

Federal Court



Cour fédérale

Date: 20241216

Docket: IMM-13157-23

Citation: 2024 FC 2042

Toronto, Ontario, December 16, 2024

PRESENT: The Honourable Mr. Justice Ahmed

BETWEEN:

MANDEEP KAUR DHALIWAL

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Mandeep Kaur Dhaliwal, seeks judicial review of a decision of an officer (the “Officer”) of Immigration, Refugees and Citizenship Canada (“IRCC”) dated September 14, 2023 refusing her application for permanent residence under the Home Child Care Provider Class pursuant to subsection 16(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (“*IRPA*”).

[2] The Applicant submits that the Officer breached their duty of procedural fairness and rendered a decision that is unreasonable.

[3] For the reasons that follow, I disagree. This application for judicial review is dismissed.

II. **Facts**

[4] The Applicant is a citizen of India. In 2020, she applied for permanent residence under the Home Child Care Provider Class, listing her spouse and children as accompanying family members.

[5] In March 2023, the Officer issued a letter to the Applicant requesting additional documents for her spouse.

[6] The Applicant requested an extension until June 30, 2023 to submit the requested documents (the “First Extension Request”). The Officer granted an extension until June 14, 2023. The requested documents were not received by this date.

[7] On September 14, 2023, the Applicant’s application for permanent residence was refused. The Officer determined that “it cannot be established that [the Applicant] meet[s] the requirements for permanent residence” due to “[the Applicant’s] failure to produce all relevant evidence and documents required by subsection 16(1) of the [IRPA].” This is the decision that is presently under review.

III. Issues and Standard of Review

[8] The Applicant submits that the Officer's decision is unreasonable and was rendered in a procedurally unfair manner.

[9] The parties submit that the applicable standard of review for the merits of the decision is that of reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 25, 86-87 ("Vavilov")). I agree.

[10] The issue of procedural fairness is to be reviewed on the correctness standard (*Mission Institution v Khela*, 2014 SCC 24 at para 79; *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at paras 37-56 ("Canadian Pacific Railway Company"); *Canadian Association of Refugee Lawyers v Canada (Immigration, Refugees and Citizenship)*, 2020 FCA 196 at para 35). I find that this conclusion accords with the Supreme Court of Canada's decision in *Vavilov* (at paras 16-17).

[11] Reasonableness is a deferential, but robust, standard of review (*Vavilov* at paras 12-13). The reviewing court must determine whether the decision under review, including both its rationale and outcome, is transparent, intelligible, and justified (*Vavilov* at para 15). 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). Whether a decision is reasonable depends on the relevant administrative setting, the record before the decision-maker, and the impact of the decision on those affected by its consequences (*Vavilov* at paras 88-90, 94, 133-135).

[12] For a decision to be unreasonable, the applicant must establish the decision contains flaws that are sufficiently central or significant (*Vavilov* at para 100). Not all errors or concerns about a decision will warrant intervention. A reviewing court must refrain from reweighing evidence before the decision-maker, and it should not interfere with factual findings absent exceptional circumstances (*Vavilov* at para 125). Flaws or shortcomings must be more than superficial or peripheral to the merits of the decision, or a “minor misstep” (*Vavilov* at para 100).

[13] Correctness, by contrast, is a non-deferential standard of review. The central question for issues of procedural fairness is whether the procedure was fair having regard to all of the circumstances, including the factors enumerated in *Baker v Canada (Minister of Citizenship and Immigration)*, 1999 CanLII 699 (SCC), [1999] 2 SCR 817 (at paras 21-28; see also *Canadian Pacific Railway Company* at para 54).

IV. Analysis

A. *The Officer’s Decision is Reasonable*

[14] The Applicant submits that the refusal decision is unreasonable, as the Officer disregarded a letter to IRCC in which she requested an additional extension until October 31, 2023 (the “Second Extension Request”). The Applicant further submits that the refusal decision was “brief and did not adequately address the Officer’s decision-making process.”

[15] The Respondent submits that the Officer made no reviewable error. According to the Respondent, the alleged Second Extension Request was not before the Officer. Although the

Officer's decision is brief, it demonstrates a coherent and rational chain of analysis for refusing the Applicant's application.

[16] I agree with the Respondent.

[17] The Applicant's claim that a Second Extension Request was put to the Officer is not supported by the record. The Second Extension Request does not appear in the CTR. Although a copy of the alleged Second Extension Request was included in the Applicant's record, this document was undated and the Applicant brought no evidence that the letter had been sent. In contrast, the First Extension Request was dated and accompanied by an Express Worldwide document confirming that it had been mailed to IRCC. As determined by this Court in *Singh Khatra v Canada (Citizenship and Immigration)*, 2010 FC 1027 ("*Singh Khatra*"), "[w]here...the CTR does not contain a document or make any reference to such a document, a bare assertion by the Applicant that the document was sent will not generally suffice" to establish that the document was before the Officer (at para 6). In my view, the Applicant in this case makes just such a "bare assertion" (at para 6; cited in *Luzati v Canada (Citizenship and Immigration)*, 2011 FC 1179 at para 14; *Jeevaratnam v Canada (Citizenship and Immigration)*, 2011 FC 1371 at para 7; *Adeko v Canada (Citizenship and Immigration)*, 2022 FC 1047 at para 23 ("*Adeko*").

[18] As a result, I do not find that the Second Extension Request could have been considered by the Officer. As affirmed by this Court in *Zolotareva v Canada (Minister of Citizenship and Immigration)*, 2003 FC 1274, "the judicial review of a decision has to be made in light of the evidence that was submitted before the decision maker" (at para 36, cited in *Adeko* at para 23).

The Applicant has failed to demonstrate that the alleged Second Extension Request formed part of this body of evidence.

[19] Although the Applicant challenges the brevity of the Officer's decision, I find that it was reasonable for the refusal decision to be brief. The Applicant did not provide documents for the Officer to review. Consequently, it was sufficient for the Officer to simply note that the extended deadline had passed and that the Applicant had failed to provide documents required under subsection 16(1) of the *IRPA*. The Officer's reasoning is clear and amply supported by the record (*Aghaalikhani v Canada (Citizenship and Immigration)*, 2019 FC 1080 at para 16).

B. *There was No Breach of the Duty of Procedural Fairness*

[20] The Applicant submits that the Officer infringed her procedural rights by only granting an extension until June 14, 2023, despite the deadline of June 30, 2023 requested in the First Extension Request. The Applicant asserts that her procedural rights were further breached by the Officer's failure to grant the Second Extension Request.

[21] The Respondent submits that there was no breach of the duty of procedural fairness, as the refusal decision was rendered months after the requested deadline of June 30, 2023 and the Second Extension Request was not before the Officer.

[22] The Respondent is correct.

[23] The extended deadline of June 14, 2023 did not deprive the Applicant of her procedural rights. The refusal decision was rendered on September 14, 2023, more than two months after the Applicant's requested deadline of June 30, 2024. The Respondent rightly notes that the difference between the requested deadline and the deadline granted by the Officer is "of no moment."

[24] Furthermore, the Applicant has not demonstrated that the Second Extension Request was put to the Officer. Consequently, this is not a case where a decision-maker refused to grant an extension or ignored an extension request (*Gakar v Canada (Minister of Citizenship and Immigration)*, 2000 CanLII 15501 at para 36 (FC); *Tam v Canada (Minister of Citizenship and Immigration)*, 1995 CarswellNat 1456, [1995] FCJ No 1784 at para 5). In this case, the Officer granted the only extension request that was brought to their attention, gave clear "notice of the particular concerns" of IRCC, and provided "a reasonable opportunity" for the Applicant "to respond" (*Khwaja v Canada (Citizenship and Immigration)*, 2006 FC 522 at para 17).

V. Conclusion

[25] For these reasons, I dismiss this application for judicial review. The decision is based on a rational chain of analysis and accords with subsection 16(1) of the *IRPA* (*Vavilov* at paras 85, 108). The evidence does not indicate that the Officer breached their duty of procedural fairness. No questions for certification were raised, and I agree that none rise.

JUDGMENT in IMM-13157-23

THIS COURT’S JUDGMENT is that:

1. This application for judicial review is dismissed.
2. There is no question to certify.

“Shirzad A.”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-13157-23

STYLE OF CAUSE: MANDEEP KAUR DHALIWAL v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: BY VIDEOCONFERENCE

DATE OF HEARING: DECEMBER 4, 2024

JUDGMENT AND REASONS: AHMED J.

DATED: DECEMBER 16, 2024

APPEARANCES:

Arpan Brar	FOR THE APPLICANT
Trevor Siemens	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Jonjit Singh Law Corporation Barristers and Solicitors Surrey, British Columbia	FOR THE APPLICANT
Attorney General of Canada Vancouver, British Columbia	FOR THE RESPONDENT