Federal Court  Cour fédérale

Date: 20240517

Docket: IMM-5379-23

Citation: 2024 FC 755

Ottawa, Ontario, May 17, 2024

PRESENT: The Honourable Madam Justice Tsimberis

BETWEEN:

AKBAR MALIK

Applicant

and

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT

UPON application for judicial review to review and set aside the decision by a visa officer [Officer] with Immigration, Refugees and Citizenship Canada [IRCC] dated February 22, 2023 refusing of Mr. Akbar Malik's [Applicant] visitor visa application [Decision];

AND UPON reading the written submissions and hearing the oral submissions of the parties;

AND UPON reviewing the Certified Tribunal Record and the Applicant's Record;

AND UPON agreement between the parties that the applicable standard of review is that of reasonableness;

CONSIDERING the primary issue outlined and argued by the parties at the hearing was whether the Decision was reasonable with a secondary issue being a procedural fairness issue raised by the Applicant in their Memorandum of Fact and Law;

AND CONSIDERING the record shows the Applicant, a Pakistani citizen with a disability of being deaf, has had great difficulty in obtaining employment in Pakistan, as a result of his disability;

AND CONSIDERING the Applicant's brother, mother, sister-in-law, and nephews all live in Canada, and the Applicant has no remaining immediate family in Pakistan and only extended family members remaining in Pakistan;

AND CONSIDERING the Officer having reviewed the Applicant's visa application and supporting documentation and having determined that its application did not meet the statutory requirements of the *Immigration and Refugee Protection Act* [IRPA] and the *Immigration and Refugee Protection Regulations* [IRPR], and concluding in their Decision that they are not satisfied that the Applicant would leave Canada at the end of his stay, based on the following factors:

- The Applicant has significant family ties in Canada;

- The Applicant does not have significant family ties outside Canada;
- The purpose of the Applicant's visit to Canada is not consistent with a temporary stay given the details provided in the application; and
- The Applicant's current employment situation does not show that he is financially established in his country of residence.

AND CONSIDERING the Officer refused the visa application because they were not satisfied that the Applicant would leave Canada at the end of his authorized stay, based on his finances and family ties, noting in the Global Case Management System [GCMS] notes the following:

> I have reviewed the application. I have considered the following factors in my decision. The applicant has significant family ties in Canada. The applicant does not have significant family ties outside Canada. The purpose of the applicant's visit to Canada is not consistent with a temporary stay given the details provided in the application. The applicant's current employment situation does not show that they are financially established in their country of residence. Weighing the factors in this application. I am not satisfied that the applicant will depart Canada at the end of the period authorized for their stay. For the reasons above, I have refused this application.

AND CONSIDERING the Officer refusing the Applicant's visa permit on the basis of the family ties is the determinative issue as it is the legislative requirement for the visa permit as was mentioned in two of the three above-referenced factors mentioned by the Officer in its Decision;

AND CONSIDERING that this application should be dismissed for the following reasons:

I. Significant family ties in Canada / Lack of significant family ties outside Canada

[1] In my view, the Decision is reasonable. It was open and justified for the Officer to find that the Applicant has significant family ties in Canada and none outside of Canada because the entirety of the Applicant's immediate family resides in Canada, and the only family the Applicant has outside of Canada is their extended family in Pakistan.

[2] The Applicant argues that the Officer did not substantiate in their reasons how the "strong pull factors demonstrated in his application" were outweighed by other factors. While the reasons themselves were brief, the Court understands the huge volume of temporary resident visas warrants that each officer's requirement to give reasons is minimal, and such reasons need not be extensive (see for example *Chaudhary v Canada (Citizenship and Immigration)*, 2024 FC 102 [*Chaudhary*] at paras 27-30; see also *Iriekpen v Canada (Citizenship and Immigration)*, 2021 FC 1276 at para 7). As Justice Brown elucidated in *Chaudhary*:

> [27] Finally, by way of the legal framework, the shorter-term visa administrative setting is important. Every year, Canada receives upwards if not in excess of one million (1,000,000) applications for various types of permission to spend time in Canada. Every year hundreds of thousands of applications are not successful. Typically while each visa is supported by a letter setting out the reasons, here, as in most if not all cases such as this, on judicial review the reasons must be assessed together with the officer's notes and underlying record.
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> [28] Given the huge volume, the law has developed that the need to give reasons is "typically minimal" and need not be extensive. For example, in *Iriekpen v Canada (Citizenship and Immigration)*, 2021 FC 1276 Justice McHaffie ruled, and I agree:

> [7] The "administrative setting" of the visa officer's decision includes the high volume of visa and permit applications that must be processed in the visa offices of Canada's missions: Canada (Minister of Citizenship and Immigration) v Khan, 2001 FCA 345 at para 32; and Patel v Canada (Citizenship and Immigration), 2020 FC 77 at paras 15, 17. Given this context and the nature of a visa application and refusal, the Court has recognized that the requirements of fairness, and the need to give reasons, are typically minimal: Khan at paras 31–32; Yuzer at paras 16, 20; Touré v Canada (Citizenship and Immigration), 2020 FC 932 at para 11.
>
> [Emphasis added]

[29] Additionally, see Persaud v Canada (MCI), 2021 FC 1252 at paragraph 8 where Justice Phelan determined and I agree:

> This Court, consistent with Vavilov, has recognized that decisions of this type do not have to be extensive and that where a record is clear, the Court can "connect the dots on the page where the lines and direction are headed may be readily drawn" [citations omitted]. The reasons need not be extensive but there must be a rationale or a line to the rationale.

[30] Indeed, the Federal Court of Appeal affirmed this principle in Zeifmans LLP v Canada, *2022 FCA 160*:

> [9] We disagree. Vavilov goes further. Vavilov tells us that reviewing courts must not insist on the sort of express, lengthy and detailed reasons that, if asked to do the job themselves, they might have provided: Vavilov at paras. 91-94. To so insist could subvert Parliament's intention that administrative processes be timely, efficient and effective.
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> [10] Vavilov says more. It tells us that an administrative decision should be left in place if reviewing courts can discern from the record why the decision was made and the decision is otherwise reasonable: Vavilov at paras. 120-122; Canada (Citizenship and Immigration) v. Mason, 2021 FCA 156 at paras. 38-42. In other words, the reasons on key points do not always need to be explicit. They can be implicit or implied. Looking at the entire record, the reviewing court must be sure, from explicit words in reasons or from implicit or implied things in the record or

> both, that the administrator was alive to the key issues, including issues of legislative interpretation, and reached a decision on them.
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> [Emphasis added]

[3] The Applicant also attacks the wording of the reasons, alleging the "boilerplate" language is generic in nature and not responsive to the facts of their particular case. The Court has also dealt with similar issues in the past regarding generic phrases used in the reasons for refusing temporary resident visas consistently finding that such a practice is not forbidden because officers "are required to be transparent, not to be original" (*Boukhanfra v Canada (Citizenship and Immigration)*, 2019 FC 4 [*Boukhanfra*] at para 9, citing *Cojocaru v British Columbia Women's Hospital and Health Centre*, 2013 SCC 30 at paras 31–33). So long as the conclusion flows from the premises, or the use of boilerplate language does not give cause to doubt that the officer duly considered the facts, the decision at issue may well still be reasonable (*Boukhanfra* at para 9).

[4] The Applicant bears the onus of demonstrating that he meets the criteria for the issuance of a visa, and this onus does not shift onto an officer merely because the Applicant has submitted his application and is self-assured that he satisfies the statutory requirements (*Obeta v Canada (Citizenship and Immigration)*, 2012 FC 1542 at para 25).

[5] Despite their brevity, the reasons are clearly responsive to the evidence before the Officer (mother, brother, sister-in-law and nephews all in Canada with only extended family members in Pakistan) insofar as the Officer did not give any reasons that run contrary to the record and the reasons reflect the reality of the evidence. Whether one factor outweighs another is not a

question of sufficiency or intelligibility of reasons, but a question of reweighing the evidence considered by the Officer. The Court is not satisfied that the Applicant has met his onus.

II. Other Factors

[6] Despite my findings that the issues of significant family ties in Canada and no significant family ties outside Canada are determinative of this application, both parties had submissions on the issues of the Applicant's employment and finances, as well as the purpose of the Applicant's visit. I will briefly address why neither of these issues helps the Applicant.

A. *Employment & Finances*

[7] While the Applicant is employed as a caregiver in Pakistan, this fact in and of itself was not sufficient evidence of financial establishment in Pakistan. This is especially the case in light of the Applicant's own admission in the evidence that he has had great difficulty in securing employment in Pakistan due to his disability. Likewise, and as the Respondent noted, what evidence the Applicant did offer to the Officer on this point was related to assets the Applicant only has access to by virtue of his immediate family members who reside in Canada (e.g. a shared bank account with his mother, and an employment letter from his brother stating his brother's income). There was little, if anything, in the evidence to suggest the Applicant had any sufficient degree of financial establishment in Pakistan. It was therefore open for the Officer to find that this factor also weighed against the Applicant.

B. *Purpose of the visit*

[8] Similar to the issue of employment and finances, the Applicant has failed to identify any specific error in the Officer's reasoning in respect of his stated purpose of his visit. The Officer recognized the Applicant's significant family ties to Canada, his lack of significant family ties outside Canada, as well as his insufficient evidence of financial establishment in Pakistan. The sum of these findings and evidence on the record suggest the Applicant has a high incentive not to leave Canada upon arrival, instead remaining with all his immediate family, with whom the Applicant has demonstrated at least some semblance of financial reliance based on his shared assets with these immediate family members. In light of this, it was reasonably open for the Officer to determine that the Applicant's stated purpose of visiting his family at his brother's invitation but only staying for a month was inconsistent with these findings.

III. No breach of procedural fairness occurred

[9] On a related note, the Applicant argues that the Officer did not comply with the procedural fairness requirements by not giving the Applicant an opportunity to address his concern that he will not depart Canada at the end of the period authorized for his stay.

[10] I cannot agree with the Applicant for the same reasons as previously held by this Court in *Mahmoudzadeh v Canada (Citizenship and Immigration)*, 2022 FC 453 at paragraphs 14-15:

> [14] In a nutshell, the jurisprudence clearly establishes that the onus is on an applicant to establish that they meet the requirements of the IRP Regulations by providing sufficient evidence in support of their application. That is, to submit a convincing application and to anticipate adverse inferences contained in the evidence and address them. The duty of procedural fairness owed by visa

> officers to an applicant is on the low end of the spectrum. Visa officer are not obliged: to notify an applicant of inadequacies in their applications nor in the materials provided in support of the application; to seek clarification or additional documentation; or, to provide an applicant with an opportunity to address the officer's concerns when the material provided in support of an application is unclear, incomplete or insufficient to convince the visa officer that the applicant meets all the requirements that stem from the IRP Regulations. The duty of procedural fairness will not be breached when a visa officer's concerns could reasonably have been anticipated by the applicant.
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> [15] Further, when a concern arises directly from the requirements of the legislation or related regulations, a visa officer is not under a duty to provide an opportunity for an applicant to address their concerns. However, when the issue is not one that arises in this context, such a duty may arise. That is, if the visa officer was concerned with the credibility, the veracity, or the authenticity of the documentation provided by an applicant, as opposed to the sufficiency of the evidence provided, an obligation to provide the applicant with an opportunity to address those concerns may arise (see also *Hanza v Canada (Citizenship and Immigration)*, 2013 FC 264 at paras 22-25; *Tollerene v Canada (Citizenship and Immigration)*, 2015 FC 538 at para 15 [*Tollerene*]; *Gur v Canada (Citizenship and Immigration)*, 2019 FC 1275 [*Gur*] at paras 13-17; *Mohammadzadeh v. Canada (Citizenship and Immigration)*, 2022 FC 75 [*Mohammadzadeh*] at paras 20-29; *Rezaei v Canada (Citizenship and Immigration)*, 2020 FC 444 [*Rezaei*] at para 12).

[11] I agree with the Respondent that the Applicant mischaracterizes the Officer's conclusion as a veiled credibility finding. I have determined that the findings arose from the evidence (or lack thereof) placed before the Officer, which clearly relate to the sufficiency of the Applicant's evidence and the failure of the Applicant to satisfy the Officer that he would depart Canada at the end of the authorized period of stay. Given this, and that the Officer's concern arose directly from the statutory requirements, the Officer did not have a duty to provide an opportunity to the Applicant to address his concern. Such a duty arises only where credibility is impugned, which did not occur here (*Hajiyena v Canada (Citizenship and Immigration)*, 2020 FC 71 [*Hajiyena*] at

para 8, citing *Hassani v Canada (Citizenship and Immigration)*, 2006 FC 1283 at para 24). The Officer is not required to inform the Applicant of concerns regarding the sufficiency of materials in support of the application (*Hajiyena* at para 9, citing *Al Aridi v Canada (Citizenship and Immigration)*, 2019 FC 381 at para 20).

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed; and
2. No question of general importance is certified.

"Ekaterina Tsimberis"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-5379-23
STYLE OF CAUSE:	AKBAR MALIK v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
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