Federal Court  Cour fédérale

Date: 20210923

Dockets: IMM-5572-20
IMM-5575-20
IMM-5578-20

Citation: 2021 FC 991

Ottawa, Ontario, September 23, 2021

PRESENT: The Honourable Mr. Justice Ahmed

Docket: IMM-5572-20

BETWEEN:

BALJIT SINGH

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION also known as THE MINISTER OF IMMIGRATION, REFUGEES AND CITIZENSHIP CANADA

Respondent

Docket: IMM-5575-20

AND BETWEEN:

MANJIT KAUR

Applicant

and

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION
also known as THE MINISTER OF IMMIGRATION,
REFUGEES AND CITIZENSHIP CANADA**

Respondent

Docket: IMM-5578-20

AND BETWEEN:

GURLEEN ANGELA SINGH

Applicant

and

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION
also known as THE MINISTER OF IMMIGRATION,
REFUGEES AND CITIZENSHIP CANADA**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] This Judgment concerns three separate applications for judicial review that are determined together: IMM-5572-20, IMM-5575-20, and IMM-5578-20.

[2] The Applicants, Mr. Baljit Singh, Ms. Manjit Kaur, and their daughter, Gurleen Angela Singh seek judicial review of the decisions of a visa officer (the "Officer") of Immigration, Refugees and Citizenship Canada ("IRCC"), denying their applications for temporary resident status under subsection 22(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (the "*IRPA*").

[3] In particular, the Officer denied Mr. Singh's application for a work permit extension because the Officer found that Mr. Singh was no longer in Canada and therefore did not meet the requirements under subsection 181(2) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 (the "*IRPR*"). The refusal of Mr. Singh's application resulted in the refusals of Ms. Kaur's and Gurleen's applications.

[4] The Applicants submit that the Officer erred in finding that Mr. Singh was not living in Canada at the time of his application.

[5] For the reasons that follow, I find the Officer's refusal of Mr. Singh's application is unreasonable. The Officer erred by relying entirely upon Mr. Singh's Electronic Travel Authorization application (the "ETA Application"), which indicated that Mr. Singh lived in Italy, without justifying their decision in light of the IMM 5710 form submitted with Mr. Singh's application to extend his work permit (the "IMM 5710 form"), which indicated that Mr. Singh lived in Canada. I therefore grant these applications for judicial review.

II. **Facts**

A. *The Applicants*

[6] The Applicants are all members of the same family. Mr. Singh is married to Ms. Kaur. They have two children: Gurleen, born on August 30, 2002; and Akashdeep ("Akash"), born on October 11, 1999, who is not a party to these applications. The Applicants are all citizens of Italy and temporary residents of Canada.

[7] In September 2014, the Applicants and Akash came to visit Canada. In February 2015, Mr. Singh was issued a work permit for a farm worker position with Daily Fresh Produce Ltd. in Abbotsford, British Columbia. Ms. Kaur was issued an open work permit, and Akash and Gurleen were issued visitor records as accompanying dependents of Mr. Singh.

[8] In May 2017, Mr. Singh was issued a new work permit valid until May 20, 2019, as a farm supervisor with Mariposa Fruit Market Ltd. ("Mariposa") in Keremeos, British Columbia. Before the expiry of Mr. Singh's work permit, Mariposa offered to extend Mr. Singh's employment.

[9] On March 14, 2019, Mr. Singh submitted an application to IRCC for an extension of work permit based on his extended job offer and a positive Labour Market Impact Assessment ("LMIA") from Mariposa. The IMM 5710 form used for this application states that Mr. Singh's place of residency is British Columbia. Mr. Singh's application also included Ms. Kaur's

application for the extension of her open work permit, Akash's application for an extension of his visitor record and Gurleen's application, seeking an extension of her visitor record as a dependent child of Mr. Singh.

[10] On March 15, 2019, Mr. Singh travelled to India with Akash. On April 1, 2019, Mr. Singh submitted the ETA Application for authorization to travel back to Canada. In the ETA Application, Mr. Singh listed his place of residence as Bergamo, Italy.

[11] On April 2, 2019, Mr. Singh returned to Canada with Akash. Upon entry, a Canada Border Services Agency ("CBSA") officer questioned Mr. Singh about the purpose of his visit and his ongoing work permit application. Mr. Singh and Akash were allowed entry into Canada. Mr. Singh has since then remained in Canada.

[12] IRCC sent Mr. Singh procedural fairness letters on April 8, 2019 and June 5, 2019 regarding concerns with his ETA Application. Mr. Singh did not respond to either of those letters.

[13] Mr. Singh contacted IRCC through the office of a Member of Parliament (the "MP") to receive updates on the status of his work permit application and his family's applications. The MP first contacted IRCC on August 28, 2019, and again on December 16, 2019.

B. *Decision Under Review*

[14] In a decision dated October 15, 2020, the Officer refused Mr. Singh's application for a work permit extension from within Canada on the basis that Mr. Singh was no longer in Canada, and he thus failed to meet the requirements under subsection 181(2) of the *IRPR*.

[15] The Officer's decision is largely contained in their Global Case Management System ("GCMS") notes, which form part of the reasons for their decision (*Torres v Canada (Citizenship and Immigration)*, 2019 FC 150 at para 19).

[16] The Officer noted that Mr. Singh submitted his work permit application from within Canada on March 14, 2019, then departed Canada and submitted his ETA Application to travel to Canada on April 1, 2019, through the Canadian visa office in Rome, Italy. The Officer noted that Mr. Singh's place of residence was in Italy when he submitted his ETA Application, and that his ETA Application was refused on June 24, 2019.

[17] Having refused Mr. Singh's application, the Officer refused the remainder of the Applicants' applications. The Officer refused Ms. Kaur's application for an extension of her open work permit, finding that she no longer met an LMIA exemption required under subsection 205(c)(ii) of the *IRPR* and no longer held a valid LMIA. The Officer also refused Gurleen's application for a visitor extension because she was no longer the dependant of a temporary foreign worker.

III. **Issue and Standard of Review**

[18] In my view, the determinative issue for this application for judicial review is whether the Officer erred in determining that Mr. Singh did not live in Canada at the time of submitting his application for an extension of his work permit.

[19] The parties mostly agree that the Officer's decision is reviewed upon the standard of reasonableness. I agree (*Patel v Canada (Citizenship and Immigration)*, 2020 FC 672 ("*Patel*") at para 8, citing *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 ("*Vavilov*") at paras 10, 16-17).

[20] Reasonableness is a deferential, but robust, standard of review (*Vavilov* at paras 12-13). The reviewing court must determine whether the decision under review, including both its rationale and outcome, is transparent, intelligible and justified (*Vavilov* at para 15). 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).

[21] Whether a decision is reasonable depends on the relevant administrative setting, the record before the decision-maker, and the impact of the decision on those affected by its consequences (*Vavilov* at paras 88-90, 94, 133-135). In the context of decisions made by visa officers, it is not necessary to have exhaustive reasons for the decision to be reasonable given the enormous pressures they face to produce a large volume of decisions every day (*Patel* at para 10).

[22] For a decision to be unreasonable, an applicant must establish the decision contains flaws that are sufficiently central or significant (*Vavilov* at para 100). A reviewing court must refrain from reweighing the evidence that was before the decision-maker, and it should not interfere with factual findings absent exceptional circumstances (*Vavilov* at para 125).

IV. **Legislative Framework**

[23] Section 179 of the *IRPR* lists the requirements that must be satisfied for a temporary resident visa to be issued:

Issuance	**Délivrance**
179 An officer shall issue a temporary resident visa to a foreign national if, following an examination, it is established that the foreign national	179 L'agent délivre un visa de résident temporaire à l'étranger si, à l'issue d'un contrôle, les éléments suivants sont établis :
(a) has applied in accordance with these Regulations for a temporary resident visa as a member of the visitor, worker or student class;	a) l'étranger en a fait, conformément au présent règlement, la demande au titre de la catégorie des visiteurs, des travailleurs ou des étudiants;
(b) will leave Canada by the end of the period authorized for their stay under Division 2;	b) il quittera le Canada à la fin de la période de séjour autorisée qui lui est applicable au titre de la section 2;
(c) holds a passport or other document that they may use to enter the country that issued it or another country;	c) il est titulaire d'un passeport ou autre document qui lui permet d'entrer dans le pays qui l'a délivré ou dans un autre pays;
(d) meets the requirements applicable to that class;	d) il se conforme aux exigences applicables à cette catégorie;

(e) is not inadmissible;	e) il n’est pas interdit de territoire;
(f) meets the requirements of subsections 30(2) and (3), if they must submit to a medical examination under paragraph 16(2)(b) of the Act; and	f) s’il est tenu de se soumettre à une visite médicale en application du paragraphe 16(2) de la Loi, il satisfait aux exigences prévues aux paragraphes 30(2) et (3);
(g) is not the subject of a declaration made under subsection 22.1(1) of the Act.	g) il ne fait pas l’objet d’une déclaration visée au paragraphe 22.1(1) de la Loi.

[24] Under subsection 181(2) of the *IRPR*, a foreign national’s authorization to remain in Canada as a temporary resident shall be extended if they continue to meet the requirements for a temporary resident visa:

Extension	**Prolongation**
181 (2) An officer shall extend the foreign national’s authorization to remain in Canada as a temporary resident if, following an examination, it is established that the foreign national continues to meet the requirements of section 179.	181 (2) L’agent prolonge l’autorisation de séjourner à titre de résident temporaire de l’étranger si, à l’issue d’un contrôle, celui-ci satisfait toujours aux exigences prévues à l’article 179.

[25] As the authorization under subsection 181(2) is to remain in Canada, it follows that the foreign national must be residing in Canada as a temporary resident to be eligible for an extension.

V. **Analysis**

[26] The Officer found that Mr. Singh was not eligible for the extension of a work permit from within Canada under subsection 181(2) of the *IRPR* because Mr. Singh was no longer in Canada.

[27] The Officer, under cross-examination, acknowledged that under IRCC policy applicants are allowed to leave and return to Canada during the processing of their application for extension of work permit, and that Mr. Singh was authorized to seek entry to Canada without a visa because he is a citizen of a visa exempt country.

[28] The Applicants submit that the Officer erred in refusing Mr. Singh's application, as neither subsection 181(2), nor section 179 of the *IRPR* required Mr. Singh to remain in Canada at all times during the processing of his application.

[29] In particular, the Applicants assert that the Officer's decision is not justified in relation to the IMM 5710 form submitted for Mr. Singh's application to extend his work permit, which states that Mr. Singh's place of residency is British Columbia. In light of that evidence, the Applicants argue that the Officer erred in determining Mr. Singh's place of residence was outside of Canada by relying on his ETA Application, which states that Mr. Singh's place of residency is Italy. The Applicants submit that simply because Mr. Singh's ETA Application was decided by the visa office in Rome does not entail that he resides in Italy, noting that the ETA Application was made online and could be processed anywhere within IRCC's network.

[30] The Respondent submits that the Officer's decision is justified in relation to the evidence. The Respondent notes that the onus rests on Mr. Singh to provide all of the relevant information to establish that he resided in Canada (*Sulce v Canada (Citizenship and Immigration)*, 2015 FC 1132 ("*Sulce*") at para 10). At the time of the Officer's decision, IRCC's most recent information with respect to Mr. Singh's place of residence was contained in the ETA Application, which listed his place of residence as Italy.

[31] The Respondent notes that the ETA refusal entailed that Mr. Singh was not authorized to return to Canada, as Mr. Singh was still required to present a valid ETA to re-enter Canada despite being a citizen of a visa exempt country. The Respondent further notes that on or about April 1, 2019, IRCC advised Mr. Singh not to undertake travel to Canada while his ETA Application was under review, yet Mr. Singh failed to notify the IRCC of his return to Canada. IRCC, unaware of Mr. Singh's re-entry into the country, continued to process the ETA Application even after his return.

[32] In my view, the Officer's decision is not justified in relation to Mr. Singh's IMM 5710 form, thus rendering their decision unreasonable (*Vavilov* at para 85).

[33] An administrative decision maker is not obliged to mention every piece of evidence; however, the more important the unmentioned evidence is, the more willing the Court is to infer that the decision maker unreasonably failed to account for the evidence before it (*Ali v Canada (Citizenship and Immigration)*, 2021 FC 731 at para 33, citing *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, [1999] 1 FC 53, 1998 CanLII 8667 at paras 16-17).

[34] In this case, Mr. Singh's IMM 5710 form was of utmost importance in establishing that he resided in Canada, as it listed his place of residence as British Columbia. While the ETA Application listed Mr. Singh's place of residence as Italy, that was a separate application to Mr. Singh's work permit application. In contrast, the IMM 5710 form is the basis of Mr. Singh's application to extend his work permit, yet the Officer's decision fails to reasonably grapple with that evidence.

[35] The Officer's logic is that the information contained in the IMM 5710 form is no longer relevant given the ETA Application. However, the ETA Application is by no means conclusive evidence that Mr. Singh no longer resides in Canada. The Officer acknowledges that, under IRCC policy, Mr. Singh was allowed to leave and return to Canada during the processing of his application, which is precisely what Mr. Singh did. While the ETA Application post-dates the IMM 5710 form, there was no evidence before the Officer to suggest that Mr. Singh no longer resided in Canada in light of the inconclusive nature of the ETA Application. I therefore find that the Officer's decision is unreasonable.

[36] I am not persuaded by the Applicants' remaining arguments.

[37] The Applicants note that Mr. Singh, through the MP, inquired with IRCC regarding his application in August and December of 2019. The inquiries are listed in the Officer's GCMS notes, but the Officer asserts that IRCC did not notify them of the inquiries. The Applicants assert that the inquiries indicate Mr. Singh was residing in Canada, and it was therefore unreasonable for the Officer to determine otherwise.

[38] I find that the Officer's decision is reasonable in relation to the MP's inquiries. I agree with the Respondent that there is no evidence displaying that the MP advised IRCC that Mr. Singh was residing in Canada. At most, the inquiries display that Mr. Singh remained interested in his application, which the Officer does not dispute.

[39] The Applicants further submit that the Officer's decision is not justified in relation to the entry/exit data of the CBSA. The Applicants assert that on April 2, 2019, Mr. Singh traveled to Canada and was examined by a CBSA officer upon arrival. The Applicants assert that under IRCC's "Entry/Exit Program" guidelines, IRCC officers may query CBSA entry/exit data through the GCMS as of February 2019. The Applicants assert that it was therefore unreasonable for the Officer not to investigate Mr. Singh's entry/exit data prior to rendering their decision.

[40] The Respondent argues that there were no notes in the GCMS displaying that Mr. Singh re-entered Canada in April 2019. Further, the Respondent notes that the "Entry/Exit Program" guidelines state that data on all travellers by air will begin to accumulate only as of June 2020. Mr. Singh returned to Canada in April 2019, months before the guidelines were implemented.

[41] I find that the Applicants, in arguing the Officer should have relied upon the CBSA's exit/entry data, unduly attempt to shift the burden onto the Respondent. There was no evidence before the Officer displaying Mr. Singh's re-entry into Canada in April 2019. It was Mr. Singh's responsibility to provide all of the relevant information to establish that he resided in Canada

(*Sulce* at para 10). The Officer cannot reasonably be expected to search for evidence on Mr. Singh's behalf, regardless of whether the Officer was capable of doing so.

VI. **Costs**

[42] The Applicants seek costs from the Respondent.

[43] Under Rule 22 of the *Federal Courts Citizenship, Immigration and Refugee Protection Rules*, SOR/93-22 ("*Rules*"), costs are only awarded for applications for judicial review made pursuant to the *IRPA* for "special reasons":

Costs	**Dépens**
22 No costs shall be awarded to or payable by any party in respect of an application for leave, an application for judicial review or an appeal under these Rules unless the Court, for special reasons, so orders.	22 Sauf ordonnance contraire rendue par un juge pour des raisons spéciales, la demande d'autorisation, la demande de contrôle judiciaire ou l'appel introduit en application des présentes règles ne donnent pas lieu à des dépens.

[44] The threshold for establishing "special reasons" is high. It includes instances where one party has acted in a manner that may be characterized as unfair, oppressive, improper or actuated by bad faith (*Taghiyeva v Canada (Citizenship and Immigration)*, 2019 FC 1262 at paras 17-23; *Ndungu v Canada (Citizenship and Immigration)*, 2011 FCA 208 at para 7).

[45] In my view, costs are not warranted. I am not convinced that the Respondent, through the Officer's mishandling of the evidence, acted in an unfair, oppressive, or improper manner.

VII. **Conclusion**

[46] I find the Officer's refusal of Mr. Singh's application is unreasonable. The Officer failed to justify their finding that Mr. Singh was no longer in Canada in relation to the evidence displaying the contrary. In light of my determination that the Officer's decision with respect to Mr. Singh is unreasonable, I find the Officer's decisions with respect to Ms. Kaur and Gurleen are also unreasonable, as those decisions were premised on the refusal of Mr. Singh's work permit. I therefore grant these applications for judicial review.

[47] No costs are awarded.

[48] The parties have not proposed a question for certification, and I agree that none arises.

JUDGMENT in IMM-5572-20 and IMM-5575-20 and IMM-5578-20

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is granted.

2. No costs are awarded.

3. No question is certified.

4. A copy of this Judgment and Reasons will be placed on files IMM-5575-20 and IMM-5578-20.

"Shirzad A."
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKETS:	IMM-5572-20 IMM-5575-20 IMM-5578-20
STYLE OF CAUSE:	BALJIT SINGH v THE MINISTER OF CITIZENSHIP AND IMMIGRATION also known as THE MINISTER OF IMMIGRATION, REFUGEES AND CITIZENSHIP CANADA MANJIT KAUR v THE MINISTER OF CITIZENSHIP AND IMMIGRATION also known as THE MINISTER OF IMMIGRATION, REFUGEES AND CITIZENSHIP CANADA GURLEEN ANGELA SINGH v THE MINISTER OF CITIZENSHIP AND IMMIGRATION also known as THE MINISTER OF IMMIGRATION, REFUGEES AND CITIZENSHIP CANADA
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