Federal Court  Cour fédérale

Date: 20211112

Docket: IMM-4544-20

Citation: 2021 FC 1226

Ottawa, Ontario, November 12, 2021

PRESENT: The Honourable Madam Justice Aylen

BETWEEN:

ZABEULLA AZIZULLA

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] This is an application for judicial review of a decision, dated July 28, 2020, made by a visa officer [Officer] at the Embassy of Canada in Moscow, Russia refusing the Applicant's temporary resident visa [TRV] application on the basis that the Officer was not satisfied that the Applicant would leave Canada at the end of his stay as a temporary resident, as stipulated in paragraph 179(b) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [the *Regulations*].

[2] For the reasons that follow, this application for judicial review will be allowed.

I. Background and Decision at Issue

[3] The Applicant suffers from retinitis pigmentosa and seeks a multi-entry TRV to enter Canada to obtain further acupuncture and herbal treatments from Dr. Weidong Yu at the Wellspring Clinic in Vancouver, British Columbia. The Applicant has already received one round of treatment from Dr. Yu in Shanghai, China and seeks a TRV to facilitate at least eight further rounds of treatment.

[4] The Applicant previously applied for a TRV to enter Canada to obtain this treatment on two other occasions, both of which applications were denied. The Applicant commenced an application for leave and for judicial review in relation to the second decision and the parties agreed to set aside the decisions and have the application re-determined by another officer.

[5] On July 14, 2020, the Applicant submitted a third application for a TRV (the one at issue in this proceeding), which was supported by additional information and documentation and further submissions from the Applicant’s counsel. By letter dated July 28, 2020, the application was refused. The letter briefly explained that, after reviewing the Applicant's application and supporting documentation, the Officer determined that the application did not meet the requirements of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the *IRPA*], and the *Regulations*. Specifically, the Officer was not satisfied that the Applicant would leave Canada at the end of his stay as a temporary resident, as stipulated in paragraph 179(b) of the *Regulations*,

based on: (a) the purpose of his visit; (b) the limited employment prospects in his country of residence; and (c) his personal assets and financial status.

[6] The Global Case Management System [GCMS] notes from entries dated July 27 and 28, 2020 (which form part of the reasons for decision) provide further reasons as to why the Officer refused the Applicant's application. Specifically, they state:

> Submission reviewed, both original and new. Applicant is a Russian citizen residing in Moscow. He is suffering from retinitis pigmentosa, a condition which is likely to impair vision if not treated. The applicant has searched the internet and found Dr. Yu in Vancouver who offered to provide a 10 day acupuncture treatment followed by future treatment every 3-6 months. The applicant has visited Dr. Yu since submitting his TRV application when the doctor was visiting China last year and has obtained some treatment while there. Notwithstanding the above, there is limited information on file which would indicate that this condition cannot be treated in home country which raises my concerns regarding the purpose of this trip.
>
> Applicant stated he is employed as head of purchasing department in a company in Moscow where he is earning about RUR 166,000/month which is a rather modest income considering the costs of living in Russia's capital. The applicant has provided evidence of his savings, however, there is no banking history for most of the amounts declared and therefore the provenance of the funds in his possession is rather unclear, especially considering the applicant's stated income. Therfore, am not satisfied that the applicant's employment and financial ties to home country are sufficient to compel him to leave Canada if a visa was issued. I have considered the applicant's personal ties, as stated in submissions, however, am not satisfied that these would compel him to leave Canada. Upon review of the entire information on file, am not satisfied that this applicant has a valid purpose for travelling to Canada and that his ties to home country are indeed sufficient to compel him to leave Canada if a visa was issued.

II. Issue to be Determined and Standard of Review

[7] The sole issue raised on this application is whether the decision to reject the Applicant's TRV application was unreasonable.

[8] Both parties submit that the applicable standard of review of a visa officer's decision to issue or refuse a TRV is reasonableness. I agree. This Court has previously held that a visa officer's decision to deny a TRV application based on the belief that an applicant would not leave Canada at the end of their stay attracts the reasonableness standard of review [see Canada (Minister of Citizenship and Immigration) v Vavilov, 2019 SCC 65 [Vavilov] at paras 10, 16-17; *Utenkova v Canada (Citizenship and Immigration*), 2012 FC 959 at para 5; Zhang v Canada (Citizenship and Immigration), 2019 FC 764 at para 12].

[9] Reasonableness is a deferential, but robust, standard of review. The reviewing court must determine whether the decision under review, including both its rationale and outcome, is transparent, intelligible and justified. 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. Whether a decision is reasonable depends on the relevant administrative setting, the record before the decision-maker, and the impact of the decision on those affected by its consequences [see Vavilov, supra at paras 12-13, 15, 85, 88-90, 94, 133-135].

III. Analysis

[10] Foreign nationals wishing to enter Canada must rebut the presumption that they are immigrants [see *Danioko v Canada (Citizenship and Immigration)*, 2006 FC 479 at para 15; *Ngalamulume v Canada (Citizenship and Immigration)*, 2009 FC 1268 at para 25]. Applicants for TRVs must therefore establish, among other things, that they will leave Canada at the end of the requested period of the stay [see sections 20(1) and 29(2) of the *IRPA* and section 179(b) of the *Regulations*]. In the present case, the Applicant's TRV application was rejected because the Applicant failed to satisify the Officer that he would leave Canada at the end of his stay as a temporary resident.

[11] The Applicant, who bears the onus of demonstrating that the decision is unreasonable, raised three arguments challenging the reasonableness of the Officer's decision, which I will address in turn.

[12] The first ground advanced by the Applicant is that the Officer's reasons offer no coherent justification, in the face of the evidentiary record, for the Officer's concern with the purpose of the Applicant's planned visit to Canada. The Applicant asserts that there was substantial evidence before the Officer supporting the Applicant's reasons for wanting to come to Canada to continue his desired medical treatment to slow down the progression of his illness and that the record before the Officer clearly supported the conclusion that the desired treatment was not available locally.

[13] The Respondent acknowledged at the hearing that the Applicant described clearly, and with supporting evidence, the purpose of his intended visit to Canada. However, the Respondent asserts that the Applicant did not demonstrate that his medical condition could not be treated in Russia and as a result, the Officer's concern regarding the purpose of the Applicant's trip was reasonable.

[14] I agree with the Respondent. It is not the role of the Court on this application to re-weigh the evidence that was before the Officer. The Officer had considerable discretion in assessing the evidence advanced by the Applicant regarding the intended purpose of the Applicant's trip and it was reasonable for the Officer to conclude that there was limited information before him that would indicate that this condition could not be treated in Russia. The Applicant has not pointed to any evidence in his application expressly addressing the availability of the desired treatment in Russia and the fact that the Officer decided not to "infer" from the evidence before the Officer that the desired treatment was not available in Russia does not render the Officer's decision unreasonable.

[15] The second ground advanced by the Applicant is that the Officer's concern with the Applicant's "limited employment prospects" is unjustifiable and unintelligible. The Applicant asserts that while the Officer's letter stated a concern regarding the Applicant's alleged limited employment prospects, the Officer's GCMS notes make no mention of the Applicant's future employment prospects but rather raise a concern about the Applicant's current modest income considering the costs of living in Russia's capital. Even if one accepts that the Applicant's income as noted by the Officer is modest for Russia (which the Applicant does not accept as an accurate or intelligible finding), the Applicant asserts that the Officer has not explained why that would

make the Applicant's employment prospects limited. Moreover, the Applicant asserts that there was evidence from his employer before the Officer confirming that he is gainfully employed, such that there was no basis for the Officer to be concerned about the Applicant's employment prospects. The Applicant asserts that the Officer's failure to engage with this evidence renders the decision all the more unreasonable.

[16] The Respondent asserts that the Applicant's focus on the term "employment prospects" in the Officer's letter is misguided, as the Officer's GCMS notes make it clear that the Officer's concern was tied to the Applicant's modest salary earned through his current employment and it would not take a "generous reading" of the Officer's notes to understand that the Officer did not think the Applicant's earning potential was a strong enough tie to Russia.

[17] A decision is unreasonable where the conclusion reached cannot flow from the analysis undertaken [see *Vavilov, supra* at para 103]. I agree with the Applicant that the Officer's conclusion that the Officer was not satisfied that the Applicant would leave Canada at the end of his stay based on the Applicant's limited employment prospects in Russia does not flow from the analysis undertaken by the Officer as set out in the GCMS notes, as the GCMS notes do not analyse the Applicant's employment prospects in Russia. While the Officer did express concerns in the GCMS notes regarding the Applicant's financial ties to Russia, the Applicant's "personal assets and financial status" was stated by the Officer to be a separate ground for their decision.

[18] The third ground advanced by the Applicant is that the Officer ignored several factors weighing in favour of granting the TRV application which were highlighted for the Officer in the

Applicant's counsel's written submissions in support of the application, including the Applicant's extensive travel history that showed repeated compliance with the immigration laws of over ten countries, the Applicant's exceptionally strong ties to Russia (his wife and parents reside in Russia) and lack of any ties to Canada, and the Applicant's express statement that he has every intention of abiding by all of Canada's immigration laws. Even if the Court finds that such evidence was not ignored by the Officer, the Applicant asserts that the decision still falls short of the principles of justification and transparency, as the Officer was non-responsive to detailed submissions concerning this evidence.

[19] The Respondent asserts that the Officer clearly states in their notes that the Officer considered the Applicant's personal ties as stated in his submissions, such that the Applicant's assertion that this evidence was ignored by the Officer must be rejected.

[20] Further, the Respondent asserts that while compliance with the immigration laws of other countries can be a positive factor, a failure to address this in the reasons, where the Officer's focus is clearly on other concerns, is not grounds alone for finding the decision unreasonable. The Respondent argues that a visa officer is presumed to have considered all of the evidence before them and is not required to provide comprehensive reasons and list all of the evidence. Rather, it is sufficient to address the issues and key concerns raised by the evidence. Given the Officer's concerns with the purpose of the trip and the factors compelling the Applicant's return to Russia, the Applicant's travel history was not sufficiently significant to, or so inconsistent with, the determination of the Officer to find that this evidence was ignored. While the Officer's reasons

were brief, the Respondent asserts that they permit the Court to understand why the Officer arrived at the decision they did.

[21] I disagree with the Respondent. The Officer's reasons simply state the issue ("I have considered the applicant's personal ties") and then state the Officer's conclusion ("I am not satisfied that these would compel him to leave Canada"). Without any analysis or explanation to back up the Officer's conclusion, this portion of the Officer's reasons are not really "reasons" at all [see *Adu v Canada (Minister of Citizenship and Immigration)*, 2005 FC 565 at para 14]. Moreover, in light of the significant evidence before the Officer that contradicted their conclusion, the Officer was obligated to explain, even briefly, why the Officer preferred the Officer's own conclusion over this evidence, which the Officer did not do [see *Penez v Canada (Citizenship and Immigration)*, 2017 FC 1001 at para 26].

[22] In light of my determinations above and considering the Officer's decision as a whole, I find that there are sufficiently serious shortcomings in the Officer's decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency. Therefore, the application for judicial review will be allowed and the Applicant's application for a TRV will be remitted for re-determination by a different officer.

[23] Neither party proposed a question for certification and I agree that none arises.

JUDGMENT IN IMM-4544-20

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is allowed. The July 28, 2020 decision refusing the Applicant's temporary resident visa application is set aside and the application is remitted for re-determination by another visa officer.

2. No question is certified.

"Mandy Aylen"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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