Federal Court Cour fédérale

Date: 20220503

Docket: IMM-5336-20

Citation: 2022 FC 639

Ottawa, Ontario, May 3, 2022

PRESENT: The Honourable Madam Justice Elliott

BETWEEN:

CHITRANIE SINGH

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Chitranie Singh, is a self-represented litigant. She is a permanent resident of Canada and a citizen of Guyana.

[2] In May of 2018 the Applicant and her husband applied to sponsor her father's application for himself, his wife and their two children (the family) for permanent residence in Canada as members of the family class. The family are all citizens of Guyana and currently reside there.

[3] The sponsorship application was refused by a visa officer on August 19, 2019 for failing to meet the minimum necessary income (MNI) for a family size of six persons established under section 133(1)(j)(i) of the *Immigration and Refugee Protection Regulations* SOR/2002-227 (*IRPR*).

[4] The Applicant now seeks judicial review of a decision made on September 16, 2020 by the Immigration Appeal Division (IAD) dismissing her appeal of the refusal of her sponsorship (the Decision).

II. Background Facts

[5] The Applicant filed the sponsorship application herself and she was not aware of the MNI requirement.

[6] The lock-in date for the sponsorship application was May 18, 2018. The relevant years for the purpose of the MNI were 2015, 2016 and 2017.

[7] On receiving the visa officer's refusal, the Applicant realized she could have met the required income by adding income she received in cash from a second employer. She contacted

that employer and received a T4A slip from them for each of the three qualifying years - 2015 to 2017.

[8] The Applicant then successfully applied to Canada Revenue Agency for a reassessment of her income for those three years to include the income earned from the second employer.

[9] The Applicant's revised income, when combined with her husband's income, showed that they were able to meet the MNI, exceeding it slightly for each year.

[10] The Applicant appealed the sponsorship refusal to the IAD.

[11] In the appeal, the Applicant submitted that, with her reassessed income, the refusal was not legally valid because she met the MNI for six persons for all three years.

III. **The Decision**

[12] The determinative issue identified by the IAD was the evidence supporting the Applicant's income from her second place of employment.

[13] The Applicant had submitted T4A forms and a letter of reference from that employer. The T4As showed that she earned an income of $8,000 in 2015, $12,460 in 2016 and $12,950 in 2017.

[14] The letter of reference, dated September 18, 2019, stated that she had been employed from 2015 “to present” as a part-time office assistant.

[15] The Applicant testified she was paid in cash and was employed with the second employer from January 2015 to December 2017. The Applicant’s husband also testified and confirmed those dates.

[16] The IAD found there was not enough evidence to support the details of the Applicant’s income. For example, there was no evidence of the remuneration rate, the total number of hours and dates worked or how often the Applicant was paid. There were no paystubs, bank receipts, deposit transactions or any other records concerning the payment and receipt of cash from the Applicant’s second employer. Although paystubs may not have been available, the Applicant presumably could have provided bank records showing the deposit of her pay.

[17] The IAD noted that the letter from the second employer stated the Applicant was still employed on the date it was written (September 18, 2019). The letter therefore contradicted the testimony of the Applicant and her husband that she terminated her employment with that employer in December 2017. While it is too late for this application, I note that if the letter was in error, the employer could provide a replacement letter with an explanation and accurate information.

[18] As a result of the lack of documentary evidence to support the truth of the Applicant's income, the IAD assigned little evidentiary weight to the accuracy of the Applicant's income earned from the second employer in 2015, 2016 and 2017.

[19] The IAD upheld the visa officer's refusal of the sponsorship application because not enough independent documents, such as bank statements, were provided to support the claimed new income.

[20] The IAD addressed the hardship factor submitted by the Applicant. It was noted that the primary motivation for sponsoring the Applicant's family was for assistance with future childcare needs as the Applicant has no immediate family in Canada.

[21] The IAD decided that any emotional hardship arising from family separation was mitigated by the Applicant's annual visit to her family in Guyana and the ability to communicate by telephone and video.

IV. **Issue and Standard of Review**

[22] The only issue is whether the Decision is reasonable.

[23] Subject to certain exceptions that are not present, the standard of review is presumptively reasonableness as described by the Supreme Court of Canada in *Canada (Minister of Citizenship & Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*].

[24] The word “reasonable” when used in connection with this Decision does not mean the same in law as it does in ordinary English. A reasonable decision in law is one that explains to the reader how and why the outcome was determined. It refers to facts and law and the task of the reviewing judge is to determine whether the decision is justified given those facts and law. When that is shown, the reviewing court is required to defer to the decision: *Vavilov*, at para 85.

[25] The IAD, as the decision maker, may assess and evaluate the evidence before it. Unless there are exceptional circumstances, a reviewing court will not interfere with those factual findings. A reviewing court also must refrain from “reweighing and reassessing the evidence considered by the decision maker”: *Vavilov* at para 125.

V. **Analysis**

A. *MNI*

[26] The submissions to the IAD to show that the MNI had been met since the visa officer’s decision was made were the Notices of Assessment, T4s and paystubs for the first employer. As noted by the IAD, other than the T4A and the letter from the second employer, there was nothing to support the payment of any of the newly claimed income to the Applicant.

[27] The IAD was concerned that the second employer’s letter said the Applicant was still employed approximately two years after she, and her husband, testified she had stopped working there in December 2017.

[28] The IAD noted that in *Motala v Canada (Citizenship and Immigration)*, 2012 FC 123 at paragraph 22, it was confirmed that the IAD's discretionary power to consider whether the grounds of inadmissibility had been overcome authorizes them to question the accuracy of financial documents submitted in support of sponsorship applications, and to require corroboration of the income reported in a Notice of Assessment.

[29] On February 5, 2020, the Applicant's representative was asked to provide income documents for 2019 for the Applicant and her husband when they became available. The representative was also asked to "kindly provide updated income documentation for 2019 for both the sponsor and co-signer as soon as possible, including T4s, employment letters, income tax returns and paystub's from the last few pay periods"

[30] This issue arose as the new income only arose after the visa officer's refusal of the application for not meeting the MNI requirement for 6 people. A request was also made for evidence that the tax owing had been paid.

[31] On March 2, 2020, the Applicant's representative was asked to supply evidence to confirm the previously unclaimed income. Examples were suggested such as pay stubs or invoices.

[32] As of the date of the IAD hearing in September 2020, other than those documents already mentioned as being before the IAD, none of the suggested additional documents had been submitted.

[33] Considering all of the above, I find it was reasonable for the IAD to require more specific, corroborating evidence to support the T4s and Notices of Assessment. This is particularly the case considering that the letter from the secondary employer wrongly states the Applicant was still working there in 2019.

[34] The failure of the Applicant to file the specific evidence that was suggested to be filed to corroborate the additional income, or any similar such evidence, did not help the Applicant's arguments.

[35] At the end of the day, the IAD reasonably found that evidence the Applicant presented was not persuasive without corroboration.

B. *Humanitarian and Compassionate Factors*

[36] Paragraph 67(1)(c) of the *Immigration and Refugee Protection Act*, SC 2001, c27, empowers the IAD to allow an appeal if they are satisfied that, taking into account the best interests of a child directly affected by the decision, there are sufficient humanitarian and compassionate considerations to warrant special relief in light of all the circumstances of the case.

[37] The only evidence submitted to support the special relief request was a handwritten note from the Applicant dated February 24, 2020 to show her relationship with and closeness to her family. She sent some of her family photos for the years January 2015 to December 2019 and indicated that she tried to visit her family every year.

[38] The IAD heard testimony from the Applicant and her husband. The IAD noted that the Applicant’s father was a farmer in Guyana and her mother was a housewife. They live in a home that they own. The two younger siblings live with their parents.

[39] The Applicant testified it was generally a harder life in Guyana compared to Canada. The IAD expressed their sympathy for the Applicant’s desire to be reunited with her parents and siblings but found that very little evidence had been presented about difficulties or hardship for her parents in Guyana.

[40] With respect to hardship for the Applicant as the child of her parents, the IAD found, as previously noted, that the Applicant’s circumstances in Canada did not support granting special relief as she and her husband did not yet have a child. As the primary motivation for sponsoring the Applicant’s family was for assistance with future childcare needs I find it was reasonable for the IAD to find hardship for the Applicant did not exist at the time of the Decision.

VI. **Conclusion**

[41] The IAD reasonably considered the evidence before them, both oral and documentary, and explained clearly and rationally why they were not persuaded to grant the appeal.

[42] Given the facts and law, the outcome reached by the IAD in this matter is reasonable.

[43] For all the foregoing reasons, the application is dismissed, without costs.

[44] There is no serious question of general importance to certify.

JUDGMENT in IMM-5336-20

THIS COURT'S JUDGMENT is that:

1. The application is dismissed without costs.

2. There is no question of general importance to certify.

"E. Susan Elliott"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-5336-20
STYLE OF CAUSE:	CHITRANIE SINGH v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	HELD BY WAY OF VIDEOCONFERENCE
DATE OF HEARING:	MAY 2, 2022
JUDGMENT AND REASONS:	ELLIOTT J.
DATED:	MAY 3, 2022

APPEARANCES:

Chitranie Singh	FOR THE APPLICANT ON HER OWN BEHALF
Lorne McClenaghan	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT