Federal Court  Cour fédérale

Date: 20210920

Docket: IMM-4198-20

Citation: 2021 FC 958

Ottawa, Ontario, September 20, 2021

PRESENT: The Honourable Mr. Justice Pamel

BETWEEN:

ELIZAVETA KUPRIIANOVA

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] Ms. Kupriianova is a 71-year-old citizen of Russia who seeks judicial review of a decision of a visa officer at the Embassy of Canada in Moscow dated August 31, 2020, in which her application for a multiple-entry temporary resident visa [TRV] was refused. In short, I find the reasons of the visa officer lack appropriate justification. Consequently, the decision is unreasonable and is to be set aside.

I. Background

[2] Ms. Kupriianova's only son, Sergei, lives in Canada with his wife and their 4-year-old son. Ms. Kupriianova also has a second grandchild, a 22-year-old granddaughter from Sergei's previous marriage, who lives and studies in St. Petersburg and who is close to her grandmother. The plan was for Ms. Kupriianova to travel to Canada to visit her son and his family during the month of August 2020—her son had rented a cottage for the occasion—and for Ms. Kupriianova to then return to Russia to marry her partner.

[3] Ms. Kupriianova was working up until 2018, receives a modest retirement income, has the Canadian equivalent of about $4,000 squirreled away in bank accounts and at home, and has an apartment in St. Petersburg worth the equivalent of about $60,000.

[4] As one would expect a son to do, Sergei undertook to support his mother financially while she was visiting Canada. He provided bank statements confirming personal income of just under $4,000 per month and indicated that his total annual family income was about $60,000.

[5] On August 31, 2020, Ms. Kupriianova received a letter from the visa section of the Embassy of Canada in Moscow denying her application on the grounds that the visa officer was "not satisfied that [Ms. Kupriianova] had sufficient funds, including income and assets, to carry out [her] stated purpose in coming to Canada or to maintain [herself] while in Canada and to effect [her] departure" and was not satisfied that Ms. Kupriianova would "leave Canada at the end of [her] stay as a temporary resident, as stipulated in paragraph 179(b) of the IRPR, based on

[her] family ties in Canada and in [her] country of residence", "the purpose of [her] visit", her "current employment situation" and her "personal assets and financial status".

[6] Read alone, the letter of August 31, 2020 seems to focus exclusively on Ms. Kupriianova's financial status and completely disregards the evidence of Sergei, who has undertaken to house his mother and take charge of her financial needs while she is in Canada. Other than a little shopping, what expenses can Ms. Kupriianova possibly have while staying with her son's family?

[7] However, the visa officer's notes in the Global Case Management System [GCMS] seem to take a slightly more nuanced approach, and limited to the following:

> Submissions reviewed. On the basis of information on file, am not satisfied that hosts are in a position to support this visit and am not satisfied that pa's personal and financial ties to home country are indeed sufficient to compel pa to leave Canada upon expiry of any status granted. refused.

II. Issues

[8] The present application raises two issues:

(a) Did the visa officer reach his/her decision in conformity with procedural fairness principles?

(b) Is the visa officer's decision reasonable?

III. Standard of review

[9] The parties agree that reasonableness is the applicable standard of review for the merits of the decision. I agree (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 25 [*Vavilov*]).

IV. Analysis

[10] As a preliminary matter, I wish to quickly address Ms. Kupriianova's argument relating to a breach of procedural fairness on account of the visa officer making what is argued to be veiled credibility findings. I see nothing in the decision of the visa officer nor in the evidence to suggest anything of the kind. In fairness, Ms. Kupriianova did not press the point during oral arguments before me.

[11] Ms. Kupriianova's argument that the visa officer's decision lacks justification, transparency and intelligibility is, however, a much better argument.

[12] There is no doubt that the onus is on Ms. Kupriianova to establish that she will leave Canada at the end of her authorized period (paragraph 20(1)(b) of the *Immigration and Refugee Protection Act*, SC 2001, c 27). Moreover, it is not for this Court to reweigh the evidence and substitute its own conclusions to that of the visa officer (*Saif v Canada (Citizenship and Immigration)*, 2021 FC 680 at para 27).

[13] That said, in a post-*Vavilov* world, it is also not enough for visa officers to simply provide the conclusions of their findings without at least leaving some hint as to the elements of the

evidence which led them to arrive at such conclusions. As recently stated by Mr. Justice Norris in *Potla v Canada (Citizenship and Immigration)*, 2020 FC 646 at paragraph 24:

> An assessment of the reasonableness of a decision must be sensitive and respectful yet robust (*Vavilov* at paras 12-13). Reasonableness review focuses on "the decision actually made by the decision maker, including both the decision maker's reasoning process and the outcome" (*Vavilov* at para 83). In matters concerning visa applications, deference is owed to the decision maker because of the largely fact-based nature of the decision and the decision maker's presumed familiarity with the applicable criteria. A visa officer is not required to give extensive reasons, but they must be sufficient to explain the result [citations omitted]. As the Supreme Court explained in *Vavilov*, "it is not enough for the outcome of a decision to be *justifiable*. Where reasons for a decision are required, the decision must also be *justified*, by way of those reasons, by the decision maker to those to whom the decision applies" (at para 86, emphasis in original). The reasons given should be read in light of the record and with due sensitivity to the administrative setting in which they were given (*Vavilov* at paras 91-95).
>
> [Emphasis added.]

[14] The administrative setting is an application for a TRV. Visa officers receive, assess and decide upon countless such applications on a regular basis; their decisions are highly discretionary with their findings being entitled to deference (*Van Hoffen v Canada (Citizenship and Immigration)*, 2018 FC 1023 at para 13). Under such circumstances, I agree with the Minister of Citizenship and Immigration [Minister] that it would not be reasonable for courts to expect lengthy or detailed reasons for their findings—that would simply be unworkable.

[15] However, it is not enough, as stated by the Supreme Court in *Vavilov*, that the visa officer's decision itself be justifiable. Rather, a reviewing court should also reasonably expect the decision to be justified by the visa officer by way of reasons.

[16] Here, all I read in the GCMS notes is that the visa officer was not satisfied as to Sergei's financial ability to support his mother while she is in Canada or as to Ms. Kupriianova's ties to Russia being a sufficient pull factor to have her return once her authorized stay in Canada was over.

[17] During the hearing before me, both Ms. Kupriianova and the Minister went on at length, focusing on elements of the evidence that went to support their position. As for Ms. Kupriianova, I was being asked to reweigh the evidence—something I will not do. However, I also found the efforts of the Minister in picking through the evidence in what often seemed like a desperate attempt at finding justification for the visa officer's decision to also fall short of the mark.

[18] The fact remains that there are no clues in the visa officer's decision as to why he/she was not satisfied that Sergei would be able to support his mother or why the officer was not satisfied that the factors which would support Ms. Kupriianova's return to Russia after her stay was over were sufficient. I do not expect lengthy prose—a visa officer's reasons may be brief, however they should be sufficient to enable Ms. Kupriianova and the court to understand why her application was rejected (*Sepehri v Canada (Citizenship and Immigration)*, 2007 FC 1217 at para 4). I do expect at least some reference to the evidence leading to the visa officer's conclusions. As it stands, I am left to speculate what the visa officer saw in the evidence that left him/her dissatisfied.

[19] The Minister argues that the visa officer's reasons are sufficient if they enable Ms. Kupriianova to understand why her application was rejected (*Lv v Canada (Citizenship and*

Immigration), 2018 FC 935 at para 29 [*Lv*]). I agree, however, in *Lv*, the GCMS notes of the visa officer go beyond stating that he/she is not satisfied with the material provided by the applicant, and make reference to the particular elements of the evidence of concern. That is not the case here.

V. Conclusion

[20] I grant the application for judicial review and remit the matter back to another visa officer for redetermination.

JUDGMENT in IMM-4198-20

THIS COURT'S JUDGMENT is as follows:

1. The decision of the visa officer dated August 31, 2020 is set aside and this matter is returned to a new visa officer for redetermination.

2. There is no question for certification.

"Peter G. Pamel"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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APPEARANCES:

Amedeo Clivio on behalf of Tatiana Gulyaeva	FOR THE APPLICANT
Alex C. Kam	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Law office of Tatiana Gulyaeva Toronto, Ontario	FOR THE APPLICANT
Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT