Federal Court Cour fédérale

Date: 20220609

Docket: IMM-1661-20

Citation: 2022 FC 865

Ottawa, Ontario, June 9, 2022

PRESENT: The Honourable Mr. Justice Southcott

BETWEEN:

GWENDOLYNN TADIWANASHE KADYE

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant seeks judicial review of a decision by an immigration officer [the Officer] denying her application, as a victim of family violence, for a temporary resident permit [TRP] under s 24(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*]. The Officer concluded that the Applicant had implied status, was not inadmissible to Canada, and was thus ineligible for a TRP.

[2] As explained in greater detail below, this application is allowed, because the Officer failed to consider the Applicant's submissions that she is she is eligible for a TRP because she does not meet the requirements of *IRPA* to apply for permanent residence or work authorization.

II. **Background**

[3] The Applicant, Gwendolynn Tadiwanashe Kadye, is a citizen of Zimbabwe who is seeking a TRP pursuant to s 24(1) of *IRPA*. She first came to Canada in 2010 in order to pursue a Bachelor of Legal Studies at Carleton University. She graduated in 2015.

[4] In early 2016, the Applicant began dating a permanent resident. She moved in with him and his son later that year. The Applicant states that, about a year and a half into their relationship, her partner began regularly abusing her, including emotional and verbal abuse, as well as regular physical assaults. In 2018, the Applicant briefly moved out and lived with a friend. At her partner's request, she returned with the hope of mending the relationship. However, the Applicant states he abused her again and ultimately threw her out of the house.

[5] The Applicant says that her partner had promised to sponsor her as a permanent resident under the family class but that, in January 2019, he informed her that he would no longer sponsor her permanent residence application and subsequently ended their relationship. On January 8, 2020, the Applicant submitted an application for a TRP as a victim of family violence.

III. Decision Under Review

[6] In a letter dated February 28, 2020, the Officer conveyed to the Applicant that it had been determined that she did not meet the requirements for a TRP, because she was under implied status at the time her application was received. The Officer also prepared a document entitled Decision and Rationale, providing further reasons for the decision. In that document, the Officer set out s 24(1) of *IRPA*, which provides as follows:

24 (1) A foreign national who, in the opinion of an officer, is inadmissible or does not meet the requirements of this Act becomes a temporary resident if an officer is of the opinion that it is justified in the circumstances and issues a temporary resident permit, which may be cancelled at any time.	**24 (1)** Devient résident temporaire l'étranger, dont l'agent estime qu'il est interdit de territoire ou ne se conforme pas à la présente loi, à qui il délivre, s'il estime que les circonstances le justifient, un permis de séjour temporaire — titre révocable en tout temps.

[7] The Officer also referenced as follows the eligibility requirements for the issuance of a family violence TRP:

> In order to meet eligibility requirements for a family violence TRP, the applicant must be physically located in Canada and experiencing abuse from their spouse or common-law partner while in Canada *and* must be seeking permanent residence that is contingent on remaining in a genuine relationship in which there is abuse and if the relationship with the abusive spouse or common-law partner is critical for the constitution of the individual's status in Canada. Eligibility also extends to spouses or applicants that have been misled and made to believe that a family class permanent residence application has been submitted and is in process, when in fact, no such application exists. All eligibility

> requirements and ministerial instructions must be satisfied to meet the intent of the program.

[8] It is common ground between the parties that this explanation by the Officer represents a reference to a ministerial instruction concerning foreign nationals who are victims of family violence. This instruction was issued under s 24(3) of *IRPA*, which provides that, in applying s 24(1) of *IRPA*, an officer shall act in accordance with any instructions that the Minister may make.

[9] The Officer noted that the Applicant was issued a visitor record on August 2, 2019, valid until January 12, 2020. As the application for a TRP was received on January 10, 2020, the Officer concluded that the Applicant currently had implied status. Based on this implied status, and because the Officer was not aware of any grounds that would render the Applicant inadmissible, the Officer concluded that she did not meet the eligibility requirements for a TRP.

IV. **Issues and Standard of Review**

[10] The only issue raised by the Applicant is whether the Officer applied s 24(1) of *IRPA* erroneously and thereby made an unreasonable decision in refusing her TRP application.

[11] As suggested by its articulation, the standard of review applicable to this issue is reasonableness.

V. **Analysis**

[12] The Applicant's principal submission, in challenging the reasonableness of the Officer's decision, is that the Officer focused solely upon whether she was inadmissible to Canada and did not consider her submission that she does not meet the requirements of *IRPA* to apply for permanent residence or a work permit.

[13] The Applicant submits that s 24(1) provides two pre-conditions, one of which must be met before an officer considers whether issuance of a TRP is justified in an applicant's particular circumstances. These pre-conditions are either that the applicant is inadmissible or that the applicant does not meet the requirements of *IRPA*. The Applicant emphasizes that the text of s 24(1) sets out a disjunctive test, such that only one of the pre-conditions must be satisfied before an officer moves to consider whether issuance of a TRP is justified.

[14] I agree with the Applicant's interpretation of s 24(1), which is supported by both the plain wording of the provision and relevant jurisprudence (see, e.g., *Palermo v Canada (Citizenship and Immigration)*, 2016 FC 1128 at para 10). The question for the Court's determination is whether the Officer unreasonably failed to consider not only whether the Applicant was inadmissible but also whether she did not meet the requirements of *IRPA*.

[15] The Respondent takes the position that the Officer considered both pre-conditions. The Applicant submits that that neither the Officer's letter nor the Decision and Rationale supports this conclusion. I agree that this documentation contains no express reference to whether the Applicant meets the requirements of *IRPA*. The Officer expresses that the refusal of the

application is based on the Applicant having implied status and there being no grounds that would render her inadmissible.

[16] However, the Respondent submits that the Officer's reference to the Applicant not being out of status represents a conclusion that she meets the requirements of *IRPA*. The Respondent also draws the Court's attention to information on the website of Immigration, Refugees and Citizenship Canada [IRCC], stating "[t]hese instructions aim to provide guidance to IRCC officers on the issuance of an initial fee-exempt temporary resident permit for out-of-status foreign nationals experiencing family violence" [emphasis added].

[17] In response to this submission, the Applicant emphasizes that IRCC policy, including ministerial instructions, cannot alter the provisions of s 24(1). I agree with this position. While s 24(3) requires an officer considering a TRP application to act in accordance with ministerial instructions, I read the authority afforded by s 24(3) as related to the circumstances that may justify issuance of a TRP, not as authority to alter the two statutory pre-conditions to eligibility under s 24(1).

[18] To the extent the Respondent is arguing that being out of status and not meeting the requirements of *IRPA* are equivalent, I have difficulty with this proposition, as the latter strikes me as significantly broader than the former. However, it is unnecessary for the Court to arrive at a definitive conclusion on this proposition, as it is far from clear that the Officer's decision is based on such an analysis.

[19] Indeed, the difficulty with the Officer's decision is that it does not disclose any analysis of the Applicant's submission, in support of her TRP application, that she does not meet the requirements of *IRPA*. Her submission to the Officer expressly stated that her circumstances do not allow her to be granted permanent residence or work authorization within the strict application of *IRPA* and that the grant of a TRP could remedy the strict application of the law. She explained that she wished to regularize her status to explore her options to apply for permanent residence. However, the Officer's reasoning demonstrates no engagement with these submissions.

[20] The Respondent argues that these submissions are very general in nature and provide no detail as to which requirements of *IRPA* the Applicant does not meet and why she is unable to apply for permanent residence or work authorization under various IRCC programs. I do not disagree with the Respondent's characterization of the Applicant's submissions. If the Officer had denied the TRP application on the basis that the Applicant's submissions were not sufficiently detailed to demonstrate that she did not meet the requirements of *IRPA*, the Court would have been required to assess the reasonableness of that analysis. However, the Officer's decision does not demonstrate any such analysis.

[21] Absent any engagement with the Applicant's submissions as to why she met one of the preconditions under s 24(1), the Officer's decision is unreasonable. As such, this application for judicial review will be allowed and, granting the relief the Applicant seeks, the Officer's decision will be set aside and returned to another officer for redetermination, following an opportunity for the Applicant to provide further submissions in support of her TRP application.

[22] Neither party proposed any question for certification for appeal, and none is stated.

JUDGMENT IN IMM-1661-20

THIS COURT'S JUDGMENT is that this application for judicial review is allowed, the Officer's decision is set aside, and the matter is returned to a different officer for redetermination, after the Applicant is afforded an opportunity to provide further submissions in support of her TRP application. No question is certified for appeal.

"Richard F. Southcott"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-1661-20
STYLE OF CAUSE:	GWENDOLYNN TADIWANASHE KADYE V THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	HEARD VIA VIDEOCONFERENCE
DATE OF HEARING:	JUNE 6, 2022
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