Federal Court  Cour fédérale

**Date: 20200218**

**Docket: IMM-2563-19**

**Citation: 2020 FC 257**

**Ottawa, Ontario, February 18, 2020**

**PRESENT: The Honourable Mr. Justice LeBlanc**

**BETWEEN:**

**S. M. GOLAM RABBANI**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION**

**Respondent**

# JUDGMENT AND REASONS

## I. Introduction

[1] The Applicant seeks judicial review of a decision rendered by a visa officer [Officer] of the High Commission of Canada in Singapore. The Officer denied his application for a permanent resident visa as a member of the Quebec Selected Investor Category because he was not satisfied that the Applicant intended to reside in Quebec.

## II. Background

[2] The Applicant is a citizen of Bangladesh. On November 9, 2014, he applied for a permanent resident visa in the economic program, under the Québec Selected Investor Category. Along with his application, he submitted copies of the *Certificats de sélection du Québec* [CSQ] that were issued to him, his wife and their two children on September 5, 2014. At the time he submitted his visa application, his son was already in Canada as he was studying at the University of Toronto.

[3] On September 13, 2016, upon an initial review of his file, a procedural fairness letter was sent to the Applicant. That letter requested that he provide proof of his intention to reside in Québec. On October 10, 2016, in response to said letter, the Applicant submitted a confirmation for a French course registration for his wife and his children; updated information regarding his daughter's enrollment at the University of Toronto; notarized declarations signed by himself and his wife, declaring their intent to settle in Québec; and notarized declarations signed by his children, declaring their intent to request a transfer of credits to a university located in Québec once their parents are successful with their application. He also submitted a copy of a promise to purchase a property in Montréal, dated October 7, 2016 as well as a bank draft dated October 5, 2016, regarding said promise to purchase.

[4] On March 20, 2018, a further review of the Applicant's file led a visa officer to request additional documentary evidence regarding his intention to reside in Québec. In response to that further request, the Applicant submitted notarized declarations from his daughter and wife, declaring that they both had completed a French language course in 2016. Again, his daughter

and his son declared their willingness to seek that their credits at the University of Toronto be transferred to a university in Québec.

[5] On November 15, 2018, the Applicant was informed that an in-person interview would be required. The Global Case Management System Notes [GCMS Notes] indicate, at that period, that the visa officer had concerns regarding the Applicant's intention to reside in Québec. These concerns stem from the Applicant's children's residency in Ontario and the residency of his two brothers who had previously been granted permanent resident visa under the Quebec Selected Investor Category, but never settled Quebec.

[6] On January 31, 2019, the Applicant received the convocation letter for the interview, which was scheduled for February 24, 2019. The next day, on February 1, 2019, he signed an agreement for the purchase of shares in a grocery store in Montréal with his eldest brother, who lives in Ontario. Doing so, they entered into a partnership with another individual, which led the Applicant and his brother to hold 50 percent of the shares in the grocery store. Additionally, on February 21, 2019, the two bought a property in Montréal.

[7] At the interview, the Officer reiterated his concerns regarding the Applicant's intent to reside in Québec. For instance, he raised concerns regarding the fact that both of the Applicant's children were studying in Toronto. The Applicant explained that they were not studying in Québec because the Applicant's second cousin lives in Toronto. He also questioned the Applicant regarding the fact that his eldest brother, who was granted permanent residency under the Quebec Selected Investor Category and with whom he had bought the grocery store and property in Montréal, only stayed in Québec for three or four days before moving to Ontario.

Finally, the Officer questioned the Applicant regarding the fact his other brother moved back to Bangladesh after being granted permanent resident status under the same program.

[8] On March 7, 2019, the Officer refused the Applicant's application as he was not satisfied that the Applicant intended to reside in Québec and that he met, therefore, the definition of an "investor elected by a province" as set out in subsection 88(1) of *Immigration and Refugee Protection Regulations*, SOR/2002-227 [Regulations]. Because the Officer found the Applicant not to be an investor within the meaning of that provision, his application was refused and no further assessment was required pursuant to subsection 90(2) of the Regulations.

[9] In particular, the Officer found the evidence provided by the Applicant regarding his intention to reside in Quebec to be vague, evasive and unreliable. He noted in that regard that:

a) The Applicant does not speak French, but his wife and daughter took French classes;

b) The Applicant's eldest brother handled the purchase of the shares in the grocery store and property in Montréal;

c) The Applicant has no knowledge of the grocery business and he did not know the location of the grocery and property he had bought with his brother;

d) Neither of the Applicant's brothers, who were granted permanent resident status under the same category, settled in Québec; one lives in Toronto with his family, where the Applicants' children study, and the other moved back to Bangladesh;

e) The Applicant's children currently live and study in Toronto and although they have visited Montréal before, they both have no detailed plans as to what they will do once in Montréal.

[10] The Applicant claims that the Officer violated procedural fairness by failing to give him an opportunity to address the Officer's concern that the purchase of both the shares in the grocery store and the property in Montreal "were made recently and likely for this immigration purpose." (Certified Tribunal Record [CTR] at p 7). According to the Applicant, this concern goes to his credibility, but was never put to him by the Officer, therefore rendering the Officer's approach unfair and non-transparent.

[11] The Applicant also submits that the Officer unreasonably refused his permanent residence visa application. According to him, the Officer's decision was speculative and not grounded in the evidence. Though the Applicant swore he would reside in Québec, the Officer failed to explain why he disbelieved his testimony, other than referring to the Applicant's family history and to his lack of knowledge about his future business plans.

[12] Finally, the Applicant claims that the Officer applied the wrong legal test in assessing his permanent residence visa application. However, he abandoned that argument at the hearing of this judicial review application.

## III. Issues

[13] In my view, this case raises the following issues:

a) Did the Officer breach procedural fairness by failing to give the Applicant an opportunity to address the Officer's concerns?

b) Did the Officer committed a reviewable error in concluding that the Applicant had failed to establish that he intended to reside in Quebec?

[14] In his written submissions, the Respondent noted that some of the documents produced by the Applicant before the Officer were not included in the CTR but claimed that since these documents were discussed at length by the Officer at the interview, there was no evidence of a breach of procedural fairness in this case and no basis, therefore, to quash the Officer's decision on that ground. This does not appear to be an issue for the Applicant. In any event, I am satisfied that the incompleteness of the CTR in this case does not warrant judicial review being granted as the missing documents were considered by the Officer and are available to the Court (*Ajeigbe v Canada (Citizenship and Immigration)*, 2015 FC 534, at para 18).

## IV. Standard of Review

[15] When this case was argued, the standard of review applicable to these two questions was not an issue. Both parties were of the view that the first question was governed by the standard of correctness whereas the second question was to be assessed by the Court on a standard of reasonableness and they were right (*Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 43; *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47 [*Dunsmuir*]; *Dashtban v Canada (Citizenship and Immigration)*, 2015 FC 160 at para 31; *Potdar v Canada (Citizenship and Immigration)*, 2019 FC 842 at para 12).

[16] However, a few days after having taken the matter under advisement, the Supreme Court of Canada issued its judgment in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*], a case that presented the Supreme Court with an "opportunity to re-examine its approach to judicial review of administrative decisions" (*Vavilov* at para 1).

[17] The parties were then offered the opportunity to submit further written submissions on the impact, if any, *Vavilov* might have on the standards of review applicable to this case. They both filed such submissions.

[18] The Applicant is of the view that the standards of review for these two issues remain the same and reiterates that the Officer's decision is both procedurally unfair as well as irrational and illogical and, therefore, unreasonable.

[19] The Respondent, meanwhile, also agrees that the standard of reasonableness applies to the review of the merits of the decision. He contends that since none of the situations justifying a departure from the presumption that said standard is applicable to all cases where the merits of an administrative decision are challenged, which was crystallised in *Vavilov*, applies in the present case. As for the procedural fairness issue raised by the Applicant, the Respondent submits that since the question of procedural fairness was not addressed through the revised framework established in *Vavilov*, the common law on procedural fairness should apply to determine whether the decision making process was fair.

[20] I agree that the standard of review applicable to the two questions at issue in this case remain the same. In an effort to clarify and simplify the applicable law with respect to the determination of the applicable standard of review to a given case, the Supreme Court of Canada has adopted a revised framework for determining the standard of review, which "begins with a presumption that reasonableness is the applicable standard in all cases" (*Vavilov* at paras 10 and 25). This analytical framework assumes, as a conceptual basis for this presumption, the expertise

of administrative decision makers, which is inherent to their specialized functions (*Vavilov* at para 26-28).

[21] According to *Vavilov*, the presumption of reasonableness review can only be rebutted in two types of situations. The first type of situation concerns cases where the legislature explicitly prescribes the applicable standard of review or where it provides a statutory appeal mechanism from an administrative decision to a court. Here, it is a matter of respecting the legislature's will (*Vavilov* at para 33).

[22] The second type of situation concerns cases where the rule of law requires that the standard of correctness be applied. This will be the case for constitutional questions, general questions of law of central importance for the legal system as a whole and questions related to the jurisdictional boundaries between administrative bodies (*Vavilov* at para 17).

[23] It is clear, here, that none of these exceptions apply to the case at bar.

[24] Regarding the actual content of the reasonableness standard, the Respondent submits that the *Vavilov* framework does not represent a marked departure from the Supreme Court's previous approach, as set out in *Dunsmuir* and subsequent decisions, which was based on the "hallmarks of reasonableness", namely transparency, intelligibility and justification. The Applicant did not make any submissions on that particular point, besides providing further submissions on the unreasonableness of the Officer's decision.

[25] I generally agree with the Respondent's view on this point. I will only add the following. As the Supreme Court noted, "a court applying the reasonableness standard does not ask what decision it would have made in place of that of the administrative decision maker, attempt to ascertain the "range" of possible conclusions that would have been open to the decision maker, conduct a *de novo* analysis or seek to determine the "correct" solution to the problem". The Court will only consider "whether the decision made by the administrative decision maker - including both the rationale for the decision and the outcome to which it led – was unreasonable" (*Vavilov* at para 83).

[26] In that respect, the Supreme Court pointed out that when a reviewing court undertakes the review of an administrative decision on the reasonableness standard, it must show deference to such a decision (*Vavilov* at para 85) and must refrain from engaging in a "line-by-line treasure hunt for error" (*Vavilov* at para 102).

[27] In essence, the reviewing court must, according to the Supreme Court, "develop an understanding of the decision maker's reasoning process" and determine "whether the decision bears the hallmarks of reasonableness - justification, transparency and intelligibility" (*Vavilov* at para 99).

[28] In doing so, the reviewing court will only interfere regarding the administrative decision-maker's factual findings in "exceptional circumstances", when the decision-maker has "fundamentally misapprehended or failed to account for the evidence before it" (*Vavilov* at paras 125-126). In doing so, too, it must also be aware that the written reasons of the decision-maker "must not be assessed against a standard of perfection" (*Vavilov* at para 91) because

administrative justice does not always resemble judicial justice. Moreover, when assessing the quality of the reasoning followed by the decision-maker, as revealed in the reasons for its decision, the reviewing court may take into account, among others, the history and the context of the proceedings in which said reasons were rendered and the evidence that was before the decision-maker (*Vavilov* at para 94).

[29] This analytical framework does not indeed represent, in my view, a marked departure with the principles set out in *Dunsmuir*, although care must be taken to ensure that the application of these principles in a given case is in line with those set out in *Vavilov*, whose ultimate objective is to "develop and strengthen a culture of justification in administrative decision making" (*Vavilov* at paras 2 and 143).

## V. Analysis

### A. *The Procedural Fairness Issue*

[30] As I indicated previously, the Applicant submits that the Officer should have raised with him, at the interview, his concern that the purchase of the shares in the grocery store and of the property were likely made for immigration purposes. According to the Applicant, this amounted to a credibility concern to which he should have been given an opportunity to respond.

[31] The Applicant contends that the same situation arose in *Ransanz v Canada (Public Safety and Emergency Preparedness)*, 2015 FC 1109 [*Ransanz*] where judicial review was granted for this reason.

[32] However, I am not satisfied that the situation in the case at bar is similar to the one in *Ransanz*. In that case, the visa officer also had concerns regarding the applicant's intent to reside in Québec. The specifics of these concerns were raised during the interview. In response to these concerns, the applicant showed the visa officer an unsigned finder's agreement with a business consulting firm in Montréal, whereby the applicant would target pharmaceutical companies available for purchase in Montréal. He also explained to the visa officer that his wife had recently visited Montréal to look at properties and had visited schools where they were considering enrolling their children (*Ransanz* at para 30). That applicant also filed affidavit evidence in which he swore that the visa officer had refused to look at the agreement because it was unsigned.

[33] Here, the Officer weighed the Applicant's evidence regarding the purchase agreements for the property and the shares in the grocery store, but concluded that the Applicant did not demonstrate his intent to reside in Québec.

[34] With respect to the credibility concern regarding the main reason underlying these transactions, the GCMS Notes show that the Officer raised it and gave the Applicant an opportunity to respond. The Officer wrote the following (CTR at p 7):

> Also provided agreement of sale of shares dated 1 Feb 2019 to purchase the grocery store. **Note that all the above transactions were made recently and likely for this immigration purpose.** This is because PA has little info to offer about the business or reason for purchasing the house as PA said that eldest brother made the decision as he is in Canada etc. I advised PA that I have concern about whether he would reside in the province of Quebec per schedule 5 signed by him. **Do you understand all questions asked? Yes Do you have anything further to add? No**.
>
> [my emphasis]

[35] As is well established, GCMS Notes form part of a visa officer's decision (*Thedchanamoorthy v Canada (Citizenship and Immigration)*, 2018 FC 690 at para 17; *Wang v Canada (Citizenship and Immigration)*, 2019 FC 284 at para 6; *Song v Canada (Citizenship and Immigration)*, 2019 FC 72 at para 18). The reference to this concern in the GCMS Notes appears right after the Officer noted having been provided by the Applicant with copies of both the purchase agreements of the shares in the grocery store and of the property dated, respectively, February 1, 2019 and February 21, 2019.

[36] It is clear to me, when the GCMS Notes are read as a whole, that the Officer advised the Applicant of this particular concern when he was provided with these agreements, as this concern is referenced in the section of the GCMS Notes that summarizes the content of the interview, the questions that were asked by the Officer and the answers that were given by the Applicant.

[37] In *Ransanz*, the credibility issue concerned a trip of the applicant's wife in Montreal to research into real estate and schools for the children. At the hearing of the judicial review application, the respondent's counsel implied that the visa officer suspected that this trip only took place because the applicant was aware of his upcoming interview with the officer. If such was the case, the Court said, then the visa officer should have raised this concern with the applicant and give him an opportunity to respond. On that point, *Ransanz* is, therefore, distinguishable from the case at bar.

[38] The Applicant also argues that because the Officer wrote in the GCMS Notes that the interview was to address concerns in the "spousal category" (CTR at p 5), procedural fairness

was breached. However, I do not believe that this mistake warrants judicial review. The Applicant, prior to the interview, received procedural fairness letters requesting evidence about his intention to reside in Québec (CTR, at p 79 and 162).

[39] Moreover, it is clear from the GCMS Notes that the focus was not on concerns in the spousal category, but rather on the Applicant's intent to reside in Québec. Therefore, I am satisfied that the unfortunate reference in the GCMS Notes to the spousal category was only an unfortunate mistake. Although this may suggest "inattention or a hurried approach", it is not fatal, since the record shows that the Applicant was clearly aware of the Officer's true concerns (*Ekpenyong v Canada (Immigration, Refugees and Citizenship)*, 2019 FC 1245 at para 24).

B. *The Reasonableness of the Officer's Decision*

[40] The Applicant submits that the Officer unreasonably dismissed his permanent residence visa application, by assuming that he would not settle in Québec after being granted permanent resident status, since his brothers who had previously been granted permanent resident visa under the Quebec Selected Investor Category failed to do so. Such an analysis, according to the Applicant, is irrational and illogical. Rather, he argues that he presented the Officer's with ample and eminently credible evidence regarding his intention to reside in Québec.

[41] I do not agree.

[42] First, under subsection 88(1) of the Regulations, there were two requirements in order to meet the minimal eligibility requirement of the Selected Investor Category found at

subsection 90(2) of the Regulations. These two requirements are: (1) to be named in a selection certificate issued by the chosen province and (2) to demonstrate an intention to reside in that province. However, as stated by Justice Martineau in *Ransanz*, having a CSQ delivered by the province of Québec does not preclude federal immigration authorities from assessing whether an applicant had the intention to reside in Québec, as per the requirements of section 88(1) of the Regulations.

> [27] To summarize, under the IRPA, it is the federal government who has the final authority to grant permanent resident visas to foreign nationals. In this case, the Officer found that the applicant did not meet the admissibility criteria provided for under the Regulations and the IRPA, and thus denied his application according to subsection 90(2) of the Regulations. As a result, the Officer did not commit a reviewable error in refusing the applicant's application, in spite of the fact that the province of Quebec had issued a CSQ. Accordingly, the Officer did not have to find that the applicant was inadmissible, as per sections 33 to 43 of the IRPA, in order to refuse his application for a permanent resident visa (*Qing v Canada (Minister of Citizenship and Immigration)*, 2005 FC 1224 (CanLII) at para 7).

[43] Since intention to reside in a chosen province is a highly subjective criteria, this Court, in *Dhaliwal v Canada (Citizenship and Immigration)*, 2016 FC 131 [*Dhaliwal*], stated that the assessment of said criteria "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" (*Dhaliwal* at para 31).

[44] Once again, the Applicant argues that the Officer considered, as determinative to his decision, the fact that his children and brothers were currently living outside of Québec. However, I do not believe that was the case.

[45] The Officer took into consideration, just as he was entitled to in light of this Court's teachings in *Dhaliwal*, the present circumstances. Among the circumstances presented to the Officer, he noted the fact that the Applicant's children both lived and studied in Toronto and that they had no plans as to what they would do once in Montréal. He also weighed into his assessment of the Applicant's intent to reside in Québec his family history regarding immigration.

[46] On this particular point, it is to be noted that the Applicant explained, in response to a procedural fairness letter asking him to provide evidence regarding his intent to reside in Québec that two of his brothers also had successfully applied for CSQ under the Québec Investor Program (CTR at p 153).

> It is pertinent to mention that each of the three brothers applied for Canada Immigration under Quebec Investor Program and got CSQ. (CIC File # Rabbani, S. M. Golam EP00162589, Quibria S. Golam, EP00157875 and Nomany, S.G. Shibly # EP00162593). (Photocopies of relevant documents are attached.)

[47] As the Applicant's brothers' immigration status was first brought up to the immigration authorities by the Applicant himself in support of his intention to reside in Québec, the Officer was entitled to look at whether his brothers stayed or not in Québec. He found that the two of them left Québec once their permanent resident status under the same category was issued. Therefore, I believe that the Officer could take into consideration, among other *indicia*, the Applicant's family immigration pattern when assessing whether he truly intended to settle in Québec.

[48] Moreover, contrary to the Applicant's contention, I do not believe that the Officer required of him to have personal knowledge of his business plans prior to his immigration. The Officer rather asked basic questions regarding the grocery store the Applicant had just bought with his eldest brother and another partner.

[49] I understand that the decisions rendered in the entrepreneurial context differ and cannot apply to cases involving an application for permanent residence visa in the investor category, as the requirements under the Act and Regulations differ.

[50] However, in the present case, the Officer noted that, although the Applicant had no knowledge of the business in the grocery store, he did not know much about the location of said grocery, nor the name of the other partner in the venture. In my view, these questions are very different that the ones asked in the entrepreneurial context, where applicants are asked to provide more detailed plans regarding their future business.

[51] I have reproduced below the questions that were asked by the Officer regarding the purchase of the grocery store and the Applicant's answers:

> What business did you buy? Grocery shop What grocery? Fish and meat and crockery and vegetables What is the name of the grocery shop? Sonar Gaon **How many employees in this shop? I don't know about the employees Who is looking after the shop? A partner What is the name of partner? I don't know How much did you pay for this shop? I paid 50,000 and my brother 50,000 on Feb 1 2019. This is an existing business belonging to your brother and both you and eldest brother decided to partner with him? PA did not know the answer and said he would show me the documents.**
>
> [my emphasis]

[52] I believe these are basic questions regarding his recent purchase and the Applicant could not answer them. It seems fair to assume that someone who invest $50,000.00 in a business will – at least – be able to name the people with whom he has invested money and discuss some basic characteristics of said business. The Officer reasonably considered, along with other indicia, as requested in *Dhaliwal*, that the Applicant had no intent to operate this store and, as a result, to reside in Québec.

[53] Moreover, the Officer considered the fact that the Applicant does not speak French, but acknowledged that his wife and daughter took French classes.

[54] Therefore, I do not believe that the Officer unreasonably rejected the Applicant's application for permanent resident visa or that he unreasonably concluded the Applicant failed to demonstrate his intention to reside in Québec. I see nothing irrational or illogical in the reasoning that led the Officer to deny the Applicant's visa application.

[55] Consequently, this application for judicial review will be dismissed. There is no question for certification raised by the parties. I agree that none arises.

**JUDGMENT in IMM-2563-19**

**THIS COURT'S JUDGMENT is that**:

1. The Application for judicial review is dismissed.

2. No question is certified.

"René LeBlanc"
Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

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|---|---|
| **DOCKET:** | IMM-2563-19 |
| **STYLE OF CAUSE:** | SM GOLAM RABBANI v THE MINISTER OF CITIZENSHIP AND IMMIGRATION |
| **PLACE OF HEARING:** | MONTRÉAL, QUEBEC |
| **DATE OF HEARING:** | DECEMBER 9, 2019 |
| **JUDGMENT AND REASONS:** | LEBLANC J. |
| **DATED:** | FEBRUARY 18, 2020 |

**APPEARANCES:**

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