Federal Court  Cour fédérale

Date: 20220426

Docket: IMM-5541-21

Citation: 2022 FC 605

[ENGLISH TRANSLATION]

Ottawa, Ontario, April 26, 2022

PRESENT: Mr. Justice Pentney

BETWEEN:

MARIE EDITH LOURDES ROMAIN LEVEILLE

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] This is an application for judicial review of a decision of the Immigration Appeal Division (IAD) of the Immigration and Refugee Board of Canada. The IAD dismissed the applicant's appeal of an immigration officer's decision in which the officer found that she had

not complied with her residency obligation. As a result, an inadmissibility order was issued against her.

[2] The applicant appealed this decision to the IAD, alleging humanitarian and compassionate grounds for her application. She argued that she had been away to care for her parents in Haiti, but that her stay had been extended beyond the period originally planned due to the pandemic and other exceptional circumstances.

[3] The member found that there were insufficient humanitarian and compassionate grounds to warrant special relief and dismissed the appeal. While the IAD accepted that the departure from Canada was justified, it determined that the extended stay was not, as the applicant failed to return at the first opportunity. The IAD stated that the applicant left Canada without a permanent resident card and knew that she would have to return in one of two ways: (1) by using a travel document to return directly to Canada; or (2) by travelling through the United States. The IAD noted that the applicant had a visa for the United States valid until July 2020. The IAD found that the applicant failed to make arrangements to obtain the required Canadian documentation in a timely manner, noting that her U.S. visa remained valid until July 2020, but that she attempted to renew it in April 2020 rather than use it to return to Canada.

[4] It should be noted that the applicant obtained permanent resident status in Canada in 2014, but it was not until 2018 that she decided to move to Canada. Between 2014 and 2018, she spent extended periods of time in Haiti.

[5] To meet the residency obligation under section 28 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA], permanent residents must be physically present in Canada

for a minimum of 730 days in the preceding five-year period. In other words, permanent residents must be in Canada for a minimum of two years in any five-year period.

[6] The applicant's first permanent resident card expired in September 2019. The applicant did not apply for a renewal because she knew that she had not met her Canadian residency obligation at that time.

[7] In December 2019, the applicant left Canada without a permanent resident card with her children to visit her parents in Haiti because they were ill. She had planned to stay there for about two months and return to Canada in February 2020. However, that was not to be. On May 8, 2021, the applicant returned to Canada via the United States and, as noted above, a departure order was issued against her under section 41 of the IRPA, based on her failure to comply with the residency obligation.

[8] The applicant was in Canada for only 628 days during the five years relevant to the calculation, which is 102 days short of the statutory minimum of 730 days. The IAD found that the breach of the permanent residence obligation was moderate, but also found that:

1. the applicant's establishment in Canada was very limited and recent (negative factor);

2. the departure from Canada was justified, but the prolonged stay was not (negative factor);

3. the applicant failed to return at the first favourable opportunity (negative factor); and

4. the presence of the applicant's sisters and two adult children was a positive factor, but of low value.

[9] The IAD determined that "[t]he non-compliance with the residency obligation is moderate, but the humanitarian considerations are so minimal that they are insufficient to outweigh the extent of the non-compliance" (IAD decision at para 24).

[10] The applicant is seeking judicial review of that decision.

[11] The only issue in this case is whether the IAD's decision was reasonable. The reasonableness standard is applicable to a review of that decision (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*]).

[12] In summary, following the analytical framework set out in *Vavilov*, a reviewing court conducting a review on a reasonableness standard must "examine the reasons given by the administrative decision-maker and . . . determine whether the decision is based on inherently coherent reasoning and is justified in light of the relevant legal and factual constraints" (*Canada Post Corporation v Canadian Union of Postal Workers*, 2019 SCC 67 at para 2 [*Canada Post*]). The onus is on the applicant to satisfy the Court "that any shortcomings or flaws relied on . . . are sufficiently central or significant to render the decision unreasonable" (*Vavilov* at para 100, cited in *Canada Post* at para 33).

[13] The applicant argues that her absence was justified because she was unable to return to Canada because of the pandemic and the ensuing difficulties in trying to obtain the necessary documentation. She is of the view that the IAD had erred in downplaying her degree of establishment in Canada.

[14] The applicant also notes that the IAD failed to take into account the crucial fact that she was not in possession of her passport for a long period of time as she had surrendered it to the

United States Embassy in April 2020 in order to renew her visitor's visa for that country. However, the embassy subsequently closed for almost a year because of the pandemic. Therefore, the applicant was unable to return to Canada or submit an application for a travel document to return without a passport. The closure of the embassy was beyond her control.

[15] The applicant alleges that the IAD was unreasonable in concluding that her stay in Haiti was prolonged by her inaction and choice. She returned to Canada at the first available favourable opportunity and this factor therefore militates in favour of special relief. In addition, the applicant argues that the presence of her two children and two sisters in Canada was a positive factor that carried significant weight in the circumstances. She wishes to continue her life with her children in Canada.

[16] Finally, the applicant argues that the IAD erred in failing to consider the hardship she would face if she were to return to Haiti. She asserts that the current situation in that country is precarious, and that the economic and social context is explosive.

[17] For all of these reasons, the applicant contends that the IAD's decision was unreasonable.

[18] I am not persuaded by the applicant's arguments.

[19] The applicant's arguments amount to asking the Court reweigh the evidence, which is not its role on judicial review (*Vavilov* at para 125). The IAD should be afforded considerable deference in assessing the evidence on humanitarian and compassionate grounds (*Wopara v Canada (Citizenship and Immigration)*, 2021 FC 352 at paras 20–21 and the case law cited therein).

[20] The IAD applied the correct test by assessing the factors enumerated in the case law (*Ribic v Canada (Minister of Employment and Immigration)*, [1985] IABD No 4 (QL) at para 14, approved by the Supreme Court in *Chieu v Canada (Citizenship and Immigration)*, 2002 SCC 3 at para 40) and the decision was transparent, intelligible and justified (*Vavilov* at para 15).

[21] The applicant has two major problems in this case: first, she decided to leave Canada without a permanent resident card because she had not met her residency obligation in Canada between 2014 and 2019. She spent a significant amount of time between 2014 and 2018 in Haiti, but it was her choice to do so.

[22] Second, the applicant never explained her decision to attempt to renew her U.S. visa in April 2020, rather than keeping it and using it to return to Canada, either by obtaining a travel document, or by travelling first to the United States and then to Canada, which she ended up doing. This was also her choice, but choices have consequences. Further, I agree that the respondent explained to her the procedure she would have to follow to return to Canada before she surrendered her passport to the U.S. Embassy in April 2020. However, the applicant failed to follow up in a timely manner.

[23] The applicant was responsible, by her choice, for not having access to her passport for a year. The IAD reasonably concluded that it was not impossible for the applicant to return to Canada because of the pandemic, although it conceded that the circumstances had become more difficult.

[24] I must apply the analytical framework set out by the Supreme Court of Canada in *Vavilov*:

> [99] A reviewing court must develop an understanding of the decision maker's reasoning process in order to determine whether the decision as a whole is reasonable. To make this determination, the reviewing court asks 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: *Dunsmuir*, at paras. 47 and 74; *Catalyst*, at para. 13.

[25] Applying this framework to the IAD's decision, and taking into account the applicant's submissions, I conclude that the decision was reasonable. Accordingly, I must dismiss this application for judicial review.

[26] Finally, the parties agree that the proper respondent in this case is the Minister of Citizenship and Immigration. The style of cause is amended accordingly.

[27] There are no questions of general importance to certify.

JUDGMENT in IMM-5541-21

THIS COURT'S JUDGMENT is as follows:

1. The application for judicial review is dismissed.

2. The style of cause is amended to replace the "Minister of Public Safety and Emergency Preparedness" by the "Minister of Citizenship and Immigration".

3. No question of general importance is certified.

"William F. Pentney"
Judge

Certified true translation
Michael Palles

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-5541-21
STYLE OF CAUSE:	MARIE EDITH LOURDES ROMAIN LEVEILLE v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	MONTRÉAL, QUEBEC
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APPEARANCES:

Laurent Gryner	FOR THE APPLICANT
Patricia Nobl	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Laurent Gryner Counsel Montréal, Quebec	FOR THE APPLICANT
Attorney General of Canada Montréal, Quebec	FOR THE RESPONDENT