Federal Court  Cour fédérale

Date: 20200220

Docket: IMM-4541-19

Citation: 2020 FC 283

Vancouver, British Columbia, February 20, 2020

PRESENT: The Honourable Madam Justice Roussel

BETWEEN:

ZHENG ZHANG

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Zheng Zhang, seeks judicial review of a decision of the Immigration Appeal Division [IAD] dated July 11, 2019, dismissing her appeal pursuant to subsection 63(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] against a decision made by an immigration officer refusing to issue her parents a permanent resident visa.

[2] The Applicant was born in China. She immigrated to Canada and became a citizen in 2006. In 2015, she sought to sponsor her parents pursuant to paragraph 117(1)(*c*) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227. The Applicant's mother, Haiying Sun, is the principal applicant on the application for permanent resident status [PR application]. The Applicant's father, Long Zhang, is named as a dependent on the PR application.

[3] On March 7, 2018, an immigration officer in the Family Class Unit at the Immigration, Refugees and Citizenship Canada Case Processing Centre – Ottawa [CPC-Ottawa] advised Ms. Sun that she and her husband needed to complete an immigration medical examination [IME] by April 7, 2018.

[4] On March 22, 2018, the Applicant advised the CPC-Ottawa by email that her father was in the hospital for a diagnostic check for diabetes, and she requested a two (2) month extension. The CPC-Ottawa agreed to extend the IME deadline to April 30, 2018 and invited the Applicant to advise their office if her father's medical condition continued to be a "barrier" for undergoing the medical examination.

[5] On April 10, 2018, the Applicant advised the CPC-Ottawa that her father had been transferred to intensive care and that there was no clear indication as to when he would be discharged or transferred back to the inpatient ward. The Applicant requested a further two months to complete the IMEs. The CPC-Ottawa granted a second extension to June 20, 2018.

The Applicant was again invited to advise the CPC-Ottawa if her father's medical condition continued to be a "barrier" for undergoing the medical examination.

[6] On May 24, 2018, the Applicant advised the CPC-Ottawa that her father remained in the hospital's intensive care unit and that she could not provide a timeline for when her father would "fully recover and be released". On this basis, she asked for a further extension of six (6) months to complete the IMEs. She also queried what would happen if her father passed away and whether her mother could still go for the medical examination herself.

[7] In a letter dated June 14, 2018, an immigration officer at the CPC-Ottawa [Officer] rejected the PR application. The Officer acknowledged the Applicant's six-month extension request, but explained that it "cannot grant extensions indefinitely until 'the worst case scenario' were to happen". The Officer then explained that the medical condition of the Applicant's father "might render [the Applicant's mother] inadmissible to Canada pursuant to section 42(a) of the [IRPA] " and suggested that the Applicant's mother may want to consider other options than permanent residence in Canada, such as applying for a "parent and grandparent super visa". Relying on subsection 11(1) of the IRPA, the Officer was not satisfied that the Applicant's mother was not inadmissible.

[8] Despite the rejection of her PR application, the Applicant's mother attended an IME on June 19, 2018, one day before the expiration of the second extension.

[9] The Applicant appealed the Officer's decision to the IAD. She argued that the decision was legally invalid, as the Officer had breached procedural fairness by rejecting the PR application before the second deadline of June 20, 2018 and by failing to respond to her query in her May 24, 2019 email. In the alternative, she argued that there were sufficient humanitarian and compassionate [H&C] considerations for the IAD to exercise its discretionary jurisdiction and grant special relief.

[10] On July 11, 2019, the IAD dismissed the appeal. It found that the Officer's decision was legally valid. After weighing the positive and negative factors, the IAD also found insufficient H&C considerations to justify special relief.

II. Analysis

[11] Although the Applicant raises several issues in her memorandum of argument, the determinative issue, in my view, is the IAD's failure to engage in a reasonable analysis of the Applicant's procedural fairness allegations relating to the Officer's treatment of the PR application.

[12] In *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*], the Supreme Court of Canada held that reasonableness is the presumptive standard of review for decisions made by administrative decision makers (*Vavilov* at paras 10, 16-17). None of the exceptions described in *Vavilov* apply here.

[13] In providing guidance on what constitutes a reasonable decision, the Supreme Court of Canada explained that "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). A decision will be unreasonable if the reasons for it, read holistically, reveal that the decision was based on an irrational chain of analysis or if the reasons read in conjunction with the record do not make it possible to understand the decision maker's reasoning on a critical point (*Vavilov* at para 103). Moreover, "the internal rationality of a decision may be called into question if the reasons exhibit clear logical fallacies, such as circular reasoning, false dilemmas, unfounded generalizations or an absurd premise" (*Vavilov* at paras 103-104).

[14] I agree with the Applicant that the IAD's decision is unreasonable. Even when read holistically, the IAD's reasons fail to reveal a rationally coherent analysis regarding the validity of the Officer's decision to refuse the PR application before the expiration of the second deadline granted to the Applicant's parents to complete their IMEs.

[15] The IAD found that the Officer's decision to refuse the PR application before June 20, 2018 did not breach procedural fairness. In the IAD's view, the Applicant's request for a third extension essentially indicated that the family could not meet the IME deadline as it then stood. The IAD also found that, even if a breach of procedural fairness had occurred, the family's refusal to comply with the IME requirement would necessarily result in a refusal of the application. It added that in *Mobil Oil Canada Ltd v Canada-Newfoundland Offshore Petroleum Board*, [1994] 1 SCR 202 [*Mobil Oil*], the Supreme Court of Canada "held that, despite a finding

that there had been a breach of natural justice, it would be inappropriate to quash a decision and refer it back to the original decision-maker when the ultimate result was inevitable".

[16] In my view, the IAD's characterization of the outcome as "inevitable" for the purposes of engaging *Mobil Oil* is inconsistent with some of its other findings. In examining whether to allow the appeal based on H&C considerations, the IAD found that there is little evidence to demonstrate that (i) the Applicant had exhausted other possible avenues of having her father medically examined, or that (ii) she had made every reasonable effort to ensure her father's compliance with the IME requirement. Again, in its conclusion, the IAD suggested that the Respondent has the authority to rectify the family's predicament by either directing that the authorized physician examine the Applicant's father in his hospital bed, or by exercising the Minister's discretion under subsection 25(1) of the IRPA in order to waive the father's IME requirement.

[17] In my view, these inconsistencies in the IAD's conclusions undermine the internal coherence of the decision. On the one hand, the IAD concluded that the Officer did not breach procedural fairness by deciding the matter before the IME deadline without notice, particularly because it found that the outcome was "inevitable". On the other hand, the IAD faulted the Applicant's parents for not having exhausted all "other possible avenues", and it recognized that the Respondent could have done more, including by directing that the Applicant's father be examined in the hospital or by waiving the IME requirement.

[18] To the extent that “other avenues” existed, as noted by the IAD, the Applicant may have availed herself of them before the deadline of June 20, 2018. On this basis, it was not reasonable for the IAD to conclude that the outcome was inevitable.

[19] Moreover, the IAD’s finding that the allegations of procedural fairness are moot is also unreasonable. The IAD considered the Applicant’s procedural fairness claim as it pertains to the Officer’s premature refusal, and it found this claim moot on the basis that the Applicant’s father had not met the IME requirement by the June 20, 2018 deadline. However, by that date, the Officer had already refused the PR application. The IAD cannot reasonably use the Applicant’s conduct following the refusal against her in this manner without further analysis.

[20] To conclude, I find that the IAD’s decision is unreasonable because it is not based on an internally coherent and rational chain of analysis (*Vavilov* at para 85).

[21] As a result, the application for judicial review is allowed.

[22] No questions of general importance were proposed for certification, and I agree that none arise.

JUDGMENT in IMM-4541-19

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is allowed;
2. The decision of the Immigration Appeal Division is set aside and the matter is remitted back to a different panel for redetermination; and
3. No question of general importance is certified.

"Sylvie E. Roussel"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-4541-19
STYLE OF CAUSE:	ZHENG ZHANG v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	VANCOUVER, BRITISH COLUMBIA
DATE OF HEARING:	FEBRUARY 17, 2020
JUDGMENT AND REASONS:	ROUSSEL J.
DATED:	FEBRUARY 20, 2020

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