Federal Court  Cour fédérale

Date: 20240118

Docket: IMM-10312-22

Citation: 2024 FC 81

Ottawa, Ontario, January 18, 2024

PRESENT: The Hon Mr. Justice Henry S. Brown

BETWEEN:

RACHIT KUMAR

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Nature of the Matter

[1] This is a judicial review of a decision by a visa officer [Officer] of Immigration, Refugees, and Citizenship Canada at the Embassy of Canada in the United Arab Emirates, dated August 29, 2022 [Decision], refusing the Applicant's application for a study permit. Two previous study permit visa applications had been refused, one in 2019 and another in 2021. He was also refused a tourist visa to the USA in 2016.

[2] The Officer refused the Applicant's application because they found it did not meet the requirements under the *Immigration Refugee Protection Act*, SC 2001, c 27 [*IRPA*] and paragraph 216(1)(b) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [*IRPR*]. Specifically, the Officer was not satisfied the Applicant would leave Canada at the end of his study period based on his purpose of visit, his immigration status, and employment possibility in his country of residence United Arab Emirates [UAE] and his country of citizenship [India].

II. Facts

[3] The Applicant is a citizen of India, and a temporary resident in the UAE along with his wife and daughter. The Applicant has resided and worked in the UAE since 2015.

[4] The Applicant has a Bachelor's Degree in Architecture, and a Master's in Architecture. He is a professional architect and worked for various employers in both India and the UAE as a Project Architect and Design Architect, with some periods of unemployment.

[5] The Applicant applied in 2022 for a study permit to pursue a Master's of Business Administration [MBA] with a specialization in Sustainable Innovation at the University of Victoria in BC. The Officer noted he already had obtained this degree as a result of his studies in India and elsewhere.

[6] In his application, the Applicant says he has a limited understanding of finance and management, and has been unable to adequately contribute to some projects at work in this way. The Applicant further identifies that there was a need for an integrated approach while working

on projects, specifically one that employed design, sustainability, and business management. However, and in this connection, the Officer noted he had plenty of relevant experience in architectural projects and management.

[7] The Applicant supplied details of his establishment and family ties in India and the UAE. Specifically, the Applicant states while he does not have any economic or family ties in Canada, his elderly parents reside in India, his wife and daughter reside in the UAE and would continue to do so while he completes his studies, his extended family and friends reside in the UAE, and that despite a temporary status in the UAE, the above circumstances would compel his return to either the UAE or India.

[8] However, the Officer noted his residence in UAE was temporary, as was that of his wife and child. In addition, his residency there would expire in 2023. The record before this Court does not show if it was renewed. In addition, his residency in UAE was tied to his working there, it would be lost if he left.

[9] The application was refused on August 29, 2022.

III. Decision under review

[10] The refusal letter states:

> - I am not satisfied that you will leave Canada at the end of your stay as required by paragraph R216(1)(b) of the IRPR (http://laws-lois.justica.gc.ca/eng/regulations/sor-2002-227/section-216.html). I am refusing your application because you have not established that you will leave Canada, based on the following factors:

- The purpose of your visit to Canada is not consistent with a temporary stay given the details you have provided in your application.
- Your immigration status outside your country of nationality or habitual residence.
- You have limited employment possibilities in your country of residence.

[11] The Global Case Management System [GCMS] notes state:

> I have reviewed the application. I have considered the following factors in my decision. The information on file does not satisfy me that the proposed course of study would indeed lead to an improved career path for the applicant in his country of origin or his current COR given they already has a Masters in their field with international experience (Australia). Given the economic conditions in Cor, I am not satisfied an MBA would change their career prospects. The applicant's immigration status in their country of residence is temporary, which reduces their ties to that country. Although the applicant's family and extended family reside in UAE, their status is still temporary. I have noted the refusal notes in the previous assessment. These concerns have not been overcome in the current application. Based on the applicant's limited employment prospects in their country or residence/citizenship. I have accorded less weight to their ties to their country of residence/citizenship. In particular, I have noted there have been several recent periods of unemployment in the applicant work history. Weighing the factors in this application. I am not satisfied that the applicant will depart Canada at the end of the period authorized for their stay. For the reasons above, I have refused this application.

[12] The GCMS states the file processed was with the assistance of Chinook 3+.

IV. Issues

[13] The Applicant raises the following issues:

A. What is the appropriate standard of review?

B. Was the Applicant's study permit application refused unreasonably and without regard to the evidence before the Officer?

C. He also raises an issue of procedural fairness in not having an opportunity to address the Officer's concerns.

V. Standard of Review

[14] It is long settled and not disputed that the standard of review of a study permit visa decision is reasonableness. With regard to reasonableness, in *Canada Post Corp v Canadian Union of Postal Workers*, 2019 SCC 67 [*Canada Post*], issued at the same time as the Supreme Court of Canada's decision in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*], the majority per Justice Rowe explains what is required for a reasonable decision, and what is required of a court reviewing on the reasonableness standard:

> [31] 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" (*Vavilov*, at para. 85). Accordingly, when conducting reasonableness review "[a] reviewing court must begin its inquiry into the reasonableness of a decision by examining the reasons provided with 'respectful attention' and seeking to understand the reasoning process followed by the decision maker to arrive at [the] conclusion" (*Vavilov*, at para. 84, quoting *Dunsmuir*, at para. 48). The reasons should be read holistically and contextually in order to understand "the basis on which a decision was made" (*Vavilov*, at para. 97, citing *Newfoundland Nurses*).
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> [32] A reviewing court should consider whether the decision as a whole is reasonable: "what is reasonable in a given situation will always depend on the constraints imposed by the legal and factual context of the particular decision under review" (Vavilov, at para. 90). The reviewing court must ask "whether the decision bears the hallmarks of reasonableness – justification, transparency and intelligibility – and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision" (*Vavilov*, at para. 99, citing *Dunsmuir*, at paras. 47 and 74, and *Catalyst Paper*

> *Corp. v. North Cowichan (District)*, 2012 SCC 2, [2012] 1 S.C.R. 5, at para. 13).
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> [33] Under reasonableness review, "[t]he burden is on the party challenging the decision to show that it is unreasonable" (*Vavilov*, at para. 100). The challenging party must satisfy the court "that any shortcomings or flaws relied on ... are sufficiently central or significant to render the decision unreasonable" (*Vavilov*, at para. 100).
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> [Emphasis added]

[15] Furthermore, *Vavilov* makes it abundantly clear the role of this Court is not to reweigh and reassess the evidence unless there are "exceptional circumstances". The Supreme Court of Canada instructs:

> [125] It is trite law that the decision maker may assess and evaluate the evidence before it and that, absent exceptional circumstances, a reviewing court will not interfere with its factual findings. The reviewing court must refrain from "reweighing and reassessing the evidence considered by the decision maker": *CHRC*, at para. 55; see also *Khosa*, at para. 64; *Dr. Q*, at paras. 41-42. Indeed, many of the same reasons that support an appellate court's deferring to a lower court's factual findings, including the need for judicial efficiency, the importance of preserving certainty and public confidence, and the relatively advantageous position of the first instance decision maker, apply equally in the context of judicial review: see *Housen*, at paras. 15-18; *Dr. Q*, at para. 38; *Dunsmuir*, at para. 53.
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> [Emphasis added]

[16] The Federal Court of Appeal instructs in *Doyle v Canada (Attorney General)*, 2021 FCA 237 [*Doyle*] that the role of this Court is not to reweigh and reassess the evidence except where the decision maker committed fundamental errors in fact-finding that undermine the acceptability of the decision; this exception is not applicable in this case:

> [3] In doing that, the Federal Court was quite right. Under this legislative scheme, the administrative decision-maker, here the Director, alone considers the evidence, decides on issues of admissibility and weight, assesses whether inferences should be drawn, and makes a decision. In conducting reasonableness review of the Director's decision, the reviewing court, here the Federal Court, can interfere only where the Director has committed fundamental errors in fact-finding that undermine the acceptability of the decision. Reweighing and second-guessing the evidence is no part of its role. Sticking to its role, the Federal Court did not find any fundamental errors.
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> [4] On appeal, in essence, the appellant invites us in his written and oral submissions to reweigh and second-guess the evidence. We decline the invitation.

[17] It is also the law that reasons such as these are not to be assessed against a standard of perfection. That the reasons "do not include all the arguments, statutory provisions, jurisprudence or other details the reviewing judge would have preferred" is not on its own a basis to set aside the decision: see *Vavilov* at paragraphs 91 and 128, and *Canada Post* at paragraphs 30 and 52. In addition, reviewing courts cannot expect administrative decision makers to "respond to every argument or line of possible analysis" or to "make an explicit finding on each constituent element, however subordinate, leading to its final conclusion": *Vavilov*, paragraphs 91 and 128 again, and *Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, [2011] 3 SCR 708, at paragraphs 16 and 25.

[18] Importantly also, the Applicant has the onus to establish his or her case to the satisfaction of the issuing officer. Additionally, because visa applications do not raise substantive rights — foreign nationals have no unqualified right to enter Canada — the level of procedural fairness is low, and generally does not require that applicants be granted an opportunity to address the officer's concerns: see for examples *Bautista v Canada (Citizenship and Immigration)*, 2018 FC

669 at para 17; *Kaur v Canada (Citizenship and Immigration)*, 2017 FC 782 at paragraph 9 and *Sulce v Canada (Citizenship and Immigration)*, 2015 FC 1132 at paragraph 10.

[19] Also importantly, as noted in *Alaje v Canada (Citizenship and Immigration)*, 2017 FC 949, at paragraph 14, this Court owes great deference to the Officer's assessment, and I would add to the Officer's weighing, of the evidence: "… the Court owes great deference to the officer's assessment of the evidence."

[20] Finally, by way of the legal framework, the shorter-term visa administrative setting is important. Every year, Canada receives upwards if not in excess of one million (1,000,000) applications for various types of permission to spend time in Canada. Every year hundreds of thousands of applications are not successful. Typically while each visa is supported by a letter setting out the reasons, here, as in most if not all cases such as this, on judicial review the reasons must be assessed together with the officer's notes and the underlying record.

[21] Given the huge volume, the law has developed that the need to give reasons is "typically minimal" and need not be extensive. For example, in *Iriekpen v Canada (Citizenship and Immigration)*, 2021 FC 1276 Justice McHaffie ruled, and I agree:

> [7] The "administrative setting" of the visa officer's decision includes the high volume of visa and permit applications that must be processed in the visa offices of Canada's missions: *Canada (Minister of Citizenship and Immigration) v Khan*, 2001 FCA 345 at para 32; and *Patel v Canada (Citizenship and Immigration)*, 2020 FC 77 at paras 15, 17. Given this context and the nature of a visa application and refusal, the Court has recognized that the requirements of fairness, and the need to give reasons, are typically minimal: *Khan* at paras 31–32; *Yuzer* at paras 16, 20; *Touré v Canada (Citizenship and Immigration)*, 2020 FC 932 at para 11.

> [Emphasis added]

[22] Additionally, see *Persaud v Canada (MCI)*, 2021 FC 1252 at paragraph 8 where Justice Phelan determined:

> This Court, consistent with *Vavilov*, has recognized that decisions of this type do not have to be extensive and that where a record is clear, the Court can "connect the dots on the page where the lines and direction are headed may be readily drawn" [citations omitted]. The reasons need not be extensive but there must be a rationale or a line to the rationale.

[23] The Federal Court of Appeal affirmed this principle in *Zeifmans LLP v Canada*, 2022 FCA 160 [*Zeifmans*]:

> [9] We disagree. *Vavilov* goes further. *Vavilov* tells us that reviewing courts must not insist on the sort of express, lengthy and detailed reasons that, if asked to do the job themselves, they might have provided: *Vavilov* at paras. 91-94. To so insist could subvert Parliament's intention that administrative processes be timely, efficient and effective.
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> [10] *Vavilov* says more. It tells us that an administrative decision should be left in place if reviewing courts can discern from the record why the decision was made and the decision is otherwise reasonable: *Vavilov* at paras. 120-122; *Canada (Citizenship and Immigration) v. Mason*, 2021 FCA 156 at paras. 38-42. In other words, the reasons on key points do not always need to be explicit. They can be implicit or implied. Looking at the entire record, the reviewing court must be sure, from explicit words in reasons or from implicit or implied things in the record or both, that the administrator was alive to the key issues, including issues of legislative interpretation, and reached a decision on them.
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> [Emphasis added]

[24] An example of these principles at work is *Hashem v Canada (Citizenship and Immigration)*, 2020 FC 41:

> [27] It is not for the Court to reweigh the evidence before the visa section. I agree with the respondent that Mrs. Hashem is essentially asking the Court to reweigh the evidence and to substitute its view for that of the visa section officers.
>
> [28] A decision-maker is not obliged to refer explicitly to all the evidence. It is presumed that the decision-maker considered all the evidence in making the decision unless the contrary can be established *(Hassan v Canada (Minister of Employment & Immigration)*, [1992] FCJ No 946 at para 3; *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, [1998] 157 FCJ No 1425 at para 16).
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> [29] Mrs. Hashem's failure to show that the visa section officers ignored evidence amounts to a mere disagreement with the factors they found to be determinative *(Boughus v Canada (Minister of Citizenship and Immigration)*, 2010 FC 210 at paras 56 and 57). There is no reason to intervene and set the decision aside.

A. *The Officer's Decision is Reasonable*

[25] Respectfully, after review of the written submissions and the oral hearing of this matter, the Court has concluded the Officer's Decision is reasonable and supported by the evidentiary record. As such it is transparent, intelligible and justified as required by *Vavilov* and *Canada Post*.

[26] In this case, my analysis will proceed as instructed by Justice Rennie's judgment in *Komolafe v Canada (Citizenship and Immigration)* [*Komolafe*], 2013 FC 431; Justice Rennie's "connect the dots" analysis was upheld by the Supreme Court of Canada in *Vavilov*:

> [97] Indeed, *Newfoundland Nurses* is far from holding that a decision maker's grounds or rationale for a decision is irrelevant. It instead tells us that close attention must be paid to a decision maker's written reasons and that they must be read holistically and contextually, for the very purpose of understanding the basis on which a decision was made. We agree with the observations of

> Rennie J. in *Komolafe v. Canada (Minister of Citizenship and Immigration)*, 2013 FC 431, 16 Imm. L.R. (4th) 267, at para. 11:
>
> *Newfoundland Nurses* is not an open invitation to the Court to provide reasons that were not given, nor is it licence to guess what findings might have been made or to speculate as to what the tribunal might have been thinking. This is particularly so where the reasons are silent on a critical issue. It is ironic that *Newfoundland Nurses*, a case which at its core is about deference and standard of review, is urged as authority for the supervisory court to do the task that the decision maker did not do, to supply the reasons that might have been given and make findings of fact that were not made. This is to turn the jurisprudence on its head. *Newfoundland Nurses* allows reviewing courts to connect the dots on the page where the lines, and the direction they are headed, may be readily drawn.

[27] The record is clear, and with respect, the Court may readily discern from the record why the decision was made as set out in *Zeifmans*, *Komolafe* and *Vavilov*.

[28] With respect, it seems to me the Applicants invite the Court to engage in a wholesale reassessment and reweighing of the evidence in this case. This forms not part of the Court's role on judicial review, and as the Federal Court of Appeal instructs in *Doyle*, I respectfully decline the invitation.

[29] The Applicants say the Officer is under a duty to enumerate details of the evidence relied on by the Officer. This is not the law which, and with respect is set out in *Watts v Canada (Citizenship and Immigration)*, 2020 FC 158, at paragraph 27 where I stated:

> [27] In my respectful view, the Applicants have mischaracterized the language of the Decisions. To begin with, there is no requirement for an officer to enumerate the details of the evidence she or he relied upon in her or his reasons, which is what the Applicants would have such officers do. It is enough for an officer to give reasons that meet the tests set out in *Vavilov*.

[30] The same applies here. The Officer is deemed to have considered all the evidence. The Officer had no obligation to enumerate all the evidence relied upon to reach the conclusion, though the record demonstrates the Applicant has extensive experience as listed on his CV of both project management and leadership skills, among others. In this connection, the Officer was not satisfied that the Applicant would not have enhanced career prospects after pursuing the MBA, given this evidence in the record including the fact he already had the degree he wanted to pursue in Canada. This conclusion is transparent, intelligible and justified on the record the Applicant put before the Officer.

[31] With respect to the Applicant's employment prospects, the Officer's Decision notes the concern of the Applicant only having temporary residence status in the UAE, and how they would be given up to pursue further education. The Officer noted the Applicant had periods of unemployment in his work history, and that due to the economic conditions in the UAE, he was not convinced the Applicant's employment prospects would be better off from obtaining an MBA. These are matters in respect of which the Court should and will give deference to the expertise of the Officer. The Applicant did not provide any evidence from his current or other employer concerning his re-employment let alone promotion on returning to the UAE. Upon weighing the evidence, and the fact that the Applicant will not have status in the UAE after his studies, it was reasonable and open to the Officer to conclude the Applicant's employment prospects in his country of residence would be diminished. In my view this conclusion is transparent, intelligible and justified on the record.

[32] Finally, the Officer's assessment on the Applicant's ties to his country of residence and origin are reasonable in that they are transparent, intelligible and justified on the record put to the Officer by the Applicant, including the fact the Applicant had not been in India since 2015.

[33] While the Applicant argues the Officer did not consider the Applicant's ties to his country of citizenship, that argument is simply unsustainable given what the Decision actually states in GCMS notes:

> Although the applicant's family and extended family reside in UAE, their status is still temporary. I have noted the refusal notes in the previous assessment. These concerns have not been overcome in the current application. Based on the applicant's limited employment prospects in their country of residence/citizenship, I have accorded less weight to their ties to their country of residence/citizenship.
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> [Emphasis added]

[34] Furthermore, the Respondent submits and I agree this Court has confirmed that visa officers are reasonably entitled to consider an applicant's temporary resident status in their country of residence in assessing whether they will depart Canada. In *Ahmed v Canada,* 2023 FC 50, Justice Grammond states at paragraph 8:

> [8] The officer was entitled to rely on the fact that the applicants only have temporary status in the UAE. While this status may be renewed, the uncertainty inherent in this process may incentivize foreign nationals to remain in Canada. This Court has validated visa refusals based on similar considerations: *Sadiq v Canada (Citizenship and Immigration)*, 2015 FC 955 at paragraph 22; *Khaleel v Canada (Citizenship and Immigration)*, 2022 FC 1385 at paragraphs 22–34.

[35] All of these findings are reasonable in themselves, and so too in my respectful opinion, is the Officer's conclusion they were not satisfied the Applicant would depart Canada at the end of his stay.

[36] The Applicant argues the Officer's Decision suggests a suspicion regarding his motivation for studying in Canada, and claims the Officer should have given him an opportunity to answer the Officer's concerns.

[37] I disagree. There is, with respect, no breach of procedural fairness here, simply, as submitted by the Respondent, a disagreement with the outcome. I see no attack on, or impugning of the Applicant's credibility or accuracy, simply his failure to persuade the Officer of the merits of his case as was his onus under the *IRPR*.

[38] I also agree with Justice Gascon who considered a similar submission in *Abbas v Canada (Citizenship and Immigration)*, 2022 FC 378:

> [22] The reference to a *bona fide* concern in the Decision must not be conflated with a credibility concern (*D'Almeida* at para 65; *Patel v Canada (Citizenship and Immigration)*, 2020 FC 517 at para 14). It is simply part of the task of visa officers who must be satisfied, pursuant to paragraph 216(1)(b) of the IRPR, that an applicant will leave Canada following completion of his or her studies. The use of the words *bona fide* is not determinative. In some cases, it can amount to a veiled credibility finding; in other cases, it does not engage issues of credibility. It all depends on the context and on the analysis conducted by the decision maker.
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> [23] In the case of Mr. Abbas, as pointed out by counsel for the Minister, the Officer repeatedly stated that it was <u>not satisfied</u> that, based on the evidence before it, Mr. Abbas would have the motivation to leave the country and return to Pakistan at the end of his studies. I do not read the Officer's reasons as amounting to veiled credibility findings, or as expressing suspicion or skepticism

> vis-à-vis Mr. Abbas's submissions. On the contrary, the Officer repeatedly acknowledged and noted the various pieces of evidence submitted by Mr. Abbas in support of his study permit application, such as his attendance at a two-day workshop, his employment research or his pictures. But these were not enough. While the Officer did not expressly refer to the sufficiency of the evidence or did not use the term "sufficient," it is clear that the Officer was not satisfied and convinced that Mr. Abbas had provided the required elements to meet the legislative and regulatory requirements to obtain a study permit. This, in my view, is not a credibility finding but rather a finding of lack of evidence. Stated differently, it was a failure, on the part of Mr. Abbas, to meet the applicable requirements and to demonstrate, on a balance of probabilities, that he would leave Canada at the end of the period authorized for his stay, as set out in subsection 216(1) of the IRPR.
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> [24] In those circumstances, the Officer was under no obligation to provide an opportunity for Mr. Abbas to address this *bona fide* concern (*Perez Pena v Canada (Citizenship and Immigration)*, 2021 FC 491 [*Perez Pena*] at para 35; *Marcelin* at para 18; *Sharma v Canada (Citizenship and Immigration)*, 2020 FC 381 at para 32). It is not disputed that the case law clearly distinguishes between adverse findings of credibility and adverse findings regarding the insufficiency of the evidence: "[w]here the visa officer raises doubts about the credibility, truthfulness or authenticity of the information submitted in support of an application, it is incumbent upon the visa officer to provide the applicant with an opportunity to resolve those doubts. On the other hand, if the decision is based on the sufficiency of the evidence presented by the applicant, or on the failure to meet the statutory requirements, the visa officer has no obligation to inform the applicant" (*Perez Pena* at para 35). A study permit applicant must satisfy all requirements, and visa officers are not required to inform an applicant of concerns regarding the sufficiency of the materials in support of the application (*Al Aridi* at para 20). Here, Mr. Abbas did not satisfy all requirements, and the Officer was under no duty to inform him of the weaknesses in his application.

[39] Finally, I note but find no merit in the Applicant's submission that the GCMS notes referencing the assistance of Chinook 3+ without further explanation or context is unreasonable. I dealt with the Chinook-based artificial intelligence issue in *Hagshenas v Canada (Citizenship and Immigration)*, 2023 FC 464, at paragraphs 24 and 28 and respectfully repeat:

> [24] As to artificial intelligence, the Applicant submits the Decision is based on artificial intelligence generated by Microsoft in the form of "Chinook" software. However, the evidence is that the Decision was made by a Visa Officer and not by software. I agree the Decision had input assembled by artificial intelligence, but it seems to me the Court on judicial review is to look at the record and the Decision and determine its reasonableness in accordance with *Vavilov*. Whether a decision is reasonable or unreasonable will determine if it is upheld or set aside, whether or not artificial intelligence was used. To hold otherwise would elevate process over substance.
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> ….
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> [28] Regarding the use of the "Chinook" software, the Applicant suggests that there are questions about its reliability and efficacy. In this way, the Applicant suggests that a decision rendered using Chinook cannot be termed reasonable until it is elaborated to all stakeholders how machine learning has replaced human input and how it affects application outcomes. I have already dealt with this argument under procedural fairness, and found the use of artificial intelligence is irrelevant given that (a) an Officer made the Decision in question, and that (b) judicial review deals with the procedural fairness and or reasonableness of the Decision as required by *Vavilov*.

VI. Conclusion

[40] The Decision is in accordance with constraining law as applied to the record. Therefore the application for judicial review must be dismissed.

VII. Certified Question

[41] The parties do not propose a general question of importance for certification, and I agree none arises.

JUDGMENT in IMM-10312-22

THIS COURT'S JUDGMENT is that this application for judicial review is dismissed, no question of general importance is certified and there is no Order as to costs.

"Henry S. Brown"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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