/family does not demonstrate sufficient establishment or sufficient ties to motivate return - Lack of travel history noted which could be used to gauge past compliance to

> immigration laws of countries with strong migration pull factors Given the foregoing, PA has not demonstrated sufficient establishment or sufficient ties to motivate return. I am not satisfied on balance that PA is a bona fide visitor to Canada who will depart at the end of authorized stay. Application refused.
>
> [Emphasis added]

IV. Preliminary Issue

[9] The Respondent raises a preliminary issue that the Applicants' joint affidavit filed in support of this application for judicial review is improper.

[10] I agree. Rule 80(1) of the *Federal Courts Rules*, SOR/98-106 requires affidavits to be in the first person, in Form 80A, which permits only a single affiant. The Respondent correctly cites Justice Heneghan in *Antoine v Sioux Valley Dakota Nation*, 2008 FC 794 at para 33:

> [33] As noted above, the Applicants swore and filed joint affidavits. The *Federal Courts Rules*, SOR/98-106 (the "Rules") do not contemplate the filing of joint affidavits. In this regard, I refer to Rule 80(1) which provides as follows:
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> | | |
> |---|---|
> | **80(1) Form of affidavits –** Affidavits shall be drawn in the first person, in Form 80A. | **80(1) Forme**–Les affidavits sont rédigés à la première personne et sont établis selon la formule 80A. |

[11] Similarly, as stated by Justice Rennie (as he then was) in *Elhatton v Canada (Attorney General)*, 2013 FC 71 at paras 72 and 73:

> [72] Secondly, the Commissioner received as fresh evidence a "joint affidavit", signed by Cst. Elhatton and her fiancé. Joint affidavits are unknown to our legal system. There are many good reasons for this; they inherently reflect a collusion between two separate and distinct witnesses and interfere with the truth-seeking function of cross-examination. In respect of this particular

> affidavit, the affiant deposes that it was based on personal knowledge when it is manifestly not; rather it is replete with egregious hearsay.
>
> [73] The evidence in the joint affidavit was relied on to explain the outcome of the perjury investigation, and to support the conclusion that the credibility of Cst. Elhatton would be unaffected. While the Commissioner is not bound by strict rules of evidence, reliance on the joint affidavit to conclude that her credibility would be unaffected falls short of the Dunsmuir standard of cogency. It does not follow that because no charges were laid her credibility in respect of her testimony before the Board would be unaffected.

[12] In the Applicants' Reply, the Applicants submit they are willing to submit separate affidavits with the permission of the Court by filing a motion to have the affidavit allowed as separate affidavits; no such motion was filed.

[13] In my view, the joint affidavit is not compliant with the rules. I will disregard it completely. In any event, as I noted at the hearing, judicial review proceeds on the record before the decision-maker and is not an opportunity to serially relitigate the case a second time with added new evidence, except in very limited circumstances, none of which apply in this case: *Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22, per Stratas JA at para 20.

V. Issues

[14] The Applicants submit the following issues for determination:

1) Did the visa officer base his/her decision on erroneous findings that were made in a perverse or capricious manner and without regard to the material before him/her?

2) Did the visa officer act without jurisdiction or refused to exercise his/her jurisdiction?

3) Did the visa officer fail to consider the totality of the evidence before him/her?

4) Did the visa officer act in any other way that is contrary to law?

[15] In my view, the only issue raised in the Applicants' submissions is whether the Decisions were reasonable.

VI. Standard of review and statutory material

A. *Standard of Review*

[16] This application for judicial review was heard shortly after the Supreme Court of Canada decisions in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65, majority reasons by Chief Justice Wagner [*Vavilov*], and *Canada Post Corp v Canadian Union of Postal Workers*, 2019 SCC 67, majority reasons by Justice Rowe [*Canada Post*]. The parties made their original submissions under the *Dunsmuir v New Brunswick*, 2008 SCC 9 [*Dunsmuir*] framework. I will apply the standard of review framework set out in *Vavilov* and *Canada Post*. No unfairness arises; prior to the hearing I invited parties to make submissions regarding the application of the standard of review analysis in *Vavilov*. Neither party made submissions.

[17] As to the standard of review, in *Canada Post* Justice Rowe noted *Vavilov* set out a revised framework for determining the applicable standard of review for administrative decisions. There is a presumption that the standard of reasonableness applies, which is not rebutted in this case. Therefore, the Decisions are reviewable on a standard of reasonableness.

[18] Reasonableness review is both robust and responsive to context: *Vavilov* at para 67. Applying the *Vavilov* framework in *Canada Post,* Justice Rowe explains what is required for a reasonable decision and what is required of a court reviewing on the reasonableness standard of review:

> [31] 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 para. 85). Accordingly, when conducting reasonableness review "[a] reviewing court must begin its inquiry into the reasonableness of a decision by examining the reasons provided with 'respectful attention' and seeking to understand the reasoning process followed by the decision maker to arrive at [the] conclusion" (*Vavilov*, at para. 84, quoting *Dunsmuir*, at para. 48). The reasons should be read holistically and contextually in order to understand "the basis on which a decision was made" (*Vavilov*, at para. 97, citing *Newfoundland Nurses*).
>
> [32] A reviewing court should consider whether the decision as a whole is reasonable: "what is reasonable in a given situation will always depend on the constraints imposed by the legal and factual context of the particular decision under review" (*Vavilov*, at para. 90). The reviewing court must ask "whether the decision bears the hallmarks of reasonableness — justification, transparency and intelligibility — and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision" (*Vavilov*, at para. 99, citing *Dunsmuir*, at paras. 47 and 74, and *Catalyst Paper Corp. v. North Cowichan (District)*, 2012 SCC 2, [2012] 1 S.C.R. 5, at para. 13).
>
> [33] Under reasonableness review, "[t]he burden is on the party challenging the decision to show that it is unreasonable" (*Vavilov*, at para. 100). The challenging party must satisfy the court "that any shortcomings or flaws relied on . . . are sufficiently central or significant to render the decision unreasonable" (*Vavilov*, at para. 100). In this case, that burden lies with the Union.

[19] Also, as noted by the Chief Justice for the majority in *Vavilov*:

> *D. Formal Reasons for a Decision Should Be Read in Light of the Record and With Due Sensitivity to the Administrative Setting in Which They Were Given*

> [91] A reviewing court must bear in mind that the written reasons given by an administrative body must not be assessed against a standard of perfection. That the reasons given for a decision do "not include all the arguments, statutory provisions, jurisprudence or other details the reviewing judge would have preferred" is not on its own a basis to set the decision aside: Newfoundland Nurses, at para. 16. The review of an administrative decision can be divorced neither from the institutional context in which the decision was made nor from the history of the proceedings.

B. *Legislation*

[20] Applications for TRVs are governed by paragraph 20(1)(b) of the *IRPA* and subsection 7(1) and section 179 of the *IRPR*. Paragraph 20(1)(b) provides:

Obligation on entry	**Obligation à l'entrée au Canada**
20 (1) Every foreign national, other than a foreign national referred to in section 19, who seeks to enter or remain in Canada must establish,	**20 (1)** L'étranger non visé à l'article 19 qui cherche à entrer au Canada ou à y séjourner est tenu de prouver :
…	…
(b) to become a temporary resident, that they hold the visa or other document required under the regulations and will leave Canada by the end of the period authorized for their stay.	**b)** pour devenir un résident temporaire, qu'il détient les visa ou autres documents requis par règlement et aura quitté le Canada à la fin de la période de séjour autorisée.

[21] Subsection 7(1) and section 179 of the *IRPR* provide:

Temporary resident	**Résident temporaire**
7 (1) A foreign national may not enter Canada to remain on a temporary basis without first obtaining a temporary resident visa.	**7 (1)** L'étranger ne peut entrer au Canada pour y séjourner temporairement que s'il a préalablement obtenu un visa de résident temporaire.
…	…
Issuance	**Délivrance**
179 An officer shall issue a temporary resident visa to a foreign national if, following an examination, it is established that the foreign national	**179** L'agent délivre un visa de résident temporaire à l'étranger si, à l'issue d'un contrôle, les éléments suivants sont établis :
(a) has applied in accordance with these Regulations for a temporary resident visa as a member of the visitor, worker or student class;	**a)** l'étranger en a fait, conformément au présent règlement, la demande au titre de la catégorie des visiteurs, des travailleurs ou des étudiants;
(b) will leave Canada by the end of the period authorized for their stay under Division 2;	**b)** il quittera le Canada à la fin de la période de séjour autorisée qui lui est applicable au titre de la section 2;
(c) holds a passport or other document that they may use to enter the country that issued it or another country;	**c)** il est titulaire d'un passeport ou autre document qui lui permet d'entrer dans le pays qui l'a délivré ou dans un autre pays;
(d) meets the requirements applicable to that class;	**d)** il se conforme aux exigences applicables à cette catégorie;
(e) is not inadmissible;	**e)** il n'est pas interdit de territoire;

(f) meets the requirements of subsections 30(2) and (3), if they must submit to a medical examination under paragraph 16(2)(b) of the Act; and	**f)** s'il est tenu de se soumettre à une visite médicale en application du paragraphe 16(2) de la Loi, il satisfait aux exigences prévues aux paragraphes 30(2) et (3);
(g) is not the subject of a declaration made under subsection 22.1(1) of the Act.	**g)** il ne fait pas l'objet d'une déclaration visée au paragraphe 22.1(1) de la Loi.

VII. Administrative setting

[22] The Court is asked to and takes judicial notice of the administrative setting in which the decision-maker reached her Decisions. As counsel for the Minister submitted, the Minister's officers approved 1,438,633 applications for temporary visitors visas in 2017, according to the *2018 Annual Report to Parliament on Immigration*. I accept that the Minister's officers presumably reviewed numerous additional temporary visa applications that were refused, as with the ones in this case. These are very significant numbers and, of course, each could be subject to the same level of scrutiny on judicial review.

VIII. Analysis

[23] The leading case regarding TRVs is *Rahman v Canada (Citizenship and Immigration)*, 2016 FC 793 per Strickland J, who sets out the relevant considerations at para 16:

> [16] The *IRPA* requires that a foreign national, before entering Canada, apply for a visa (s 11(1)), establish that they hold such a visa and that they will leave Canada by the end of the period authorized for their stay (s 20(1)(b)). With respect to TRV's, s 7(1) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 ("IRP Regulations") states that a foreign national

> may not enter Canada to remain on a temporary basis without first obtaining a TRV. Section 179 of the IRP Regulations sets out the requirements that must be met before a visa officer will issue a TRV. Among these is the requirement that the visa officer be satisfied that the foreign national will leave Canada at the end of the period authorized for his or her stay. There is a legal presumption that a foreign national seeking to enter Canada is an immigrant, and it is up to him or her to rebut this presumption (*Obeng* at para 20). Therefore, in the present case, the onus was on the Applicant to prove to the Officer that she is not an immigrant and that she would leave Canada at the end of the requested period of stay (*Chhetri* at para 9).

[24] First, the Applicants submit the Officer made unreasonable findings without regard to the record. The Applicants argue they provided all of the information needed to process the application and the Officer ignored this evidence. They say this because, which is the case, none of the evidence I referred to above is mentioned in either the letters from the Officer or the GCMS notes.

[25] Therefore, the Applicants submit there are no reasons, and ask that judicial review be granted.

[26] With respect, I disagree.

[27] In my respectful view, the Applicants have mischaracterized the language of the Decisions. To begin with, there is no requirement for an officer to enumerate the details of the evidence she or he relied upon in her or his reasons, which is what the Applicants would have such officers do. It is enough for an officer to give reasons that meet the tests set out in *Vavilov*.

The Officer's GCMS notes set out those reasons under the heading "Summary of key findings below." These reasons are repeated here for convenience:

> I have reviewed all the documentation provided for this application. Summary of key findings below: - Insufficient proof of financial status / funds on file do not appear sufficient to facilitate the trip to Canada and its duration; based on the documentation on file to support the applicant's level of economic establishment and considering the purpose of the visit, I do not consider that the proposed trip to Canada is a reasonable or affordable expense; see proof of funds on file -PA/family does not demonstrate sufficient establishment or sufficient ties to motivate return - Lack of travel history noted which could be used to gauge past compliance to immigration laws of countries with strong migration pull factors Given the foregoing, PA has not demonstrated sufficient establishment or sufficient ties to motivate return. I am not satisfied on balance that PA is a bona fide visitor to Canada who will depart at the end of authorized stay. Application refused.
>
> [Emphasis added]

[28] Properly read, the language of the Officer does not permit the Court to find that there are no reasons. As I comprehend it, the Officer took a four-step approach in her Decisions. First, she referred to the record, prepared by the Applicants, which she reviewed. Second, she summarized her key findings, that is, she assessed material factors and provided her reasons in relation to each material factor. Third, she came to a conclusion based on her findings, namely that the Applicants were not bona fide visitors to Canada who will depart at the end of their authorized stay. This conclusion was based on the record and her reasons. Finally, she rendered the decision, dictated by the legislation given her conclusion that the Applicants did not meet the statutory conditions, and rejected the two applications.

[29] In opposition to the foregoing analysis, I was pointed to two cases. The first was *Ogunfowora v Canada (Citizenship and Immigration)*, 2007 FC 471, per Lagacé J [*Ogunfowora*],

which however was decided before both *Dunsmuir* and well before *Vavilov*, and as such is of limited assistance.

[30] In addition, I was referred to *Groohi v Canada (Citizenship and Immigration)*, 2009 FC 837 [*Groohi*], where Justice Zinn stated at para 14:

> [14] These applications must succeed based simply on the absence of any true analysis of the evidence by the visa officer. It is trite law that simply listing a series of factors, and stating a conclusion, is generally insufficient to meet the test of reasonableness, the reason being that it is impossible for a reviewing Court to appreciate and assess the train of thought or logical process engaged in by the decision-maker. That is exactly the shortcoming the records disclose here.
>
> [Emphasis in original]

[31] With respect, the situation described in *Groohi* is distinguishable. The Officer did not 'simply list a series of factors and state a conclusion.' In this case, the Officer provided reasons in her "Summary of key findings" before reaching her conclusions, and then, based on her reasons and resulting conclusions, made the determination to reject both applications.

[32] In my respectful view, the reasons in this case meet the test set out in *Vavilov* in that they enable the Court to ascertain the decision maker's train of reasoning. *Vavilov* at para 102 says that the reviewing court "must be able to trace the decision maker's reasoning without encountering any fatal flaws in its overarching logic, and it must be satisfied that "there is [a] line of analysis within the given reasons that could reasonably lead the tribunal from the evidence before it to the conclusion at which it arrived."" That is the situation here: the Officer's

reasons are appropriately summarized under the heading “Summary of key findings” as reproduced above.

[33] Notwithstanding counsel’s very able submissions, I am not persuaded that any of the Officer’s findings are unreasonable, nor that they are unreasonable viewed holistically. Her key findings on the record lead directly to the conclusion that the Applicants do not meet the test established by Parliament, and her Decision to dismiss their applications was required by her reasons coupled with Parliament’s direction in paragraph 179(b) of the *IRPA*.

[34] In this connection, the Applicants submit the Officer acted unreasonably in holding lack of travel history was a negative factor in refusing their application. The Applicants rely on *Dhanoa v Canada (Citizenship and Immigration)*, 2009 FC 729 per Harrington J and *Ogunfowora*, cited above. I agree that travel in this case was a neutral factor, but nonetheless I find that travel was properly considered by the Officer and assessed in the factual matrix. The Officer’s mention of travel does not render the outcome unacceptable given the Officer’s reasonable conclusions about lack of funds. This is not a fatal flaw described in *Vavilov* at para 102. In terms of the overall financial assessment, it is in my view relevant that the cost of the proposed vacation would equal approximately half the Applicants’ combined annual income. The Officer’s reasons state: “funds on file do not appear sufficient to facilitate the trip to Canada and its duration” and “I do not consider that the proposed trip to Canada is a reasonable or affordable expense.” It was open to the Officer to make these findings.

[35] The Applicants submit that if the Officer had concerns with the financial information, the Officer should have issued a procedural fairness letter. This arises because there is no evidence as to the provenance of funds in the Applicants' bank accounts. I am not persuaded a procedural fairness letter was required even if that was the Officer's concern, based on *Bautista v Canada (Citizenship and Immigration)*, 2018 FC 669 per Gagné J (as she then was) at para 17 (dealing with a work permit not a vacation visa):

> [17] I also was not convinced by the Applicant's argument that the visa officer should have given the employer the opportunity to rebut his findings before denying the Applicant's work permit. The onus of satisfying the visa officer of all elements of the application lay with the Applicant. It is generally not a procedural fairness requirement that applicants for a work permit be granted an opportunity to respond to a visa officer's concerns. This is particularly so where, as in the present case, there is no evidence of serious consequences to the Applicant resulting from a refused work visa application, since she may re-apply and there is no evidence that doing so would cause hardship (*Qin v Canada (Minister of Citizenship and Immigration)*, 2002 FCT 815 (CanLII) at para 5; *Singh Grewal v Canada (Citizenship and Immigration)*, 2013 FC 627 at para 19). The onus does not shift to the visa officer to interview the Applicant and to take other steps to satisfy his concerns arising from any documentation filed by the Applicant.

[36] I also rely on *Sulce v Canada (Citizenship and Immigration)*, 2015 FC 1132, per Leblanc J at para 10:

> [10] It is well-settled that it is up to a temporary work permit applicant to provide all relevant supporting documentation and sufficient credible evidence to satisfy a visa officer that he can fulfill the job requirements. In other words, it is for the applicant to put his best case forward (*Silva v Canada (Citizenship and Immigration)*, 2007 FC 733, at para 20; *Grusas*, above at para 63; *Singh v Canada (Citizenship and Immigration)*, 2015 FC 115, at para 25[*Singh*]). In such context, and keeping in mind that visa applications do not raise substantive rights since visa applicants do not have an unqualified right to enter Canada, the level of procedural fairness is low and generally does not require that temporary work permit applicants be granted an opportunity to

> address the visa officer's concerns (*Grusas*, above at para 63; *Ali v Canada (Citizenship and Immigration)*, 2011 FC 1247, 398 FTR 303, at para 85; *Grewal*, above at para 18). This is particularly the case where there is no evidence of serious consequences to the applicant, where for example the applicant is able to reapply for a work permit and there is no evidence that doing so will cause him or her hardship (*Qin v Canada (Minister of Citizenship and Immigration)*, 2002 FCT 815, [2002] FCJ No 1098, at para 5; *Masych v Canada (Citizenship and Immigration)*, 2010 FC 1253, at para 30).
>
> [Emphasis added]

IX. Conclusion

[37] Stepping back and taking a holistic view, the Decisions meet the tests of reasonableness set out in *Canada Post* and *Vavilov*. The Decisions were based on internally coherent reasons and are justified in light of the facts and law that constrained the Officer. They are transparent and intelligible as well. Therefore, judicial review will be dismissed.

X. Certified Question

[38] Neither party proposed a question of general importance, and none arises.

JUDGMENT in IMM-3057-19

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed, no question of general importance is certified, and there is no order as to costs.

"Henry S. Brown"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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