Federal Court  Cour fédérale

Date: 20231215

Docket: IMM-4202-22

Citation: 2023 FC 1704

Ottawa, Ontario, December 15, 2023

PRESENT: Madam Justice Sadrehashemi

BETWEEN:

YANG LI
ZHONGZHUANG YU
JUNDI YU

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicants are a family: Yang Li, her husband and their child. Ms. Li, the Principal Applicant, applied for permanent residence under the Self-Employed Persons Class based on her work experience as an editor and her plan to work as a self-employed editor in Canada. An officer at Immigration, Refugees and Citizenship Canada ("the Officer") refused her application

on March 6, 2022, finding that she is not a “self-employed person” within the meaning of subsection 88(1) of the *Immigration and Refugee Protection Regulations* SOR/2002-227 [*IRPR*].

[2] Ms. Li is challenging this refusal on judicial review. The parties agree that the Officer unreasonably limited their analysis to only one of the ways that an applicant could qualify as having “relevant experience” as defined in subsection 88(1) of the *IRPR*. The same issue arose in *Zhang v Canada (Citizenship and Immigration)*, 2019 FC 764.

[3] The Minister argues the error on “relevant experience” is not determinative because the Officer also found Ms. Li did not meet the two other independent requirements to be approved under this category: ability to make a significant economic contribution and ability to be self-employed in Canada. Ms. Li argues that the Officer’s error as to her qualification on “relevant experience” is fatal to the rest of their analysis on the two other requirements for the class. Alternatively, Ms. Li argues that the Officer’s assessment on the two remaining requirements is also unreasonable because it misconstrues and ignores relevant evidence and submissions.

[4] I do not agree as a matter of principle that where an officer has erred on assessing the “relevant experience” requirement, which is one of three requirements to qualify for this program, it necessarily follows that their analysis on the other two requirements are unreasonable and the decision must be redetermined. I have considered the Officer’s reasons on all three requirements.

[5] I find the Officer's determination on both Ms. Li's ability to make a significant contribution and be self-employed to be unreasonable. On both of these requirements for the program, the Officer's decision is not responsive to the submissions and evidence in the record, including Ms. Li's history of self-employment work and the nature of the work she is proposing to do in Canada.

[6] Based on the reasons below, I grant the application for judicial review.

II. Issue and Standard of Review

[7] The only issue on judicial review is the Officer's assessment of Ms. Li's qualification for the self-employed program under subsection 88(1) of the *IRPR*. The parties submit and I agree that I should review the RPD's decision on a reasonableness standard. The Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] described a reasonable decision as "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). Administrative decision makers must ensure that their exercise of public power is "justified, intelligible and transparent, not in the abstract, but to the individuals subject to it" (*Vavilov* at para 95).

III. Analysis

[8] Subsections 100(1) and 88(1) of *IRPR* prescribe the Self-Employed Persons class. To be a self-employed person within the definition prescribed by *IRPR*, the foreign national must establish three requirements:

a. The person has relevant experience as defined in subsection 88(1);

b. The person has the intention and ability to be self-employed in Canada; and

c. The person has the intention and ability to make a significant contribution to specific economic activities in Canada.

[9] There is further elaboration in subsection 88(1) of *IRPR* on defining what qualifies as "relevant experience" for an applicant applying as a "self-employed person." As explained above, both parties agree that the Officer unreasonably limited their analysis on relevant experience. In particular, the Officer failed to consider, despite targeted submissions on this issue, whether the Applicant qualified under clause 88(1)(a)(i)(B) or (C) of the *IRPR* in relation to whether any of their experience could have been considered to be at a "world class level."

[10] The issue in dispute between the parties is the Officer's assessment on the requirements that an applicant must have the intention and ability to be self-employed in Canada and have the intention and ability to make a significant contribution to specific economic activities in Canada.

[11] Relevant to both of these requirements is evidence of Ms. Li's past success at being self-employed as an editor in China (Safarzadeh v Canada (Citizenship and Immigration), 2022 FC 589 at para 9). Ms. Li filed 126 pages of bank records and labelled them as evidence of her self-employment income. The Officer stated that Ms. Li had not provided "any demonstration of income from his [sic] work as a self-employed person." This statement is inaccurate given Ms. Li's evidence and her submissions in relation to this evidence. On judicial review, the Respondent made submissions about the nature of the bank records but these were not issues raised by the Officer in their reasons. The Officer's reasons are clear that their view was that there was no evidence of income from past self-employment filed with the application.

[12] I also find that the Officer did not meaningfully consider that a central aspect of Ms. Li's plan to be self-employed and make a significant contribution to Canada was in serving Chinese-Canadian authors in Canada. The Officer states: "I find that the editing services [the Applicant] intends to establish will not create a significant impact and contribution to a cultural activity in Ontario." Further, at a few points in the decision the Officer suggests the benefits of Ms. Li's work would accrue to China as opposed to Canada. The Officer does not consider Ms. Li's submission that she plans to leverage her continued connections to Chinese markets to benefit her Chinese-Canadian clients in Canada by extending the reach of their work. Overall, missing from the Officer's analysis is any meaningful consideration that a key component of Ms. Li's plan would be to serve Chinese-Canadian writers in Canada.

[13] None of these concerns about the Officer's decision set out above could be characterized as minor missteps. I find the Officer's decision is not adequately responsive to Ms. Li's

submissions and evidence on central components relevant to their assessment as to whether she qualifies as a self-employed person under subsection 88(1) of *IRPR*. For this reason, the application must be set aside and redetermined.

JUDGMENT in IMM-4202-22

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is granted;

2. The IRCC decision dated March 6, 2022 is quashed and sent back to be redetermined by a new decision maker; and

3. No serious question of general importance is certified.

"Lobat Sadrehashemi"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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