Federal Court Cour fédérale

Date: 20220520

Docket: IMM-1585-20

Citation: 2022 FC 748

Ottawa, Ontario, May 20, 2022

PRESENT: The Hon Mr. Justice Henry S. Brown

BETWEEN:

FAKHAR HUSSAIN

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] This is an application for judicial review of a decision by an Immigration Officer [Officer] of Immigration, Refugees and Citizenship Canada [IRCC] dated February 17, 2020 [Decision] which refused the Applicant's application for permanent residence as a member of the Canadian Experience Class due to inadmissibility. The Applicant was found to be inadmissible pursuant to paragraph 40(1)(a) of the *Immigration and Refugee Protection Act*, SC 2001, c. 27 [*IRPA*], because he failed to establish the admissibility of his wife at the time of his examination

as required by subsection 51(b) of the *Immigration and Refugee Protection Regulations*, SOR/2002-27 [*Regulations*].

[2] The Applicant is a 34-year-old citizen of Pakistan. He applied for permanent residence as a skilled worker under the Express Entry Program from Pakistan in March 2017. The application was approved on October 2, 2018 and the Applicant's visa was issued.

[3] On December 24, 2018, the Applicant married but mistakenly did not update or inform the visa office of this change in his family circumstances.

[4] On January 20, 2019, the Applicant landed at Pearson International Airport. Upon arrival, he was asked by CBSA if anything had changed in his family situation. He immediately and readily told officials he was married.

[5] Therefore, he was not landed because subsection 51(b) of the *Regulations* requires permanent resident visa holders to demonstrate at the time of their examination for permanent residence that they and all of their dependants, whether accompanying or not, are admissible to Canada. The Applicant was permitted to enter Canada but his passport was seized. His visa and permanent resident status were cancelled soon after.

[6] He enlisted the help of his MP, Hon. Judy Sgro. Soon after, IRCC reopened his file. He was able to add his wife who was examined and found compliant.

[7] By that time the Applicant expected he would have his visa and permanent resident status restored. It appears IRCC was of the same mind.

[8] He thought his mistake in not telling IRCC of his marriage until he arrived in Canada was forgiven.

[9] He was mistaken. I say this because CBSA – which is in charge of enforcing *IRPA* – instituted proceedings against him and issued a Report under section 44 on February 7, 2019, concerning subsection 41(a), a proceeding which could, and eventually did result in an inadmissibility finding against him by the Immigration Division [ID], although as noted below, not without misgivings by the ID Member.

[10] The Applicant was advised on February 7, 2019 that he could leave Canada voluntarily or be referred to the ID for an admissibility hearing. The Applicant chose to stay under the mistaken, but perhaps reasonable belief that matters were in hand with IRCC, which they appeared to be. I say “perhaps” because this is a matter for determination on the reconsideration Ordered herein.

[11] The ID held an admissibility hearing on November 21, 2019 and found the Applicant inadmissible under paragraph 40(1)(a) of *IRPA* and subsection 51(b) of the *Regulations*. An exclusion order was made against him, but not without misgivings.

[12] At the hearing before the ID, the ID Member repeatedly expressed concern that CBSA was proceeding for exclusion while IRCC had reopened the file possibly (I make no determination on this) with a view to restoring his visa and permanent resident status.

[13] The ID Member noted this was a matter of "on the one hand … and on the other". In my view, there is merit in the ID's concern because in Canada the Executive government is vested in the Crown and with respect, it must address claimants like this with one voice. See section 9 of the *Constitution Act, 1867,* (UK) 30 & 31 Vict, c 3:

9. The Executive Government and Authority of and over Canada is hereby declared to continue and be vested in the Queen.	9. À la Reine continueront d'être et sont par la présente attribués le gouvernement et le pouvoir exécutifs du Canada.

[14] On January 23, 2020, the Applicant was issued a procedural fairness letter, noting the reasons why he was determined inadmissible and the consequences of the exclusion order.

[15] He was given an opportunity to respond.

[16] Notably, the Applicant's counsel responded on February 14, 2020, and requested an exemption from inadmissibility on H&C grounds under section 25 of *IRPA*.

[17] The H&C grounds raised were several and dealt with various aspects of the Applicants treatment by CBSA "on the one hand", as the ID Member had put it, and his treatment by IRCC "on the other hand".

[18] However, the Applicant's application was refused February 17, 2020, leading to this application for judicial review.

[19] The Applicant raises promissory estoppel and inadequacy of reasons.

[20] I make no finding with respect to promissory estoppel because counsel may wish to advance that argument at the reconsideration I am ordering, such that it might be a matter for officials to determine.

[21] I recognize the Applicant would not have had any issues had he returned to Pakistan and waited for a decision, rather than remaining in Canada, a point emphasized by the Respondent.

[22] However, as was the ID Member, I too am concerned how the two hands of government treated this Applicant in this unusual case, which in part is why reconsideration is Ordered.

[23] I am also not satisfied the Respondent Minister or those with his delegated authority meaningfully grappled with the issues raised when they rejected his H&C request. The duty to come to grips with important issues in set out in *Vavilov* at para 128:

> [128] Reviewing courts cannot expect administrative decision makers to "respond to every argument or line of possible analysis" (*Newfoundland Nurses*, at para. 25), or to "make an explicit finding on each constituent element, however subordinate, leading to its final conclusion" (para 16). To impose such expectations would have a paralyzing effect on the proper functioning of administrative bodies and would needlessly compromise important values such as efficiency and access to justice. However, a decision maker's failure to meaningfully grapple with key issues or central arguments raised by the parties may call into question

> whether the decision maker was actually alert and sensitive to the matter before it. In addition to assuring parties that their concerns have been heard, the process of drafting reasons with care and attention can alert the decision maker to inadvertent gaps and other flaws in its reasoning: *Baker*, at para. 39.
>
> [Emphasis added]

[24] The Respondent submitted while the reasons are succinct, they are adequate. I am unable to agree. While it is not a matter of quantity versus quality, the reasons for rejecting the H&C considerations raised are set out in the Decision letter dated February 17, 2020 and are of themselves manifestly inadequate:

> I am not satisfied that the H&C considerations before me justify an exemption under A25(1) of the *IRPA*. The application is therefore, refused.

[25] The GCMS note add little more but, in my respectful view, do not meet the requirements set out in *Vavilov*. After inconsequential introductory comments, the material passage is the following sentence:

> There were no specific H&C grounds raised by the appellant other than their disagreement with CBSA's actions in issuing the 44 report and removal and the delay in the processing of the application for permanent residence.

[26] With respect, this sentence this fails to satisfy *Vavilov's* requirement that the central issues raised in the H&C be meaningfully grappled with. Therefore judicial review will be granted. Neither party proposed a question of general importance to certify and neither do I.

JUDGMENT in IMM-1585-20

THIS COURT'S JUDGMENT is that judicial review is granted, the Decision is set aside, the matter is remanded to a differently constituted decision-maker for redetermination, no question of general importance is certified, and there is no Order as to costs.

"Henry S. Brown"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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APPEARANCES:

Richard Wazana	FOR THE APPLICANT
Ian Hicks	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Wazana Law Barrister and Solicitor Immigration Refugee Law Toronto, Ontario	FOR THE APPLICANT
Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT