Federal Court Cour fédérale

Date: 20241029

Docket: IMM-8314-23

Citation: 2024 FC 1720

Vancouver, British Columbia, October 29, 2024

PRESENT: Justice Andrew D. Little

BETWEEN:

DAOYUAN FU

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] By decision dated May 15, 2023, an officer of Immigration, Refugees and Citizenship Canada in Hong Kong refused the applicant's request for permanent residence in Canada as a member of the Québec investor class.

[2] The officer was not satisfied that the applicant intended to reside in Québec, as required by paragraph 90(2)(*a*) of the *Immigration and Refugee Protection Regulations,* SOR/2002-227 (the *"IRPR"*).

[3] The applicant asks this Court to set aside the decision as unreasonable under the principles in *Canada (Minister of Citizenship and Immigration) v. Vavilov,* 2019 SCC 65, [2019] 4 SCR 653. He also raised procedural fairness concerns.

[4] For the following reasons, the application will be dismissed.

I. Facts and Events leading to this Application

[5] The applicant is a citizen of China. His son, also a Chinese national, attended university in Canada.

[6] In April 2018, the applicant submitted an application for permanent residence as a proposed member of the Québec investor class under subsection 90(2) of the *IRPR*. One of the requirements of the Québec investor class is a demonstrated intention to reside in Québec. The applicant declared that he and his dependent son intended to live in Québec.

[7] By letter dated April 3, 2023 (the Procedural Fairness Letter or "PFL"), an officer advised the applicant about concerns that "there is little evidence to support your declared intention to reside in the Province of Quebec as presented". The letter noted that the applicant had a travel history of visiting Canada since April 2012, but that his destination in Canada had

always been Vancouver, and that the applicant's dependant son had attended high school in British Columbia from September 2013 to April 2019 and had been attending university in Ontario since. The officer offered the applicant an opportunity to respond.

[8] In early May 2023, the applicant responded. He provided his own statement (dated May 1, 2023), a statement from his son (dated May 2, 2023), and related documents.

[9] By decision dated May 15, 2023, the officer refused the application.

[10] The applicant now seeks to set the decision aside as unreasonable.

II. Analysis

A. *Are the applicant's affidavits admissible?*

[11] When he filed his application for leave and judicial review, the applicant filed an affidavit sworn on September 23, 2023, which attached several exhibits. In August 2024, the applicant filed a second affidavit with the Court, which was sworn on November 5, 2023. The respondent objected to its admissibility. I will deal with the contents of both affidavits.

[12] The general rule is that the evidentiary record before the reviewing court is restricted to the evidentiary record that was before the administrative decision maker. Evidence that was not before the decision maker and that goes to the merits of the matter is not admissible on an application for judicial review in this Court: *Terra Reproductions Inc. v. Canada (Attorney General),* 2023 FCA 214, at para 5; *Perez v. Hull,* 2019 FCA 238, at para 16; *Association of*

Universities and Colleges of Canada v. Canadian Copyright Licensing Agency (Access Copyright), 2012 FCA 22, at para 19.

[13] However, there are exceptions to this general rule. The applicant relied on an exception that allows for the admission of evidence that highlights the complete absence of evidence before the decision maker when it made a particular finding: see *Perez*, at para 16; *Association of Universities*, at para 20. Justice Stratas described this exception in *Bernard v. Canada (Revenue Agency)*, 2015 FCA 263, at paragraph 24:

> […] Sometimes a party will file an affidavit disclosing the complete absence of evidence on a certain subject matter. In other words, the affidavit tells the reviewing court not what is in the record—which is the first exception—but rather what cannot be found in the record: […] This can be useful where the party alleges that an administrative decision is unreasonable because it rests upon a key finding of fact unsupported by any evidence at all. […]

[14] The exception does not permit a party to adduce supplementary evidence on an issue that was addressed by the decision maker, or evidence on a new issue: *Dr. Luchkiw v. College of Physicians and Surgeons of Ontario*, 2022 ONSC 5738, at para 46; *Qureshi v. Canada (Citizenship and Immigration)*, 2020 FC 88, at para 15. Such evidence would fall within the general rule prohibiting the admission of new evidence on judicial review that was not before the original decision maker.

[15] In my view, most of paragraphs 1-6 of the applicant's first affidavit are background and are admissible. However, much of the rest of that affidavit and some of its exhibits are not admissible. Paragraphs 7-13 are not admissible as they concern his responses to the officer's

refusal on the intent to reside issue. The exhibits of his written statement and his son's statement were before the officer. The officer's refusal letter is also an exhibit and is not contentious. The lengthy explanation document entitled "Québec Immigration Appeal", which sets out the applicant's reasons for intending to live in Québec for this application, is an attempt to supplement the evidence before the officer on the substantive issue in *IRPR* paragraph 90(2)(*a*) and falls within the general rule against new evidence. It is therefore not admissible on this application.

[16] For the same reason, the applicant's second affidavit sworn on November 5, 2023, is generally not admissible. It concerns his reasons for not visiting Quebec in 2020 and his son's 2023 application to study at Concordia University starting in the fall of 2024.

[17] As noted, the applicant argued that one key point in the affidavits fell within the exception. His argument focused on one statement in the Global Case Management System ("GCMS"). The officer stated that the applicant was:

> unable to provide satisfactory and substantiated explanations for his reasons not to also visit the PQ [Province of Québec] when he visited [his] dep[endent] son studying in Toronto in 2020.
>
> [Emphasis added.]

[18] The applicant contended that there was a complete absence of evidence before the officer that he travelled to Toronto to visit his son while his son lived there and studied at the University of Toronto. He took the position that the decision was unreasonable "because it rests upon a key finding of fact unsupported by any evidence at all" as *Bernard* contemplates (at para 24). The

applicant's affidavit confirmed that he had not travelled to Toronto to visit his son in 2020 and explained why.

[19] The matter is complicated, however, by the respondent's submission that there was evidence of a visit to Toronto. To support the officer's finding, the respondent pointed to the following excerpt from the applicant's written response to the PFL:

> Above all, I ever visited Quebec once, and I prepared mostly on immigrating to Montreal with my son, although I didn't visit Quebec recent years due to busy work, travel restriction and epidemic. Because I am working as Manager not big boss, I paid more attention on living cost, after I visited Vancouver even Toronto, I found due the aspects of the house, price, environment and so on, Montreal is more suitable for me on financial planning, shopping convenience, health care needs, all those are essential reasons I made up my mind to immigrate to here!
>
> [Emphasis added.]

[20] The underlined turn of phrase was the only basis in the record that could support the officer's finding of a visit by the applicant to Toronto.

[21] The applicant's affidavit evidence that he did not visit his son in Toronto is consistent with part of his statement in response to the PFL, quoted above, that "… I ever visited Quebec once …" (which as the officer noted was in 2013). However, there is ambiguity in the applicant's sentence containing the phrase "after I visited Vancouver even Toronto", as it could be read as referring either to understanding living costs after visits to Vancouver and Toronto, or to a comparison of living costs in Vancouver, Toronto and Montreal.

[22] In these circumstances, and considering the applicant's strong but not perfect written English, I find one point in the applicant's affidavit evidence admissible to confirm the absence of any information in the record that the applicant visited Toronto. Specifically, his evidence is admissible only to the extent that it confirms that fact and resolves the linguistically ambiguous "even Toronto" in his response to the PFL.

[23] The applicant's explanation of why he did not visit Québec in "recent years" was already in his response to the PFL dated May 1, 2023. His reasons included having no time, busy work schedule, travel restrictions and the epidemic/pandemic. The more detailed explanation in his Court affidavits concerning why he did not visit Toronto in 2020 is not admissible because it constitutes the applicant's response to the officer's finding on that issue. It is also information that could have been included in his May 2023 statement in response to the PFL to explain why he did not visit Québec.

B. ***Procedural Fairness***

[24] The applicant submitted that as a matter of procedural fairness, the officer should have expressly described what information he required from the applicant to show an intent to reside in Québec, rather than providing a generalized request for information in the PFL. In the alternative, the applicant argued that the officer should have offered the applicant an interview, which, according to the applicant's counsel, often occurs in this type of application.

[25] I find no procedural unfairness in the present circumstances. First, the requirement to demonstrate an intention to reside in Québec is an express requirement in paragraph 90(2)(*a*) of

the *IRPR*. An officer has no obligation to provide an applicant with a further chance to provide information, or a "running score" of the information needed, to meet a requirement of the regulations. The applicant had the onus to meet the requirements of the regulation with sufficient evidence. See e.g., *Quan v. Canada (Citizenship and Immigration)*, 2022 FC 576, at paras 33-34, 36; *Mahmoudzadeh v. Canada (Citizenship and Immigration)*, 2022 FC 453, at paras 14-15; *Kucukerman v. Canada (Citizenship and Immigration)*, 2022 FC 50, at paras 21-22; *Lv v. Canada (Citizenship and Immigration)*, 2018 FC 935, at para 23.

[26] Second, the PFL identified the officer's concern about information to support an intent to reside in Québec and offered the applicant a second opportunity to submit information on the issue. The PFL set out the existing information in the application related to the applicant's travels to Canada (only to Vancouver) and his son's residence in Vancouver for high school and in Ontario for university. Thus, the PFL identified both the officer's concern and the information that connected the applicant to Canada but not to Québec.

[27] Third, the applicant's statement in response to the PFL acknowledged that he "didn't show much evidence of our plans" and provided his explanations and some facts he hoped would satisfy the officer's concerns. There is no indication in the applicant's response that he did not understand what was required, nor did he complain at the time about lack of details in the PFL: see *Quan*, at para 36.

[28] Fourth, the applicant did not rely on any case suggesting a high degree of procedural fairness was required. He made no submissions about the *Baker* factors: *Baker v. Canada*

(Minister of Citizenship and Immigration), [1999] 2 SCR 817, at paras 22-28. The applicant also did not point to any law or policy to support a legal requirement to conduct an interview in the circumstances. The applicant did not identify any case in which this Court has established such a requirement. Counsel advised that it is very common for IRCC to request an interview in practice and relied on several cases of this Court in which an officer conducted an interview to determine the applicant's intention. However, neither one establishes that an interview is requirement for procedural fairness. The applicant did not suggest that he had grounds for a legitimate expectation that he would be interviewed. An interview may well be a permissible, helpful and convenient way to proceed; however, that does not imply it is a requirement for procedural fairness.

[29] Accordingly, the applicant has not established that he was deprived of procedural fairness in the circumstances.

C. ***Substantive Review of the Decision***

(1) **Standard of Review**

[30] I agree with the parties that the standard of review is reasonableness as described in *Vavilov*. See *Kabir v. Canada (Citizenship and Immigration),* 2023 FC 1123, at para 16; *Khan v. Canada (Citizenship and Immigration),* 2023 FC 605, at para 7; *Quan,* at para 14; *Yaman v. Canada (Citizenship and Immigration),* 2021 FC 584, at para 17.

[31] Reasonableness review is a deferential and disciplined evaluation of whether an administrative decision is transparent, intelligible and justified: *Mason v. Canada (Citizenship*

and Immigration), 2023 SCC 21, at paras 8, 63; *Vavilov*, at paras 12-13 and 15. The starting point is the reasons provided by the decision maker, which are read holistically and contextually, and in conjunction with the record that was before the decision maker. A reasonable decision is based on an internally coherent and rational chain of analysis and is justified in relation to the facts and law that constrained the decision maker: *Mason*, at paras 8, 59-61, 66; *Canada Post Corp v. Canadian Union of Postal Workers*, 2019 SCC 67, [2019] 4 SCR 900, at paras 2, 28-33, 61; *Vavilov*, esp. at paras 85, 91-97, 103, 105-106 and 194.

[32] It is not the role of the Court to re-assess or re-weigh the evidence, or to provide its own view of the merits. Thus, it is not permissible for the Court to come to its own view of the merits of the application and then measure the impugned decision against the Court's own assessment: *Mason*, at para 62; *Vavilov*, at para 83; *Delios v. Canada (Attorney General)*, 2015 FCA 117, at para 28.

[33] To intervene, the reviewing court must be satisfied that there are "sufficiently serious shortcomings" in the decision such that it does not exhibit sufficient justification, intelligibility and transparency. Flaws or shortcomings must be more than a "minor misstep"; the problem must be sufficiently central or significant to the outcome to render the decision unreasonable: *Vavilov*, at para 100.

(2) **Was the decision reasonable?**

[34] The applicant contended that "the central reason" for officer's decision was the finding that the applicant had travelled to Toronto to see his son, but had not visited Québec (i.e., when

he was so close by). The applicant argued that he did not visit Toronto and, through his affidavit filed on this application, explained why he had not done so.

[35] The respondent submitted that the officer clearly considered all the information provided by the applicant to reach the decision. The respondent argued that the applicant's position was asking the Court to reweigh the evidence, contrary to the Court's role in a judicial review application: *Vavilov,* at paras 125-126. The respondent noted that the applicant had visited Vancouver many times between 2013 and 2017 (in addition to other places in the world) before he applied for permanent residence in the Québec investor class in 2018. However, the applicant did not visit Québec during that period or while his son was studying in Toronto starting in 2019 until the onset of the pandemic in 2020.

[36] I am unable to agree with the applicant that the failure to visit Québec was the central reason for the refusal of his application. I agree with the respondent that the officer considered and weighed all of the material information in order to reach a conclusion on the applicant's intent to reside in Québec.

[37] The applicant's position on his intention to reside in Québec relied on both his own statements about intention, and his son's intentions (specifically that the son had travelled to Montreal, advised that he would move there and had applied for jobs there). The officer concluded that the applicant and his son were "unable to submit sufficient and satisfactory evidence to substantiate their responses to the PFL".

[38] An officer's determination of an intention to reside in Québec is an inference based on the information provided by an applicant. In this case, in addition to finding that the applicant had not visited Québec when he visited Toronto, the GCMS notes showed that the officer also assessed the following information from the applicant and his son:

a) the applicant's "touring" visit to Québec for five days in September 2013;

b) the applicant's submission of his son's Canadian bank statement for April/May 2022, which showed 6 charges made by him in Montreal;

c) the son's U of T Confirmation of Enrollment letter confirming that he had begun pursuing a BA Hons degree in 2019 and was in his fourth year;

d) the son's explanation letter dated advising he had decided to look for jobs in Montreal, that he had sent dozens of emails to different companies, that most of these companies had already provided feedback;

e) the applicant's ex-wife took care of their son more often than the applicant while the son was in Vancouver, as she travelled back and forth from Shanghai to Vancouver for work; and

f) the applicant explained that he had not visited the Province of Québec in the "recent years" due to "busy work schedule, travel restrictions, and the epidemic".

[39] The applicant did not challenge any of these six findings and did not argue that the officer failed to consider any other relevant information in the record when determining whether he had an intention to reside in Québec.

[40] Even accepting that the officer erred by finding that there was no explanation why the applicant did not visit Québec when he visited Toronto because the applicant had not in fact visited Toronto, there were six other factors expressly considered by the officer. It was open to the officer to come to the conclusion that the applicant and his son were "unable to submit sufficient and satisfactory evidence to substantiate their responses to the PFL". Those responses went to the officer's concerns about whether the applicant had an intention to reside in Québec. In this context, I am unable to conclude that the identified error was so central or fundamental to the determination on intent to reside in Québec that it rendered the officer's decision unreasonable under *Vavilov* principles: *Vavilov*, at para 100.

[41] As noted, one of the other six factors was that the applicant explained that he had not visited Québec in the recent years due to a "busy work schedule, travel restrictions, and the epidemic". This finding reflected the applicant's statement in response to the PFL, which did not elaborate with details. For example, in response to the PFL, the applicant did not state that he had in fact made plans to visit Québec after coming Vancouver in early 2020, provide evidence of those plans (e.g. cancelled airline and hotel reservations), and explain that he was interrupted by the onset of the pandemic and had to return to China.

[42] For these reasons, the applicant has not persuaded me that the officer's decision was unreasonable.

III. Conclusion

[43] The application is dismissed. Neither party proposed a question to certify for appeal and none arises.

JUDGMENT in IMM-8314-23

THIS COURT'S JUDGMENT is that:

1. The application is dismissed.

2. No question is certified under paragraph 74(*d*) of the *Immigration and Refugee Protection Act*.

"Andrew D. Little"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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