Federal Court  Cour fédérale

Date: 20241007

Docket: IMM-11692-23

Citation: 2024 FC 1572

Toronto, Ontario, October 7, 2024

PRESENT: Madam Justice Whyte Nowak

BETWEEN:

ANA INES LOPEZ ASSIA

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Ana Ines Lopez Assia [the Applicant], applied for permanent residence in Canada as a member of the Canadian Experience Class via the Express Entry system established under subsection 87.1(1) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [*IRPR*]. Her application was refused in a decision dated August 19, 2023 [the First Decision]

because the Applicant did not meet the requisite eligibility requirements based on her submitted work experience.

[2] The Applicant sought reconsideration of the First Decision; however, an officer [the Officer] of Immigration, Refugees and Citizenship Canada [IRCC] refused her request by decision dated September 1, 2023 [the Reconsideration Decision]. This is a judicial review of the Reconsideration Decision.

[3] For the reasons that follow, the Reconsideration Decision is unreasonable as it is devoid of any reasons and fails to respond to the basis upon which the Applicant sought reconsideration. Accordingly, this application is granted.

II. The Legislative Framework

[4] The system that manages applications for permanent residency in Canada, the Express Entry system, is set out under Division 0.1 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*].

[5] According to paragraph 87.1(2)(a) of the *IRPR*, at least one year of full-time work experience in Canada is required for membership in the Canadian Experience Class. This work experience must have been acquired within the three years before the date on which the application for permanent residence is made.

[6] Paragraph 15(7)(b.1) of the *Ministerial Instructions* expressly states that a period of unauthorized work is not to be included in calculating a period of work experience and paragraph 15(7)(c) of the *Ministerial Instructions* adds that "the foreign national must have had temporary resident status during their period of work experience."

[7] Paragraph 11.2(1)(a) of the *IRPA* prohibits an officer from issuing a visa or other document in respect of an application for permanent residency under an invitation under Division 0.1 where the applicant did not meet the eligibility criteria upon which the invitation was issued either at the time the invitation was issued or at the time the officer received their application.

III. Facts

A. *The Applicant's Application for Permanent Residency*

[8] The Applicant is a citizen of Colombia who came to Canada in 2014 as an international student. She graduated from Seneca College in 2017 and obtained a Post-Graduation Work Permit [PGWP] in August 2017. That permit was extended under a PGWP Public Policy on March 14, 2021.

[9] The Applicant made an initial application for permanent residency as a member of the Canadian Experience Class via the Express Entry system. Her application was refused due to errors in the documents she submitted.

[10] On August 10, 2022, the Applicant received an email from IRCC, which advised that she was eligible for a special facilitation measure under the PGWP Public Policy, which permitted her to stay and work in Canada.

[11] The Applicant received an interim work authorization that allowed her to continue working until May 31, 2023. The Applicant's further work permit extension was refused.

[12] The Applicant received a new invitation in January 2023 to apply for permanent residence under the Canadian Experience class, which she did. She claimed four years and one month of Canadian work experience while working at Canadian Language Learning College between November 2018 to December 2020 and March 2021 to March 2023.

B. *The First Decision*

[13] According to the First Decision and the accompanying Global Case Management System notes, the Applicant's application for permanent residence was refused by reason that she did not have the requisite years of work experience and therefore did not meet the eligibility requirements under section 11.2 of the *IRPA*. The officer of the First Decision did not count the period from August 2022 to March 2023, as these years were not considered valid as the Applicant did not have valid temporary status in Canada nor was she authorized to work.

[14] Based on a recalculation of the Applicant's Comprehensive Ranking, the officer found that the Applicant's score had fallen below that of the lowest-ranked candidate invited to apply in that round of invitations.

C. *The Applicant's Request for Reconsideration*

[15] The Applicant submitted a request for reconsideration of the refusal of her permanent residence application on August 30, 2023. The Applicant acknowledged that she did not have status for certain periods of her claimed work experience; however, she defended its inclusion on the basis of the correspondence from IRCC concerning the PGWP Public Policy. The Applicant's request for reconsideration reads in part:

> However, I would like to draw your attention to a letter I received on August 10, 2022, which indicated that I could be eligible for a special facilitation measure under the Post-Graduation Work Permit (PGWP) Public Policy. This measure allowed me to work in Canada without a valid work permit until May 31, 2023, while I awaited a new work permit application decision (please find letter attached). This information, combined with the updates on the IRCC website, led me to believe that I had the authorization to continue working during this period.

[16] The Applicant also asked that consideration be given to her "unique circumstances" based on the effect the Applicant's removal from Canada would have on her Canadian-born daughter.

D. *The Reconsideration Decision*

[17] The Applicant's reconsideration request was refused on September 1, 2023.

IV. Issues and Standard of Review

[18] The Applicant has raised the following issues:

A. Is the Reconsideration Decision unreasonable by reason of the Officer's failure to: (i) provide sufficient reasons; and (ii) consider the humanitarian and compassionate [H&C] grounds raised by the Applicant in her letter requesting reconsideration of the First Decision?

B. Was the Applicant denied procedural fairness?

[19] In the reasons that follow, I find the Officer's Reconsideration Decision to give insufficient reasons, rendering it unintelligible and therefore unreasonable; accordingly, I have considered it unnecessary to decide the Applicant's further arguments related to the Officer's treatment of the Applicant's H&C submissions or her suggestion that she was denied procedural fairness.

[20] The standard of review of the merits of a visa officer's decision is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 97, 85 [*Vavilov*]). While this Court's review is deferential, it is nevertheless a robust review (*Vavilov* at paras 12-13) which considers both the outcome and rationale of the decision with an eye to the hallmarks of public power which require that it be transparent, intelligible and justified (*Vavilov* at para 15), including to those to whom the decision applies (*Vavilov* at para 127).

V. Analysis

A. *The Sufficiency of the Reconsideration Decision*

[21] Immigration officers are entitled to reconsider their decisions based on new evidence and/or new submissions (*Canada (Citizenship and Immigration) v Kurukkal*, 2010 FCA 230 at

paras 3-4). To do so, officers must first decide whether they will entertain the request (referred to as "opening the door" to reconsideration) based on considerations going to the interests of justice or "unusual circumstances." If the officer is willing to entertain the reconsideration request, the second step involves the actual reconsideration taking into account the information on file and any information provided in support of the reconsideration request (*AB v Canada (Citizenship and Immigration)*, 2021 FC 1206 at para 21).

[22] The parties disagree over what step the Applicant's request for reconsideration was denied under. The Reconsideration Decision states:

> Your request for reconsideration has been received. After review of all the information on file and all the information you provided in support of the reconsideration request, I am not satisfied that there are sufficient grounds to reconsider the decision. The request for reconsideration has been refused.

[23] I find that the Officer refused the Applicant's request for reconsideration at the first stage. What is not apparent, however, is why. The Reconsideration Decision is wholly conclusory and devoid of any reasoning or analysis. The Applicant was entitled to understand why the Officer did not find reconsideration of her case to be in the interests of justice or to constitute unusual circumstances. The Officer's failure to provide any basis whatsoever for the Reconsideration Decision or to address the Applicant's argument that she was induced by IRCC to believe that she was entitled to work without a new work permit is fatal (*Vavilov* at para 127 and *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 at para 66).

[24] The Respondent submits that there was nothing to reconsider: the Applicant did not meet statutorily required eligibility criteria and the Applicant's argument about having been induced

by IRCC does not justify reconsideration since the PGWP Public Policy relied on by the Applicant expressly stated that it did not restore legal temporary residence status and that it remained the Applicant's responsibility to maintain valid status in Canada. This explanation provided by the Respondent is the very engagement with the Applicant's evidence and submissions that the Officer should have provided the Applicant.

VI. Conclusion

[25] The Reconsideration Decision is devoid of any reasons and fails to meaningfully account for the central issues and concerns raised by the Applicant, rendering it unreasonable. Accordingly, this application for judicial review is granted.

JUDGMENT in IMM-11692-23

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is granted.

2. The matter is remitted back to a different decision maker for reconsideration.

3. There is no question for certification.

"Allyson Whyte Nowak"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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