Federal Court  Cour fédérale

Date: 20240624

Docket: IMM-10753-22

Citation: 2024 FC 978

Ottawa, Ontario, June 24, 2024

PRESENT: Madam Justice Azmudeh

BETWEEN:

MUHAMMAD ASHIQ

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Muhammad Ashiq, filed an Application for Leave and for Judicial Review of the Immigration Appeal Division ("IAD") decision dated October 12, 2022 (the "IAD Decision") where the IAD had dismissed his appeal from the visa officer's decision and concluded that his son, Mr. Nouman, is not a member of the Applicant's family class pursuant to the application of s. 117(9)(d) of the *Immigration and Refugee Protection Regulations* [IRPR].

[2] For the reasons that follow, I dismiss the application.

II. Summary of relevant facts

[3] I acknowledge that the facts of this case are devastating for the Applicant and his family. However, it is my role to review whether the decision of the IAD was reasonable. I will therefore limit my summary of the facts to those that are legally relevant or material.

[4] The facts of this case are not at dispute. The Applicant was born in Pakistan and became a permanent resident of Canada in June 2013 when one of his sons sponsored him.

[5] At the time the Applicant filed his permanent residence application, he declared his six children. However, he only included his spouse and his youngest son, Arslan Ashiq, as accompanying dependents.

[6] Another son, Mr. Nouman, who is subject of the IAD Decision, was not listed as an accompanying dependent nor did he ever undergo any examination. A little over a month before obtaining his permanent resident status, the Applicant signed a declaration in which he acknowledged being Mr. Nouman's biological father and understood that, pursuant to the IRPR, by not having his son undergo a medical examination, he would never be eligible to sponsor him.

> The Applicant submitted an application to sponsor his son, Mr. Nouman. The visa officer ("Officer") refused the application. The Applicant appealed the Officer's decision to the IAD. A member of the IAD dismissed the appeal without a hearing on a legal ground: that Mr. Nouman was not a member of the family class and that it has no jurisdiction to consider humanitarian and compassionate considerations. That IAD decision is now the subject of this judicial review application.

III. Preliminary issue

[7] As the parties acknowledge, pursuant to Rule 5(2)(b) of the *Federal Courts Citizenship, Immigration and Refugee Protection Rules*, and section 4 of the *Immigration and Refugee Protection Act* [IRPA], the style of cause should be amended to name the Respondent as the "Minister of Citizenship and Immigration".

IV. The Issues and Standard of Review

[8] The only issue before me is whether the IAD Decision was reasonable.

[9] The standard of review applicable the IAD decision is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 (CanLII), [2019] 4 SCR 653 [*Vavilov*] at para 23; *Singh v Canada (Citizenship and Immigration)*, 2022 FC 1645 at para 13; *Shah v Canada (Citizenship and Immigration)*, 2022 FC 1741 at para 15). 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 that constrain the decision maker" (*Vavilov* at para 85). The reviewing court must ensure that the decision is justifiable, intelligible, and transparent (*Vavilov* at para 95). Justifiable and transparent decisions account for central issues and concerns raised in the parties' submissions to the decision maker (*Vavilov* at para 127).

V. Legislative Framework

[10] The following is the relevant section of the IRPA:

Family reunification **12 (1)** A foreign national may be selected as a member of the family class on the basis of their relationship as the spouse, common-law	**Regroupement familial** **12 (1)** La sélection des étrangers de la catégorie « regroupement familial » se fait en fonction de la relation qu'ils ont avec un

partner, child, parent or other prescribed family member of a Canadian citizen or permanent resident.

Right to appeal – visa refusal of a family class.
63 (1) A person who has filed in the prescribed manner an application to sponsor a foreign national as a member of the family class may appeal to the Immigration Appeal Division against a decision not to issue the foreign national a permanent resident visa.
Humanitarian and compassionate considerations
65 In an appeal under subsection 63(1) or (2) respecting an application based on membership in the family class, the Immigration Appeal Division may not consider humanitarian and compassionate considerations unless it has decided that the foreign national is a member of the family class and that their sponsor is a sponsor within the meaning of the regulations.

citoyen canadien ou un résident permanent, à titre d'époux, de conjoint de fait, d'enfant ou de père ou mère ou à titre d'autre membre de la famille prévu par règlement.

Droit d'appel : visa
63 (1) Quiconque a déposé, conformément au règlement, une demande de parrainage au titre du regroupement familial peut interjeter appel du refus de délivrer le visa de résident permanent.

Motifs d'ordre humanitaires
65 Dans le cas de l'appel visé aux paragraphes 63(1) ou (2) d'une décision portant sur une demande au titre du regroupement familial, les motifs d'ordre humanitaire ne peuvent être pris en considération que s'il a été statué que l'étranger fait bien partie de cette catégorie et que le répondant a bien la qualité réglementaire.

[11] The following is the relevant section of the IRPR:

Member
117 (1) A foreign national is a member of the family class if, with respect to a sponsor, the foreign national is :
(a) the sponsor's spouse, common-law partner or conjugal partner;
(b) a dependent child of the sponsor;
(c) the sponsor's mother or father;
(d) the mother or father of the sponsor's mother or father;
[…]
Excluded relationships
117(9) A foreign national shall not be considered a member of the family class by virtue of their relationship to a sponsor if
[…]

Regroupement familial
117 (1) Appartiennent à la catégorie du regroupement familial du fait de la relation qu'ils ont avec le répondant les étrangers suivants :
a) son époux, conjoint de fait ou partenaire conjugal;
b) ses enfants à charge;
c) ses parents;
d) les parents de l'un ou l'autre de ses parents;
[…]
Restrictions
(9) Ne sont pas considérées comme appartenant à la catégorie du regroupement familial du fait de leur relation avec le répondant les personnes suivantes :
[…]

(d) subject to subsection (10), the sponsor previously made an application for permanent residence and became a permanent resident and, at the time of that application, the foreign national was a non-accompanying family member of the sponsor and was not examined.	**d)** sous réserve du paragraphe (10), dans le cas où le répondant est devenu résident permanent à la suite d'une demande à cet effet, l'étranger qui, à l'époque où cette demande a été faite, était un membre de la famille du répondant n'accompagnant pas ce dernier et n'a pas fait l'objet d'un contrôle.

VI. Analysis

A. *Was the IAD decision reasonable?*

[12] The Applicant appealed the decision of the Officer to the IAD by the virtue of s. 63(1) of IRPA.

[13] There is no question that the Applicant's son, Mr. Nouman, was never examined during the processing of the Applicant's permanent resident application. The IAD therefore concluded that he was excluded as a member of family class by the operation of s. 117(9)(d) of IRPR. At the judicial review hearing, the Applicant's counsel conceded that the IAD's legal finding on this point was correct, and that by the operation of 117(9)(d) of IRPR, Mr. Nouman was not a member of family class for immigration purposes.

[14] The IAD then applied its obligation under s. 65 of IRPA which explicitly prohibits it from considering H&C factors if the appeal was under s. 63(1) of IRPA "unless it has decided that the foreign national is a member of the family class".

[15] It was therefore reasonable to not consider H&C factors when the IAD had no such jurisdiction.

[16] The Applicant argued that if the IAD had clearly stated that it had not jurisdiction, the reasons would have been reasonable. However, once it started dealing with it starting at para 21 of the decision, it assumed jurisdiction and it needed to engage in a robust H&C analysis.

[17] I disagree with the Applicant's characterization that the IAD assumed jurisdiction over H&C. Even if it had, the IAD is not a court of inherent jurisdiction, and as an administrative tribunal, the limits of its authority are defined by legislation. Engaging in an H&C analysis would have constituted an error because the IAD would have acted outside of its jurisdiction.

[18] However, this is not what happened here. The IAD was an appellate body and had a duty to review the Officer's decision. It was within the jurisdiction of the Officer to consider H&C factors. It was in its reviewing capacity that the IAD engaged with H&C factors, which was reasonable.

[19] How the IAD also dealt with the Officer's decision on H&C factors was reasonable. The IAD explained clearly referred to the different parts of the evidence that had dictated the Officer's weighing of the evidence and found that the Officer had the right to dismiss the application on the basis of H&C (at para 23). Even though the IAD mistakenly referred to India rather than Pakistan, I find that this was not a determinative mistake. I disagree with counsel that this is evidence of the IAD's overall careless approach to the case where the IAD clearly explained its chain of reasoning in its reasons.

[20] I find that the IAD clearly explained that by virtue of relevant legislative provisions, Mr. Nouman was not a member of the family class. Since it had no jurisdiction over H&C, it did not assess it, and it ultimately dismissed the appeal. The IAD's conclusions are rationally connected to the evidence and to the legal provisions.

[21] For these reasons, I find the IAD Decision to be reasonable and I dismiss the judicial review application.

VII. Conclusion

[22] The Application for Judicial Review is dismissed.

[23] There is no question to be certified.

JUDGMENT IN IMM-10753-22

THIS COURT'S JUDGMENT is that

1. The application for Judicial Review is dismissed.

2. There is no question for certification.

"Negar Azmudeh"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-10753-22
STYLE OF CAUSE:	MUHAMMAD ASHIQ v. MIRC
PLACE OF HEARING:	MONTRÉAL, QUEBEC
DATE OF HEARING:	JUNE 6, 2024
REASONS FOR JUDGMENT AND JUDGMENT:	AZMUDEH J.
DATED:	JUNE 24, 2024

APPEARANCES:

Ciro Paul Scotti	FOR THE APPLICANT
Jeanne Robert	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Siro Paul Scotti Montréal, QC	FOR THE APPLICANT
Department of Justice Canada Montréal, QC	FOR THE RESPONDENT