Federal Court  Cour fédérale

Date: 20240924

Docket: IMM-7912-23

Citation: 2024 FC 1492

Toronto, Ontario, September 24, 2024

PRESENT: Mr. Justice Diner

BETWEEN:

ITUNU ADEDOKUN AJAYI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

(Delivered from the Bench at Toronto, Ontario, on September 23, 2024)

[1] Ms. Ajayi seeks judicial review of a decision made by a Minister's Delegate, an Immigration Officer [Officer] refusing her application for a study permit [Application], dated April 28, 2023 [Decision]. Along with her spouse Mr. Jacob Olanrewaju Ajayi, Ms. Ajayi further applied for Temporary Resident Visas for her two (2) sons, and for an Open Work Permit for her husband. The Officer found Ms. Ajayi and her family inadmissible to Canada for misrepresentation pursuant to paragraph 40(1)(a) of the *Immigration and Refugee Protection Act*,

SC 2001, c 27 [IRPA], and refused her Application pursuant to paragraph 216(1)(b) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227. According to the outcome of this decision, pursuant to paragraph 40(2)(a) of IRPA, Ms. Ajayi is inadmissible to Canada for a period of five years from the date of the Decision. For the reasons below, this application for judicial review is granted.

[2] In brief, the Officer issued a Procedural Fairness Letter [PFL] on February 23, 2023. The Officer raised concerns regarding a potentially fraudulent bank statement submitted, "which if undetected could have induced an error in the administration of The Act, in that a visa/study permit could have been issued in error based on fraudulent information […]."

[3] On February 24, 2023, Ms. Ajayi responded to the PFL with a letter of explanation enclosing supporting documentation. The Officer ultimately refused Ms. Ajayi and her family members' applications on the basis that they had "submitted documentation that lacks authenticity as part of their applications," which the Officer noted "diminished the overall credibility" of Ms. Ajayi's Application.

[4] The Applicant argues that the finding of misrepresentation must be based on clear and convincing evidence, and the notice must contain enough detail to enable her to know the case to meet. Here, she argues, the record was devoid of any clear and convincing evidence, and in any event, the Officer did not engage with the contents of the PFL response.

[5] The Respondent, on the other hand, argues that the evidence was both clear and compelling, in that (i) the bank letter that the Applicant submitted with her PFL response was signed by two people who do not work at the bank, (ii) the Applicant was resubmitting the same bank statement a second time without providing an updated transaction history up to the response to the PFL, and (iii) the authentication stamp on the bank statement, which appears twice in the record, is pixelated in one copy, yet clear in the other.

I. Analysis

[6] The standard of review for the Decision is reasonableness and I must determine whether it is transparent, intelligible and justified (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 15 [*Vavilov*]). Questions of procedural fairness, on the other hand, are to be reviewed by asking whether the process leading to the Decision was fair in all the circumstances (*Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at paras 54–55).

[7] Ms. Ajayi has persuaded me that the Decision is unreasonable. While I appreciate the efforts of the Respondent's very able and succinct counsel in support of his client by pointing the Court to cases including *Kong v Canada (Citizenship and Immigration)*, 2017 FC 1183, I note at the outset that misrepresentation decisions have serious consequences (*Likhi v Canada (Citizenship and Immigration)*, 2020 FC 171 at para 27). As Justice Grammond observed in *Vargas Villanueva v Canada (Citizenship and Immigration)*, 2023 FC 66 at paras 17–19 [*Villanueva*], findings of misrepresentation must (a) be based on clear and convincing evidence,

(b) provide “more extensive reasons” than the minimal reasons typically required of visa office decisions, and (c) first provide notice and the opportunity to make submissions.

[8] Here, while the third requirement was met, the Officer fell short on the first and second. Indeed, I find that the factual basis of this case, including some of the factual underpinning, closely mirrors that of Justice Gleeson’s recent decision in *Ogunpaimo v. Canada (Citizenship and Immigration)*, 2024 FC 1120.

[9] First, weaknesses noted by the Respondent in an effort to explain the reasons for refusal were neither clear nor convincing. Ms. Ajayi provided what she believed was reasonable evidence by producing a further letter from her bank, signed by two managers who appear to work for the bank.

[10] The Officer provided no reason in explaining their concerns, or why the further documentation failed to address the concerns they had. While the Officer provided little to no explanation as to why the response was not satisfactory, the Respondent pointed out that the screening officer who did the initial assessment states in the GCMS (Global Case Management System) notes that “Verification activity on documents in support of this application has resulted in adverse findings.”

[11] Second, as pointed out above, the Officer failed to provide a justifiable or intelligible explanation of the weaknesses in the evidence. Rather, Respondent’s counsel was left to fill in the reasons in this litigation. The Officer did not provide any details as to the issue underlying

the concern with the financial information provided (either originally or with the PFL), or what the nature of its "verification activity" was. Clearly, failing to address evidence is never a good recipe for passing muster under *Vavilov*, which states at paragraph 126 that the "reasonableness of a decision may be jeopardized where the decision maker has fundamentally misapprehended or failed to account for the evidence before it" such that they provide responsive (or adequate) justification. *Vavilov* also warns that decision-makers must provide adequate justification when stakes are elevated (see para 133). This includes situations where the spectre of misrepresentation are raised, given the resulting five-year ban.

[12] Here, in light of the PFL response provided by the Applicant, the Officer lacked such justification: the Officer simply never pointed to the additional evidence provided in their reasons, or the issue they had with the evidence. *Vavilov* aside, this fails to meet the requirements that were set out in the context of misrepresentation findings in *Villanueva*. Again, while counsel for the Respondent attempted to rehabilitate the Decision by providing his explanations for the concerns that underlay the Decision, his justification and rationale cannot serve as a proxy for the Officer.

[13] Finally, I note that Ms. Ajayi also raised procedural fairness arguments, but given my findings on the other grounds she raised, I will not comment on that issue. In light of the above, this application for judicial review is granted.

JUDGMENT in IMM-7912-23

THIS COURT'S JUDGMENT is that:

1. The judicial review is granted, and shall be remitted for redetermination by a different officer.

2. There is no question to certify.

3. No costs will issue.

"Alan S. Diner"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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