Federal Court  Cour fédérale

Date: 20210902

Docket: IMM-7598-19

Citation: 2021 FC 916

Ottawa, Ontario, September 2, 2021

PRESENT: The Honourable Madam Justice McVeigh

BETWEEN:

LIWAYWAY MIRANDA

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The Applicant, Liwayway Miranda, seeks judicial review of a December 4, 2019 refusal to extend her work permit by an immigration officer [the "Officer"].

[2] Though this is a judicial review of a work permit extension, it is complicated by the Applicant's immigration history, which includes allegations of criminality, mistakes by counsel,

and potential unfairness on the part of the Respondent. This Application only judicially reviews the work permit extension and does not review her overall experiences with the Respondent.

[3] This is important to remember, given that the Applicant has argued – in her request for special costs – what I see are really matters that would be best pursued in a civil action. This is because the arguments pertaining to why I should award costs, and what the costs are to compensate the Applicant for, resemble civil torts and damages.

[4] I do wish to note that counsel were both excellent advocates on behalf of their clients.

I. Chronology

[5] The Applicant arrived in Canada in 2009 to work as a live-in caregiver [“LIC”]. In 2012, she applied for her permanent residency [“PR”] under the LIC program, an option which is no longer in place.

[6] The application took a significant amount of time to process, and in 2014 she received confirmation that she met the eligibility requirements for her PR. In 2016, she wrote to the visa office to follow up. She received a letter in October 2016 indicating that her accompanying family members required medical examinations, as well as requesting police certificates and various other administrative requirements. In her affidavit, the Applicant states that she complied with the requests.

[7] In 2018, while she was still waiting for the results of her PR application, she was charged with various offences under the *Immigration and Refugee Protection Act*, SC 2001 c 27 [*IRPA*] including: migrant trafficking, contravention of the act, counselling misrepresentation, and counselling offences under the act. The relevant sections of the *IRPA* are: ss. 118(1); 124(1)(c); 126; and 131. The charges related to her business which provided workers for an Ontario mushroom farm.

[8] As a result of the charges, her business was not viable during the period during which she had been charged, so she took a job. On April 9, 2019, she applied to extend her worker status pending the outcome of her PR application. In the Application, her counsel (at the time) stated that:

> Ms. Miranda is eligible for an open work permit as she falls within **R207(d)** of the *Immigration and Refugee Protection Regulations* as a foreign national who has applied to become a permanent **resident under the Live-in Caregiver Program and her application has not yet been finalized.**
>
> (CTR at page 54) [Emphasis added]

[9] On June 26, 2019, her PR application was denied, and she applied to challenge the refusal at this Court in file IMM-4655-19, which is currently being re-determined.

[10] In late 2019, the charges against the Applicant were stayed or withdrawn.

[11] The negative work permit decision was a short letter accompanied by brief Global Case Management System [“GCMS”] notes. The letter states that the Officer is refusing the Applicant’s work permit because:

> You have worked in Canada for one or more periods totalling four years.
>
> **Your Live-In Caregiver application for permanent residence was refused therefore you are ineligible for a work permit.**
>
> [Emphasis added]

[12] The brief GCMS notes are:

> Applicant is a 49 year old married female from the Philippines in implied status. Last WP was valid from 2017/04/11 to 2019/04/11 and **would like to extend her stay until unknown date as she waits for her PR application – her Live-In Caregiver application was refused on 2019/06/26**. **Client is ineligible for another Work Permit as she her [*sic*] PR application was refused and** she has worked in Canada for one or more periods totaling four years. Application for WP extension is refused.
>
> [Emphasis added]

[13] For the reasons set out below, I am dismissing this application for judicial review and not awarding costs.

II. Issues

[14] The issues in this judicial review are as follows:

A. Was it reasonable to refuse the work permit extension on the grounds that the Applicant’s Live-In Caregiver application for permanent residence was refused therefore she is ineligible for a work permit?

B. Was it reasonable to refuse the work permit extension on the grounds that the Applicant had worked in Canada for one or more periods totalling four years?

III. Standard of Review

[15] The parties agree, as do I, that the standard of review is one of reasonableness. There is a rebuttable presumption that the reasonableness standard will apply when a Court reviews an administrative decision, and there is no basis for departing from that presumption in this case (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 7, 10, 23 [*Vavilov*]).

IV. Analysis

A. *Was it reasonable to refuse the work permit extension on the grounds that the Applicant's Live-In Caregiver application for permanent residence was refused therefore she is ineligible for a work permit?*

(1) The Law

[16] S. 207(d) is the section the Applicant applied under [see para 6 above]:

207 A work permit may be issued under section 200 to a foreign national in Canada who	207 Un permis de travail peut être délivré à l'étranger au Canada, en vertu de l'article 200, dans les cas suivants :
(d) has applied to become a permanent resident and the Minister has granted them an exemption under subsection 25(1), 25.1(1) or 25.2(1) of the Act;	d) il a demandé le statut de résident permanent et le ministre a levé, aux termes des paragraphes 25(1), 25.1(1) ou 25.2(1) de la Loi, tout ou partie des critères et obligations qui lui sont applicables;

[17] However, s. 205(a) is the section the Applicant now says she qualified for a work permit:

205 A work permit may be issued under section 200 to a foreign national who intends to perform work that (a) would create or maintain significant social, cultural or economic benefits or opportunities for Canadian citizens or permanent residents;	205 Un permis de travail peut être délivré à l'étranger en vertu de l'article 200 si le travail pour lequel le permis est demandé satisfait à l'une ou l'autre des conditions suivantes : a) il permet de créer ou de conserver des débouchés ou des avantages sociaux, culturels ou économiques pour les citoyens canadiens ou les résidents permanents;

[18] The Applicant submits that it was unreasonable to deem her ineligible for a work permit extension because her PR application was refused, and that the Officer was required to assess her personal circumstances prior to rendering a decision on her application.

[19] She says that the use of the word —and— in the GCMS notes shows that "the refusal of the Applicant's PR application was not determinative of a refusal on her work permit extension application" [see para 12 above].

[20] She goes on to argue that the PR application was refused on June 26, 2019, and the work permit application was transferred to the Etobicoke IRCC office on September 24, 2019, three months after the PR was refused. If the PR refusal was determinative, she says, it would have made no sense to transfer the file post-PR refusal. She then quotes the policy manual, IP 4 Processing Live-in Caregivers in Canada, which it suggests cases requiring a "more in-depth assessment" be transferred to an IRCC inland office, as this case was.

[21] She advanced the argument that the "case type" of the work permit extension was reflective of an s. 205(a) work permit [see para 16 above]. She argues that despite applying under s. 207(d), [see para 15 above], there was no grounds for her to apply under those regulations (which have to do with humanitarian and compassionate grounds), and it was clear from the situation and the history of the Applicant that she was intending to apply under s. 205(a) despite the section that her counsel actually applied under. Therefore, she argues, the refusal was a "mischaracterisation of the request and unreasonable".

[22] She further submits that all extensions are to be assessed on a case-by-case basis, and that the complete record should be taken into account before rendering a decision. Her situation, she argues, showed a generally positive immigration history and that refusing to consider her personal circumstances was therefore unreasonable.

[23] She goes on to say that because the charges were withdrawn or stayed, the evidentiary basis for the refusal of her PR was in question, and yet the Officer relied on the PR refusal for their decision. Ultimately, she says, the "Officer's process and outcome were unreasonable and had no basis in law," as they "make no reference to any legislative or … policy grounding for the finding."

[24] Even if the Application citing s. 207(d) was a typographical error and if s. 205(a) had been cited, the reason for the extension request as set out in clear language [see para 8 above] disappeared during the application submissions. Had the PR not been refused, or had the application letter made the request for the purpose of earning a living while waiting for her PR,

then an argument could be made. That is not the case here. In the brief application filed by her then counsel, there was no argument made or evidence provided or which could be made that would support the Officer finding that she fulfilled the s. 205(a) requirement that she "create or maintain significant social, cultural, or economic benefits or opportunities for Canadian citizens or permanent residents."

[25] This Application was brought solely under the premise that the Applicant wanted to support herself while waiting for the decision on her PR application. This is clear from the cover letter written by counsel, and despite the paragraph in the regulations cited, or what she now says should have been cited. Clearly, this was the stated reason for her request and there was no evidence that she "would create or maintain significant social, cultural or economic benefits or opportunities for Canadian citizens or permanent residents" as required under s. 205 (a). Her PR was refused, and so the stated reason for her extension disappeared.

[26] There may have been other routes to an extension, but to borrow the Respondent's use of *Sharma v Canada (MCI),* 2014 FC 786 [*Sharma*], in their submissions on s. 205(a), it is not reasonable to require immigration officers to attempt to find any possible way to allow a request given the sheer number of ways entry to Canada may be granted: "…it is difficult to fault the Officer for considering the application as the Applicant indicated he wanted it to be considered" (*Sharma* at para 36).

[27] I am also not convinced by the Applicant's argument regarding the Officer's use of the word —and— in the GCMS notes. The Applicant argued that the use of —and— meant that the

two reasons for refusal are co-dependant. There is no legislative authority for that interpretation or reliance on the word —and— by the Officer as I find the Officer found two reasons which were separate reasons without apparent connection. *Vavilov* instructs us, following years of jurisprudence, that a "[r]easonableness review is not a 'line-by-line treasure hunt for error'..." (*Vavilov* at para 102). The notes give two reasons for denying the work permit extension, and it is easy for this Court to see the reasoning why. That is sufficient to, upon judicial review, find the decision to be reasonable.

[28] I am similarly unconvinced by the argument that if the PR situation was not determinative, then the file would not have been transferred. There are a host of reasons why a file might have been transferred, including staffing or logistical issues. Without further evidence, it would be reckless to assume the only reason it was transferred was because the file required a "more in-depth assessment." I do not find that a transfer means that there was an obligation on the Officer to do more than what is in the letter and GMCS notes, nor do I think a lack of a more in-depth assessment after it was transferred makes the decision unreasonable.

[29] There is also no reason to suggest that the Applicant's whole immigration history was not taken into account in the Officer's decision. The evidentiary basis for the PR refusal might have been in question, as the Applicant submits, but at the time of the decision, her PR was refused, and so her application was still not appropriate for a work permit extension of the type she was seeking. I note that there is nothing in the record on what the current situation with her PR status is, and it would be improper to speculate.

B. *Was it reasonable to refuse the work permit extension on the grounds that the Applicant had worked in Canada for one or more periods totalling four years?*

[30] The Applicant argues that the Officer relied on s. 200(3)(g) of the *Immigration and Refugee Protection Regulations* (SOR/2002-227) [*IRPR*] for the denial on this basis, which was repealed in 2018. The Applicant notes that the Operational Guidelines state that when an open work permit is submitted with an application for PR under the LIC program, the maximum to which it can be extended is four years. She says, however, that she has previously been granted extensions beyond the four years, and that she has been on work permits for the seven years while she waited for the processing of her PR application. Therefore, she states, "any reliance on the repealed provisions or guidelines that speak to a four-year cap were inapplicable in the case at bar."

[31] The Applicant puts forward the argument that making an error in relying on a repealed law is the equivalence of disregarding the law, which renders a decision unreasonable. She offers no jurisprudential support for this conclusion. She then alleges that because of the seven-year history, the decision leaves one wondering "whether the Officer considered the relevant record at all".

[32] In this case, even if the Officer relied on a repealed regulatory provision, any reliance on this ground is immaterial given that the application would have been denied based on her ineligibility for a work permit under paragraph 207(d), or her failed Application for permanent residency. While the error of relying on a repealed section is not acceptable, it did not go to the heart of the decision and was given as a second reason the permit was refused. As seen above,

the first reason the work permit was refused was determinative so the error in the second reason is regrettable but ultimately an immaterial error.

[33] It is also not a reviewable error that the Applicant has previously been granted work permit extensions when she feels her status was the same. This is because, as set out above, her status was not the same as when her application for PR was rejected.

[34] To summarize, I find that the Officer gave two reasons of which the first was sufficient and the second not determinative. I do not agree that the Officer's use of —and— in the GCMS notes was meant to be conjunctive it was conjunctive, given that it only appeared in the GCMS notes, rather than legislation, and there is no legislative authority for their purported interpretation of the word —and— (*Krishan v Canada (Minister of Citizenship and Immigration*, 2018 FC 1203 at paras 50-51).

[35] I find that the decision was reasonable and will dismiss the application.

[36] No certified questions were presented and none arose.

V. Costs

[37] Special costs pursuant to s. 22 of the *Federal Courts Citizenship, Immigration and Refugee Protection Rules*, SOR/93-22, were sought by the Applicant. Given my findings, it is not necessary to deal with those arguments, as I am not prepared to exercise my discretion to award costs to the Applicant given they were not successful.

JUDGMENT IN IMM-7598-19

THIS COURT'S JUDGMENT is that:

1. The Application is dismissed.

2. No question is certified.

3. No special costs are awarded.

"Glennys L. McVeigh"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-7598-19
STYLE OF CAUSE:	LIWAYWAY MIRANDA v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	HELD BY VIDEOCONFERENCE
DATE OF HEARING:	AUGUST 10, 2021
JUDGMENT AND REASONS:	MCVEIGH J.
DATED:	SEPTEMBER 2, 2021

APPEARANCES:

Mario D. Bellissimo	FOR THE APPLICANT
David Cranton	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Bellissimo Law Group PC Barristers & Solicitors Toronto, Ontario	FOR THE APPLICANT
Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT