Federal Court  Cour fédérale

Date: 20221013

Docket: IMM-4500-19

Citation: 2022 FC 1401

Ottawa, Ontario, October 13, 2022

PRESENT: The Honourable Madam Justice Elliott

BETWEEN:

VICTORIA OWUSU

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant seeks judicial review of a decision made on July 11, 2019 by the Operations Support Centre of Citizenship and Immigration Canada in Ottawa denying her request to amend her Confirmation of Permanent Residence to change her surname, her given name and her date of birth [Decision].

[2] On this application for judicial review, brought pursuant to paragraph 72(2)(d) of the *Immigration and Refugee Protection Act*, SC 2001 c27 [*IRPA*], the Applicant challenges both the application of the administrative guideline to her circumstances as well as the administrative guideline itself.

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

II. **Background Facts**

[4] The Applicant is a Canadian citizen. On October 28, 2001, she landed in Canada as a permanent resident from Ghana.

[5] In February 2019, thirteen years after obtaining citizenship and eighteen years after obtaining permanent residence, the Applicant filed a Request to Amend the Record of Landing [RARL] in order to change her full name and her date of birth (DOB) from Victoria Owusu, DOB August 30, 1987 to Gloria Hemaa Okyere, DOB September 16, 1988.

[6] In an affidavit submitted with the RARL, the Applicant explained that she travelled to Canada and obtained citizenship under an assumed identity.

[7] Grace Asante, the Applicant's aunt, was sponsored by her husband some time before 2001. The application included Victoria Owusu, an adoptive child of Ms. Asante, as an accompanying dependent.

[8] Ms. Asante later decided she would not take Victoria with her to Canada. After the travel documents were issued, she arranged to take her niece Gloria Hemaa Okyere in Victoria's place. Gloria, who was then thirteen years old, entered Canada using Victoria's passport and has been living under her identity ever since. By Gloria's own account, the RARL is an attempt to set the record straight and correct the personal information in her Record of Landing.

[9] The Applicant provided an affidavit and one document in support of her application: a birth registration document from Ghana with what she contends is her real name and DOB. The birth registration document was issued on December 27th, 2018.

III. **The Decision**

[10] The Decision letter explained that Immigration, Refugees and Citizenship Canada (IRCC) policy was that the Record of Landing is an historical document. As such, only those errors made by departmental officials at the time of the Applicant's arrival in Canada could result in an amendment to the document.

[11] Specifically, the Officer noted that as an historical document it does not change to reflect life events such as marriage, birth of children, name changes, death or other happenings that occur after a person becomes a permanent resident of Canada.

[12] The Officer found no amendment was warranted based on IRCC policy as the information recorded in the Applicant's Record of Landing accurately captured the personal information in the passport presented for the Applicant at the time of her landing.

[13] The Global Case Management System notes contain the reasons for the Decision: *Wang v Canada (Citizenship and Immigration)*, 2018 FC 368, at paragraph 9 and cases cited therein.

[14] While the notes are brief, they identify the request to change the Applicant's surname from Owusu to Okyere and to change the given name from Victoria to Gloria Hemaa. They show the Officer considered the Applicant's Permanent Residence document and birth registration document. The Officer found that the Applicant provided insufficient proof to support her application and stated that the Applicant should provide a "Court Judgment document".

[15] The policy is set out in IRCC Guide Request to Amend Record of Landing, Confirmation of Permanent Residence or Valid Temporary Resident Documents (IMM 5218) [Amending Policy].

[16] The Applicant acknowledges the Guide provides for process and does not allow for changes to DOB, only a change of name.

IV. **Issues**

[17] The Applicant raises three issues:

(1) what is the standard of review;

(2) was the decision unreasonable;

(3) does the Request to Amend Record of Landing, Confirmation of Permanent Residence or Valid Temporary Resident Document (IMM5218), (2019-05-13) [Amending Policy] conflict with the purpose of the *IRPA* and Canada's

> obligations under the Convention on the Rights of the Child, [CRC] ratified on December 12, 1991.

V. **Standard of Review**

[18] The Supreme Court of Canada has established that when conducting judicial review of the merits of an administrative decision, other than a review related to a breach of natural justice and/or the duty of procedural fairness, the presumptive standard of review is reasonableness: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at para 23. While this presumption is rebuttable, none of the exceptions to the presumption are present here.

[19] The focus of reasonableness review must be on the decision actually made by the decision maker, including both the decision maker's reasoning process and the outcome. The role of courts in these circumstances is to review, and at least as a general rule, to refrain from deciding the issue themselves: *Vavilov* at para 83.

[20] To set a decision aside, a reviewing court must be satisfied that there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency. Any alleged flaws or shortcomings must be more than merely superficial or peripheral to the merits of the decision: *Vavilov* at para 100.

[21] The decision maker may assess and evaluate the evidence before it. Absent exceptional circumstances, a reviewing court will not interfere with its factual findings. The reviewing court must refrain from "reweighing and reassessing the evidence considered by the decision maker": *Vavilov* at para 125.

VI. **Analysis**

A. *The Decision is Reasonable*

[22] The Applicant submits that the reference in the Decision to needing a Court Judgment renders it unreasonable because, as it would have been obtained after her arrival in Canada, it would not be sufficient. She also states that it shows the Officer did not consider her affidavit and supporting documents.

[23] With respect, neither such conclusion arises from the statement made by the Officer.

[24] The Guide requires that individuals provide at least two identity and civil status documents issued prior to the date on which they entered Canada. In addition, the IRCC policy document "Naming Procedures: Managing Existing Records – Change of Name Request" found in the Application Record, sets out specific procedures for change of name requests. This document indicates that where a person submits an RARL application, and it is determined that IRCC made a clerical or administrative error at the time of landing, a correction will be made in the record and in IRCC's system of record. It also specifically states that historical documents such as an immigration record of landing or Confirmation of Permanent Residence will not be amended unless a clerical or administrative error was made by IRCC.

[25] Requests for a name change for reasons other than a clerical or administrative error require a "legal or administrative decision as evidence". The Applicant presented only her own affidavit and birth registration document, which was issued over 17 years after her arrival in Canada.

[26] From the foregoing, it appears the Officer's reference to a Court judgment simply reflects the fact that the Applicant failed to meet the specified administrative requirements for the change she requested.

[27] There is no basis for the Applicant's allegation that the Officer failed to consider her affidavit and supporting documents. The GCMS Notes specifically mention "Supp. Docs: COPR, birth certificate etc. (see correspondence attachments)".

[28] Even if the Officer had not mentioned the documents, it is well known that a decision-maker is not required to refer to each and every detail supporting their conclusion. It is sufficient if the reasons permit the Court to understand why the decision was made and to determine whether the conclusion falls within the range of possible, acceptable outcomes: *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para 16.

[29] Based on the above, I find that the Applicant has not met her onus to show the Decision is unreasonable.

B. *The Amending Policy does not conflict with IRPA*

[30] The Applicant submits that neither the Decision nor the GCMS notes refer to the *IRPA* or the CRC.

[31] She then states that Article 7 of the CRC guarantees every child's right to their name and *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 [*Baker*], requires

that the best interests of the child be placed at the centre of legislative interpretation when interpreting the *IRPA*. Therefore, she submits the Amending Policy conflicts with the legislative purposes of the *IRPA* because it provides no avenue for a person in her circumstances - i.e. a dependent child caught under a misrepresentation on an immigration application made by an adult - to rectify the situation.

[32] I do not agree with the Applicant's argument on this issue.

[33] While the circumstances described by the Applicant are sympathetic, I am of the view that the Amending Policy is neither unreasonable nor is it in conflict with the *IRPA* and therefore *ultra vires*, as the Applicant submits.

[34] The starting point for assessing the Applicant's challenge to the Amending Policy is that the unfortunate circumstances in which she finds herself are not the result of the Amending Policy but rather are the result of a misrepresentation made by her Aunt/Guardian at the time of her landing in Canada.

[35] There is no indication that the Amending Policy conflicts with the purposes of the *IRPA*, or that it is an unreasonable government policy in the ordinary operation of the *IRPA*.

[36] The Applicant observes that if the Minister were to pursue revocation of her citizenship for misrepresentation under section 10(1) of the *Citizenship Act*, the Applicant would have the opportunity to make submissions relating to her personal circumstances that warrant special relief and she could retain her citizenship.

[37] The Applicant appears to raise this argument to underscore what they believe is a dichotomy in the legislation.

[38] The jurisprudence is clear that misrepresentations made by a parent implicate a minor child for the purpose of a substantive revocation and cessation application: *Canada v Tobar Toledo*, 2013 FCA 226 [*Toledo*] at paras 67-68 and *Mella v Canada*, 2019 FC 1587 at paras 32-35.

[39] The essential facts in *Toledo* are similar to the Applicant's, including, as observed by the Court of Appeal, that "in his application for judicial review, Mr. Tobar Toledo alleged that the officer had misinterpreted paragraph 101(1)(b) of the Act and that this incorrect interpretation is inconsistent with Canada's obligations as a signatory of the *Convention on the Rights of the Child*, [1992] Can. T.S. No. 3 (the Convention)."

[40] The Court of Appeal considered this certified question:

> Does the rejection of a refugee claim submitted by parents accompanied by minor children necessarily render ineligible a later claim submitted by one of those children, having now reached the age of majority, on their own behalf, pursuant to paragraph 101(1)(b) of the *IRPA*, regardless of whether the facts on which the second claim is based are different from those on which the original claim submitted by the parents was based?

[41] In allowing the appeal and setting aside the Federal Court decision, the Court of Appeal restored the original decision of the border services officer and provided this answer to the question:

> The rejection of a refugee claim submitted by a minor child, whether or not that claim has been filed in conjunction with claims

> by other family members, necessarily renders ineligible a later claim submitted by that child, having now reached the age of majority, pursuant to paragraph 101(1)(b) of the Act, regardless of whether the facts on which the second claim is based are different from those on which the original claim submitted by the child was based.

[42] In my view, it would be incongruous to find that the same circumstances which led to the revocation of citizenship in *Toledo* amount to egregious government policy in the context of an administrative change of personal information in a Record of Landing.

[43] For these reasons, I find the Applicant has not met their onus to show the Amending Policy is in conflict with the *IRPA*.

VII. **Conclusion**

[44] This application is dismissed.

[45] No serious question of general importance arises on these facts nor was one suggested by the parties.

JUDGMENT in IMM-4500-19

THIS COURT'S JUDGMENT is that:

1. This application is dismissed.

2. There is no serious question of general importance for certification.

"E. Susan Elliott"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-4500-19
STYLE OF CAUSE:	VICTORIA OWUSU v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	HELD BY WAY OF VIDEOCONFERENCE
DATE OF HEARING:	DECEMBER 14, 2021
JUDGMENT AND REASONS:	ELLIOTT J.
DATED:	OCTOBER 13, 2022

APPEARANCES:

Damilola Asuni	FOR THE APPLICANT
Marcia Jackson	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Veeman Law Barristers and Solicitors Saskatoon, Saskatchewan	FOR THE APPLICANT
Attorney General of Canada Saskatoon, Saskatchewan	FOR THE RESPONDENT