Federal Court Cour fédérale

Date: 20250606

Docket: IMM-10942-24

Citation: 2025 FC 1023

Toronto, Ontario, June 6, 2025

PRESENT: The Honourable Mr. Justice Thorne

BETWEEN:

ZOHREH HELMZADEH
MAHMOUD MIRAB
AILI MIRAB
ARVIN MIRAB

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Principal Applicant, Zohreh Helmzadeh, seeks judicial review of an April 22, 2024 Decision by a visa officer [the Officer] with Immigration, Refugees and Citizenship Canada

[IRCC], which denied her request for a substituted evaluation pursuant to subsection 98.10(1) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [IRPR].

[2] In an earlier decision, IRCC had denied the Principal Applicant's application for permanent residence under the Start-up Business Class visa program. It held that she had not met certain aspects of the language skills requirements for this program, as set out in paragraph 98.01(2)(b) of the IRPR. The Principal Applicant then sought to obtain a substituted evaluation to replace the results of certain of these language testing benchmarks pursuant to section 98.10 of the IRPR. It is the Decision denying her substituted evaluation request that the Principal Applicant now seeks judicial review of.

[3] For the reasons that follow, this application is allowed.

II. Background

[4] The Principal Applicant is a 52-year-old citizen of Iran. Her spouse and their two children are included as parties in this proceeding. The Applicants already reside in Canada, where the Principal Applicant holds a valid work permit.

[5] The Principal Applicant was formerly a physician in Iran and is part of an entrepreneurial group seeking to establish Smart Stimuli+, a tech company centered on data management software for healthcare providers, as a start up in Vancouver, BC. In relation to this endeavour, the Applicants applied for permanent residence as members of the Start-up Business Class, on February 16, 2021.

[6] On December 12, 2023, the Principal Applicant received a Procedural Fairness Letter [PFL] from the Officer evaluating her application. The letter stated that the Principal Applicant's International English Language Testing System (IELTS) scores, dated August 8, 2020, did not meet the minimum language level requirements of paragraph 98.01(2)(b) of the IRPR for the Start-up Visa Program. These required a Canadian Language Benchmark (CLB) minimum score of 5 in each of the Reading, Writing, Listening and Speaking skill assessment areas. The letter noted that the Principal Applicant had scored only 4.5 in Listening, though she had recorded scores of 5 in both Reading and Writing and had earned a 6 in Speaking. The letter invited her to provide additional information, if she chose. The Principal Applicant responded to this letter, stating that she had rebooked an IELTS exam for the earliest available date of February 2024, and requesting time to provide updated scores.

[7] The Applicants' permanent residence application was denied in a subsequent January 9, 2024 letter. This noted that the Principal Applicant had misinterpreted the PFL, and that the Officer had not requested, and nor could they accept, the results of a new IELTS exam. The rejection letter went on to state that the Principal Applicant had not demonstrated an ability to become economically established in Canada, pursuant to subsection 98.01(1) of the IRPR, because she did not meet the language requirements to qualify as a member of the Start-up Business Class as set out in paragraph 98.01(2)(b) of the IRPR. This decision was also recorded in IRCC's Global Case Management System (GCMS) without additional reasoning. As a result of the refusal of the Principal Applicant, each of the pending permanent residence applications for the other members of her entrepreneurial team were also refused.

[8] In March 2024, the Principal Applicant requested a substituted evaluation. As outlined in subsection 98.10(1) of the IRPR, this is a discretionary measure in which an Officer may substitute their own evaluation of an applicant's ability to become economically established in Canada in lieu of the requirements noted in subsection 98.01(2) – including the language requirement – if the Officer deems those requirements to be insufficient indicators of whether the applicant will become economically established in Canada. The Principal Applicant asserted that a substituted evaluation would be justified, considering her extensive medical expertise and the impact of the COVID-19 pandemic on her ability to test during the relevant application window.

[9] The Principal Applicant's substituted evaluation request was denied in a letter dated April 22, 2024. In this Decision, the Officer noted the statutory requirements set out in paragraph 98.01(2)(b) of the IRPR and reiterated the Principal Applicant's IELTS results. The Officer went on to decline the Principal Applicant's request for a substituted evaluation, stating that he was not satisfied that she had strong enough English language communication skills to apply a substituted evaluation for the language test results. In support of this conclusion, the Officer asserted that the Principal Applicant "received the minimum required score in **two** out of the four assessed areas" [emphasis added] on her IELTS exam. The Officer also stated that accepting a new language test would be in contravention of applicable regulations, which require the test results to be less than two years old on the date of the application for permanent residence. Ultimately, the Officer found that the Principal Applicant did not provide sufficient information to dissuade their concerns, and therefore denied her request for substituted evaluation.

[10] That decision is reiterated in the Officer's GCMS notes, which provides additional reasoning that a letter of support from a member of the Principal Applicant's Start-up Business

Designated Entity was “given less weight” by the Officer in reaching the Decision, as the party who wrote the support letter had a conflict of interest, since they were a “shareholder who is also a member of the Designated Entity VANTEC Angel Network”.

III. Issues and Standard of Review

[11] This matter raises the following issues:

1. Is the reasonableness of the Decision a moot issue?
2. Did the Officer unreasonably consider the Principal Applicant’s substituted evaluation request?

[12] As was correctly asserted by both parties, the standard of review applicable in this case is that of reasonableness, as articulated by the Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*]. Under this standard, 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). Accordingly, reasonableness review requires that “a court must consider the outcome of the administrative decision in light of its underlying rationale in order to ensure that the decision as a whole is transparent, intelligible and justified” (*Vavilov* at para 15). The principle of justification requires that decisions under review account for the central issues and concerns as raised in the parties’ submissions to the decision maker (*Vavilov* at para 127).

IV. Relevant Provisions

[13] This matter involves the following statutory provisions:

Immigration and Refugee Protection Regulations, SOR/2002-227

Class	**Catégorie**
98.01 (1) For the purposes of subsection 12(2) of the Act, the start-up business class is prescribed as a class of persons who may become permanent residents on the basis of their ability to become economically established in Canada, who meet the requirements of subsection (2) and who intend to reside in a province other than Quebec.	**98.01 (1)** Pour l'application du paragraphe 12(2) de la Loi, la catégorie « démarrage d'entreprise » est une catégorie réglementaire de personnes qui peuvent devenir résidents permanents du fait de leur capacité à réussir leur établissement économique au Canada, qui satisfont aux exigences visées au paragraphe (2) et qui cherchent à s'établir dans une province autre que le Québec.
Member of class	**Qualité**
(2) A foreign national is a member of the start-up business class if	**(2)** Appartient à la catégorie « démarrage d'entreprise » l'étranger qui satisfait aux exigences suivantes :
(a) they have obtained a commitment that is made by one or more entities designated under subsection 98.03(1), that is less than six months old on the date on which their application for a permanent resident visa is made and that meets the requirements of section 98.04;	**a)** il a obtenu d'une ou de plusieurs entités désignées en vertu du paragraphe 98.03(1) un engagement qui date de moins de six mois au moment où la demande de visa de résident permanent est faite et qui satisfait aux exigences de l'article

(b) they have submitted the results of a language test that is approved under subsection 102.3(4), which results must be provided by an organization or institution that is designated under that subsection, be less than two years old on the date on which their application for a permanent resident visa is made and indicate that the foreign national has met at least benchmark level 5 in either official language for all four language skill areas, as set out in the *Canadian Language Benchmarks* or the *Niveaux de compétence linguistique canadiens*, as applicable

…

Substituted evaluation

98.10 (1) An officer may substitute their evaluation of the applicant's ability to become economically established in Canada for the requirements set out in subsection 98.01(2), if meeting or failing to meet those requirements is not a sufficient indicator of whether the applicant will become economically established in Canada.

98.04;

b) il a fourni les résultats — datant de moins de deux ans au moment où la demande est faite — d'un test d'évaluation linguistique approuvé en vertu du paragraphe 102.3(4) provenant d'une institution ou d'une organisation désignée en vertu de ce paragraphe qui indiquent qu'il a obtenu, en français ou en anglais et pour chacune des quatre habiletés langagières, au moins le niveau 5 selon les *Niveaux de compétence linguistique canadiens* ou le *Canadian Language Benchmarks*, selon le cas;

…

Substitution de l'évaluation

98.10 (1) Si le fait de satisfaire ou non aux exigences prévues au paragraphe 98.01(2) n'est pas un indicateur suffisant de l'aptitude du demandeur à réussir son établissement économique au Canada, l'agent peut y substituer son appréciation.

Exception

Exception **(2)** However, a substitute evaluation must not be conducted for an applicant who did not have a commitment from a designated entity on the day on which they made their application.	**(2)** Toutefois, l'agent ne peut substituer son appréciation dans le cas d'un demandeur n'ayant pas d'engagement de la part d'une entité désignée à la date de la présentation de sa demande.

V. Issue 1: Mootness

[14] The Respondent primarily maintains that the Officer's Decision is reasonable. However, though they do not specifically raise the issue of mootness, they nonetheless also suggest that there is "no purpose" in redetermining the Principal Applicant's request for a substituted evaluation, even if the Decision is unreasonable.

[15] They point out that another requirement, in paragraph 98.01(2)(a) of the IRPR, is that members of the Start-up Business Class must also have a commitment from an appropriate designated entity. They argue that the Principal Applicant was ineligible for a substituted evaluation in accordance with the exception outlined under subsection 98.10(2) of the IRPR, which instructs that a substituted evaluation must not be conducted for an applicant who did not have a commitment from a designated entity on the date of their application. They further note that the relevant Commitment Certificate on record was valid between June 3, 2020 and December 3, 2020, and that the Applicants' permanent residence application was not filed until February 2021.

[16] Though it does not specifically frame this argument in terms of mootness, or cite any case law in support of their argument on mootness, the Respondent asserts that there would be no benefit to returning this matter for redetermination. This appears to be a distinction without a difference.

[17] The Applicants allege that the Officer did not, in any way, raise the issue of the expiration of the Commitment Certificate in the Decision. They argue that if this was a ground for refusal to offer a substituted evaluation, it was for the Officer to provide such a justification, rather than for the Respondent to do so upon judicial review. They further note that the language in subsection 98.10(2) is imperative, declaring that "a substituted evaluation **must** not be conducted" [emphasis mine] for the applicants it describes. On this basis, they argue that this consideration with respect to the expiration of the Certificate could not have comprised part of the Officer's rationale for rejecting the request of the Applicant, since the Officer did, in fact, undertake a substituted evaluation, though they ultimately decided against implementing the substitution.

[18] The Applicants also note that, due to COVID, there were certain temporary policies operational at the time of the application which might have affected the Officer's assessment of the expired Commitment Certificate, and which they claim might have provided the Principal Applicant relief from the substituted evaluation exception. They specifically cite one such policy, OB 669, in this regard. The Respondent, in turn, argues that this policy would not have had such an effect.

[19] I note that the principle of mootness applies where a decision of the court will not have the effect of resolving a controversy which affects or may affect the rights of the parties (*Borowski v Canada (Attorney General)*, 1989 CanLII 123 (SCC) [*Borowski*]; *Gill v Canada (Citizenship and Immigration)*, 2024 FC 1453 at para 11 [*Gill*]). However, at para 11 of *Gill*, this Court reiterated that that a court may exercise their discretion to address a moot issue in light of factors including a continued adversarial context, concern for judicial economy, and the court's law-making role.

[20] Notwithstanding the exception noted in subsection 98.10(2) of the IRPR, and the fact that the Commitment Certificate had indeed expired at the time of the Applicants' permanent residence application, I find that it cannot be said that there is no live controversy to resolve between the parties which affects, or may affect, the Applicants' rights. There is a tangible dispute between the parties as to whether the Applicants may have been relieved from the exception in subsection 98.10(2) of the IRPR because of COVID-19 policies operative during the processing of their permanent residence application, for example. In this regard, both parties speculate as to the applicability of OB 669 or other policies that may have factored into the Officer's reasoning on this point, or the reasoning of a different, future officer redetermining the Decision. However, it is not possible for this Court to make any findings about the applicability of any such policies to the Applicants' permanent residence application, as they are not on the record before us, and indeed, the policy in question has apparently been entirely removed from the Ministry's internet presence. Further, this Court cannot speculate as to how this Officer may have considered this issue, which is not explicitly raised in the Decision. Though the Court may 'connect the dots' on "readily" drawn inferences in the Officer's reasoning, here there are simply no such dots to connect in relation to the effect of the expired Commitment Certificate on the

Officer's assessment of the viability of the Principal Applicant's request for a substituted evaluation (*Vavilov* at para 97, citing *Komolafe v Canada (Minister of Citizenship and Immigration)* at para 11).

[21] More importantly, I agree with the Applicants that if the expiry of the Commitment Certificate were an underlying reason for the rejection of their request for a substituted evaluation, it was for the Officer, rather than the Respondent now, to provide this justification. Reasonableness review starts with the reasons themselves, and a reasonable decision must be justified by way of those reasons (*Vavilov* at paras 84, 95). I agree that nothing in the Decision suggests that the expiration of the Commitment Certificate was an issue, or even a consideration, for the Officer. Indeed, the fact that the Officer conducted a substitute evaluation, at all, in contravention of imperative language in s. 98.10, clearly indicates they did not see this as an issue. In any event, the Respondent cannot supplement the Decision on judicial review by implying that the Officer may have considered OB 669 and, in doing so, might have distinguished between the Principal Applicant's failure to meet language benchmark eligibility criteria and other circumstances contemplated by OB 669.

VI. Issue 2: Reasonableness

[22] This Court has held that there are no grounds for intervention on judicial review when IRCC officers provide a clear, intelligible chain of reasoning as to how the statutory requirements of the Start-up Business Class Program apply in an applicant's particular circumstances (see e.g. *Orouji* at para 14). However, in my view, the Officer did not do so in this case. Crucially, I find the Decision unreasonable because the manner in which the Officer

evaluated the Principal Applicant's request did not appear to accord with the applicable legislative standard with respect to a substituted evaluation – or, in the parlance of the Supreme Court, it was unjustified in relation to legal constraints bearing upon the Decision (*Vavilov* at para 99).

[23] Recall that subsection 98.10(1) of the IRPR requires an officer to consider whether meeting or failing to meet the requirements outlined in subsection 98.01(2) of the IRPR – including the language requirement – constitutes a sufficient indicator of whether an applicant will become economically established in Canada. The essence of this provision is that where an officer concludes that, for other reasons, those requirements do not sufficiently indicate whether the person will become economically established in Canada, the officer has the discretion substitute their evaluation of whether the party will do so.

[24] In the Decision, after citing the Applicant's IETLS scores, the Officer states:

> I am not satisfied that you have strong enough communication skills in the English language to apply a Substituted Evaluation for the language test results. You received the minimum required score in two out of the four assessed areas on your IELTS exam.

[25] In their submissions, the Applicants and Respondent argued as to whether this passage indicated that the Officer had committed an error in fact, as he seemed to indicate that the issue with the Principal Applicant's IELTS results was that she had received the minimum required score in "two out of the four" skill areas on her IELTS exam, rather than the fact that she had not met the benchmark of receiving a passing grade in all of the four assessed areas. I do not find the Officer made any factual error. Earlier in the Decision letter, the Officer had specifically set out

the Principal Applicant's scores in each of the assessed areas. As a result, when read in context, it is evident that the Officer did not mistake or ignore the actual benchmark requirement of achieving a passing score in each language skill category.

[26] However, even so, the Decision and reasons do suggest that the Officer considered the Principal Applicant's substituted evaluation request solely based on whether she achieved the minimum score in her IELTS skills assessments, and on the number of areas in which she earned the minimum allowable benchmark language score of 5. It is evident from the Decision that this is the only rationale provided by the Officer to justify their finding that the Principal Applicant's communication skills were insufficient for him to apply a substituted evaluation of her language test results.

[27] From this, two points emerge. First, under subsection 98.10(1) of the legislation, what is to be potentially substituted is not merely the replacement of the evaluation of the language test results, as seems to be contemplated by the Officer, but rather an overall evaluation of an applicant's ability to become economically established in Canada. There is no indication in the Decision that this was considered, or that the evaluation of the Principal Applicant's language abilities was somehow being used to gauge this capacity. Rather, the Decision indicates that the concern of the Officer was simply that he was not convinced that the Principal Applicant possessed sufficient English language communication skills to be granted a substituted evaluation for the language test results. This does not accord to the legislative standard as set out in section 98.10 the IRPR.

[28] Second, I note that the Principal Applicant included, in her submissions to the Officer, a request for substituted evaluation based on her "extensive medical experience." It is well established that a Decision of an officer is not unreasonable merely because it fails to consider "every argument or line of possible analysis" presented by an applicant (*Vavilov* at para 128). However, I note that here the Officer did not, in any way, consider the submission about medical expertise, nor provide any other analysis beyond the aforementioned fact that the Principal Applicant had only achieved the minimum score in two language skills assessment areas.

[29] By evaluating the Principal Applicant's request through these two improper lenses and, accordingly, failing to apply the overall test in relation to which an Officer should offer a substituted evaluation as set out in subsection 98.10(1) of the IRPR, I find that the Decision is not justified in relation to its legal constraints and that it does not properly reflect the legislative standard at play.

[30] An administrative decision maker does not err for failing to justify the decision under review in light of factual and legal constraints that are peripheral or inconsequential, but a decision may be held unreasonable for overlooking or contravening constraints that are central and critical (*Singh v Canada (Citizenship and Immigration)*, 2022 FC 363 at para 21). I find that to be the case here. In my view, the reasonableness of the decision is fatally jeopardized by the Officer's failure to, in any way, justify their analysis pursuant to the requirements set out in section 98.10 of the IRPR (*Vavilov* at para 126).

[31] I note that in the hearing, counsel for the Respondent argued that in focusing on the communication skills of the Principal Applicant in the Decision, the Officer was indicating that, based on the extent of the language skills demonstrated, he had come to the conclusion that the Principal Applicant lacked the ability to become economically established in Canada. With respect to this, I agree with counsel for the Applicants that this rationale is simply not reflected in the Decision, and nor does it flow logically from it. The reasoning of the Officer cannot be buttressed in this fashion, after the fact, by speculating about a potential line of analysis by the Officer that is not apparent in the Decision itself. The jurisprudence is clear that reasonableness review does not permit this Court to entertain supplemental reasons beyond those issued in the decision under review (see e.g. *Alexion Pharmaceuticals Inc v Canada (Attorney General)*, 2021 FCA 157 at paras 8, 15, citing *Vavilov* at para 97, *Rezaei v Canada (Immigration, Refugees and Citizenship)*, 2020 FC 444 at para 28).

VII. Conclusion

[32] The Officer was required to exercise their discretion to consider the Principal Applicant's request for substituted evaluation under subsection 98.10 of the IRPR in a reasonable manner. The Applicants have demonstrated sufficiently serious shortcomings in the Decision to establish that this was not done. Accordingly, the application for judicial review is allowed.

JUDGMENT IN IMM-10942-24

THIS COURT'S JUDGMENT is that:

1. The judicial review application is granted.
2. The decision of the Officer dated April 22, 2024, is set aside and the matter is returned for redetermination by a different immigration Officer.
3. No question of general importance is certified.

"Darren R. Thorne"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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