Federal Court  Cour fédérale

Date: 20220413

Docket: IMM-1342-20

Citation: 2022 FC 535

Ottawa, Ontario, April 13, 2022

PRESENT: Madam Justice Sadrehashemi

BETWEEN:

JUN YUAN PAO

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Ms. Pao, became a landed immigrant of Canada in May 1973, approximately 48 years ago. She is 81 years old. In 2017, she renounced her permanent resident status. Ms. Pao asserts that she took this step because of a misunderstanding about the new requirements for electronic travel authorizations ("eTAs") that had come into place in 2016.

[2] Ms. Pao subsequently applied for a permanent resident card (“PR Card”) where she asked the officer to consider the circumstances surrounding her recent renunciation of her permanent resident status and grant her a PR Card in spite of it. This application was refused in 2018 and challenged by judicial review. This Court ordered that the matter be redetermined by another officer, principally on the grounds that the officer had fettered their discretion by not making an independent decision and instead relied on the suggestion of the Case Management Branch (*Pao v Canada (Minister of Citizenship and Immigration)*, 2019 FC 1397 [*Pao*]).

[3] Ms. Pao’s application for a PR Card was redetermined and refused again in February 2020. This judicial review is with respect to this second refusal of the PR Card.

[4] The key issue on judicial review is the sufficiency of the Officer’s reasons, particularly whether the Officer’s decision was responsive to Ms. Pao’s submissions. The Respondent (“the Minister”) acknowledges that the Officer did not directly address Ms. Pao’s submissions about the circumstances surrounding her renunciation, but argues that it was unnecessary to do so given the limited jurisdiction of the Officer considering the PR Card application.

[5] I agree with the Minister. The Officer’s decision is reasonable. The Officer referenced the sections of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*] and the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [*IRPR*] that set out the limited scope of an officer’s review of a PR Card application where there has already been a decision renouncing one’s permanent resident status. Ms. Pao’s complaint is really about the decision to accept her renunciation and is an attempt to re-open that decision through the PR Card process.

Ms. Pao's submissions to the Officer did not provide any analysis as to how the Officer should interpret the *IRPR* to consider her request to treat her renunciation as void. Though the Officer's decision could have been more fulsome, in this context, given the Officer's appropriate references to *IRPA* and *IRPR*, setting out their limited jurisdiction, and the lack of submissions from the Applicant that address this issue, I do not accept that there would be any practical purpose in sending the matter back for redetermination for a third time.

II. Background Facts

[6] Ms. Pao became a landed immigrant in Canada in 1973, before the introduction in *IRPA* of the PR Card – a status document confirming permanent resident status in Canada. Prior to making the application that is the subject of this judicial review, Ms. Pao had never applied for or received a PR Card. Prior to 2016, Ms. Pao travelled between Canada and Hong Kong on her visa-exempt Hong Kong passport.

[7] According to Ms. Pao, the confusion about her status arose when it became a requirement for foreign nationals from visa-exempt countries to obtain electronic travel authorizations ("eTA") prior to entering Canada (s 11(1.01) of *IRPA*). Even though Ms. Pao was a permanent resident at the time and therefore not required to obtain an eTA to travel to Canada, she stated that her travel agent wrongly advised her that an eTA was needed to fly back to Canada in March 2016. Ms. Pao applied and erroneously received an eTA despite having permanent resident status in Canada.

[8] Following this, Ms. Pao made five more eTA applications to travel to Canada in February, March and April 2017. All of these applications were treated as “withdrawn” because she already had permanent resident status.

[9] Ms. Pao then sought help from family members and friends as she wanted to return to Canada. A relative prepared an Application to Voluntarily Renounce Permanent Resident Status. Ms. Pao asserts that she did not understand the contents, or the consequences of signing the application, but she did sign it on April 19, 2017 and it was approved. Her status was confirmed as renounced on May 11, 2017. Subsequent to this, Ms. Pao received an eTA as a foreign national travelling to Canada.

[10] In late 2018, Ms. Pao obtained legal advice from an immigration lawyer. It was at that time that Ms. Pao indicates she became aware of the legal consequences of her actions in renouncing her permanent resident status.

[11] The immigration lawyer filed an application for a PR Card on December 17, 2018. In this application, Ms. Pao’s lawyer provided a statutory declaration of Ms. Pao, setting out the circumstances surrounding her application to renounce her permanent resident status. Ms. Pao asked that the Officer considering the PR Card application treat her renunciation as void given the circumstances.

[12] On March 28, 2019, Ms. Pao's PR Card application was refused on the basis that she had lost her permanent resident status through renunciation (s 46(1)(e) of *IRPA*) and therefore was not entitled to a PR Card (s 59(1)(a) of *IRPR*).

[13] This first refusal was challenged by way of judicial review. The main concern was that the officer, who had indicated in their notes that they thought Ms. Pao should be entitled to a PR Card, had then sought the opinion of the Case Management Branch and then rejected the application. This Court found that the "real issue in this application for judicial review is less the manner in which the Officer exercised his discretion but whether he made an independent decision or merely adopted the opinion of another, that is the Case Management Branch" (*Pao* at para 18).

[14] The matter was sent back for redetermination. Ms. Pao relied on the same submissions and evidence that was filed in 2017. The application was refused on the grounds that as a person who had been found to have renounced their permanent resident status, she did not meet the requirements for a PR Card under s 59(1)(a) of *IRPR*.

III. Issue and Standard of Review

[15] The only issue on judicial review is whether the Officer's decision to refuse Ms. Pao's application for a PR Card was reasonable. The parties agree that I should apply the reasonableness standard of review to my analysis. The Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] confirmed that

reasonableness is the presumptive standard of review when reviewing administrative decisions on their merits. This case raises no issue that would justify a departure from that presumption.

[16] In *Vavilov*, the Supreme Court of Canada described the reasonableness standard as a deferential but nonetheless "robust form of review," where the starting point of the analysis begins with the decision-maker's reasons (at para 13). A decision-maker's formal reasons are assessed "in light of the record and with due sensitivity to the administrative regime in which they were given" (*Vavilov* at para 103).

[17] The Court described a reasonable decision as "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). Administrative decision-makers, in exercising public power, must ensure that their decisions are "justified, intelligible and transparent, not in the abstract, but to the individuals subject to it" (*Vavilov* at para 95).

IV. Analysis

[18] Subsection 59(1) of *IRPR* sets out the circumstances where an officer must issue a PR Card upon receiving an application. It sets out a conjunctive list of four items. The first item is that the applicant "has not lost permanent resident status under subsection 46(1) of the Act" (s 59(1)(a) of *IRPR*). Subsection 46(1) of *IRPA* sets out the different circumstances where a person loses their permanent resident status. One of those circumstances is described as "on approval by an officer of their application to renounce their permanent resident status" (s 46(1)(e) of *IRPA*).

[19] There is no controversy between the parties that Ms. Pao's application to renounce her permanent residence had been approved by an officer and that this meant that she lost her permanent resident status according to s 46(1)(e) of *IRPA*.

[20] The dispute between the parties is about whether an officer considering a PR Card application under s 56(1) of *IRPR* can issue a PR Card even where a person's application to renounce their permanent resident status has been approved.

[21] In oral submissions, Ms. Pao's counsel made two points to assert that there is support for the view that the Officer considering a PR Card application has such a discretion. I note that neither of these submissions were made to the Officer, nor were they made in their written submissions. In any case, I do not find either compelling as a basis to find that the Officer's view of their jurisdiction was unreasonable in these circumstances.

[22] First, Ms. Pao points out that the first officer who had refused her application had initially commented in their notes that they thought her application should be approved. There was no further explanation in the officer's notes for this belief and ultimately the officer refused the application. I do not view this as a basis to find the Officer considering Ms. Pao's application overlooked a basis in *IRPA* or *IRPR* on which they had discretion to overturn the decision to approve the renunciation application.

[23] Second, Ms. Pao asks the Court to consider that Immigration, Refugees and Citizenship Canada [IRCC] has adopted a policy that no longer asks applicants to return their previous PR

Cards before they are issued a new one (IRCC operational instructions and guidelines, ENF 27 at 35), despite this being one of the requirements set out in s 59(1)(d) of *IRPR*. Ms. Pao argues that the existence of this policy demonstrates that IRCC understands that they have the discretion to issue PR Cards even when all of the requirements in s 59(1) are not fulfilled. I do not find this argument assists. It may well be that this practice/policy is inconsistent with s 59(1) of *IRPR*. Again, Ms. Pao has not pointed to any basis in *IRPA* or *IRPR* to support their view that the officer considering PR Card applications has the discretion to overturn a decision to approve an application to renounce permanent resident status.

[24] Ms. Pao also asks the Court to draw an analogy with the circumstances in the *Martinez Rodriguez* case, where Justice Harrington held that the Immigration Appeal Division [IAD] was required to consider whether the form signed at the visa post by the applicant, which waived their appeal rights at the IAD and renounced their permanent resident status, was truly consented to, instead of simply asserting that they had no jurisdiction to consider the case because of the renunciation itself (*Martinez Rodriguez v Canada (Minister of Citizenship and Immigration)*, 2011 FC 946 [*Martinez Rodriguez*]). The circumstances are distinguishable. The IAD is an appellate body that holds *de novo* hearings and can consider equitable factors; in *Martinez Rodriguez*, the renunciation of permanent residence application was tied up with the applicant consenting to waive their appeal rights at the IAD — it happened at the same time at the visa post. The same cannot be said about permanent residence renunciation and the PR Card application process in this case.

[25] I have carefully considered whether the Officer's reasons should be set aside because they are not adequately responsive to Ms. Pao's submissions. Ms. Pao relies on the Supreme Court of Canada's decision in *Vavilov* — in particular, that "the principles of justification and transparency require that an administrative decision maker's reasons meaningfully account for the central issues and concerns raised by the parties" (at paras 127-128).

[26] I agree that the Officer did not explicitly state that they could not treat her renunciation as void because of the limits imposed by s 59(1) of *IRPR*. But, the Officer's reasons identified the limits of their jurisdiction by setting out the relevant sections of *IRPA* and *IRPR* where there has been a renunciation of an applicant's permanent resident status. In her submissions to the Officer, and before this Court, the Applicant did not point to any part of *IRPA* or *IRPR* that provided the Officer with the discretion to issue a PR Card even where this condition was not met. The underlying facts of the renunciation are only relevant if Ms. Pao had shown that there is a basis in *IRPA* or *IRPR* for an officer to have this sort of discretion on a PR Card application.

[27] In these circumstances, I cannot find that there is a basis to interfere with the Officer's decision. I find that the decision is adequately responsive given the submissions that were before the Officer. The decision is transparent, intelligible and justified "in relation to the facts and law that constrain[ed]" the Officer (*Vavilov* at para 85).

[28] The application for judicial review is dismissed.

[29] The parties agreed that there is no question of general importance to be certified.

JUDGMENT IN IMM-1342-20

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed;

2. There is no question of general importance to be certified.

"Lobat Sadrehashemi"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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APPEARANCES:

Robert Y.C. Leong	FOR THE APPLICANT
Julio Paoletti	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Lowe and Company Barristers and Solicitors Vancouver, British Columbia	FOR THE APPLICANT
Attorney General of Canada Vancouver, British Columbia	FOR THE RESPONDENT