

Federal Court



Cour fédérale

Date: 20240624

**Dockets: IMM-5604-23
IMM-3368-23**

Citation: 2024 FC 980

Ottawa, Ontario, June 24, 2024

PRESENT: Madam Justice McDonald

CONSOLIDATED MATTERS

BETWEEN:

OMOLADUN JANET AKINOKUN

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] Omoladun Janet Akinokun was approved under the Ontario Provincial Nomination Program and completed an online Express Entry application for permanent residence in Canada.

Her application was refused by an Officer with Immigration, Refugees and Citizenship Canada [IRCC] when, after two requests, she failed to produce a copy of her Provincial Nomination Certificate [PNC or Certificate]. She denies having received the Certificate from the Province of Ontario and says that, in any event, IRCC itself had access to the Certificate so it was unreasonable to insist that she produce the Certificate.

[2] There are two IRCC decisions challenged; the first is the refusal of her application because she did not produce the Certificate, and the second is the refusal to re-open her application. For the following reasons, these judicial reviews are dismissed as the request that she produce the Certificate was reasonable, and the process followed by IRCC was fair to the Applicant.

I. Background

[3] As the Applicant challenges two decisions and the process, some chronology is helpful:

- IRCC gave the Applicant a deadline of December 21, 2022 to produce the PNC. She responded to IRCC two days after the deadline, on December 23, 2022, but did not provide the PNC.
- On December 30, 2022, IRCC followed up with the Applicant and gave the Applicant until January 10, 2023 to produce the PNC.
- On January 3 and 9, 2023, the Applicant contacted the Province of Ontario to request her PNC. The province responded that she had previously been provided with the PNC on August 2022.

- On January 12, 2023, IRCC refused her application because she did not comply with the provisions of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] when she failed to produce the PNC.
- On January 12, 2023, the Applicant asked for a reconsideration of the refusal.
- On March 31, 2023, IRCC refused her request for reconsideration.

[4] Upon receipt of this refusal, the Applicant immediately requested reconsideration by way of a “Letter of Appeal,” in which she claimed that she had not received the IRCC request on December 30, 2022 as she was “preparing for a major surgical operation in the United States and had no access to [her] email or IRCC account.” She further states that she did not regain enough strength to request the document from the Province of Ontario until January 9, 2023. In this letter, she also claimed that the IRCC website was down on January 10, 2023, so she was not able to submit the document until January 11, 2023. Ultimately, the Applicant states that she did not receive a copy of her PNC from the Province until March 16, 2023, which she then sent immediately to IRCC in support of her reconsideration request.

II. Issues and standard of review

[5] The Applicant raises the following issues:

- A. Was it reasonable for the Officer to request the PNC from the Applicant?
- B. Was the reconsideration process fair?

[6] The parties agree that on the first issue the standard of review is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 23 [*Vavilov*]). 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). The reviewing court must ensure that the decision bears the hallmarks of reasonableness; namely, that it is justifiable, intelligible, and transparent (*Vavilov* at para 99). For a decision to be set aside, the reviewing court must determine that the shortcomings or flaws must be central to the decision (*Vavilov* at para 100).

[7] On the second issue, being the fairness of the reconsideration process, the standard of review is akin to the correctness standard “even though, strictly speaking, no standard of review is being applied” (*Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54). The particular question in this case is if the party was given a right to be heard and the opportunity to know the case against them.

III. Analysis

A. *Was it reasonable for the Officer to request the PNC from the Applicant?*

[8] The Applicant argues it was unreasonable for IRCC to request a copy of the PNC as the “Document Checklist, Permanent Residence-Provincial Nominee Class and Quebec Skilled Workers” does not list a PNC as a required form, and only lists a nomination approval letter *or* alternative proof of nomination as being required. Further, she argues that the nomination agreement between Canada and Ontario mandates that the Government of Ontario send the PNC

directly to IRCC. The Applicant argues the Officer could have verified the information with the Province of Ontario.

[9] There are several problems with the Applicant's arguments.

[10] First, the August 11, 2022, email from the Province of Ontario to the Applicant confirms the Applicant *did* receive a copy of her PNC as an attachment to that email. This email was in the certified tribunal record and was before the decision-maker. Despite this, the Applicant was not prepared to concede that she had in fact received the PNC.

[11] Second, despite the Applicant's submissions to the contrary, there is no evidence that IRCC had her PNC. She relies upon Note 20 in the Global Case Management System [GCMS] where there is a reference to "PNC#: 21115352" as proof that the Certificate must have been before the Officer. This alone is not evidence that the Certificate was before the Officer; at most, it is evidence that the Officer was aware of the certificate number. But even if the Officer had the Certificate, that would not render the request that the Applicant herself provide the Certificate unreasonable. IRCC has the right to request information directly under subsection 16(1) of the IRPA. As well as noted in the nomination letter from the Province, it was her onus to satisfy IRCC that "[she met] the eligibility requirements for permanent residence in Canada under the federal Immigration and Refugee Protection Act." This is consistent with the Document Checklist, which notes that confirmation of provincial nomination in the form of the nomination approval letter or "other confirmation of nomination from the province" may be required. Thus, even if IRCC had a copy of the PNC, the request to the Applicant cannot be

characterized as unreasonable as it was within the Officer's authority under subsection 16(1) of IRPA to request a copy of the PNC from the Applicant directly.

[12] Third, despite the subsection 16(1) statutory authority to request documents, the Applicant argues that the Officer's request for a copy of the PNC was unreasonable. She relies upon a case where this Court has held that an officer's discretion is not unfettered if the requested documents are difficult or impossible to produce (*Lan v Canada (Minister of Citizenship and Immigration)*, 2004 FC 770 at paras 12-16 [*Lan*]). Reference to *Lan* does not assist the Applicant. There is no evidence that the PNC was difficult or impossible to produce, particularly given that it appears to have been sent directly to the Applicant by email on August 11, 2022. Further, the PNC is an official document tied directly to the requirements for membership in the provincial nominee class.

[13] Fourth, the Applicant's submission that she did not produce her PNC until mid-March 2023 because there was a technical issue with the IRCC website in January 2023 is without merit. That does not explain a two-month delay in producing her PNC.

[14] Finally, the Applicant's submission that it was incumbent on the IRCC Officer to consult with the Province of Ontario to request the PNC is without merit. The Officer's duty to consult with the province is triggered when the issue of economic establishment arises. That was not an issue identified by IRCC; rather, in this case, IRCC refused her application as she failed to comply with the instructions of the Officer under subsection 16(1) and, therefore, was inadmissible due to her failure to comply with the IRPA at paragraph 41(a).

[15] In sum, the Applicant has failed to demonstrate that the IRCC decision is unreasonable. The Officer's decision is justified, transparent, and supported by the legislation.

B. *Was the reconsideration process fair?*

[16] The Applicant argues that the Officer breached her legitimate expectations by refusing to reconsider her request. The doctrine of legitimate expectations protects procedural rights; it does not protect an outcome or substantive rights (*Agraira v Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36 at para 97). Additionally, a reconsideration decision is highly discretionary and entitled to deference (*Hussein v Canada (Citizenship and Immigration)*, 2018 FC 44 at paras 55-57). Against these considerations, I will assess if the procedure followed was fair.

[17] The Applicant failed to provide the PNC before the deadline imposed. The Applicant's responses leading up to the initial January deadline did not request an extension of time to provide the PNC, nor did the reconsideration request attach the PNC. In fact, the Applicant did not present her PNC until over two months after the original refusal. Overriding all of this is the fact that the Applicant received a copy of her PNC on August 11, 2022, but either refused or failed to provide it to IRCC. Considering these facts and circumstances, the Officer's refusal to re-open her application is reasonable.

[18] The Applicant had an opportunity to make her case in her request for reconsideration. The Applicant was not denied procedural fairness in her request for reconsideration; she was simply unsuccessful.

IV. Conclusion

[19] The Applications for Judicial Review are dismissed. The Applicant has not demonstrated that the Officer's decision to deny her Express Entry application for permanent residence under the Provincial Nominee Program class was unreasonable or procedurally unfair.

JUDGMENT IN IMM-5604-23 AND IMM-3368-23

THIS COURT'S JUDGMENT is that:

1. The applications for judicial review are dismissed.
2. No question is certified.

"Ann Marie McDonald"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: IMM-5604-23 AND IMM-3368-23

STYLE OF CAUSE: AKINOKUN V THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: MAY 21, 2024

JUDGMENT AND REASONS: MCDONALD J.

DATED: JUNE 24, 2024

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