Federal Court  Cour fédérale

Date: 20210623

Docket: IMM-876-20

Citation: 2021 FC 660

Ottawa, Ontario, June 23, 2021

PRESENT: The Honourable Mr. Justice Gleeson

BETWEEN:

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Applicant

and

GULFIYA RAKHMATULINA

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, the Minister of Citizenship and Immigration [Minister], seeks judicial review, pursuant to section 72 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA], of the Immigration Appeal Division's [IAD] January 9, 2020 decision finding that the Respondent, Ms. Gulfiya Rakhmatulina, had not lost her permanent residency [PR] status.

[2] The Minister submits the IAD erred in determining whether Ms. Rakhmatulina had failed to meet her residency obligations under the IRPA and ignored evidence contradicting its conclusions.

[3] For the reasons that follow, the Application is granted.

II. Background

[4] The Respondent is a 75-year-old Kazakhstani woman. She obtained permanent residency in Canada in 2009. The Respondent applied for a permanent resident travel document [PRTD] in August of 2014.

[5] A Canadian immigration official at the Canadian Embassy in Moscow refused the PRTD application finding the Respondent had failed to meet the residency requirement, having spent only 58 days in Canada between 2009 and 2014, well short of the minimum 730 days in the previous five years that is required to maintain PR status. The officer also found that an exemption from the residency obligations on humanitarian and compassionate [H&C] grounds was not warranted.

[6] The Minister claims that in denying the Respondent's PRTD application, it sent a refusal letter on August 26, 2014. The 2014 refusal letter is not included in the Record, the letter having been destroyed in 2016 in accordance with the Applicant's document retention practices. The Respondent states that she did not receive that letter.

[7] After the refusal of the PRTD, the Respondent submitted four temporary resident visa [TRV] applications between September 2014 and September 2015. The first three were refused, but the fourth application was successful and a visa valid for the period November 2015 to November 2020 issued.

[8] In March 2017, the Respondent's daughter wrote to immigration officials on the Respondent's behalf. The Respondent had been advised upon entering Canada that she retained PR status and would not be able to enter on the TRV after November 2018. The 2017 GCMS notes indicate immigration officials replied and a short series of email exchanges followed. In the 2017 exchange, immigration officials noted the 2014 refusal of the PRTD and advised that if the Respondent did not wish to be considered a PR she could apply to voluntarily renounce her status. Officials indicated that this would resolve any difficulties in entering Canada on her TRV.

[9] The Respondent's daughter then applied, on the Respondent's behalf, for a PR card. This was refused, the Applicant advising the Respondent in a letter dated March 21, 2019 that her PR status had been lost as a result of the August 26, 2014 decision. The Respondent then appealed the March 21, 2019 determination to the IAD.

III. Decision under Review

[10] The IAD allowed the appeal and restored the Respondent's PR status. The IAD found that the letter denying the Respondent's 2014 PRTD application was never sent. The denial was therefore invalid.

[11] The IAD observed that the March 2019 letter was the only letter in evidence informing the Respondent that she had lost her PR status in 2014.

[12] The IAD found that the 2014 GCMS notes clearly establish it had been determined in 2014 that the Respondent had failed to meet the PR residency requirement and that the retention of that status was not justified on H&C grounds. The IAD found that the GCMS notes, combined with the usual process for communicating refusals, which includes returning the Applicant's passport with a refusal letter, suggests that the Respondent received a refusal letter. However, the IAD found that the 2017 GCMS notes undermined such a conclusion, those notes indicating that the Respondent retained her status as a PR in 2017.

[13] The IAD found that the 2017 GCMS notes superseded those of 2014 and confirmed PR status continued to exist for the Respondent. On this basis, the IAD found that the Respondent was never notified of the 2014 decision and never lost PR status.

IV. Issues and Standard of Review

[14] The Application raises a number of issues. However, the Applicant's argument that the IAD failed to address evidence and circumstances indicating the 2014 notice of decision was issued and received by the Respondent is determinative. It is the only issue I need address.

[15] The IAD's decision is presumptively reviewable on the reasonableness standard and the parties agree that the circumstances do not warrant departing from that standard (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 23, 33 and 53

[*Vavilov*]). A decision is reasonable where it is "based on an internally coherent and rational chain of analysis and…is justified in relation to the facts and law" (*Vavilov* at para 85).

V. Analysis

[16] In its decision the IAD identifies the issue before it as follows:

> [11] The question is whether the appellant lost her permanent resident status in 2014 for failing to meet the residency requirement. It is not sufficient to point out that there was an assessment of the residency obligation in 2014, which there was according to the GCMS notes. It must be established that the appellant was informed of and received notice in 2014 that she lost her permanent resident status.
>
> [Emphasis added].

[17] The IAD accepts that the Respondent's compliance with her residency obligations as a PR were assessed in 2014 and it was determined that she lost her PR status. The IAD then considers whether the Respondent received notification of that decision and concludes she did not, relying on the 2017 GCMS notes indicating her PR status remained at that time. In reaching this conclusion, the IAD fails to address and grapple with the evidence that indicates notification of the 2014 decision was both sent and received in 2014.

[18] The 2014 refusal letter is not included in the record, however the absence of the letter is not determinative of whether a letter was prepared and sent. The IAD was required to examine the whole of record prior to determining whether notification occurred (*Shah v Canada (Minister of Citizenship and Immigration)*, 2007 FC 207 at paras 12-13). In this instance, the letter's

absence was explained by the Applicant: the Respondent's PRTD file was destroyed in 2016 in accordance with office procedures.

[19] The Applicant further notes there was evidence within the record indicating that the notification letter was sent and received. This includes:

A. A statement made by the Respondent's daughter in an email to the Applicant on March 3, 2017 where the Respondent's daughter writes, "Hello, I understand that the application was refused, and the letter says that the applicant is no longer a permanent resident" [Emphasis added]. It appears the only letter the daughter could possibly have been referring to is the 2014 notification letter (Applicant's Record, page 44).

B. A GCMS information request stating an outgoing refusal letter was sent to the Respondent in 2014 (Applicant's Record, page 32).

C. The Respondent's passport was returned after the PRTD decision was made as she subsequently resubmitted the passport in support of her multiple TRV applications. The record indicates that it is standard practice to return a passport with a refusal letter. The IAD does acknowledge this practice but instead of addressing this matter simply cites the 2017 GCMS notes as undermining a conclusion that the refusal letter was communicated.

D. The fact of applying for a TRV—which the Respondent did one month after losing PR status—suggests that she had received notice that her PR status had been lost.

[20] A reasonableness review includes consideration of both the reasoning process and the outcome (*Vavilov* at para 83). While decision makers are not held to a standard of perfection, a reasonable decision is one that is justified, intelligible, and transparent to the individuals subject to it (*Vavilov* at para 95). A reviewing court "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': *Ryan*, at para. 55; *Southam*, at para. 56" (*Vavilov* at para 102).

[21] In my view, the IAD's failure in this instance to grapple with the evidence that notification of the 2014 decision was sent and received undermines the intelligibility and transparency of the decision.

[22] The Respondent relies on *Nizami v Canada (Minister of Citizenship and Immigration)*, 2008 FC 265 [*Nizami*] where it was held that an Officer's notes are not absolute proof that a letter was sent (*Nizami* at para 28). I do not take issue with the principle set out in *Nizami*, but it is of little assistance to the Respondent. The issue in this instance is the IAD's failure to engage with evidence beyond that contained in the Officer's notes, evidence that may have supported the conclusion that the letter was sent.

VI. Conclusion

[23] The Application is granted. The parties have not identified a question of general importance for certification, and none arises.

JUDGMENT IN IMM-876-20

THIS COURT'S JUDGMENT is that:

1. The Application is granted;

2. The matter is returned for redetermination by a different decision maker.

"Patrick Gleeson"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-876-20
STYLE OF CAUSE:	THE MINISTER OF CITIZENSHIP AND IMMIGRATION v GULFIYA RAKHMATULINA
PLACE OF HEARING:	BY VIDEOCONFERENCE
DATE OF HEARING:	APRIL 8, 2021
JUDGMENT AND REASONS:	GLEESON J.
DATED:	JUNE 23, 2021

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