Federal Court  Cour fédérale

Date: 20230501

Docket: IMM-3452-22

Citation: 2023 FC 630

Ottawa, Ontario, May 1, 2023

PRESENT: The Honourable Madam Justice Elliott

BETWEEN:

MUTIAT OJUOLAPE BISIRIYU

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant seeks judicial review of a decision rendered by an Immigration Officer at the High Commission of Canada in Nairobi, Kenya, dated April 12, 2022 (the "Decision"). The Officer refused the Applicant's Temporary Resident Visa ("TRV") application.

[2] The Applicant asks this Court to set the Decision aside and send the matter back for redetermination by a different Immigration Officer.

[3] For the reasons that follow, this application is allowed.

II. **Background**

[4] The Applicant is a Nigerian citizen.

[5] In February 2022, the Applicant applied for a TRV to visit her son, Hakeem Bisiriyu, and her son's family in Canada from April 4, 2022 to April 30, 2022.

[6] In her Application Summary, the Applicant states that she has $4000 CAD saved up for her stay in Canada and notes that her son and his spouse are also supporting her travel itinerary. The Applicant states that she is self-employed, and has been in the business of "buying and selling" since 1984. Finally, in her Application Summary, the Applicant says that she applied twice for a visitor's visa to visit her son and his family, and that both applications were refused "based on consular discretion." The Applicant is widowed but has two daughters (and grandchildren) who also reside in Nigeria.

[7] The Applicant's son provided a letter of explanation, dated February 10, 2022, stating that his mother is a business owner in Nigeria, and she intends to return to her business at the end of her approximately 1-month long trip to Canada. In addition to her business, the Applicant owns land and a home. The letter also states that the Applicant is in good health and will not rely on public funds, health care, or government benefits during her short stay in Canada.

[8] The Applicant included proof of funds in her TRV application, as well as a letter from Amazon, which serves as proof of her son's job with the company.

III. **Decision under Review**

[9] On April 12, 2022, an Immigration Officer (the "Officer") at the Canadian High Commission in Nairobi, Kenya, denied the Applicant's TRV application.

[10] The Officer was not satisfied that the Applicant would leave Canada at the end of her stay, as stipulated by paragraph 179(b) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227.

[11] The Officer listed four reasons for the denial: 1) based on the Applicant's personal assets and financial status; 2) based on the Applicant's family ties in Canada and in her country of residence; 3) based on the purpose of the Applicant's visit; and 4) based on the Applicant's travel history.

[12] The Officer's Global Case Management System (GCMS) Notes elaborate on the above-listed reasons for refusal. The Officer finds the Applicant failed to demonstrate sufficient establishment such that the proposed visit would be a reasonable expense. The Officer found the Applicant's proof of funds insufficient.

[13] The Officer also found insufficient documentation in support of the Applicant's establishment in her home country, finding the Applicant has strong family ties in Canada.

[14] Finally, the Officer determined that the purpose of the visit appears unreasonable given the Applicant's socioeconomic circumstances. The Officer found "no proof of relationship provided" regarding the family visit. The Officer deemed the Applicant's travel history insufficient to count as a positive factor in their assessment, with no evidence of previous travel.

[15] Therefore, the Officer was not satisfied that the Applicant will leave Canada at the end of the period of authorized stay, refusing the application.

IV. **Issues and Standard of Review**

[16] The key issue is whether the Decision is reasonable. The Applicant submits that the Decision is unreasonable because the Officer failed to regard the totality of the evidence.

[17] The Applicant also raises a procedural fairness argument. The Applicant submits that she had a legitimate expectation not to be penalized for following Immigration, Refugees and Citizenship Canada's ("IRCC") guidelines.

[18] I agree with the parties that the standard to be applied to the substance of an Officer's decision is reasonableness as described in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at paragraphs 23, 25, 99. In summary, under the *Vavilov* framework, 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. An administrative decision-maker's exercise of public power must be "justified, intelligible and transparent": *Vavilov* at para 95.

[19] The ultimate question for a Court addressing issues related to procedural fairness is whether the procedure was fair in all the circumstances in that the Applicant knew the case to be met and had a full and fair chance to respond. This is similar to correctness review, per *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at paragraphs 54, 56.

V. **Analysis**

A. *The Officer's assessment of the evidence*

[20] My decision to grant this application for judicial review turns on the Officer's assessment of the evidence.

[21] Although the Applicant makes a number of submissions that are outside the scope of this judicial review – for example, citing case law dealing with study permit applications – I find the bulk of the Applicant's arguments have merit. I refer to these arguments below.

[22] The Respondent argues that the Officer reasonably found the Applicant not sufficiently financially established in Nigeria, such that her visit to Canada was an unreasonable expense. A TRV applicant must provide proof of funds: *Ntamag v Canada (Immigration, Refugees and Citizenship)*, 2020 FC 40 [*Ntamag*]. However, in *Ntamag*, the applicant failed to submit *any* proof of funds with her application. In the case at hand, proof of funds was provided by the Applicant.

[23] According to the Respondent, the Officer also determined that the Applicant has strong family ties in Canada, and no previous travel history, which were additional reasons to find that

the Applicant will not depart Canada at the end of the period authorized for her stay. This is a restatement of the Officer's decision.

[24] The Applicant submits that she provided all of the requisite documentation with her TRV application. The Applicant provided personal bank statements in support of her application, as well as a written pledge of financial support from her son. The Applicant also has a business in Nigeria, and she sought only a brief visit in Canada of approximately one month.

[25] The Applicant argues, and I agree, that it is unclear how the Officer determined that, given the evidence before them, the proposed one-month-long TRV is an unreasonable expense. In particular, the Applicant’s bank statements, the short length of her visit, proof of her son's employment and pledged financial support all speak to the contrary. While I note the Applicant's proof of funds is somewhat sparse and inconclusive, it is nonetheless unclear why and how the Officer found insufficient funds, considering the Applicant’s evidence.

[26] As for the Applicant's family ties, the Applicant's only ties to Canada are her son and his immediate family. On the other hand, the Applicant has two daughters (and grandchildren) in Nigeria and she owns her own business there, as clearly indicated in her application form. The Officer failed to weigh this evidence, which contradicts their finding that the Applicant has strong ties to Canada.

[27] I find the Officer failed to regard the factual constraints that bore on their decision, as required by *Vavilov*. The Applicant cites *Sangha v Canada (Citizenship and Immigration)*, 2021 FC 760 [*Sangha*] at paragraphs 34-35, where a visa officer similarly neglected an applicant's ties

to their home country. In *Sangha*, Justice Ahmed noted that the officer "neglected the constellation of evidence that contradicts their conclusion": para 35. While I do not find the present case to be as strong as the facts were in *Sangha*, I ultimately agree with the Applicant that the Officer failed to regard the totality of the evidence, particularly with respect to the clear evidence regarding her family ties in Nigeria.

[28] As set out in *Aghaalikhani v Canada (Citizenship and Immigration)*, 2019 FC 1080 at paragraph 19, in balancing these factors I agree with the Applicant that there is more evidence demonstrating that the Applicant will leave Canada than evidence that suggests the Applicant will not leave Canada at the end of her authorized stay.

[29] Finally, as to the purpose of the Applicant's visit and her travel history, in the GCMS notes the Officer stated that the "purpose of visit does not appear reasonable given the applicant's socio-economic situation" and that the "applicant's travel history is not sufficient to count as a positive factor." I find that the Officer held the Applicant's lack of travel history against her, which should not amount to an express reason for refusal. While a lack of travel history may have a neutral or positive effect on a TRV application, the mere absence of a travel history should not be held against the Applicant. Again, as with the Applicant's proof of funds, it is unclear why the Officer believes the Applicant cannot or should not spend money on a one-month-long visit to Canada to see her son and grandchildren. I agree with the Applicant that this leaves her with a lack of understanding regarding why her TRV application was refused.

[30] I also agree with the Applicant that the Decision itself is confusing. The Officer states that the Applicant has strong family ties to Canada, but further states that no proof of relationship is provided. This is an unintelligible finding.

[31] The Applicant cites *Gill v Canada (Citizenship and Immigration)*, 2020 FC 934 at paragraph 40 for the following proposition: "A court may infer that a decision-maker has made an erroneous finding of fact without regard to the evidence from a failure to mention in the reasons evidence that is relevant to the finding and which points to a different conclusion"; see also *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, 1998 CanLII 8667 (FC), [1998] FCJ No 1425 (QL) at para 15.

[32] Having carefully reviewed the reasons, I find the Officer failed to take into account the relevant evidence contradicting their finding that the Applicant had strong family ties to Canada and would not leave Canada at the end of their authorized period of stay. That conclusion fails to take into account the extensive ties the Applicant has to Nigeria.

[33] The Respondent notes that, *Hakimi v Canada (Citizenship and Immigration)*, 2015 FC 657 at paragraphs 19-20 states that decision-makers are presumed to have weighed and considered all of the evidence before them. This Court is not to reweigh the evidence, but to determine whether this outcome falls within a range of reasonable outcomes (see also *Marcelin v Canada (Citizenship and Immigration)*, 2021 FC 761 at para 19). Furthermore, the obligation to provide reasons for a TRV application is minimal: *Zamor v Canada (Citizenship and Immigration)*, 2021 FC 479 at para 22.

[34] However, the Officer's decision must be justified in light of the factual and legal constraints bearing on their decision, as per the tenets of *Vavilov* at paragraphs 95-96 and 101. A reviewing court 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; see *also Demyati v Canada (Citizenship and Immigration)*, 2018 FC 701 at para 19 and cases cited therein.

[35] As set out in *Vavilov*, and recently cited in *Afuah v Canada (Citizenship and Immigration)*, 2021 FC 596, at paragraph 17, "it is important that reasons not simply be justifiable; they must be justified": *Vavilov* at paras 86, 96.

Procedural fairness and legitimate expectation

[36] The Applicant also makes a number of procedural fairness arguments, related to what she titles a "legitimate expectation." I note that abiding by IRCC's guidelines on how to submit a TRV application does not guarantee a positive outcome. The Applicant also raises concerns regarding the sufficiency of reasons. I find this argument duplicitous and, again, note the minimal obligation for visa officers to provide reasons. The Applicant's credibility argument is similarly vague. I disagree with the Applicant that the Officer formed a "negative personal opinion" about the Applicant, as it is not supported by the evidence in the record.

[37] Therefore, I find the Applicant's procedural fairness argument is without merit.

VI. **Conclusion**

[38] For a decision to be reasonable, it "must be justified in relation to the constellation of law and facts that are relevant to the decision": *Vavilov* at para 105.

[39] The principle of "responsive justification", set out by the Court in *Vavilov* states, "if a decision has particularly harsh consequences for the affected individual, the decision maker must explain why its decision best reflects the legislature's intention": para 133. The Officer provided no such explanation in the reasons for the Decision.

[40] Furthermore, concerns around the arbitrariness of a decision are typically more acute in cases where the consequences of a decision are particularly harsh on the affected party, and a "failure to grapple with such consequences may well be unreasonable": *Vavilov* at para 134.

[41] Ultimately, the Officer's decision is unreasonable because the Officer failed to consider all of the evidence, rendering a decision that is not transparent, intelligible, or justified. The decision is not justified in light of the facts and the Officer failed to grapple with the consequences of the Decision.

[42] Accordingly, this application is allowed and the Decision is set aside. This matter is to be returned to a different decision maker for redetermination.

[43] The parties proposed no question of general importance for certification, and I agree that none arise on these facts.

JUDGMENT IN IMM-3452-22

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is allowed.
2. The Decision is set aside and the matter is to be returned to a different decision maker for redetermination.
3. There is no serious question of general importance to certify.

"E. Susan Elliott"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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