Federal Court  Cour fédérale

Date: 20240104

Docket: IMM-1661-23
IMM-1669-23
IMM-1684-23

Citation: 2024 FC 16

Ottawa, Ontario, January 4, 2024

PRESENT: The Honourable Madam Justice McVeigh

BETWEEN:

KALPESHKUMAR KIRTANBHAI PATEL
RIPALBEN KALPESHKUMAR PATEL
HONEY KALPESHKUMAR PATEL

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] Kalpeshkumar Kirtanbhai Patel, Ripalben Kalpeshkumar Patel and Honey Kalpeshkumar Patel (the "Applicants") are a family, consisting of a mother, a father and a daughter ("Honey"). On January 24, 2023, an officer (the "Officer") refused the Applicants' applications for

temporary resident permits ("TRPs") pursuant to section 24(1) of the *Immigration and Refugee Protection Act,* SC 2001, c 27 ("*IRPA*").

[2] In 2017, the Applicants previously received TRPs following Honey's diagnosis of cerebral palsy. At that time, Honey was deemed medically inadmissible under code M5 S1, meaning she could pose an excessive demand on health and social services.

[3] On January 13, 2023, Honey was reassessed and her medical assessment was changed to M1 S1, which was valid until January 23, 2024. This code meant Honey was no longer medically inadmissible. Due to this, the Officer denied the Applicants' TRP applications, noting they could take steps to "…obtain temporary residence through other channels available in order to remain in Canada…."

[4] In their TRP applications, the Applicants filed extensive materials relating to their ability to care for Honey, both financially and medically. The Applicants' also explained why it was in Honey's best interests to stay in Canada. By the time their applications were assessed, Honey was no longer medically inadmissible. Moreover, I note that the Applicants answered "No" to the following question in their application: "2a) Have you ever remained beyond the validity of your status, attended school without authorization or worked without authorization in Canada?" As a result, it was clear based on the record that the Applicants were always compliant with the *IRPA.*

II. Issue

[5] The only issue on judicial review is whether the Officer's decision to deny the Applicants' TRP applications under section 24(1) was reasonable.

III. Standard of Review

[6] The standard of review is reasonableness. When a court reviews administrative decisions, there is a rebuttable presumption that the reasonableness standard will apply. This presumption has not been rebutted in this case (*Vavilov v Canada (Minister of Citizenship and Immigration)*, 2019 SCC 65 [*Vavilov*]).

IV. Analysis

[7] The following provision of the *IRPA* is relevant:

> **Temporary resident permit**
>
> **24 (1)** A foreign national who, in the opinion of an officer, is inadmissible or does not meet the requirements of this Act becomes a temporary resident if an officer is of the opinion that it is justified in the circumstances and issues a temporary resident permit, which may be cancelled at any time.

[8] At the oral hearing, the Applicants argued that the Officer had an obligation to determine applications under section 24(1) by both assessing whether the Applicants were inadmissible and whether they otherwise failed to meet the requirements of the *IRPA*.

[9] In their written submissions, the Applicants asserted that the Officer failed to properly consider their applications, as the Officer's decision was neither coherent nor justified. To this point, the Applicants cited *Kazembe v Canada (Citizenship and Immigration)*, 2020 FC 856. In that case, Justice Walker found the Officer's decision lacked a coherent and rational chain of analysis.

[10] The Applicants also argued that the Officer failed to consider the 300 pages of documentation provided, and appeared to render a decision based entirely on the medical report from January 2023. The Applicants claimed that the medical report did not include evidence that formed the basis of the Officer's decision. Accordingly, the Applicants asserted that the Officer's decision was "completely devoid of any coherent and rational analysis." The Applicants submitted that immigration officers have a duty to explain their reasons for refusal, and to consider all of the evidence submitted.

[11] The Applicants further claimed that the Officer erred by failing to properly consider the evidence, including the medical evidence. The Applicants provided a copy of the medical examination completed on January 9, 2023, noting the medical report did not include a determination on medical inadmissibility. Accordingly, the Applicants stated it was unclear what

evidence the Officer used in assessing Honey as a M1 S1. As this determination was the only justification for removal, the Applicants argued that this error was highly important.

[12] Moreover, the Applicants claimed that they presented at least two legal arguments in their application that were "completely ignored." First, the Applicants argued that the Officer had a duty to consider the best interests of their Canadian born child, Aaradhya. Second, the Applicants asserted that the Officer ignored their humanitarian and compassionate ("H&C") arguments.

[13] I do not agree with the Applicants that the Officer made a reviewable error.

[14] While the new medical classification that Honey is no longer medically inadmissible should be positive news, it appears that the Applicants are now arguing that she should be found inadmissible. However, Honey's new classification allows the Applicants to apply stay in Canada by other means, given that they do not meet the conditions for a TRP under section 24(1).

[15] As stated in the case law, the granting of a TRP under section 24(1) is an exceptional regime and highly discretionary. To receive a TRP, applicants must meet the "pre-conditions."

[16] Section 24(1) has two pre-conditions, at least one of which must be met before an officer can consider whether issuing a temporary resident permit is justified (citing *Kadye v Canada*

(Citizenship and Immigration), 2022 FC 865 at paras 13-14). The pre-conditions are either that: 1) the applicant is inadmissible, or 2) the applicant has failed to comply with the *IRPA*.

[17] The purpose of section 24 is to "soften the sometimes harsh consequences of the strict application of IRPA where there may be "compelling reasons" to allow a foreign national to enter or remain in Canada despite inadmissibility or non-compliance with IRPA" (*Farhat v Canada (Citizenship and Immigration)*, 2006 FC 1275 at para 22). In *El Rahy v Canada (Citizenship and Immigration)*, 2020 FC 372, Justice Pamel stated that the "very purpose of a TRP is to allow individuals to who have not respected the IRPA to regularize their status" (at para 62).

[18] Accordingly, there was no need for the Officer to consider the Applicants' temporary resident applications further, given they no longer fell within the scope of section 24(1).

[19] While a bit confusing, it appears that the Applicants' written arguments are based on the mistaken premise that it was the Officer who reassessed Honey's medical condition, including whether it was likely to cause an excessive demand on Canada's health or social services. However, the Officer did not make that determination, as only certain medical officers have delegated authority under section 20(1) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 ("*IRPR*") to conduct medical assessments and make such conclusions. (See Canada, Citizenship and Immigration Canada, *Instrument of Designation and Delegation: Immigration and Refugee Protection Act and Regulations* (Ottawa: CIC, 2023) at paras 16-18 online: <il3-eng.pdf (canada.ca)>.).

[20] Additionally, the IRCC's operational manual indicates that, where a medical officer finds an applicant is inadmissible for health reasons, the immigration officer has the final decision-making authority in deciding admissibility under section 38(1). (See Canada, Immigration, Refugees and Citizenship Canada, *Excessive demand on health services and on social services* (Ottawa: IRCC, 2023) online: <Excessive demand on health services and on social services - Canada.ca>. Since the medical officer assessed Honey as "M1 S1", (no risk and no requirement for medical surveillance), meaning she posed no excessive demand, the issue of medical inadmissibility did not fall on the Officer. The Officer's responsibility in the circumstances was to determine whether to issue the TRPs upon considering the medical officer's assessment.

[21] The Applicants' implied position, that Honey is inadmissible, is also meritless given the Applicants' took the opposite position in their TRP applications. The Applicants have no basis to argue with the medical officer's assessment after advocating for that exact same finding: that their daughter is not medically inadmissible.

[22] Further, in relation to the second precondition, there is no indication either in the record or in the Applicants' submissions, that the Applicants were otherwise noncompliant with the *IRPA*. Rather, one of the Applicants declared that they were making efforts to fully comply. Accordingly, the second precondition did not arise on the facts of this case. However, even without specific mention by the Officer, the Applicants' compliance is implied. In their reasons, the Officer states, "Client may take the necessary steps to obtain temporary residence through other channels available in order to remain in Canada." It is unlikely that the Applicants could not take further measures if they failed to meet the second precondition. Therefore, it is clear

from the record that the Officer considered both pre-conditions and the Applicants did not meet either.

[23] While the Officer was short in their reasons, the decision was clear and cogent. The Applicants have the onus of providing sufficient evidence to justify the granting of a TRP: *Bhamra v Canada (Citizenship and Immigration)*, 2020 FC 482 at para 27. Accordingly, as neither precondition for the temporary resident permit was met, the Officer's decision was reasonable. I note the Officer is presumed to have considered all of the evidence unless the contrary is shown (*Florea v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 598 (FCA) (QL)).

[24] In terms of the Applicants' other two arguments, relating to H&C factors and the best interests of the child, I agree with the Respondent that this justification was not necessary. An officer's analysis under section 24 is not a full scale H&C determination as mandated under section 25 of the *IRPA*, meaning an officer does not have to consider and analyze each submission by the applicant: *Rodgers v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1093 at paras 10-11. Again, the Applicants' have the onus of establishing why a TRP application should be granted. In this case, they provided limited evidence on the best interests of the child and did not identify any H&C factors, apart from family separation and the COVID-19 pandemic.

[25] However, more importantly, there were no inadmissibility or non-compliance concerns to overcome with H&C factors, given the Applicants did not fall within the scope of section 24(1).

The Applicants' evidence in this regard would only have been relevant if the Officer deemed the Applicants inadmissible, or found they otherwise failed to comply with the *IRPA*. This also distinguishes this case from *Osmani v Canada (Citizenship and Immigration)*, 2019 FC 872, as, in that decision, the applicant was inadmissible under the *IRPA*, meaning the officer's failure to consider his compelling reasons was unreasonable.

[26] In conclusion, the Applicants are not without recourse, despite not being eligible for temporary resident permits. The Applicants have an application for permanent residence on H&C grounds pending since June 2023, at which point the best interests of the child may be fully reviewed.

V. Conclusion

[27] The applications are dismissed.

[28] The Applicants proposed a certified question but then withdrew it post-hearing. Accordingly, I will not grant a certified question.

JUDGMENT IN IMM-1661-23, IMM-1669-23 AND IMM-1684-23

THIS COURT'S JUDGMENT is that:

1. The applications are dismissed.

2. No question is certified.

"Glennys L. McVeigh"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKETS:	IMM-1661-23, IMM-1669-23 AND IMM-1684-23
DOCKET	IM-1661-23
STYLE OF CAUSE:	KALPESHKUMAR KIRTANBHAI PATEL, RIPALBEN KALPESHKUMAR PATEL, HONEY KALPESHKUMAR PATEL v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
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