Federal Court  Cour fédérale

Date: 20230426

Docket: IMM-4781-22

Citation: 2023 FC 605

Ottawa, Ontario, April 26, 2023

PRESENT: Mr. Justice Norris

BETWEEN:

MOHAMMAD ZAKIR HOSSAIN KHAN

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The applicant is a citizen of Bangladesh. In 2017, he submitted an application for permanent residence in Canada as a member of the Quebec Investor Class pursuant to subsection 90(2) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 ("*IRPR*"). The applicant's wife and daughter were included on the application as dependents.

[2] As required by paragraph 90(2)(b) of the *IRPR*, the applicant was named in a *Certificat de sélection du Québec* issued by the Province of Quebec. However, on review of the application, a visa officer with Immigration, Refugees and Citizenship Canada ("IRCC") identified concerns over whether the applicant intended to reside in Quebec, as required by paragraph 90(2)(a) of the *IRPR*.

[3] On February 28, 2022, IRCC sent the applicant a letter convoking an interview with a visa officer. Apart from instructions regarding the submission of supporting documents and the logistics of the interview (which would be conducted by videoconference), the letter simply stated: "The onus is on you to satisfy the interviewing officer that you meet the eligibility requirements of the category in which you are applying." The letter did not identify any specific concerns about the applicant's eligibility as a member of the Quebec Investor Class, including doubts about the genuineness of his stated intention to reside in Quebec.

[4] The interview took place as scheduled on March 15, 2022. During the interview, the officer eventually raised concerns about whether the applicant genuinely intended to reside in Quebec. Two specific concerns were identified. One was that, while the application was pending, the applicant had applied on behalf of his daughter for a study permit to attend school in Ontario. The other was that the applicant had been included in an application for residency in the United States that the applicant's sister-in-law had submitted in 2012. This application was still pending. After considering the applicant's responses, the officer concluded that her concerns had not been assuaged. Consequently, in a decision dated March 29, 2022, the officer refused the application for permanent residence because she was not satisfied that the applicant

intends to reside in the Province of Quebec. The officer's Global Case Management System notes reiterate these two concerns as the basis for the conclusion that the applicant had not established that he intends to reside in Quebec.

[5] The applicant now applies for judicial review of this decision under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 ("*IRPA*"). He submits that the decision was made in breach of the requirements of procedural fairness because he was not given fair notice of and a reasonable opportunity to respond to the officer's concerns about whether he intended to reside in Quebec. He also submits that the decision is unreasonable.

[6] As I will explain, I agree that the decision is unreasonable. As a result, it is not necessary to address the procedural fairness issue.

[7] The parties agree, as do I, that the substance of the officer's decision should be reviewed on a reasonableness standard.

[8] A reasonable decision "is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker" (*Canada (Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 85). A decision that displays these qualities is entitled to deference from the reviewing court (*ibid.*). For a decision to be reasonable, a reviewing court "must be able to trace the decision maker's reasoning without encountering any fatal flaws in its overarching logic, and it must be satisfied that there is a line of analysis within the reasons that could reasonably lead the tribunal from the evidence before it

to the conclusion at which it arrived" (*Vavilov* at para 102, internal quotation marks and citation omitted). On the other hand, "where reasons are provided but they fail to provide a transparent and intelligible justification [. . .], the decision will be unreasonable" (*Vavilov* at para 136).

[9] The onus is on the applicant to demonstrate that the officer's decision is unreasonable. To set aside a decision on this basis, the reviewing court must be satisfied that "there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency" (*Vavilov* at para 100).

[10] For the following reasons, I have concluded that the officer's assessment of the outstanding US residency application as it relates to the applicant's intention to reside in Quebec is unreasonable.

[11] First, it is simply unintelligible why the officer concluded that an application for US residency that was submitted in 2012 is inconsistent with the applicant now having a genuine intention to reside in Quebec. As a matter of logic and common sense, there is no reason why the two cannot co-exist. The applicant could genuinely intend to reside in whichever country granted him residency first. If that turned out to be Canada, he would reside in Quebec.

[12] Second, in any event, the two applications were submitted five years apart. By the time of the IRCC interview, the US application had been pending for some 10 years. The officer does not consider that, even if he had once been interested in living in the United States, the applicant could have changed his mind. In fact, the applicant stated unequivocally in the interview that he

preferred to reside in Quebec given social and political conditions there compared to those in the United States. The officer does not grapple with this evidence in any way.

[13] Third, the officer inferred from the fact that the applicant had not withdrawn the US application that he must still intend to reside in the United States (and therefore not in Quebec). Even if this were a logical inference (which it is not), it is still unreasonable in the absence of any evidence that the applicant had any control over the US application. When asked during the interview whether he had considered any migration programs in other countries besides Canada, the applicant stated that his sister-in-law had included his wife on her application for residency in the United States. Throughout the interview, the applicant was clear that it was his sister-in-law who had submitted the application, not him. On the information known to the officer, there was no basis to presume, as the officer did, that it was within the applicant's power to withdraw the US application.

[14] As noted above, the officer also had concerns arising from the fact that the applicant had applied for a study permit for his daughter to attend school in Ontario while his application for permanent residence as a member of the Quebec Investor Class was pending. The respondent has not suggested that the decision could be upheld on this basis alone. Consequently, it is not necessary for me to determine whether these concerns were reasonable or not.

[15] For these reasons, the application for judicial review will be allowed. The decision of the visa officer dated March 29, 2022, will be set aside and the matter will be remitted for redetermination by a different decision maker.

[16] The parties did not suggest any serious questions of general importance for certification under paragraph 74(d) of the *IRPA*. I agree that no question arises.

JUDGMENT IN IMM-4781-22

THIS COURT'S JUDGMENT is that

1. The application for judicial review is allowed.
2. The decision of the visa officer dated March 29, 2022, is set aside and the matter is remitted for redetermination by a different decision maker.
3. No question of general importance is stated.

"John Norris"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-4781-22
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