Federal Court  Cour fédérale

Date: 20200224

Docket: IMM-2461-19

Citation: 2020 FC 294

Ottawa, Ontario, February 24, 2020

PRESENT: The Honourable Mr. Justice Ahmed

BETWEEN:

LUCKY UBINI ITSEKOR

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] This case concerns the decision of a visa officer (the "Officer") of the High Commission of Canada in the United Kingdom ("U.K."), dated March 25, 2019, to deny the Applicant's temporary resident visa ("TRV") application, pursuant to subsection 179(b) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 ("*IRPR"*).

[2] The Applicant is a 46-year-old citizen of Nigeria. At the beginning of March 2019, the Applicant submitted a TRV application to visit his estranged wife and four children in Canada for two weeks from June 4 to June 17, 2019. However, the Officer was not satisfied that the Applicant would leave Canada at the end of his stay, and refused the TRV application.

[3] The Applicant submits that the Officer failed to properly consider the evidence and made findings in an arbitrary and capricious manner.

[4] For the reasons that follow, the Officer's decision was reasonable. This application for judicial review is dismissed.

II. **Facts**

[5] Mr. Lucky Ubini Itsekor (the "Applicant") is a 46-year-old citizen of Nigeria. The Applicant is estranged from his wife, Mrs. Mary Itsekor, who lives in Canada with four of their children. Mrs. Itsekor, along with two of her children, Angel and Annabel (ages 9 and 7), are Convention refugees, and they have submitted an application for permanent residence. The other two children, Anthonette and Isabella (ages 8 and 3), respectively hold U.S. and Canadian citizenship. A fifth child, Precious (age 13), lives in Nigeria.

[6] On or about March 2, 2019, the Applicant submitted a TRV application to visit his children and estranged spouse in Canada. The Applicant stated that the purpose of the trip was to visit his family, and included a letter of invitation from Mrs. Itsekor among other supporting documentation, such as bank statements and registration documents for his company.

[7] By decision dated March 25, 2019, the Officer denied the Applicant's TRV application. The Officer was not satisfied that the Applicant would leave Canada at the end of his stay based on his "family ties in Canada and in [his] country of residence." The Officer's brief reasons in the Global Case Management System ("GCMS") state:

> To visit estranged spouse and children who are making refugee claim in Cda. While noting the importance of family relationships and the best interests of the child, I note that the children have access to the mother and that they are able to communicate through telephone or the internet. I also note that the strong family ties in Canada for the applicant means that I am not satisfied he will be a BF visitor to Canada.

[8] This is the underlying decision on this application for judicial review.

III. **Preliminary Issue: Extrinsic Evidence**

[9] The Respondent submits that the Applicant has attempted to place extrinsic evidence before the Court. For example, Exhibit "B" of the Applicant's affidavit was not before the Officer. The Respondent submits such evidence should not be admissible, as the judicial review of a decision must be based only on the evidence before the decision-maker (*Lalonde v Canada (Canada Revenue Agency)*, 2008 FC 183 (CanLII) at para 66; *Canada (Attorney General) v McKenna*, 1998 CanLII 9098 (FCA), [1999] 1 F.C. 401 (C.A.)).

[10] I agree with the Respondent's position. Pages 12, 13, 17, 19-24, and 32-35 of the Application Record are inadmissible as evidence and any submissions relying on these pages will not be considered.

IV. **Issue and Standard of Review**

[11] The issue on this application for judicial review is whether the Officer's decision is reasonable.

[12] It is well-established that a reasonableness standard applies for a visa officer's refusal to issue a TRV application: *Doret v Canada (Citizenship and Immigration)*, 2009 FC 447 (CanLII) at para 19; *Zhou v Canada (Citizenship and Immigration)*, 2013 FC 465 (CanLII) at para 8. The recent decision of the Supreme Court in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 (CanLII) [*Vavilov*] sets out a revised framework for standard of review. However, I see no need to depart from the standard of review followed in previous case law, as the application of the *Vavilov* framework results in the same standard of review: reasonableness.

[13] As noted by the majority in *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 para 85). Furthermore, "the reviewing court must be satisfied that there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency," (*Vavilov* at para 100).

V. **Analysis**

[14] I note that the Applicant was self-represented on the record, and did not make an appearance at the hearing to present oral arguments.

[15] In his written submissions, the Applicant submits that the Officer erred by making a crucial factual error in considering the evidence. The Applicant had provided supporting documentation to indicate that his estranged spouse and children were Convention refugees in Canada. However, the Officer erroneously noted that Mrs. Itsekor and the children were "making refugee claims", indicating that they were refugee claimants, not Convention refugees. The Applicant submits that the Officer may have concluded that the Applicant was making a trip to Canada in order to join his family's refugee claim.

[16] The Applicant further submits that the best interests of the children ("BIOC") were not properly considered by the Officer. The Applicant incorrectly submits an issue concerning the Officer's fettering of discretion, which in my view, is not applicable to the case at bar. As such, it will not be discussed.

[17] The Respondent submits that the onus is on the Applicant to satisfy the Officer that he will return to Nigeria at the end of the authorized period, and that the Officer is presumed to have considered all the evidence presented (*Khosa v Canada (Citizenship and Immigration)*, 2010 FC 83 (CanLII) at para 36; *Florea v Canada (Minister of Employment and Immigration)*, [1993] F.C.J. No. 598 (F.C.A.) (Q.L.)). The Respondent submits that the Officer need not have specifically mentioned the Applicant's employment or travel history. The Respondent also argues that the Officer noted the Applicant had a very strong connection to Canada, since his estranged spouse and children were living in Canada. In response to the Applicant's submission that the Officer suggested that the Applicant may try to join the family's refugee claim, the Respondent submits that this is inaccurate because it is not reflected in the Officer's reasons.

[18] With respect to the BIOC, the Respondent submits that the Officer is not required to assess humanitarian and compassionate ("H&C") factors in a TRV application (*Fakhri Adhari v Canada (Citizenship and Immigration)*, 2017 FC 854 (CanLII) at para 33; *Farhat v Canada (Citizenship and Immigration)*, 2006 FC 1275 at para 36; *Afridi v Canada (Citizenship and Immigration)*, 2014 FC 193 at para 21).

[19] I agree with the Respondent that the Officer was not required to consider the best interests of the child as part of assessing the TRV application. Nonetheless, the Officer did address "family relationships and the best interests of the child" in stating that "the children have access to the mother and that they are able to communicate through telephone or the internet".

[20] Although the Officer's reasons are brief, I find that the Officer's decision is reasonable. The Respondent cites *Watts v Canada (Citizenship and Immigration)*, 2020 FC 158 (CanLII) [*Watts*] for this Court to consider the administrative setting in which numerous TRV applications are granted each year. In *Watts*, the Court took judicial notice of the following (*Watts* at para 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.

[21] Furthermore, the Respondent argues that shorter reasons in a TRV application may provide sufficient justification in comparison to decisions concerning a refugee claim or an

application for permanent residence based on humanitarian and compassionate ("H&C") grounds. I agree. In the latter cases, the interests at stake are undoubtedly much higher, where the applicant may be facing a risk of persecution or torture if returned back to their country of origin, or facing hardship and removal from an established life in Canada.

[22] In the case at bar, the Officer justified the refusal of the Applicant's TRV application by stating their concern that the Applicant was not a *bona fide* visitor due to his strong family ties in Canada, as his estranged spouse and four of his children live in Canada.

[23] For the reasons stated above, the Officer's decision is reasonable.

VI. **Certified Question**

[24] Counsel for the Respondent stated that there is no question for certification and I concur.

VII. **Conclusion**

[25] The Officer's decision to refuse the Applicant's TRV application is reasonable. This application for judicial review is dismissed.

JUDGMENT in IMM-2461-19

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. There is no question to certify.

"Shirzad A."
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-2461-19
STYLE OF CAUSE:	LUCKY UBINI ITSEKOR v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
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