Federal Court  Cour fédérale

Date: 20240607

Docket: IMM-12493-22

Citation: 2024 FC 873

Ottawa, Ontario, June 7, 2024

PRESENT: The Honourable Mr. Justice Régimbald

BETWEEN:

KAHO KAMIKAWA

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] This is an application for judicial review of a decision by a visa Officer [Officer] denying the Applicant's application for a work permit. In their decision dated November 23, 2022 [Decision], the Officer denied the Applicant's application on the grounds that the Officer was not satisfied that she would leave Canada at the end of her stay.

[2] Having considered the record before the Court, including the parties' written and oral submissions, as well as the applicable law, I find that the Applicant has discharged her burden to demonstrate that the Immigration, Refugees and Citizenship Canada's Decision is unreasonable. For the reasons that follow, this application for judicial review is granted.

II. Facts

[3] The Applicant, Kaho Kamikawa [Applicant], is a citizen of Japan. She first came to Canada in May 2017 as a student at a language school. In November 2017, she went back to Japan. Three months later, she returned to Canada with an open work permit. The work permit was issued on March 14, 2018 and expired on March 13, 2019. She worked at a restaurant until it expired. The Applicant then applied for visitor record extensions twice to stay in Canada, the first was issued on March 11, 2019 and expired on September 12, 2019 and the second was issued on November 30, 2019 and expired on February 25, 2020.

[4] An application for a Labour Market Impact Assessment [LMIA] was filed in June 2020 and the Applicant applied for a work permit in November 2020.

[5] The Applicant explained in her affidavit that the agent in charge of her case did not know or chose not to explain to her that she had 90 days from the expiry of her second visitor visa, on February 25, 2020, to renew her status or ask for a special renewal because of the ongoing COVID circumstances.

[6] The Applicant further stated that she was unable to return to Japan because of COVID-19. She explains that she could not afford to return to Japan during this time due to the cost of the flights and the cost of the required 14-day quarantine in Tokyo before she could return to her hometown of Hiroshima. The Applicant also explained that she believed she had to stay in Canada until she received the result of the LMIA application.

[7] The work permit was refused on March 17, 2022.

[8] The Applicant then consulted with legal counsel, indicating that she met with them on March 25, 2022, and only then realized that she had to leave Canada, and did so on April 1, 2022.

[9] On August 1, 2022, the Applicant applied for a work permit for the second time. On November 23, 2022 the work permit application was denied. This is the Decision contested before this Court in this application for judicial review.

III. Decision under review

[10] In the Decision, the Officer refused the Applicant's work permit and stated the following reasons:

> • I am not satisfied that you will leave Canada at the end of your stay as required by paragraph 200(1)(b) of the IRPR (https://laws.justice.gc.ca/eng/regulations/SOR-2002-227/section-200.html). I am refusing your application because you have not established that you will leave Canada, based on the following factors:

> • You have limited employment possibilities in your country of residence.
>
> • Your current employment situation does not show that you are financially established in your country of residence.
>
> • On a past visit to Canada you did not comply with all conditions outlined in R183 of the IRPR (https://laws-lois.justice.gc.ca/eng/regulations/SOR-2002-227/section-183.html) or written on your previous Canadian Immigration document.

[11] The Global Case Management System contained the following entry:

> Appln reviewed. Initial WP issued under C21, vu 2019 March 13. -subsequent VRs approved -- last VR valid to 2020 Feb 25. -last appln for VR made on 2020 Oct 27 was refused 2022 Jan 11. Subsequent appln for WP-EXT made 2020 Nov 12 refused 2022 March 17 Declared period of stay from 2020 Feb 26 to 2020 Oct 26 is unauthorized. No info on how PA was able to sustain self from 2019 Apr to 2022 Apr. It is unclear why PA declared on IMM1295 form that she was on VR status in Canada from 2019 Nov 30 to 2022 Apr 01. Presents weak econ ties to the home country. PA has been residing in Canada since 2019 March. Based on info and docs on file, I note history of contravention of terms and conditions of stay. In addition, am not satisfied PA has demonstrated sufficient economic ties to current country of residence to ensure incentive/s to leave Canada by end of period of authorized stay. Appln refused.

IV. Issue and standard of review

[12] The issue is whether the Officer's decision to refuse the work permit application is reasonable, given the facts and the evidence on file.

[13] The standard of review applicable to the merits of the Officer's Decision is that of reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at

paras 10, 25 [*Vavilov*]; *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 at paras 7, 39–44 [*Mason*]).

[14] Following this standard, *Mason*, relying on *Vavilov*, teaches that the reviewing court must first look to the reasons of the administrative decision maker in order to assess the justification for the decision. Moreover, the Supreme Court of Canada [SCC] reiterates the need to "develop and strengthen a culture of justification" (*Mason* at paras 8, 58–60, 63; *Vavilov* at paras 14, 81, 84, 86).

[15] In *Mason*, the SCC explains how a reviewing court must conduct a judicial review of a decision. A decision may be unreasonable if the reviewing court identifies a fundamental flaw, either because of a lack of internal logic in the reasoning or because of a lack of justification given the factual and legal constraints affecting the decision (*Mason* at para 64).

[16] The SCC identifies a series of factual and legal constraints that the decision maker must examine and justify, depending on the applicable context, in order for the decision to be sufficiently justified within the meaning of *Vavilov*. The burden of justification varies, but the decision maker must be "aware" of the essential elements, "sensitive to the matter before it" and "meaningfully grapple with key issues or central arguments raised by the parties" (*Mason* at para 74; *Vavilov* at para 128). The decision maker must consider the main arguments and evidence of the parties and give reasons as to why particular arguments and evidence were accepted or dismissed in the decision-making process (*Mason* at paras 73–74*; Vavilov* at paras 126–128).

[17] When the decision maker sets out its reasons, it is not enough for the decision to be justifiable; it must be justified by reasons that establish the transparency and intelligibility of the decision-making process (*Mason* at paras 59–60; *Vavilov* at paras 81, 84, 86). The Court must determine whether, by examining the reasoning followed and the result obtained, the decision is based on an internally coherent and rational chain of analysis that can be justified in light of the legal and factual constraints to which the decision maker is subject (*Mason* at paras 8, 58–61; *Vavilov* at paras 12, 15, 24, 85–86). The decision will be unreasonable if it lacks internal logic or if the reviewing court is unable to follow the decision maker's reasoning without "encountering any fatal flaws in its overarching logic" (*Mason* at para 65, citing *Vavilov* at paras 102–103).

[18] A decision maker is presumed to have considered the entirety of the record before them unless evidence of the contrary is shown (*Florea v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 598 (FCA) at para 1; *Ayala Alvarez v Canada (Minister of Citizenship and Immigration)*, 2012 FC 703 at para 10; *Herrera Andrade v Canada (Citizenship and Immigration)*, 2012 FC 1490 at para 11 [Herrera Andrade]; *Boeyen v Canada (Attorney General)*, 2013 FC 1175 at para 53; *Abdi v Canada (Citizenship and Immigration)*, 2018 FC 47 at para 38; *Leblanc v Canada (Attorney General)*, 2019 FC 959 at para 34; *Senat v Canada (Public Safety and Emergency Protection)*, 2020 FC 353 at para 34). It is on the Applicant wishing to prove the contrary that the "high burden of persuasion" falls (*Herrera Andrade*, at para 11). As held by the SCC in *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 [*Newfoundland Nurses*] at paragraph 16 "[r]easons may not include all the arguments, statutory provisions, jurisprudence or other details

the reviewing judge would have preferred, but that does not impugn the validity of either the reasons or the result under a reasonableness analysis."

[19] While the reviewing court may examine the "entire record," in the absence of specific reasons on an important issue, it can only "connect the dots on the page where the lines, and the direction they are headed, may be readily drawn" (*Vavilov* at para 97). The reviewing court cannot in the abstract deduce from the record or from the decision maker's reasons a rationale that the decision maker did not itself give (*Mason* at paras 96–97, 101).

V. Analysis

[20] The Applicant submits that the Officer's conclusion is unreasonable because the Officer failed to provide any reasons or justification as to why the explanations provided by the Applicant were not accepted or not sufficient to justify why she remained in Canada without status for a period of time.

[21] As mentioned above, the Applicant explained in her affidavit that she was not aware that she had 90 days from the expiry of her second visitor visa to renew her status or ask for a special renewal under COVID circumstances. The Applicant also explained that she was unable to return to Japan because of the COVID-19 pandemic and because she could not afford the cost of the flights and accommodations for the mandatory 14-day quarantine in Tokyo. Lastly, she explained buying a ticket to return to Japan as soon as she could after learning from a lawyer in 2022 that she was required to leave Canada.

[22] The Respondent submits that the Applicant had the burden of proving to the Officer that she would leave at the end of her stay and that it was reasonable for the Officer to remain unconvinced of that fact, in light of the evidence presented.

[23] The burden does indeed rest on the Applicant to satisfy the Officer that she will return to Japan at the end of her authorized stay (*Rahman v Canada (Citizenship and Immigration)*, 2016 FC 793 at para 30). However, the Officer is required to provide reasons that "allow the reviewing court to understand why the [decision maker] made its decision and permit it to determine whether the conclusion is within the range of acceptable outcomes" (*Newfoundland Nurses* at para 16).

[24] In this case, the Officer failed to explain why the Applicant's explanations were insufficient, and failed to justify why those explanations did not satisfy them that the Applicant would leave Canada at the end of her authorized stay, and instead remain in Canada. While the Officer is presumed to have considered all the evidence, in the present case, they did not meaningfully grapple with central arguments of the Applicant.

[25] The Officer concluded that the Applicant did not comply with all the conditions of her stay on a past visit to Canada (she overstayed her stay for six months in 2020), but did not mention any of the reasons and context given by the Applicant, including the fact that she was never advised that she had 90 days from the expiry of her second visitor visa to renew her status or had to leave Canada, nor that she could not afford the elevated cost of the plane ticket and accommodations required in Japan because of the COVID-19 pandemic. The Officer then failed

to explain why, even with the explanations provided by the Applicant, those explanations remained insufficient for the Applicant to discharge her burden to obtain the work permit.

[26] The Officer also found that she had not established that she would leave Canada because of her limited employment opportunities in Japan and that she had not shown that she was financially established there. However, they were silent on her strong family ties, with both her parents and two sisters living in Japan.

[27] The Officer also opined that the Applicant remained in Canada for a period of almost four years when she remained in Canada between 2019 and 2022, without any evidence as to how she was able to sustain herself. The Officer appears to make a credibility finding that the Applicant may have failed to comply with her obligation not to work in Canada during this time, but without clearly articulating this finding nor providing an opportunity to the Applicant to respond.

[28] The Decision therefore contains sufficient omissions causing this Court to lose confidence in the outcome reached by the Officer (*Vavilov* at para 122). The Officer had a duty to engage meaningfully with the Applicant's central arguments at the very least, and, in my view, failed to do so. The reasons provided in the Decision do not allow this Court to understand the Officer's reasoning process (*Motala v Canada (Citizenship and Immigration)*, 2020 FC 726 at para 18; *Vavilov* at para 84) and render the Decision unreasonable.

VI. Conclusion

[29] The Officer's Decision does not bear the hallmarks of a reasonableness. It is not transparent, intelligible and justified in light of the relevant legal and factual constraints (*Vavilov* at para 99; *Mason* at para 59).

[30] The Applicant's application for judicial review is granted.

[31] The parties have not proposed any question for certification and I agree that none arises in the circumstances.

JUDGMENT in IMM-12493-22

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is granted. The decision is set aside and the matter is remitted to a different officer for redetermination in accordance with the Court's reasons.

2. There is no question for certification.

"Guy Régimbald"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-12493-22
STYLE OF CAUSE:	KAHO KAMIKAWA v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	MONTRÉAL (QUÉBEC)
DATE OF HEARING:	MAY 16, 2024
JUDGMENT AND REASONS:	RÉGIMBALD J.
DATED:	JUNE 7, 2024

APPEARANCES:

Me Mohamed Amine Semrouni	FOR THE APPLICANT
Me Sonia Bédard	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Bertrand Deslauriers Barristers & Solicitors Montréal (Québec)	FOR THE APPLICANT
Attorney General of Canada Montréal (Québec)	FOR THE RESPONDENT