Federal Court  Cour fédérale

Date: 20240404

Docket: IMM-6599-22

Citation: 2023 FC 1675

[ENGLISH TRANSLATION]

Ottawa, Ontario, April 4, 2024

PRESENT: The Honourable Mr. Justice Régimbald

BETWEEN:

HEE JUNG YOU
KIJONG HAN

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

AMENDED JUDGMENT AND REASONS

[1] Hee Jung You and Kijong Han [applicants] are seeking judicial review, pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA], of a decision made by an Immigration, Refugees and Citizenship Canada [IRCC] officer [Officer] on June 28, 2022, in which the Officer refused their application for a permanent residence visa filed in the Quebec-Selected Skilled Workers category.

[2] The Officer refused the application on the grounds that he was not satisfied that the applicants really intended to reside in Quebec within the meaning of subsection 86(2) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [IRPR], particularly since their daughter and her three children live in Ontario.

[3] For the reasons that follow, this application for judicial review is dismissed. The Officer's reasoning process leading to his conclusion is logical, transparent, and intelligible; consequently, the decision is reasonable (*Canada (Minister of Citizenship and Immigration*) *v Vavilov*, 2019 SCC 65 [*Vavilov*] at para 99).

I. Background

[4] The applicants are citizens of South Korea. Hee Jung You [principal applicant] arrived in Canada in 2013 as a visitor. From January 2014 to March 2017, she worked for the Avenue Seoul Restaurant in Montréal. Her husband arrived in Montréal in January 2014.

[5] The principal applicant's employer intended to hire her as a supervisor for a new restaurant he wanted to open in Calgary, Alberta, in 2017. In November 2017, the principal applicant applied for a renewal of her work permit so that she could go to Alberta. However, her initial work permit had expired in March 2017. The principal applicant had therefore been working without authorization for some time. As a result, her application for a permit was refused, and an exclusion order was issued against her. The applicants therefore returned to South Korea in January 2018.

[6] The principal applicant returned to Canada between November 2019 and February 2020 to visit her daughter in Ontario, after the birth of her third child.

[7] In January 2020, the applicants obtained their Québec certificate of selection [CSQ], and in March 2020, they submitted their application for permanent residence to the IRCC from South Korea, under the Quebec-Selected Skilled Workers category.

[8] On March 7, 2022, the IRCC sent the principal applicant a procedural fairness letter, requesting more information on her intent to reside in Quebec. More specifically, the IRCC had questions about the fact that the applicants' daughter was residing in Ontario and had three children, pointing to a significant pull factor to Ontario rather than Quebec. In the IRCC's opinion, this factor suggested that the applicants would reside in Ontario rather than Quebec.

[9] The principal applicant responded by mentioning her desire to reside in Quebec because she had several friends. She also provided five letters of support confirming the applicants' strong ties to Montréal's Korean community.

[10] On June 28, 2022, the Officer refused the applicants' application for permanent residence primarily because the applicants had not established to the Officer's satisfaction that they would reside in Quebec given that their daughter and three grandchildren had settled in Ontario. The Officer also cited the fact that the applicants had also intended to reside in Alberta and that because of their advanced age, it would be more difficult for them to find a job in Quebec. These

factors led the Officer to question the applicants' intent to reside in Montréal, in the province of Quebec.

II. Issue and standard of review

[11] The case at hand raises only one issue: whether the Officer's decision was reasonable.

[14] The parties agree that visa officers' decisions on permanent residence are reviewable on a standard of reasonableness (*Vavilov*; *Tran v Canada (Citizenship and Immigration)*, 2021 FC 721 [*Tran*] at para 16; *Rabbani v Canada (Citizenship and Immigration)*, 2020 FC 257 [*Rabbani*] at para 15).

III. Analysis

A. *Applicants' arguments*

[12] The applicants argue that the Officer's decision is unreasonable given that he did not justify his conclusion with respect to the applicants' social integration in Quebec. The applicants also allege that the decision is unreasonable because it is based on the applicants' age and their ability to speak French.

[13] The applicants submit that, in the circumstances, their daughter's living in Ontario is not in itself that strong a pull factor to Ontario to suggest that their application should be refused. They also maintain that their daughter lived in Ontario from October 2013 to May 2014 and from

July 2014 until now, that is, for almost the entire time the applicants lived in Quebec, and that they never took any steps to reside in Ontario.

[14] The applicants argue that the Officer also did not consider the applicants' social and civic integration in Quebec. Yet this was the key and central argument they raised in their response to the procedural fairness letter they had received. They argue that the lack of justification, transparency, and intelligibility in the assessment of this contradictory evidence makes the decision unreasonable. They submit that the case law is clear that where the evidence submitted contradicts an officer's findings, the officer must provide reasons why he or she was unable to accept it (*Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, 1998 CanLII 8667 at para 17; *Makomena v Canada (Citizenship and Immigration)*, 2019 FC 894 at para 28).

[15] The applicants also argue that the fact that they are fairly advanced in age does not mean that they cannot work in Quebec, as they are still working in Korea.

[16] Finally, the applicants argue that, although they had obtained a CSQ, the Officer based his decision on an unreasonable analysis of their language proficiency. They argue that a Level 7 under the *Échelle québécoise des niveaux de compétence en français des personnes immigrantes adulte* [Quebec scale for French language proficiency of adult immigrants] in speaking and listening skills in French is precisely one of the conditions for obtaining a CSQ under subsection 34(3) of the *Québec Immigration Regulations*, CQLR c I-0.2.1, r 3).

B. *The decision is reasonable*

[17] An immigration officer who grants a visa must be satisfied that the applicant meets the requirements of subsection 11(1) of the IRPA. Subsection 12(2) of the IRPA further provides that some categories exist for applicants seeking to relocate to Canada for economic reasons; the specific requirements for this are set out in the IRPR. In particular, under section 86 (2) of the IRPR, the Quebec-Selected Skilled Workers category requires applicants to intend to reside in Quebec.

[18] It should also be noted that the fact that a CSQ is issued by the province of Quebec does not prevent federal immigration authorities from assessing whether an applicant intends to reside in Quebec. As explained by the Court in *Ransanz v Canada (Public Safety and Emergency Preparedness)*, 2015 FC 1109 at paragraph 27 (see also *Rabbani v Canada (Citizenship and Immigration)*, 2020 FC 257 at para 42):

> [27] To summarize, under the IRPA, it is the federal government who has the final authority to grant permanent resident visas to foreign nationals. In this case, the Officer found that the applicant did not meet the admissibility criteria provided for under the Regulations and the IRPA, and thus denied his application according to subsection 90(2) of the Regulations. As a result, the Officer did not commit a reviewable error in refusing the applicant's application, in spite of the fact that the province of Quebec had issued a CSQ. Accordingly, the Officer did not have to find that the applicant was inadmissible, as per sections 33 to 43 of the IRPA, in order to refuse his application for a permanent resident visa (*Qing v Canada (Minister of Citizenship and Immigration*), 2005 FC 1224 (CanLII) at para 7).

[19] After reviewing the applicants' record, including the principal applicant's response to the procedural fairness letter, the Officer was of the view that the applicants had not met the requirement under subsection 86(2) of the IRPR of intending to reside in the province of Quebec.

[20] This conclusion is reasonable in relation to the facts and the evidence on the record.

[21] According to the case law, determining the intent of an applicant is an exercise infused with subjectivity. Indeed, the law is clear that a visa officer has a large degree of discretion when determining the "intent" of an applicant to reside in a given province, as he or she is allowed to take into account all available evidence at his or her disposal (*Quan v Canada (Citizenship and Immigration)*, 2022 FC 576 [*Quan*] at para 24, citing *Tran* at para 3; *Yaman v Canada (Citizenship and Immigration)*, 2021 FC 584 [*Yaman*] at para 29; *Rabbani* at para 43; and *Dhaliwal v Canada (Citizenship and Immigration)*, 2016 FC 131 at para 31).

[22] With respect to the first argument on family ties or familial pull, the Court established in *Rahman v Canada (Citizenship and Immigration)*, 2016 FC 793 at paragraph 12, that this is an element to be considered in making decisions on temporary or permanent residence applications, and that the weight to be assigned to such a factor is a matter for the officer's discretion (see also *Fakhri Adhari v Canada (Citizenship and Immigration)*, 2017 FC 854 at para 31; *Binu v Canada (Citizenship and Immigration)*, 2021 FC 743 at para 13; *Gomes v Canada (Citizenship and Immigration)*, 2020 FC 451 at paras 17–18).

[23] In the case at hand, the Officer considered the fact that the applicants had a daughter and grandchildren residing in Ontario to be an important pull factor to Ontario. The applicants had the burden of demonstrating how the fact that their daughter and grandchildren were in Ontario was compatible with their desire to reside in Quebec. In their response to the procedural fairness letter, they could have stated that they would easily be able to visit their daughter and

grandchildren in Ontario without having to move there. For example, they could have explained that they intended to visit their family one weekend a month, and this explanation might have been sufficient to satisfy the Officer of the merits of their application. Unfortunately, the applicants failed to make such a demonstration despite the Officer's concern being specifically mentioned in the procedural fairness letter.

[24] Regarding the applicants' ages, the notes in the Global Case Management System [GCMS] state only that it would be more difficult for the applicants, who are in their seventies, to find employment in Quebec. The Officer did not draw any specific conclusions in respect of this factor but considered it in the overall assessment.

[25] Regarding the applicants' knowledge of French, I concede that the Officer erred in making a negative inference from the fact that the applicants preferred to address the IRCC in English rather than in French. This does not mean that they do not have the appropriate and required level of French to immigrate to Quebec. On the contrary, as they submit, having a CSQ shows that they have the required language level.

[26] However, this error of the Officer is insufficient to make the decision so inherently incoherent and irrational as to make it unreasonable. *Vavilov* states that the Court should not intervene for minor missteps by a decision maker, but only when the shortcomings are central to its reasoning or outcome (*Vavilov* at para 100). The error regarding the applicants' language proficiency is no such shortcoming.

[27] Regarding the applicants' social and civic integration, although this is a key argument, the evidence submitted was not contradictory in my view, as the applicants claim. In addition, the GCMS notes show rather that the Officer considered all aspects of their situation, while noting that the principal applicant had submitted letters of support from a pastor and four friends from Montréal. However, this was insufficient to satisfy the Officer of the applicants' intent to reside in Quebec.

[28] The GCMS notes therefore show that the Officer considered and weighed all the factors on the record, including the social and civic integration factor, before concluding that he was not satisfied that the applicants had demonstrated that they intended to reside in the province of Quebec.

[29] Given their age, the fact that their daughter and three grandchildren live in Ontario, the fact that they previously intended to work outside Quebec, and their greater fluency in English, the Officer concluded that all this evidence together suggested pull factors in Ontario. In my view, these reasons are sufficiently detailed and coherent. The Officer reasonably explained why the applicants had not satisfied him that they met the requirement of the intent to reside in Quebec.

[30] In the case at hand, the applicants are essentially asking the Court to reweigh the evidence. However, on judicial review, the role of the Court is not to reweigh the evidence on the record or to substitute its own conclusions for those of visa officers. Indeed, visa officers have broad discretion when rendering decisions under the IRPA and the IRPR, which the Court should

defer to (*Quan* at paras 29–30; *Sharma v Canada (Citizenship and Immigration)*, 2020 FC 381 at paras 21–22).

IV. Conclusion

[31] For the reasons outlined above, the application for judicial review is dismissed. The Officer reasonably reviewed the evidence before him and satisfactorily explained why he was not persuaded on a balance of probabilities that the applicants intended to reside in the province of Quebec.

[32] The parties have not proposed any questions for certification, and I agree that there are none.

JUDGMENT in IMM-6599-22

THE COURT ORDERS as follows:

1. The application for judicial review is dismissed.

2. There is no question to certify.

"Guy Régimbald"
Judge

Certified true translation
Johanna Kratz

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-6599-22
STYLE OF CAUSE:	HEE JUNG YOU, KIJONG HAN v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	BY ZOOM VIDEOCONFERENCE
DATE OF HEARING:	NOVEMBER 14, 2023
JUDGMENT AND REASONS:	RÉGIMBALD J.
DATED:	DECEMBER 12, 2023

APPEARANCES:

Mai Nguyen	FOR THE APPLICANTS
Simone Truong	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Cliche-Rivard, Avocats et Avocates Montréal, Quebec	FOR THE APPLICANTS
Attorney General of Canada Montréal, Quebec	FOR THE RESPONDENT