Federal Court | Cour fédérale

Date: 20211109

Docket: IMM-6006-19

Citation: 2021 FC 1211

Ottawa, Ontario, November 9, 2021

PRESENT: The Honourable Mr. Justice Favel

BETWEEN:

SRINA NAIR MANIKANDAN

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Nature of the Matter

[1] This is an Application for judicial review pursuant to section 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*] of a visa officer’s August 9, 2019 decision [the Decision] refusing the Applicant’s Work Permit application and cancelling her Temporary Resident Visa [TRV]. The Applicant’s TRV was issued on May 2, 2019.

[2] The Applicant seeks an Order quashing the Decision and remitting the matter to a different immigration officer to reissue the TRV and resume processing the Applicant's Work Permit.

[3] The application for judicial review is allowed.

II. Background

[4] The Applicant is a citizen of India and a temporary resident of Poland. In February 2019, the Applicant’s parents were working on a possible arranged marriage for her. While the Applicant was residing in Poland she and her potential spouse, Jishnu Prasad Krishnakumar, conversed online. Jishnu currently resides in Canada on a study permit.

[5] In April 2019, the Applicant advised her parents that she agreed to the marriage. On April 22, 2019, the Applicant submitted an application for a TRV to the Canadian embassy in Warsaw, Poland. She stated her purpose was “tourism” and to visit a friend, Don Davis. On April 29, 2019, the parents of the Applicant and Jishnu performed an on-line engagement ceremony in India.

[6] On May 2, 2019, the Applicant was issued a four-year TRV. On May 10, 2019, the Applicant traveled to Canada to meet her friend, Don. Jishnu, who was studying in Nova Scotia, surprised her by meeting her in Toronto. On May 12, 2019, Jishnu proposed to the Applicant. On May 14, 2019, the Applicant and Jishnu obtained a marriage licence and on May 17, they got married. The Applicant returned to Poland on May 19, 2019.

[7] On May 29, 2019, the Applicant applied to the Canadian embassy in Warsaw for a Work Permit as a spouse of a Canadian study permit holder. On June 24, 2019, the Work Permit was denied. The Applicant applied again on June 26, 2019, but the application was denied once more. On August 2, 2019, the Applicant applied for a third time.

[8] The Global Case Management System [GCMS] notes indicate that on August 9, 2019 the visa officer [Officer] noted concerns about misrepresentation and cancelled the Applicant's TRV. The Officer emailed the Applicant a procedural fairness letter indicating concerns that the Applicant had misrepresented the purpose of her visit to Canada. The relevant excerpt of the procedural fairness letter/email stated:

> Specifically, I have concerns that you have failed to **fully** disclose the actual purpose of your visit which was to become engaged and to marry Jishnu Prasad. This is material to your application.
>
> [Emphasis in original.]

[9] The procedural fairness letter/email indicated that the Applicant had ten days to respond. That same day the Applicant emailed the visa office twice. She indicated that at the time she applied for the TRV she had not been aware that Jishnu was planning to propose to her and arrange a marriage ceremony in Canada. The first email set out that she was unaware of the wedding plan, the wedding was a surprise, and that she had a history of travelling to countries as a tourist. The second email was more detailed. It explained that the purpose of her trip was to visit friends in Toronto while Jishnu was in Nova Scotia and that she was surprised he met her at the airport in Toronto. The Applicant reiterated that she had travel history and that she had pre-existing plans to visit Canada. The GCMS notes contain the contents of the procedural fairness letter and the two responses provided by the Applicant.

III. The Decision

[10] On August 9, 2019, after receiving the Applicant's emails, the Officer denied the Applicant's TRV application. The Officer found the Applicant inadmissible to Canada and that she remains inadmissible for five years for "directly or indirectly misrepresenting or withholding material facts" with respect to her TRV (see *IRPA* ss 40(1)(a), 40(2)(a)). Furthermore, the Officer was not satisfied that the Applicant would leave Canada at the end of her stay as a temporary resident as required under section 179(b) of the *Immigration and Refugee Protection Regulations*. The Officer also refused the Applicant's application for a Work Permit. Specifically, the Officer determined that she had misrepresented her intentions, stating, "[i]t is difficult to believe that applicant [sic] would have been unaware of engagement or marriage preparations."

[11] On August 18, 2019, the Applicant, through a lawyer, made additional submissions and requested that the Decision be reconsidered. It appears that this submission was intended to reply to the Officer's August 9, 2019 procedural fairness letter. The submissions included affidavits from Jishnu, Don, Sailesh Suresh Menon, Amal Paul, the Applicant's parents, Jishnu's parents, the Hindu priest who officiated the wedding, and a more detailed letter from the Applicant explaining the arranged marriage plans of her parents. The GCMS notes confirm receipt of the additional supporting documents and that the documents were uploaded.

[12] On August 21, 2019, the Officer's email replied as follows:

> Thank you for your submission. As the applicant replied to the original procedural fairness letter within the timeframe stipulated a decision was made and communicated to her soon thereafter.
>
> I have noted your submission and wish to advise that the original decision to refuse the application will be maintained.

IV. Issues and Standard of Review

[13] The sole issue in this case is whether the Decision was reasonable (*Canada (Minister of Citizenship and Immigration) v Vavilov* at paras 16-17, 23-25). In assessing the reasonableness of a decision, the Court is to consider not only the outcome but also the underlying rationale to assess whether the "decision as a whole is transparent, intelligible and justified" (*Vavilov* at para 15). For a decision to be reasonable, a decision-maker must adequately account for the evidence before it and be responsive to the Applicant's submissions (*Vavilov* at paras 89-96, 125-128).

[14] The Court will not interfere with a decision unless it is satisfied that there are "sufficiently serious shortcomings such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency" (*Vavilov* at paras 12-13, 99-100).

V. The Parties' Positions

A. *Is the Decision reasonable?*

(1) Applicant's Position

[15] The Applicant states that the Officer erroneously disregarded, ignored, or misconstrued critical evidence and reasonable explanations. The Officer improperly found, without sufficient

reasoning, that the Applicant misrepresented her intent and the purpose of her travels when applying for the TRV.

(2) The Respondent's position

[16] The Respondent states that given the timing of events, it was reasonable for the Officer to conclude that the Applicant intended to meet Jishnu and get married in Canada. Additionally, the Officer's GCMS notes explain the basis for the Decision and that the Officer reasonably did not find the Applicant's explanation plausible or likely.

VI. Analysis

A. *Is the Decision reasonable?*

[17] The misrepresentation sections of the *IRPA* state:

> **40 (1)** A permanent resident or a foreign national is inadmissible for misrepresentation
>
> **(a)** for directly or indirectly misrepresenting or withholding material facts relating to a relevant matter that induces or could induce an error in the administration of this Act;
>
> […]
>
> **40 (2)** The following provisions govern subsection (1):
>
> **(a)** the permanent resident or the foreign national continues to be inadmissible for misrepresentation for a period of five years following, in the case of a determination outside Canada, a final determination of inadmissibility under subsection (1) or, in the case of a determination in Canada, the date the removal order is enforced.

[18] The Applicant states that she was not anticipating seeing Jishnu during her visit, therefore, there was no misrepresentation or withholding of a material fact since nowhere on the TRV application forms does it ask if she is engaged to someone who was residing in Canada.

[19] In *Tuiran v Canada (Minister of Citizenship and Immigration)*, 2018 FC 324 this Court explained the purpose of the misrepresentation provisions in the *IRPA*:

> [20] Section 16(1) of the [*IRPA*] requires visa applicants to answer all questions truthfully and produce all relevant documents and evidence reasonably required when making an application under the [*IRPA*]. The purpose of the misrepresentation provisions in the [*IRPA*] is "to ensure that applicants provide complete, honest and truthful information in every manner when applying for entry to Canada" (*Jiang v Canada (Citizenship and Immigration)*, 2011 FC 942 at para 36; *Khan v Canada (Citizenship and Immigration)*, 2008 FC 512 at paras 26-29; *Wang v Canada (Citizenship and Immigration)*, 2005 FC 1059 at paras 57-58, affirmed in 2006 FCA 345 [*Wang*]).

[20] Similarly, in *Bundhel v Canada (Minister of Citizenship and Immigration)*, 2014 FC 1147 [*Bundhel*] Justice Barnes emphasized the importance of applicants' "scrupulous honesty":

> [9] The fact is, our system of immigration control relies heavily on the truthfulness of those who apply to come here. Those who misrepresent their histories or withhold material information with a view to enhancing their chances for entry are undeserving of special consideration. The consequences for Mr. Bundhel are undoubtedly serious but they result from his failure to disclose material information. The integrity of Canada's control over its borders demands nothing less than scrupulous honesty from applicants and the rigid enforcement of that obligation.

[21] It is indisputable that applicants have an obligation to disclose all relevant facts to immigration officers when applying for entry to Canada (*He v Canada (Minister of Citizenship and Immigration)*, 2012 FC 33 at para 17 [*He*]). Similarly, Officers are entitled to make

plausibility findings based on the facts in evidence before them and, as pointed out in *He*, an officer's plausibility findings should be accorded deference (at para 27). At the same time, as the Applicant emphasizes, findings of misrepresentation must not be taken lightly and they must be supported by compelling evidence due to the important and long lasting consequences (*Lamsen v Canada (MCI)*, 2016 FC 815 at para 31 [*Lamsen*], citing *Seraj v Canada (Citizenship and Immigration)*, 2016 FC 38).

[22] In *Ni v Canada (Minister of Citizenship and Immigration)*, 2010 FC 162 [*Ni*], Justice Zinn considered this principle alongside the fact that officers are not required to "blindly accept" an applicant's evidence:

> [18] I agree with the applicant that a high degree of fairness is required in misrepresentation determinations. That is why the officer sent the applicant a procedural fairness letter expressly raising his concerns and permitting the applicant to file a response. This is what fairness required in the circumstances and the officer met that burden. It does not require that the officer blindly accept the response to the fairness letter without question. The officer is required to assess whether the response satisfies and alleviates his concerns. That decision is reviewed, as stated, on the reasonableness standard.

[23] While an Officer is not required to "blindly accept" an applicant's evidence, they are still obligated to engage with the evidence before them. In *Afua v Canada (Minister of Citizenship and Immigration)*, 2021 FC 596 Justice McHaffie refers to a line of this Court's jurisprudence, noting that visa officers face a high volume of applications and that their decisions may be brief. However, their reasons must still indicate their thought process in an intelligible manner, and address evidence that may contradict important findings of fact (at para 10).

[24] In my view, this case is distinguishable from *Ni*. In this case, the Applicant provided two hasty responses to the procedural fairness letter/email, which the Officer considered. Unlike *Ni*, after the two initial responses by the Applicant, the Applicant's counsel sent additional submissions containing more information and evidence, which the Officer acknowledges receiving. After "noting" counsel's additional submissions, the Officer concluded that the original decision still stood. The Officer did not provide any additional explanation.

[25] At the very least, even if the Officer did not wish to rely on the new evidence, they should have mentioned it. The new evidence included a more detailed letter, in which the Applicant explained that the engagement date of April 29, 2019 held significance in Hindu traditions. The Applicant explained that this is why Jishnu planned the surprise wedding. The affidavits from Jishnu, Don, and others all (to varying degrees of detail) support the Applicant's story of Jishnu's surprise wedding plan. The letters and affidavits from the Applicant's parents and parents-in-law similarly support the Applicant's story and explain the Hindu traditions of arranged marriages.

[26] After reviewing the record and the authorities cited by the parties, I find that the Officer's Decision is unreasonable. The authorities, while having different facts from this matter, all point to the requirement of an officer to engage with the materials before them. Having accepted the submissions from the Applicant's lawyer, the Officer was obligated to adequately engage with and assess the additional information alongside the initial materials submitted on August 9, 2021. I conclude that the Officer's decision does not meet the minimal standards that show justification, transparency and intelligibility.

VII. Conclusion

[27] The application for judicial review is allowed.

[28] The parties did not raise any question of general importance for certification and none arises.

<u>JUDGMENT in IMM-2741-20</u>

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is allowed. The matter is referred to a different officer for re-determination.
2. There is no question for certification.
3. There is no order as to costs.

"Paul Favel"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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