

Federal Court



Cour fédérale

Date: 20240528

Docket: IMM-7091-23

Citation: 2024 FC 807

Ottawa, Ontario, May 28, 2024

PRESENT: The Honourable Madam Justice Blackhawk

BETWEEN:

KANWARPAL SINGH GILL

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Mr. Kanwarpal Singh Gill, seeks to set aside a decision dated May 20, 2023, by an officer (Officer) with Immigration, Refugees and Citizenship Canada (IRCC) refusing the Applicant's application for a temporary resident visa (Decision).

[2] The Applicant asks this Court to set the Decision aside and send the matter back for redetermination by a different officer.

[3] For the reasons that follow, this application is allowed.

II. Background

[4] The Applicant is a 28-year old citizen of India. He has two siblings residing in Canada, as well as two other siblings and his aging parents living in India.

[5] On April 24, 2023, the Applicant applied for a temporary resident visa (TRV) pursuant to section 179 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [IRPR] to visit his brother and sister who live in Winnipeg, Manitoba for a four-week summer vacation.

[6] On May 20, 2023, the Officer determined that his application did not meet the statutory requirements set out in the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] and the IRPR. The Officer refused the application because the Applicant did not satisfy the requirement that he would leave Canada at the end of his stay pursuant to subsection 179(b) of the IRPR.

III. Decision under review

[7] By letter dated May 20, 2023, Immigration, Refugees and Citizenship Canada (IRCC) refused the Applicant's request for a TRV because the Officer was not satisfied that the Applicant would leave Canada at the end of his stay as required by subsection 179(b) of the IRPR. The Officer reached this conclusion based on the following factors: the Applicant's assets and financial situation were insufficient for the stated purpose of travel; significant family ties in Canada; no significant family ties outside of Canada; and the purpose of his visit was not consistent with a temporary stay.

[8] In the Global Case Management System (GCMS) notes, which form part of the reasons, the Officer states:

I have reviewed the application. I have considered the following factors in my decision. Taking the applicant's purpose of visit into account, the documentations provided in support of the applicant's financial situation does not demonstrate that the applicant is sufficiently established that the proposed visit would be a reasonable expense. The bank statement from Punjab national bank shows balance with recent large deposits. The applicant has significant family ties in Canada. Given family ties or economic motives to remain in Canada, the client's incentives to remain in Canada may outweigh their ties to their home country. The purpose of the applicant's visit to Canada is not consistent with a temporary stay given the details provided in the application. 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.

[9] The Applicant commenced his application for leave and judicial review of the Decision on June 6, 2023. This Court granted leave for judicial review on February 27, 2024.

IV. Issues and standard of review

[10] This application raises the following two issues:

1. Was the Officer's decision to refuse the Applicant's TRV unreasonable?
2. Was the Officer's decision to refuse the Applicant's TRV a veiled credibility finding and therefore a breach of his right to procedural fairness?

[11] The parties submitted, and I agree, that that standard of review applicable to a visa officer's refusal of a TRV application is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at paras 10, 23).

[12] Reasonableness review is a deferential standard, and requires an evaluation of the administrative decision to determine if the decision is transparent, intelligible, and justified (*Vavilov* at paras 12–15). The starting point for a reasonableness review is the reasons for

decision. Pursuant to the *Vavilov* framework, 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” (*Vavilov* at para 85). An administrative decision-maker’s decision, as demonstrated by the reasons, must be “justified, intelligible and transparent” (*Vavilov* at para 95).

[13] To intervene on an application for judicial review, the Court must find an error in the decision that is central or significant to render the decision unreasonable (*Vavilov* at para 100).

[14] Finally, I will note that officers are not required to respond to every argument or piece of evidence advanced in an application or make an explicit finding on each element; however, the reasons must demonstrate that the officer “meaningfully grapple[d]” with key issues or central arguments raised (*Vavilov* at para 128).

[15] Recently in *Patel v Canada (Citizenship and Immigration)*, 2020 FC 77 [*Patel*], Justice Diner commented on the significant pressures on visa officers to review a large volume of applications on a daily basis, this does not permit officers to provide “extensive reasons.” Despite this reality, decisions must be reasonable. Brief decisions are reasonable if they are responsive to the evidence (*Patel* at para 15).

V. Analysis

A. *Was the Officer’s decision to refuse the Applicant’s TRV application unreasonable?*

[16] Section 179 of the *IRPR* sets out that an officer shall issue a TRV to a foreign national if, following an examination, certain criteria are satisfied. The onus is on the applicant to satisfy the officer that they will not remain in Canada following the expiration of their visa (*Sayarbahri v Canada (Citizenship and Immigration)*, 2024 FC 131 [*Sayarbahri*] at paras 9–10).

[17] An applicant for a TRV must establish that they satisfy the requirements of the *IRPA* and the *IRPR*. Visa officers have wide discretion in their assessment of applications and courts ought to give considerable deference to the decisions of officers, given their expertise (*Sayarbahri* at para 10, citing *Chera v Canada (Citizenship and Immigration)*, 2023 FC 733 at para 36 and *Singh v Canada (Citizenship and Immigration)*, 2022 FC 1745 at para 14). The onus is on the applicant to satisfy the officer that they will leave Canada at the end of the period of stay requested.

(1) Stability of finances

[18] The Applicant submitted that the Decision was unreasonable because it lacked transparency, intelligibility, and justification. The Officer's Decision does not address contradictory financial evidence submitted in the application.

[19] The evidence included in the application package illustrated that the Applicant co-owned a business with his father, had approximately \$11,000 CAD of his own funds, other valuable assets, and financial support from his brother, a permanent resident in Canada, if needed. The Applicant acknowledged that while the bank information was for the corporate account, he was the owner of the company and the bank account was in his name.

[20] It is not clear from the reasons provided how or why the Officer determined the Applicant's financial situation was insufficient despite evidence to the contrary or why the trip is not a reasonable expense. The Officer's Decision does not address the totality of the financial evidence related to the Applicant's means to pay for the proposed visit nor set out why the proposed visit would be an unreasonable expense (*Bisiriyu v Canada (Citizenship and*

Immigration), 2023 FC 630 at paras 25 and 27; *Sangha v Canada (Citizenship and Immigration)*, 2021 FC 760 [Sangha] at para 27).

(2) Family Ties

[21] The Applicant has two siblings in Canada. The Applicant also has two siblings and aging parents, a business, property, and other assets in India. The Officer's Decision does not reference the evidence that contradicts the conclusion: "[g]iven family ties or economic motives to remain in Canada, the client's incentives to remain in Canada may outweigh their ties to their home country."

[22] In *Sangha*, a visa officer similarly neglected evidence of the applicant's ties to their home country. Justice Ahmed notes in the *Sangha* decision, which I find applicable in the case at bar, that "[t]he Officer's reasoning is not justified in relation to the plethora of evidence that established the Applicants' ties to India (*Vavilov* at para 85)" (*Sangha* at para 34).

[23] In support of their position, the Respondent relies on Justice Pamel's decision in *Sayyar v Canada (Citizenship and Immigration)*, 2023 FC 494 at para 12 where he clarifies that a TRV is not a rubber-stamping exercise where applicants are granted permits once they show sufficient financial means. Rather a "visa officer must conduct a more detailed and fulsome investigation about the source, nature, and stability of these funds."

[24] I agree that an officer is required to complete a robust investigation and I appreciate that they do so in an environment with a heavy volume of applications and limited resources. However, an officer's reasons "may be concise and simple so long as it is responsive to the

evidence” (*Ibekwe v Canada (Citizenship and Immigration)*, 2022 FC 728 at para 28, citing *Patel* at para 17).

(3) Summary

[25] The Officer’s failure to address the totality of the evidence, namely, the contradictory evidence related to both the Applicant’s finances and his family ties in India makes the decision unreasonable (*Vavilov* at paras 127–128; *Rodriguez Martinez v Canada (Citizenship and Immigration)*, 2020 FC 293 at paras 15–16). The Decision, read with the GCMS notes and the application record, absent a clear reference to this contradictory evidence, is impossible to understand. In my opinion, the Officer failed to regard the factual constraints in the matter, as required by *Vavilov*.

[26] In my opinion there is insufficient analysis provided in the Officer’s reasons that would justify or explain the Decision. As such, the Officer’s conclusion lacks transparency, intelligibility, and justification and is unreasonable.

B. *Was the Officer’s decision to refuse the Applicant’s TRV a veiled credibility finding and therefore a breach of his right to procedural fairness?*

[27] The Applicant also submits that the notation by the Officer that: “[t]he bank statement from Punjab national bank shows balance with recent large deposits,” amounts to a veiled credibility finding. The Applicant submits that “[o]ne may draw the inference that in the Officer’s view, the Applicant’s proof of funds is not credible.” Where an officer makes a finding that goes to credibility, applicants have a right to respond; where there is no opportunity to respond, this is a breach of the right to procedural fairness.

[28] In the case at bar, the Officer has noted that the Applicant's corporate bank statements show "recent large deposits." In my opinion, this was a statement of fact drawn from the evidence included in the TRV Application. I do not agree that this is a veiled credibility finding (*Alaje v Canada (Citizenship and Immigration)*, 2017 FC 949 at para 19).

[29] Where there is a finding that evidence is not credible, it is a determination by an officer that the source of the evidence is not reliable. Here the Officer was not questioning the reliability of the information, but making an observation based on the evidence provided. An officer's finding that the evidence is not sufficient to support an application is distinguishable from an officer making a finding of the credibility of evidence in support of the claim (*Lv v Canada (Citizenship and Immigration)*, 2018 FC 935 at paras 40–41).

VI. Conclusion

[30] In light of the foregoing, this application for judicial review is granted.

[31] The parties did not pose any questions for certification, and I agree that there are none.

JUDGMENT in IMM-7091-23

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is granted.
2. The Applicant's application for a temporary resident visa shall be remitted back to the IRCC for reconsideration by a different officer.
3. There shall be no order as to costs.
4. No question is certified.

“Julie Blackhawk”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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PLACE OF HEARING: WINNIPEG, MANITOBA

DATE OF HEARING: MAY 21, 2024

JUDGMENT AND REASONS: BLACKHAWK J.

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