Federal Court  Cour fédérale

Date: 20221102

Docket: IMM-1527-22

Citation: 2022 FC 1496

St. John's, Newfoundland and Labrador, November 2, 2022

PRESENT: The Honourable Madam Justice Heneghan

BETWEEN:

IRFAN AHMED

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS AND JUDGMENT

[1] By a Notice of Motion dated May 24, 2022, for consideration without personal appearance pursuant to Rule 369 of the *Federal Courts Rules*, SOR/98-106 (the "Rules"), the Minister of Citizenship and Immigration (the "Minister") seeks the entry of judgment in respect of the application for leave and judicial reviewed filed on February 16, 2022, by Mr. Irfan Ahmed (the "Applicant"). The subject of the application for leave and judicial review is a

decision made by a Visa Officer (the "Officer") at the Embassy of Canada in Abu Dhabi United Arab Emirates, denying the Applicant's application for a study permit.

[2] In support of his Motion, the Minister filed the affidavit of Ms. Mireille Dankalian. He also relies on the affidavit of the Applicant filed as part of his application record.

[3] Ms. Dankalian is a legal assistant with the federal Department of Justice in Calgary, the office of Counsel for the Respondent. She swore her affidavit on May 24, 2022. She referred to certain correspondence that was sent to Counsel for the Applicant. Copies of that correspondence were attached as exhibits to her affidavit.

[4] The first exhibit is a letter, dated May 3, 2022, from Counsel for the Respondent, "confirming" the terms upon which the Respondent will consent to the Applicant's application for leave and judicial review: that is to set aside the negative decision of the Officer, to allow the Applicant to file updated documents, and to remit the matter to another officer, all without costs. This offer was conditional upon the Applicant filing a Notice of Discontinuance of his application for leave and judicial review.

[5] The second exhibit is a letter dated May 6, 2022 from Counsel for the Respondent, "clarifying" the letter of May 3, 2022. In this letter, Counsel again says that upon the filing of a Notice of Discontinuance by the Applicant, the Respondent will consent to set aside the decision, on the basis that the Officer improperly considered extrinsic evidence and that the reasons do not meet the legal test of reasonableness. This letter was written on a "without prejudice" basis.

[6] The third exhibit is a letter dated May 13, 2022 from Counsel for the Respondent. This letter was written on a “with prejudice” basis and requested a reply by the close of business on May 18, 2022.

[7] The Applicant filed his affidavit, sworn on April 13, 2022, in support of his application for judicial review. In his affidavit, he set out the history of his application for a study permit in Canada.

[8] The Applicant first applied for a study permit in June 2019. The application was refused on July 17, 2019 and he filed an application for leave and judicial review. The Respondent consented to setting aside the refusal and the matter was remitted to a different officer for redetermination.

[9] Following that redetermination, the Applicant’s application was refused a second time, on August 16, 2020.

[10] The Applicant sought leave to commence an application for judicial review in cause number IMM-4093-20. Leave was granted and following a hearing, Justice Fothergill allowed the application for judicial review on September 22, 2021, setting aside the negative decision and remitting the matter for redetermination.

[11] Upon a further redetermination, the Applicant received a third negative decision on February 1, 2022. That decision is the subject of the within application for leave and judicial review.

[12] The Respondent argues that the Court "should" grant his motion for judgment, on the grounds that he has admitted that the decision of the Officer shows a reviewable error and in any event, does not meet the legal test of reasonableness. He also submits that granting his motion accords with the idea of judicial economy, that he is offering the remedy that the Court would provide if leave were granted and the Applicant succeeded upon his application for judicial review, after a hearing.

[13] The Applicant opposes the Respondent's motion. While he agrees the matter must be remitted to a different officer for redetermination, he submits that clear directions are necessary, so that the officer who will decide the matter again will not make the same error, leading to further applications for judicial review. In support of this argument, he relies upon *Canada (Minister of Citizenship and Immigration) v. Vavilov*, [2019] 4 S.C.R. 653 (S.C.C.) at paragraph 142.

[14] The Applicant seeks costs upon this Motion, arguing that the Officer disregarded the order of Justice Fothergill to re-determine the application in accordance with the Court's reasons. Further, he submits the Respondent unnecessarily prolonged these proceedings by refusing to consent to his proposed directions to the visa officer.

[15] In his Notice of Application for leave and judicial review, the Applicant seeks the following relief:

> A. An Order setting aside the decision of the visa officer of the Embassy of Canada dated February 1, 2022, wherein it determined that the Applicant would not be granted a study permit in Canada; and
>
> B. An Order referring the Applicant's application for a study permit back to the visa officer of the Embassy of Canada for further review or, alternatively, for an Order referring the matter back to the Embassy of Canada for determination of the Applicant's application for a study permit in accordance with such directions as this Honourable Court considers appropriate.

[16] According to subsection 18.1(3) of the *Federal Courts Act*, R.S.C., 1985, c. F-7, the Court enjoys discretion in respect of granting relief upon judicial review. Subsection 18.1(3) provides as follows:

Powers of Federal Court	**Pouvoirs de la Cour fédérale**
(3) On an application for judicial review, the Federal Court may	**(3)** Sur présentation d'une demande de contrôle judiciaire, la Cour fédérale peut :
(a) order a federal board, commission or other tribunal to do any act or thing it has unlawfully failed or refused to do or has unreasonably delayed in doing; or	**a)** ordonner à l'office fédéral en cause d'accomplir tout acte qu'il a illégalement omis ou refusé d'accomplir ou dont il a retardé l'exécution de manière déraisonnable;
(b) declare invalid or unlawful, or quash, set aside or set aside and refer back for determination in accordance with such	**b)** déclarer nul ou illégal, ou annuler, ou infirmer et renvoyer pour jugement conformément aux instructions qu'elle estime appropriées, ou prohiber

directions as it considers to be appropriate, prohibit or restrain, a decision, order, act or proceeding of a federal board, commission or other tribunal.	ou encore restreindre toute décision, ordonnance, procédure ou tout autre acte de l'office fédéral.

[17] The remedy offered by the Respondent in his notice of motion is the "usual" relief granted by the Court in an application for judicial review. Directions from a Court, in disposing of an application for judicial review, are rare, as discussed by the Federal Court of Appeal in *Canada (Citizenship and Immigration) v. Tennant* (2019), 436 D.L.R. (4th) 155.

[18] In *Kiss v. Canada (Citizenship and Immigration),* 2019 FC 1247, the Minister filed a motion, seeking an Order to allow the application for leave and judicial review.

[19] The motion was opposed, principally on the grounds that the relief offered by the Minister in that case was not the relief sought in the application for leave and judicial review. The Minister's motion was dismissed and the proceeding continues.

[20] In the present case, the main argument advanced by the Applicant in opposition to the Minister's motion is that he fears another refusal, followed by another application for leave and judicial review. He contends that the Officer ignored the "directions" of Justice Fothergill who, upon hearing the application for judicial review in respect of the second negative decision, granted the application and set aside the second refusal of the Applicant's application for a study permit.

[21] A remedy upon an application for judicial review lies within the discretion of the Court and generally, a successful application for judicial review leads to quashing the decision under review and remitting the matter to a new decision-maker. The Court will give directions as to the outcome of a redetermination only in rare circumstances, as discussed by the Federal Court of Appeal in *Tennant, supra*.

[22] At paragraph 72 of *Tennant, supra*, the Federal Court of Appeal described the limited circumstances where the Court can grant a substituted decision as follows:

> …It is now well-established that this form of relief, a combination of certiorari and mandamus, is available where on the facts and the law there is only one lawful response, or one reasonable conclusion, open to the administrative decision-maker, so that no useful purpose would be served if the decision-maker were to redetermine the matter. [citations omitted]

[23] I am not persuaded that the Applicant has met the test set out in *Tennant, supra*. There is no reason to depart from the usual disposition of a successful application for judicial review, at least at this time. That does not foreclose the possibility of seeking directions in a future application for judicial review, should same arise.

[24] While judicial economy is a factor in the disposition of a motion such as the present one, it is not the determinative factor in this case.

[25] In the result, the Respondent's motion is granted, the decision of the Officer is set aside and the Applicant's application for a study permit is remitted to a different officer for redetermination.

[26] The Applicant seeks costs upon this motion.

[27] According to Rule 22 of the *Federal Courts Citizenship, Immigration and Refugee Protection Rules*, SOR/93-22 the Court may award costs in immigration matters for "special reasons". Rule 22 provides as follows:

22 No costs shall be awarded to or payable by any party in respect of an application for leave, an application for judicial review or an appeal under these Rules unless the Court, for special reasons, so orders.	**22** Sauf ordonnance contraire rendue par un juge pour des raisons spéciales, la demande d'autorisation, la demande de contrôle judiciaire ou l'appel introduit en application des présentes règles ne donnent pas lieu à des dépens.

[28] I agree with the submissions of the Respondent, that the Applicant has failed to show "special reasons" for the award of costs. I am not persuaded that there has been unnecessary and unreasonable prolongation of the proceedings, as the Court found in *Bageerathan v. Canada (Minister of Citizenship and Immigration)* (2009), 83 Imm. L.R. (3d) 111, where costs were awarded.

[29] In the result, the Respondent's Motion is granted, without costs.

JUDGMENT in IMM-1527-22

THIS COURT'S JUDGMENT is that the application for judicial review is allowed, the decision of the Officer is set aside and the matter is remitted to a different officer for redetermination. In the exercise of my discretion and having regard to the relevant jurisprudence, there is no Order as to costs.

"E. Heneghan"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-1527-22
STYLE OF CAUSE:	IRFAN AHMED v THE MINISTER OF CITIZENSHIP AND IMMIGRATION

MOTION IN WRITING CONSIDERED AT ST. JOHN'S, NEWFOUNDLAND AND LABRADOR PURSUANT TO RULE 369 OF THE *FEDERAL COURTS RULES*

REASONS AND JUDGMENT:	HENEGHAN J.
DATED:	NOVEMBER 2, 2022

WRITTEN REPRESENTATIONS BY:

G. Michael Sherrit	FOR THE APPLICANT
David Shiroky	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Sherrit Greene Barrister and Solicitor Calgary, Alberta	FOR THE APPLICANT
Attorney General of Canada Calgary, Alberta	FOR THE RESPONDENT