Federal Court  Cour fédérale

Date: 20241220

Docket: IMM-15820-23

Citation: 2024 FC 2081

Ottawa, Ontario, December 20, 2024

PRESENT: The Honourable Madam Justice Kane

BETWEEN:

MARIA ALEXANDRA ESPINOSA COTACACHI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The Applicant, Maria Alexandra Espinosa Cotacachi [Ms. Cotacachi], a citizen of Ecuador, seeks judicial review of the decision of a visa officer [the Officer], dated October 11, 2024, refusing her application for a temporary resident visa, in particular an open work permit. Ms. Cotacachi had applied for a work permit under the International Mobility Program to join her husband, who works in Canada with a work permit (valid until October 2024) supported by a positive Labour Market Impact Assessment [LMIA]. Ms. Cotacachi filed the application along

with those of her children, who range in age from one year to 20 years, who each submitted applications for temporary residence based on a study permit, work permit, or a visitor visa. The Officer also refused the applications of the family members.

I. The Decision under Review

[2] With respect to the refusal of Ms. Cotacachi's work permit, the letter dated October 11, 2023, along with the Global Case Management [GCMS] notes of the Officer constitute the reasons for the decision. The letter states that the Officer is not satisfied that Ms. Cotacachi will leave Canada at the end of her stay as required by the applicable regulations based on several factors: significant family ties in Canada; no significant family ties outside Canada; the purpose of her visit is not consistent with a temporary stay based on the details provided in her application; her current employment situation does not show financial establishment in her country of residence; and insufficient evidence of funds, including income and assets to carry out the stated purpose of coming to Canada or maintaining herself while in Canada.

[3] The GCMS notes are similar to the letter, stating that the application has been reviewed and the factors, as noted above, considered. The GCMS notes also state "based on the financial documents submitted, I am not satisfied that the applicant has sufficient funds for the visit."

[4] The letter and GCMS notes for the proposed accompanying family members, which remain on the record before the Court in this Application for Judicial Review, are very similar (as were their applications and supporting documents).

II. The Applicant's Submissions

[5] There was some previous confusion on the Applicant's, Ms. Cotacachi's, part regarding the scope of this Application for Judicial Review. Ms. Cotacachi had proceeded under the premise that her application and the applications for judicial review of her accompanying family members, all of whom were also refused a study permit, a work permit or a visitor visa would be determined in a consolidated application. However, no order was sought from this Court to consolidate the related applications. Moreover, the related applications for leave and for judicial review of the refusal of visas for the accompanying family members were dismissed by the Court on April 11, 2024. Although the Respondent notes that the dismissed applications are not before the Court, Ms. Cotacachi's Application Record includes the Officer's decisions in the related, albeit dismissed, applications.

[6] With respect to this Application for Judicial Review, Ms. Cotacachi submits that the Officer breached the duty of procedural fairness by not alerting her to the Officer's concerns that she (and her children) would not leave Canada at the end of her authorized stay.

[7] Ms. Cotacachi also argues that the Officer's refusals of her application and the related applications demonstrate a breach of procedural fairness. Ms. Cotacachi contends that the Officer's similar reasons for quickly refusing all the visa applications of her accompanying family members signals that the Officer did not consider the applications before them, rather relied on artificial intelligence [AI] to generate a decision, in particular, by using the Chinook tool. She submits that this rapid decision-making suggests that the Officer did not fairly consider

her application. She also argues that the lack of transparency in the decision about how the Chinook tool was used is a breach of procedural fairness.

[8] Ms. Cotacachi also submits that the Officer's decision is not reasonable. She submits that the Officer failed to consider that her husband, who has a work permit supported by a LMIA, is fully employed in Canada and his pay slips and other banking information demonstrate that there is sufficient financial capacity to support her and the children while in Canada.

[9] Ms. Cotacachi submits that she provided supporting evidence to demonstrate her ability to return after the temporary stay. She argues that the Officer erred by failing to explain why the purpose and length of her visit was inconsistent with a temporary stay and erred in failing to consider the positive factors, such as her financial capacity and ties to Ecuador.

III. The Respondent's Submissions

[10] The Respondent submits that the Officer reasonably concluded that Ms. Cotacachi had not met the requirements for a work permit, in particular, that the Officer was not satisfied that she would leave Canada at the end of her authorized stay. The Respondent notes that given the financial information provided, the Officer reasonably concluded that this would not be sufficient to cover her expenses (or those of her accompanying family members) while in Canada and or her travel costs, nor does it establish that the family is sufficiently established in their home country. The Respondent also submits that the Officer's refusal of the work permit is justified given that Ms. Cotacachi would be travelling to Canada with her family to join her husband, and there is little evidence of family ties remaining in Ecuador.

[11] The Respondent submits that the Officer's finding that Ms. Cotacachi would not leave Canada was based on the insufficiency of evidence, not credibility issues, and does not breach procedural fairness. Ms. Cotacachi was responsible for establishing her temporary intent, but failed to do so to the satisfaction of the Officer. Key deficiencies included limited evidence of financial capacity (the hourly wage of her spouse, pay slips, and bank statements for two months), which would be insufficient to cover the costs of a family of six and travel expenses. She also failed to provide any supporting documentation regarding her employment in Ecuador.

[12] The Respondent notes that clear instructions are provided to visa applicants that set out what is required to support an application.

[13] The Respondent submits that the Officer considered that family ties in Canada, including her husband and children and two other family members, could be a "pull factor" encouraging them to remain, while insufficient information was provided about her remaining family in Ecuador.

[14] The Respondent further submits that the use of the Chinook tool does not lead to the conclusion that there was a breach of procedural fairness. In the present case, the Officer engaged with the evidence on the record to reach a reasonable decision.

IV. Standard of Review

[15] The standard of review of a work permit refusal is reasonableness (Kaur v Canada (Citizenship and Immigration), 2022 FC 270 at para 21; Bains v Canada (Citizenship and

Immigration), 2020 FC 57 at para 49; Lin v Canada (Citizenship and Immigration), 2019 FC 1284 at para 23 [Lin]).

[16] 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 (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 85, 102, 105–07 [*Vavilov*]). A decision should not be set aside unless it contains "sufficiently serious shortcomings … such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency" (*Vavilov* at para 100).

[17] Reasons are not held to a standard of perfection (*Vavilov* at para 91). In the context of decisions for work permits and similar applications, it is understood that the reasons are brief (*Patel v Canada (Citizenship and Immigration)*, 2020 FC 77 at para 17 [*Patel*]); nonetheless, the reasons must permit the Court to understand why the application was refused and to determine that the conclusion falls within the range of reasonable outcomes.

[18] Issues of procedural fairness require the Court to determine whether the procedure followed by the decision-maker is fair having regard to all of the circumstances; this is akin to a standard of correctness (*Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54). The scope of the duty of procedural fairness owed in the circumstances is variable and informed by several factors (*Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 at para 21. Where a breach of procedural fairness is found, no deference is owed.

[19] The duty of procedural fairness owed to an applicant for a temporary work permit is at the low end of the spectrum (*Singh Grewal v Canada (Citizenship and Immigration)*, 2013 FC 627 at para 19; *Sulce v Canada (Citizenship and Immigration)*, 2015 FC 1132 at para 10; *Kaur v Canada (Citizenship and Immigration)*, 2017 FC 782 at para 19; *Li v Canada (Citizenship and Immigration)*, 2012 FC 484 at para 31).

V. The Decision is Procedurally Fair and Reasonable

[20] Contrary to Ms. Cotacachi's argument that she should have been alerted to the Officer's concern that she would not leave Canada at the end of her authorized stay, an officer is not required to alert an applicant to concerns that arise from the requirements of the Act (*Hassani v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1283 at para 24 [*Hassani*]; *Hamza v Canada (Minister of Citizenship and Immigration)*, 2013 FC 264 at paras 21–24; *Patel v Canada (Citizenship and Immigration)*, 2021 FC 573 at para 20).

[21] Officers are not required to request clarification or to give applicants the chance to strengthen their application, except where the officer's concerns are about the authenticity or veracity of the supporting evidence—for example, if the officer questions the credibility, accuracy or genuine nature of the information provided (*Kong v Canada (Citizenship and Immigration)*, 2017 FC 1183 at para 24; *Perez Enriquez v Canada (Citizenship and Immigration)*, 2012 FC 1091 at para 26; *Hassani*.

[22] Nor does the potential use of the Chinook tool in the Officer's assessment of Ms. Cotacachi's application and the related applications suggest any breach of procedural

fairness. The similarities in the reasons for the respective refusals are logical given that all the applications were based on the same supporting documents—which amounted to relying on the husband and father's employment in Canada and bank statements. Indeed it would be more problematic if the reasons differed.

[23] The Court has consistently held that an officer's use of Chinook to process applications does not, on its own or without clear evidence, raise issues of reasonableness or procedural fairness. Ms. Cotacachi merely speculates about how the Chinook tool works. No evidence has been placed before the Court about the Chinook tool to support her argument that it may have replaced the role of the Officer or influenced the Officer to reach an unfair decision. There is ample jurisprudence from this Court addressing and rejecting arguments similar to those raised by Ms. Cotacachi.

[24] Ms. Cotacachi points to *Jamali v Canada (Citizenship and Immigration)*, 2023 FC 1328, however, in that case, Justice Little responded to very similar arguments and found at para 43:

> [43] The applicant's arguments are speculative. The applicant did not adduce evidence to support his position, or about what the Chinook software does and does not do. It is not sufficient merely to allege or presume that not enough "human input" went into the review of his application or that there was a "lack of effective oversight", and the record does not support those arguments in this case. There is inadequate evidence to find that the apparent use of Chinook caused any procedural unfairness to the applicant in this case. See *Haghshenas*, at paras 22, 24; *Raja*, at paras 28-30; *Ardestani*, at para 26; *Zargar*, at para 12; *Shirkavand*, at paras 12-14.

[25] Ms. Cotacachi also points to *Ardestani v Canada (Citizenship and Immigration)*, 2023 FC 874; however, in that case, Justice Aylen clearly rejected the speculative assertions regarding the use of Chinook, noting at para 26:

> [26] The Applicant asserts that his work permit application was processed using Chinook, which in and of itself is a breach of procedural fairness. Moreover, he asserts that the use of Chinook was improper given the importance of the decision at issue and the degree of complexity of the decision at issue (which involved business immigration). There is also no merit to these assertions. I am not satisfied that the use of Chinook, on its own, constitutes a breach of procedural fairness or that the nature of the application itself has any bearing on the use of Chinook. The evidence before the Court is that the decision was made by an Officer, with the assistance of Chinook. Whether or not there has been a breach of procedural fairness will turn on the particular facts of the case, with reference to the procedure that was followed and the reasons for decision [see *Haghshenas*, supra].

[26] Justice Aylen added at para 34:

> The Applicant further asserts that the use of Chinook is "concerning", suggesting essentially that any decision rendered in which Chinook was used cannot be reasonable. I see no merit to this suggestion. <u>The burden rests on the Applicant to demonstrate that the decision itself lacks transparency, intelligibility and/or justification, and baseless musings about how Chinook was developed and operates does not, on its own, meet that threshold.</u>
>
> [Emphasis added.]

[27] In *Haghshenas v Canada (Citizenship and Immigration)*, 2023 FC 464, Justice Brown addressed similar arguments as advanced by Ms. Cotacachi—that there is no way to determine if the decision was made by the Officer or the Chinook software. Justice Brown noted at para 24:

> [24] As to artificial intelligence, the Applicant submits the Decision is based on artificial intelligence generated by Microsoft in the form of "Chinook" software. However, the evidence is that the Decision was made by a Visa Officer and not by software. I

> agree the Decision had input assembled by artificial intelligence, but it seems to me the Court on judicial review is to look at the record and the Decision and determine its reasonableness in accordance with *Vavilov*. Whether a decision is reasonable or unreasonable will determine if it is upheld or set aside, whether or not artificial intelligence was used. To hold otherwise would elevate process over substance.

[28] Similarly, in *Raja v Canada (Minister of Citizenship and Immigration)*, 2023 FC 719 at paras 28–30, Justice Ahmed explained why the use of the Chinook tool to extract information from applications does not necessarily constitute a breach of procedural fairness:

> [28] The Applicant submits that the Officer's use of the Chinook processing tool to assist in the assessment of the application is procedurally unfair. The Applicant contends that the tool, which he claims is able to extract information from the GCMS for many applications at a time and generate notes about these applications in "a fraction of the time" it would take to review an application otherwise, results in a lack of adequate assessment of the Applicant's work permit application.
>
> [29] The Respondent submits that IRCC's use of the Chinook tool to improve efficiency in addressing a voluminous number of temporary residence applications does not amount to a specific failure of procedural fairness in the Applicant's case. The Respondent notes that the Applicant has failed to point to any evidence to support that the Officer's use of the Chinook tool resulted in the omission of a key consideration in the assessment of his application or deprived him of the right to have his case heard. The Respondent contends that the Applicant's submissions appear to be little more than an objection to IRCC's use of this tool.
>
> [30] I agree with the Respondent. While it was open to the Applicant to raise the ways that the Chinook processing tool specifically resulted in a breach of procedural fairness in the Officer's assessment of his case, he has not provided any evidence of such a connection. I would also note that the Chinook tool is not intended to process, assess evidence, or make decisions on applications, and the Applicant has failed to raise any evidence countering this or demonstrating that the tool impacts the fairness of the decision-making process.

[29] The jurisprudence is clear that the issue is whether the decision is reasonable and/or procedurally fair based on the record before the Court and the principles established in the jurisprudence regarding reasonableness review and the duty of procedural fairness owed in the circumstances.

[30] In the present case, even if the Officer was aided by the Chinook tool, the Officer's reasons for refusing Ms. Cotacachi's work permit reflect the facts and the law. The issue for the Court is whether the Officer's decision is reasonable in that the decision is based on a rational chain of analysis and permits the Court to understand why the permit was refused.

[31] The onus was on Ms. Cotacachi to establish to the Officer's satisfaction that she met the requirements to be granted an open work permit. Ms. Cotacachi did not support her application for her work permit with anything other than her application form, noting that she did not have an intended occupation or employer in Canada; her husband's employment information, including his hourly wage and his LMIA; a copy of her husband's work permit (which notes that it would expire in October 2024); and bank statements for a two-month period. Contrary to her assertion, there is no evidence on the record regarding her employment in Ecuador, which could have been a relevant consideration in determining whether she had a "pull factor" to Ecuador.

[32] The Officer reasonably concluded that the work permit application did not meet the requirements of the Act and *Immigration and Refugee Protection Regulations*, SOR/2002-227 [Regulations]. Although the reasons are brief, the Officer addressed the information provided in

support of the application—which was very sparse—and the requirements of the Regulations that guide the granting of work permits.

[33] The Officer did not err in finding that Ms. Cotacachi, travelling on her own or with her family, would have family ties in Canada, including her husband and other relatives in Canada, and few in Ecuador, which is a factor in assessing whether an applicant will leave Canada at the end of their authorized temporary stay. The Officer also did not err in finding that the financial information provided did not demonstrate that there was sufficient funds to support Ms. Cotacachi's travel and expenses while in Canada.

JUDGMENT in file IMM-15820-23

THIS COURT'S JUDGMENT is that:

1. The Application for Judicial Review is dismissed.

2. There is no question for certification.

"Catherine M. Kane"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-15820-23
STYLE OF CAUSE:	MARIA ALEXANDRA ESPINOSA COTACACHI v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
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