

Federal Court



Cour fédérale

Date: 20200402

Docket: IMM-2745-19

Citation: 2020 FC 482

Ottawa, Ontario, April 2, 2020

PRESENT: Madam Justice McDonald

BETWEEN:

HARKARAN SINGH BHAMRA

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The Applicant came to Canada in August 2014 on a study permit. His study permit expired on March 31, 2018, and he failed to renew the permit before it expired. He applied for a temporary resident permit (TRP) and a new study permit while still in Canada, but both applications were denied. The denial of the TRP is the subject of this judicial review.

[2] For the reasons that follow, this judicial review is dismissed as I have concluded that the Visa Officer's decision to deny the temporary resident permit (TRP) was reasonable.

Background

[3] The Applicant is a citizen of India who came to Canada on a study permit to attend Sheridan College in Ontario. At some point, he transferred to the business management program at Northern Lights College in British Columbia. His study permit expired on March 31, 2018.

[4] In January 2018, the Applicant's uncle passed away. The Applicant says he was distraught and experienced panic attacks and depression. Then his grandfather died in July 2018.

[5] The Applicant says that he only realized that his study permit expired following the death of his grandfather.

[6] The Applicant applied for a temporary resident permit (TRP) to allow him to stay in Canada.

[7] His application for a TRP was rejected in April 2019.

Decision under Review

[8] The Officer noted that the Applicant was requesting a temporary resident permit on the basis that, following the deaths of his uncle and grandfather, he was depressed and was unable to deal with school or the renewal of his study permit.

[9] The Officer found that the Applicant had “failed to provide any documentation to attest to this” and that he did not provide any evidence “to suggest he would endure difficulty should he be expected to return to his home country to regularize his status.”

[10] The Officer noted that it was up to the Applicant to satisfy the Officer that there are compelling reasons why the TRP should be issued and that he had not presented any such compelling reasons.

Issues

[11] The Applicant raises two issues with the decision:

1. Did the Officer ignore evidence?
2. Did the Officer apply the wrong test?

Standard of Review

[12] The presumed standard of review for administrative decisions is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 23 [*Vavilov*]). None of the exceptions which would attract the standard of correctness – constitutional questions,

general questions of central importance to the legal system, or a question of jurisdictional boundaries between administrative bodies – apply here (*Vavilov* at para 17).

[13] To determine whether a decision is reasonable, the 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). A reasonable decision must also be internally consistent and contain a rational chain of analysis (*Vavilov* at para 85).

Analysis

1. Did the Officer ignore evidence?

[14] The Applicant argues that the Officer erred in concluding that he had not provided any evidence to support his application. The Applicant argues that there is evidence on the record confirming the deaths of his uncle and his grandfather. He also points to written statements from his sister and his brother-in-law attesting to his emotional state after their deaths.

[15] The applicant relies upon *Martin v Canada (Citizenship and Immigration)*, 2015 FC 422, at para 33 [*Martin*], where the Court states:

... the purpose of a TRP is to ‘soften the sometimes harsh consequences of the strict application of IRPA which surfaces in cases where there may be “compelling reasons” to allow a foreign national to enter or remain in Canada despite inadmissibility or noncompliance with IRPA’.... It is this court’s view that such a “compelling reasons” analysis cannot be reasonably undertaken without full considerations of the above-mentioned facts [citations omitted].

[16] Although the Officer's decision is brief, the Officer did outline the reasons for finding the Applicant had not established "compelling reasons" for granting the TRP. Notably, the Applicant did not provide evidence of his depression, and he did not provide evidence that he could not regularize his status from India. When the Officer refers to a lack of evidence, it is in relation to the Applicant's depressive condition, which the Applicant states was the reason he was unable to deal with school or renew his study permit.

[17] The Applicant presented evidence of his involvement in school and community activities. However, this "character evidence" does not demonstrate that the Applicant was incapacitated as a result of the deaths of his uncle and grandfather and therefore unable to renew his visa. While "having a good character is undoubtedly a prerequisite to the granting of a TRP" (*Arora v Canada (Immigration and Citizenship)*, 2018 FC 448, at para 9), it is one consideration only. More evidence is necessary to meet the compelling reasons requirement.

[18] In my view, the Officer did not ignore evidence. It was reasonable for the Officer to expect evidence to confirm the Applicant's claimed inability to renew his study permit.

2. *Did the Officer apply the wrong test?*

[19] The Applicant argues that the Officer applied the wrong test by stating: "client has not provided any evidence that he would endure difficulty should he be expected to return to his home country to regularize his status."

[20] The Applicant argues that the Officer was required to consider section 24 of the *Immigration and Refugee Protection Act, SC 2001 c 27 [IRPA]*, which references “justified in the circumstances”. The Applicant argues that this section does not refer to “difficulties in returning to a home country” as being part of the test, therefore the Officer erred.

[21] Section 24 of the *IRPA* states:

24 (1) A foreign national who, in the opinion of an officer, is inadmissible or does not meet the requirements of this Act becomes a temporary resident if an officer is of the opinion that it is justified in the circumstances and issues a temporary resident permit, which may be cancelled at any time.

[22] “The objective of section 24 of IRPA is to soften the sometimes harsh consequences of the strict application of IRPA which surfaces in cases where there may be ‘compelling reasons’ to allow a foreign national to enter or remain in Canada despite inadmissibility or non-compliance with IRPA.” (*Farhat v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1275, at para 22 [*Farhat*]).

[23] The Applicant asserts that the Officer should have considered the non-exhaustive list of factors outlined in the CIC Manual and argues that a “compelling reasons” analysis is incomplete without a full consideration of these factors (*Martin* at para 28). The factors outlined in *Martin* are:

- Factors that make the applicant’s presence in Canada necessary.
- The intention of the legislation.
- The essential purpose of the applicant’s presence in Canada.

- The type and class of the application (including family pertinent composition, both in their home country and in Canada).
- If medical treatment is involved, whether the treatment is available in Canada or elsewhere.
- The tangible and intangible benefits which may accrue to the Applicant and to others.
- The identity of the Applicant's sponsor, host, or employer.

[24] The first two factors noted above are the mandatory considerations, the other five factors are not mandatory considerations (*Martin* at para 28).

[25] Here, the Officer's reference to difficulty returning to India does not amount to the Officer changing the "compelling reasons" test – which is only in relation to the two mandatory factors outlined in *Martin*. The Officer dealt with the "factors that make the applicant's presence in Canada necessary" when she said that he could leave to regularize his status – meaning that his physical presence is not necessary to reapply for status.

[26] With regard to the intention of the legislation, the Applicant's possible return to India is relevant because TRPs are meant to "soften the consequence" of the strict application of the *IRPA*. Being required to leave Canada is the consequence the Applicant is trying to avoid; therefore, the fact that the Officer's decision did not soften this consequence does not mean she did not consider the intention of the legislative scheme as required.

[27] TRPs are meant to respond to exceptional circumstances (*Farhat* at para 22), and the decision to grant a TRP is highly discretionary. The onus was on the Applicant to demonstrate the compelling reasons as to why the TRP should be granted (*Stordock v Canada (Citizenship and Immigration)*, 2013 FC 16, at para 9).

[28] The Applicant argues that because the Officer did not mention the letters provided by the Applicant's sister and his brother-in-law, the decision is unreasonable. In her written statement, his sister said her "... family has had some difficult times in the past and [*sic*] been dealing with an emotional turmoil that has affected adversely all of us" and that "he has been doing more than he could to try bring our lives back to functional and normal". His brother-in-law said: "... for his side of the family it has been really challenging times, losing some really close people has affected them adversely" and that it was not easy for him to deal with "all the bad news that came his way and hence there has been ignorance on his part to pursue his studies responsibly."

[29] The letters do not mention depression or an inability to pursue his studies, but both mention that he made some missteps relating to his education and that he is trying to rectify the situation. In the circumstances, it was reasonable for the Officer to not reference these letters, as they do not go to the "compelling reason" for the requested relief, which was depression and a resulting inability to renew his study permit.

[30] In *Vavilov*, the Supreme Court of Canada noted, at para 103, that:

... formal reasons should be read in light of the record and with due sensitivity to the administrative regime in which they were given, a decision will be unreasonable if the reasons for it, read holistically,

fail to reveal a rational chain of analysis or if they reveal that the decision was based on an irrational chain of analysis...

[31] When the Officer's reasons are considered in light of the evidence provided by the Applicant, the statements from the family members do not address the issue the Officer was assessing. The Applicant claims that the reason he did not renew his study permit was that he was depressed. There was no evidence to assist the Officer to understand why the Applicant was not able to deal with his study permit. The Officer was constrained by the "compelling reason" requirement in assessing the request for the TRP. In *Singh v Canada (Citizenship and Immigration)*, 2019 FC 915, at paragraph 22, the Court confirms "... a TRP is considered an 'exceptional regime', evidence is required of something more than inconvenience to an applicant to justify the issuance of a TRP."

[32] Here, the Officer was not convinced that there was evidence of a compelling reason; the Officer's conclusion therefore is reasonable.

[33] The judicial review is dismissed. There is no question for certification.

JUDGMENT IN IMM-2745-19

THIS COURT'S JUDGMENT is that this judicial review is dismissed. There is no question for certification.

"Ann Marie McDonald"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2745-19

STYLE OF CAUSE: HARKARAN SINGH BHAMRA v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: JANUARY 15, 2020

JUDGMENT AND REASONS: MCDONALD J.

DATED: APRIL 2, 2020

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