

Federal Court



Cour fédérale

Date: 20230810

Docket: IMM-8389-22

Citation: 2023 FC 1098

Ottawa, Ontario, August 10, 2023

PRESENT: Madam Justice Pallotta

BETWEEN:

RAWAL SINGH NAGRA

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] Rawal Singh Nagra brings this application for judicial review of a visa officer's (Officer) decision that refused his application for a temporary resident permit (TRP) under section 24 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

[2] The purpose of a TRP is to mitigate harsh consequences that may arise from a strict application of the *IRPA*. If a visa officer is of the opinion that a TRP is justified, a foreign national who is otherwise inadmissible or who does not meet *IRPA* requirements may be allowed

to enter or to remain in Canada. Mr. Nagra's application for a TRP was refused because the Officer was not satisfied there were sufficient, compelling grounds to warrant granting him this type of exemption from *IRPA* requirements.

[3] Mr. Nagra is a citizen of India living in Ontario with his spouse. Mr. Nagra arrived in Canada in May 2017 on a study permit. He also obtained a post-graduation work permit (PGWP).

[4] Since September 2019, Mr. Nagra has been in Canada without status. Before his PGWP expired, Mr. Nagra applied for permanent residence under the provincial nominee program with a bridging open work permit. An officer returned the application for technical non-compliance, which meant it was marked as incomplete. Mr. Nagra reapplied; however, his second application was returned because the provincial nomination letter had expired by that time. Mr. Nagra made a third application for permanent residence and he also applied to restore his visitor status; both applications were refused.

[5] Mr. Nagra states that all his applications were refused due his immigration consultant's negligence. He applied for a TRP, citing his previous immigration history as extenuating circumstances.

[6] Mr. Nagra submits the Officer's decision to refuse his TRP application is unreasonable. Instead of considering whether a TRP was justified in all of the circumstances of his case, Mr. Nagra contends the Officer imposed a heightened standard by applying a "compelling reasons

test” to assess his application: *Palmero v Canada (Minister of Citizenship and Immigration)*, 2016 FC 1128 at para 21 [*Palmero*]. Presumably, the Officer followed Immigration, Refugees and Citizenship Canada (IRCC) guidelines, which state that an officer assessing a TRP application may consider whether the need for a foreign national to enter or to remain in Canada is compelling. However, Mr. Nagra states this language is not found in *IRPA* s. 24: *Palmero* at para 21.

[7] Furthermore, and regardless of the standard the Officer applied, Mr. Nagra submits the decision is unreasonable because the Officer misapplied the compelling standards test, and failed to consider the following evidence and unique circumstances of his case: (i) Mr. Nagra’s applications for permanent residency were refused because of his immigration consultant’s negligence, and not through any fault of his own; (ii) Mr. Nagra put his best foot forward, and he submitted all required documents with an updated provincial nomination certificate number; (iii) Mr. Nagra was deserving of a TRP in order to spend more time with his spouse and to work in Canada so he and his spouse could lead a better life.

[8] Mr. Nagra relies on this Court’s decision in *Bisht v Canada (Public Safety and Emergency Preparedness)*, 2022 FC 1178, where an applicant successfully challenged an exclusion order that resulted from his authorized representative’s incompetent advice. Mr. Nagra contends the Officer unreasonably refused his TRP application, even though his immigration history shows he was denied procedural fairness due to the negligent acts of his immigration consultant.

[9] Mr. Nagra also alleges the Officer breached procedural fairness by failing to provide an opportunity to respond to concerns about the TRP application.

[10] In his written memorandum, Mr. Nagra had raised two other grounds of procedural unfairness, namely, that the decision gives rise to a reasonable apprehension that the Officer was biased, and that the Officer breached the doctrine of legitimate expectations. Mr. Nagra withdrew these allegations at the hearing of this application.

[11] The respondent submits this application for judicial review should be dismissed. The respondent contends that the reasons Mr. Nagra provided in support of his TRP application were essentially reasons of convenience. The application requested a TRP so Mr. Nagra could work, but provided no reason why he could not apply for a work permit from India. The TRP application did not cite any hardship due to family separation, or allege any other hardship Mr. Nagra would face by returning to India. Mr. Nagra's study permit provided temporary status only, and he was required to return to India when it expired in 2019. The respondent argues that a TRP under section 24 is meant to temper the consequences of a strict application of the *IRPA*—it is not meant to provide a convenient alternative to compliance with the *IRPA*.

[12] The respondent argues the Officer was alive to the central issues raised in Mr. Nagra's TRP application. The Officer provided a detailed summary of Mr. Nagra's immigration history and reasonably concluded that Mr. Nagra's desire to work in Canada and apply for permanent residence did not amount to compelling circumstances that justified a TRP. Also, it was reasonable for the Officer to find that Mr. Nagra was responsible for ensuring his previous

applications were correct and complete, and the refusal of those previous applications did not amount to compelling reasons to grant a TRP. Generally, an applicant must live with the consequences of their counsel's actions or inaction: *Singh v Canada (Citizenship and Immigration)*, 2016 FCA 96 at para 66; *Figueroa v Canada (Citizenship and Immigration)*, 2016 FC 521 at para 35; *Al-Abayechi v Canada (Citizenship and Immigration)*, 2018 FC 360 at para 23. Moreover, the respondent submits Mr. Nagra's TRP application did not establish that his consultant's alleged mistakes amounted to compelling circumstances, as Mr. Nagra has the option of applying for a work permit from outside Canada.

[13] Lastly, the respondent submits the Officer applied the proper legal framework, in line with Federal Court decisions: see *Bhairon v Canada (Citizenship and Immigration)*, 2022 FC 739 at paras 25-27 [*Bhairon*]; *Harris v Canada (Minister of Citizenship and Immigration)*, 2021 FC 833 at para 22 [*Harris*]; *Ju v Canada (Citizenship and Immigration)*, 2021 FC 669 at para 24 [*Ju*]; *Bhamra v Canada (Citizenship and Immigration)*, 2020 FC 482 at para 27 [*Bhamra*]. According to the respondent, while some Federal Court decisions have noted some divergence in the jurisprudence regarding the test for a TRP, an officer does not commit a reviewable error by applying the "compelling reasons" standard to a TRP application: *Thind v Canada (Citizenship and Immigration)*, 2022 FC 1644 at paras 29-30 [*Thind*]; see also *Bhamra* at para 27 and *Bhairon* at paras 25-27. The respondent contends Mr. Nagra's argument ignores these decisions, and he has cited no authority to support that applying the compelling reasons standard would render the decision unreasonable.

[14] There is no dispute regarding the applicable standards for reviewing the Officer's decision. This Court reviews the merits of the Officer's decision to refuse Mr. Nagra's TRP application in accordance with the Supreme Court of Canada's guidance on reasonableness review: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*]. The reasonableness standard is a deferential but robust form of review that requires a reviewing court to determine whether the decision bears the hallmarks of reasonableness—justification, transparency and intelligibility: *Vavilov* at paras 12-13, 75, 85 and 99. Questions of procedural fairness are considered on a standard that is akin to correctness: *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54 [*Canadian Pacific Railway*]. The reviewing court must determine whether the procedure was fair, having regard to all of the circumstances: *Canadian Pacific Railway* at para 54.

[15] I find Mr. Nagra has not established the Officer's decision is unreasonable.

[16] First, I am not persuaded the Officer erred by concluding, "After reviewing all of the information presented it does not appear that sufficient compelling grounds exist to warrant the issuance of a temporary resident permit".

[17] As noted above, the respondent points to a number of decisions where this Court has upheld an immigration officer's finding of "no compelling reasons": *Bhairon* at paras 25-27; *Harris* at para 22; *Ju* at paras 21-22; *Bhamra* at para 27. I agree with this Court's decision in *Thind* that it is not unreasonable for an officer to apply a standard that this Court has also applied: *Thind* at paras 29-30.

[18] I would add that, while the Court in *Palmero* expressed a concern that IRCC guidelines speak of “compelling reasons” when the *IRPA* itself does not, the Court did not expressly find that the officer had erred by applying the compelling reasons standard, or set aside the officer’s decision on this basis.

[19] Second, a TRP decision is a discretionary decision that is afforded deference: *Chaudhary v Canada (Immigration, Refugees and Citizenship)*, 2018 FC 128 at para 45. The Officer’s notes as recorded in the Global Case Management System (GCMS) show that the Officer reviewed and considered the factors Mr. Nagra presented in support of his application, including the allegations that his previous applications were refused due to his immigration consultant’s negligence. As the respondent notes, Mr. Nagra’s application requested a TRP so he could work, but provided no reason why he could not apply for a work permit from India. The TRP application did not cite any hardship due to family separation, or allege any other hardship Mr. Nagra would face by returning to India. An applicant bears the onus to demonstrate compelling reasons as to why a TRP should be granted: *Bhamra* at para 27. The Officer’s finding that Mr. Nagra could apply for a work permit from outside Canada was not unreasonable. It was open to the Officer to find Mr. Nagra had not shown there were reasonable compelling grounds to warrant issuing a TRP.

[20] Turning to the allegation of procedural unfairness, Mr. Nagra alleged in his written memorandum that the Officer was under a duty to notify him of concerns with the application and provide an opportunity to respond. He did not make oral submissions on this point at the hearing. In my view, Mr. Nagra has not established a breach of procedural fairness. A visa

officer is not required to provide notice and an opportunity to respond to inadequacies in an application or the material provided in support: *Hamza v Canada (Citizenship and Immigration)*, 2013 FC 264 at paras 21-25. Similarly, there is no duty to advise an applicant of concerns that arise directly from the requirements of the *IRPA* or the regulations: *Nassima v Canada (Citizenship and Immigration)*, 2008 FC 688 at para 18.

[21] For the foregoing reasons, Mr. Nagra has not established a reviewable error that warrants setting aside the Officer's decision, and I must dismiss this application.

[22] Neither party proposed a serious question of general importance for certification. I find this matter does not involve such a question.

JUDGMENT in IMM-8389-22

THIS COURT'S JUDGMENT is that:

1. This application is dismissed.
2. There is no question to certify.

"Christine M. Pallotta"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-8389-22

STYLE OF CAUSE: RAWAL SINGH NAGRA v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: VANCOUVER, BRITISH COLUMBIA

DATE OF HEARING: AUGUST 1, 2023

JUDGMENT AND REASONS: PALLOTTA J.

DATED: AUGUST 10, 2023

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