Federal Court  Cour fédérale

Date: 20240319

Docket: IMM-11666-22

Citation: 2024 FC 442

Ottawa, Ontario, March 19, 2024

PRESENT: The Honourable Madam Justice Ngo

BETWEEN:

AMIRABBAS SADEGHIEH, TOKTAM SHAMSKHEIRABADI, AMIRKIA SADEGHIEH and KIARA SADEGHIEH

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicants seek judicial review of the decision dated November 17, 2022 of an immigration officer [Officer] denying work permits and Temporary Resident Visas [Decision]. The Principal Applicant applied for a work permit under the Labour Market Impact Assessment-

exempt stream for entrepreneurs or self-employed candidates of the International Mobility Program [Program] pursuant to sections 200 and 205(a) of the *Immigration and Refugee Protection Regulations* (SOR/2002-227) [*IRPR*] of the *Immigration and Refugee Protection Act* [*IRPA*]. The Officer denied the Principal Applicant's application after concluding that he was not satisfied that the business plan was viable or that issuing the work permit would result in significant benefits to Canadian citizens and permanent residents. The Principal Applicant's family applications were also denied as they were no longer eligible after the refusal and the purpose of their trip no longer existed.

[2] The Applicants allege that the Officer violated procedural fairness by making an arbitrary decision without considering the evidence provided in the application. The Applicants challenge the Decision on the basis that the Officer unreasonably assessed their business plan. The Respondent argues that based on the evidence before them, it was reasonable for the Officer to find that the Principal Applicant did not meet statutory requirements.

[3] For the reasons set out below, the application for judicial review is dismissed. I find that the Decision was not unreasonable and there was no procedural unfairness.

II. Preliminary issue – Applicants' Further Affidavits

[4] In the Applicant's Record, the Applicants provided three further affidavits:

1. Affidavit of the Applicant, Amirabbas Sadeghieh, sworn November 17, 2023;
2. Affidavit of Toktam Shamskheirabadi, sworn November 17, 2023; and,
3. Affidavit of Iman Omidallah, sworn November 21, 2023

[collectively, Further Affidavits]

[5] The general rule is that on judicial review, the Court is limited to the evidentiary record that was before the decision maker. Evidence that was not before the decision maker and that goes to the merits of the matter before the decision maker is not admissible in an application for judicial review (*Access Copyright* at para 19). The exceptions to this general rule are:

> (1) evidence that comprises general background in circumstances where the information might assist the reviewing court in understanding issues relevant to the proceeding;
>
> (2) evidence that brings attention to procedural defects that cannot be found in the evidentiary record; and
>
> (3) evidence that illustrates the complete absence of evidence before the decision maker when it made a particular finding
>
> (*Access Copyright* at para 20).

[6] The Applicants acknowledged that some facts and statements in the Further Affidavits were not before the Officer. The Applicants submit that the Further Affidavits should be admitted under two of the exceptions in *Association of Universities and Colleges of Canada and the University of Manitoba v The Canadian Copyright Licensing Agency operating as "Access Copyright",* 2012 FCA 22 [*Access Copyright*]. They submit that the Further Affidavits provide general background that might assist in understanding the issues before the Court, and that they highlight the absence of evidence.

[7] The Respondent objected to the Further Affidavits, stating that the Applicants are attempting to supplement the record that was before the Officer and they should not be able to use their Further Affidavits to justify the merits of their application under the Program. I agree with the Respondent.

[8] When new evidence is tendered on judicial review that purports to provide general background, care must be taken to ensure that the affidavit does not go further and provide evidence relevant to the merits of the matter decided by the administrative decision-maker (*Access Copyright* at para 20).

[9] The Further Affidavits do not meet the "general background" exception. To the contrary, they seek to provide evidence that goes to the merits of Decision and goes beyond providing background information in a neutral way. The Further Affidavits seek to bolster the Applicants' arguments to support the information in their work permit and temporary visa applications.

[10] The Further Affidavits also do not meet the "absence of evidence" exception. These Further Affidavits seek to introduce new evidence that was not before the decision maker, to rebut the concerns that the Officer had with respect to their applications.

[11] The two *Access Copyright* exceptions identified by the Applicants do not apply and the Court will not consider new evidence as outlined in the Further Affidavits.

III. Issues and Standard of Review

[12] The issues in this application are whether the Decision was reasonable and whether there has been a breach of procedural fairness. The standard of review to apply to the merits of the Decision on a work permit application is reasonableness (*Haghshenas v Canada (Citizenship and Immigration)* 2023 FC 464 [*Haghshenas*] at para 13), and the standard of review on a question of procedural fairness is correctness (*Haghshenas* at paras 6-8).

[13] The reasonableness standard of review finds its starting point in the principle of judicial restraint and demonstrates a respect for the distinct role of administrative decision makers (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at paras 13, 85).

[14] A reviewing court applying the reasonableness standard must focus on the decision actually made, including the reasoning process and the outcome. It does not ask what decision it would have made instead, does not attempt to ascertain the "range" of possible conclusions, conduct a *de novo* analysis, or seek to determine the "correct" solution to the problem (*Vavilov* at para 83). 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" (*Vavilov* at para 125).

[15] A reasonable decision is one 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. The reasonableness standard requires that a reviewing court defer to such a decision (*Vavilov* at para 85). Reasonableness review is not a "line-by-line treasure hunt for error" (*Vavilov* at para 102).

[16] A reviewing court "must bear in mind that the written reasons given by an administrative body must not be assessed against a standard of perfection. That the reasons given for a decision 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 the decision aside"

(*Vavilov* at para 91). Moreover, “even where elements of the analysis are left out and, in the whole scheme of the things, the decision is not undermined as a whole and must stand” (*Vavilov* at para 122).

[17] The burden of proof lies with the party claiming that the decision is unreasonable. The party must prove to the reviewing court that the decision is so seriously flawed that it cannot be said to meet the requirements of justification, intelligibility and transparency (*Vavilov* at para 100).

[18] An allegation of procedural fairness is determined on the standard of correctness, and considers whether the applicant was aware of the case they had to meet and had a full and fair opportunity to present their case (*Canadian Pacific Railway Ltd. v Canada (Attorney General),* 2018 FCA 69 at para 56; *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 at para 28).

IV. Analysis

A. *No Breach of Procedural Fairness*

[19] The Applicants submit that there was a breach of procedural fairness as the Officer’s decision ignored the evidence provided in the Application and made an arbitrary decision without regard to the evidence before them. If the Court disagrees with their characterization of the issues as procedural fairness, they rely on the same arguments with respect to the reasonableness of the Decision.

[20] With respect, I find that the Applicants' arguments are mischaracterized as procedural fairness issues. The evaluation of the evidence and the use of this evidence in relation to the Applicant's application for a work permit and temporary residence permit is a question related to the merits of the Decision. For example, whether an Officer made a reviewable error by making conclusions that were directly in opposition to an applicant's evidence and made no attempt to explain why the evidence is insufficient to overcome his concerns would be reviewed on a reasonableness standard (*Brar v Canada (Citizenship and Immigration)*, 2020 FC 445 paras 20 and 22).

[21] Indeed, all of the pinpoint citations and cases that the Applicants identified to the Court during the hearing in support of their arguments on procedural fairness related to the Court's analysis on the reasonableness of the decisions that were at issue.

[22] In any event, this Court's jurisprudence is clear that while an applicant who applies for a work permit can expect procedural fairness, the degree of procedural fairness falls at the low end of the spectrum. An Officer does not have a duty to inform applicants of concerns arising from requirements set out in the *IRPA* and *IRPR* (*Kumar v Canada (Citizenship and Immigration)*, 2020 FC 935 at para 19). Where a visa officer's decision is based on the sufficiency of evidence adduced by the applicant, or on the requirements of the *IRPR* and the statutory scheme at large, there is generally no obligation to apprise a visa applicant of those concerns (*Patel v Canada (Citizenship and Immigration)*, 2021 FC 483 at para 42). The Officer was not required to provide the Applicants an opportunity to address concerns with their application or their supporting documentation.

B. *The Decision is not Unreasonable*

[23] The Officer was critical of the business plan as it related to items such as the proposed salaries, the revenue projections, and did not believe that the business would be competitive in the Vancouver market. Finally, the Officer did not believe that the business would have a significant benefit to Canada. As a result, the Principal Applicant was found not to meet the Program's statutory requirements under R205(a) of the *IRPR*.

[24] The Applicants contend that the Officer spent little time reviewing their business plans and supporting documents. They argue that the business plan represents objectives, not guarantees, and that at the time the business plan was drawn up, these salaries were competitive and aimed at ensuring the company's viability in the early stages of its growth. They also point out that the Officer did not consider the company to be well capitalized and failed to consider the Principal Applicant's previous work experience in assessing the business plan.

[25] The Officer's reasons are elaborated in the Global Case Management System notes [Notes]. The Notes identified the Officer's concerns and conclusions: a large part of the information submitted in the business plan was general and copied from open source websites; the proposed salaries are much lower than comparable positions in Vancouver; the proposed expected revenue in the first year was overly optimistic and speculative; and, "green" renovation services are very competitive in Vancouver.

[26] The Applicants highlighted parts of their application that they argued were not addressed in the Decision, and that the Officer was silent on the most important evidence. They state that the Decision is not transparent in that one is left to guess how the Decision was reached.

[27] I disagree. The Officer's findings related to the insufficiency of the evidence. In sum, Officer found that the evidence provided in support of the application was insufficient to satisfy them that the Principal Applicant met the requirements of the Program.

[28] The Applicants have the onus of putting their best case forward and submit all relevant documentation in support of their application. The Respondent has cited *Chamma v Canada (Citizenship and Immigration)*, 2018 FC 29 at paragraph 35 and *Yang v Canada (Citizenship and Immigration)*, 2023 FC 954 at paragraph 31 in support of the Applicant's onus on a work permit application. Indeed, this is an established principle (*Farboodi v Canada (Citizenship and Immigration)*, 2023 FC 1280).

[29] A visa officer's decision warrants a high degree of deference as they have detailed specific expertise and knowledge regarding the relevant regulatory schemes (*Hashmi v Canada (Citizenship and Immigration)*, 2006 FC 1335 at para 12). The Officer is also presumed to have reviewed all of the evidence unless the contrary is shown (*Haghshenas s* at para 14).

[30] The Applicants' identification of references in the record during the hearing did not confirm this evidence to be contradictory to the Officer's conclusions. Rather, their submissions related more to how the Officer ought to have interpreted the information in their application.

[31] In this case, the Officer identified weaknesses in the Principal Applicant's business plan, including the anticipated revenues, the plans to grow the business by hiring four employees by the fourth month of business without clearly mentioning that they would hire Canadians or permanent residents. The Officer questioned the business plan's anticipated operational costs, salary and wages and the Decision set out the reasons why the Officer did not find this to be sufficient. The Applicants provided evidence to support that the green renovation services industry is booming. However, the documentation provided focused on markets in the United States, and it was open for the Officer not to rely on it. It was open to the Officer to be sceptical of the business plan in light of the information provided by the Applicants (*Shirkavand v Canada (Citizenship and Immigration)*, 2023 FC 1022 at para 28, citing *Haghshenas* at para 32).

[32] The Officer analyzed the business plan and determined that many references from the business plan had been copied from open-source websites. The Applicants agreed that they cited open-source websites. It is not unreasonable for the Officer to use readily available external information to corroborate the evidence that the applicants presented in the application package (*Zhang v Canada (Citizenship and Immigration)*, 2020 FC 101 at para 37).

[33] This Court's jurisprudence has also established that decisions in work permits and other visa applications are not expected to provide extensive reasons and that "simple, concise justification will do" (*Merhjoo v Canada (Citizenship and Immigration)* 2023 FC 887 at para 16; *Vahora v Canada (Citizenship and Immigration)* 2022 FC 778 at para 32). Under these circumstances, I cannot find that not outlining every piece of information or documentation in the Decision renders it unreasonable.

[34] The Applicants underlined that their arguments focus on reviewable errors and are not asking the Court to reweigh the evidence. I disagree. Most of the arguments in fact, ask the Court to reweigh and reassess the evidence that was before the Officer and arrive at a different conclusion, which is not the role of the Court on judicial review.

[35] The focus of the arguments related to the Principal Applicant's application under the Program. For completeness, I confirm that the decision to deny the family applications, as they were no longer eligible after the Principal Applicant's refusal and the purpose of their trip no longer existed, was also reasonable.

[36] The Applicants have not demonstrated that the Decision is unreasonable. Accordingly, this application for judicial review is dismissed.

[37] The parties confirmed that they did not have a question of general importance to certify. I agree that none arises in this case.

JUDGMENT in docket IMM-11666-22

THIS COURT'S JUDGMENT is that

1. The application for judicial review is dismissed.

2. There are no questions for certification.

"Phuong T.V. Ngo"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-11666-22
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