Federal Court Cour fédérale

Date: 20250617

Docket: IMM-6163-24

Citation: 2025 FC 1094

Toronto, Ontario, June 17, 2025

PRESENT: The Honourable Mr. Justice A. Grant

BETWEEN:

KSENIIA NANIKOVA AND RAZMIK GEVORGIAN

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. OVERVIEW

[1] The Applicants seek judicial review of a Visa Officer's decision denying their applications for temporary resident visas [TRVs] in order to visit Canada.

[2] For the reasons that follow, I will grant this application.

II. BACKGROUND

A. *Facts*

[3] The Applicants, Kseniia Nanikova and Razmik Gevorgian, are spouses and citizens of Russia. In February 2024, they submitted TRV applications to come to Canada to visit Ms. Nanikova's sister. In support of their TRV applications, the Applicants provided proof of employment, their travel history, proof of family ties to Russia, and proof of finances. Notably for this matter, the Applicants' proof of finances took the form of PDF bank statements downloaded from a mobile application called Dengi, which is affiliated with their banking institution, Alfa-Bank.

[4] In March 2024, the Applicants received a procedural fairness letter [PFL], informing them of IRCC's concerns that the banking documents provided from Alfa-Bank were fraudulent. According to the PFL, "a verification was conducted directly through manual or official automatic verification channels with the financial institutions; we therefore have credible information that has raised concerns with the documentation provided." The letter also informed the Applicants that if IRCC found they had engaged in misrepresentation, they would be rendered inadmissible to Canada for a period of five years, pursuant to s.40(2)(a) of the *Immigration and Refugee Protection Act* [IRPA].

[5] The Applicants submitted a reply to the PFL via their immigration consultant. In it, the representative explained that Ms. Nanikova had obtained the documents directly from Alfa-Bank's mobile app and that they had not been altered in any way. The representative explained

that she had modified certain portions of the bank statements, by adding red boxes to highlight translated portions and formatting them according to IRCC file requirements. She stated:

> "If your concerns were about the PDF format or encoding. I hope the above explanations alleviate your concerns. If your concerns arc about the actual information on the documents, the applicants, Alina, and I have no knowledge or explanation of how or when the information was altered."

[6] The representative also tendered additional documents, including new partially translated bank statements from Ms. Nanikova and Mr. Gevorgian, which she clarified were obtained directly from Alfa-Bank, rather than through the Dengi app. The PFL reply also contained an affidavit from Ms. Nanikova, in which she stated that she had experienced difficulty using the Dengi app, that she had not altered the impugned bank statements, and that the account certifications were "were obtained honestly and in good faith via the bank's app."

B. *Decision under Review*

[7] An Officer refused the Applicants' TRVs in March 2024. The Officer found that the Applicants had submitted fraudulent documents as proof of funds; specifically, that "Direct bank verifications confirmed that the banking information originally submitted was fraudulent/altered and not reflective of actual balances. Your response did not overcome this major concern." As a result, the Officer rejected the TRV applications and found the Applicants inadmissible to Canada for a period of five years, for misrepresenting a material fact that could induce an error in the administration of the Act, under s.40 of the IRPA.

[8] In notes entered into the Global Case Management System [GCMS], the Officer reproduced the Applicants' PFL reply, including the representative's explanations regarding the formatting of the bank statements.

[9] The Officer stated that "Importantly, I note that Alfabank's own verifications confirmed to us that the information presented in the original Alfabank documents was fraudulent/altered." The Officer further noted that the IRCC Risk Assessment Unit's concerns were not with the formatting, but with the accuracy of the bank balances. Therefore, the Officer was "not satisfied that the applicants or their representative have provided a reasonable explanation as to why the original bank statement information was determined to be fraudulent or counterfeit through our verification work."

[10] The Officer was satisfied that this was a material misrepresentation under s.40 of the IRPA, and thus found the Applicants inadmissible to Canada for a period of five years.

III. ISSUES and STANDARD OF REVIEW

[11] The Applicants submit that the Officer's decision was unreasonable, and that the Officer breached their right to procedural fairness.

[12] The standard of review on the substance of the Officer's decision is reasonableness: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 23 [*Vavilov*].

[13] On issues of procedural fairness, the standard is akin is correctness (see *Mission Institution v Khela*, 2014 SCC 24 at para 79; *Canadian Association of Refugee Lawyers v*

Canada (Immigration, Refugees and Citizenship), 2020 FCA 196 at para 35). This requires the Court to assess whether the procedure followed was fair, having regard to all the circumstances (*Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54).

IV. ANALYSIS

[14] The Applicants argue that the decision under review was unreasonable, and that this unreasonableness arose, at least in part, from an inadequate procedural fairness letter. As Justice Grammond of this Court has noted, in these circumstances, there is no watertight separation between process and substance: *Vargas Villanueva v Canada (Citizenship and Immigration)*, 2023 FC 66 at para 26 [*Villanueva*]. As in *Villanueva*, I have concluded that the PFL's lack of precision, and the Officer's failure to meaningfully consider the Applicants' response led to a decision that lacked transparency and justification, and is therefore unreasonable.

[15] Because of the intermingling of procedural and substantive arguments, I will consider them together.

[16] The departure point for my analysis is the administrative law context in which this matter arises. The TRV context attracts a low level of procedural fairness. However, while visa officers are typically required to give only minimal reasons, they must give more extensive reasons when they make findings of misrepresentation: *Gautam v Canada (Citizenship and Immigration)*, 2022 FC 550 at paras 28, 31; *Villanueva* at para 19, citing *Likhi v Canada (Citizenship and Immigration)*, 2020 FC 171 at para 27; *Gill v Canada (Citizenship and Immigration)*, 2021 FC

1441 at paras 6–7; *Munoz Gallardo v Canada (Citizenship and Immigration), 2022 FC 1304,* at para 16.

[17] The heightened duty in this context arises because of the rights at stake; a finding of misrepresentation renders an individual inadmissible for a period of five years following the initial determination under s.40(1)(a): *He v The Minister of Citizenship and Immigration),* 2022 FC 112 at para 20; *Vavilov* at para 133.

A. *The Content of the Procedural Fairness Letter*

[18] The Applicants submit that IRCC breached their right to procedural fairness by failing to specifically indicate the reason for which it had concerns regarding their banking documents. In the PFL, the Officer stated:

> Specifically, I have concerns that you submitted a fraudulent, altered, or counterfeit Financial document (e.g. bank statement, balance certificate) from Alfa bank in support of your application and your financial status. A verification was conducted directly through manual or official automatic verification channels with the financial institution; we therefore have credible information that has raised concerns with the documentation provided.

[19] The question that arises in cases such as this is whether the above passage allowed the Applicants to know the case against them and whether they had a meaningful opportunity to respond. As my colleague Justice Norris noted in *Kaur v Canada (Citizenship and Immigration),* 2020 FC 809 (at para 46) [*Kaur*]:

> [The] question is: Does the letter inform the affected party of the decision maker's concerns? To serve this purpose, the letter must

> state more than general concerns. It must state the decision maker's concerns with sufficient clarity and particularity so that the affected party has a meaningful opportunity to address them.

[20] As noted above, the Applicants responded to the PFL by acknowledging that the bank statement *had* been altered, but only to: 1) indicate the precise parts of the document that had been translated into English; and 2) compress the document to comply with IRCC portal limitations. The Applicants affirmed in an affidavit that the bank statements had been obtained "honestly and in good faith" and that they were not aware of any changes made to them prior to being received by their immigration consultant. Beyond this, the Applicants provided a new bank statement directly from their bank that was signed and sealed, and demonstrated identical balances to those in the earlier version of the statement downloaded from the Dengi application.

[21] As also noted above, in rejecting the Applicants' TRVs, the Officer indicated that the alterations made by the Applicants' consultant were not the source of the concern, which related to the bank balances, rather than the formatting or alternations made to the document. In my view, the Applicants' PFL reply strongly suggests that the PFL lacked sufficient specificity to inform them of the precise nature of the Officer's concern. The PFL made no specific reference to the Officer's concern that the balances listed in the bank statement were altered, but rather expressed a more general concern that the document was fraudulent, altered, or counterfeit.

[22] Assuming for a moment that the document was genuine, but innocuously altered by the immigration consultant, the Applicants provided to the Officer the only response that they could have provided. In other words, if the bank statements are indeed valid, I do not see how the

Applicants could have anticipated from the PFL that the Officer's concerns related to the bank balances, rather than the other alterations that were made to the document.

[23] In this sense, I find that the facts of this case are indistinguishable from those at issue in *Villanueva*, which also dealt with concerns related to fraudulent bank statements. In that case, the officer provided a similarly general PFL indicating a concern that the applicant's "proof of funds" document was fraudulent. Citing *Albrifcani v Canada (Citizenship and Immigration)*, 2020 FC 355 [*Albrifcani*], Justice Grammond found (at para 28) that "such a statement does not adequately inform the applicant of the nature of the officer's concerns. The officer should have clearly explained that they had two separate concerns: the accuracy of the information contained in the letter and the letter's authenticity."

[24] For the above reasons, I am satisfied that, in the particular circumstances of this case, the Officer's PFL did not sufficiently explain the Officer's concerns.

B. *The Decision was Unreasonable*

[25] The inadequacies of the PFL also lead to a decision that lacks justification, transparency, and intelligibility. The Respondent argues that the Applicants' response to the PFL was simply "more of the same" and, as such, it was reasonable for IRCC to find that its concerns had not been addressed. In other words, since the Officer's concerns related to the bank balances, and since the PFL reply merely provided a new version of those same balances, the Respondent argues that it was entirely reasonable for the Officer to find that the PFL reply was insufficient.

[26] There are two problems with this approach. The first is that the PFL response only appears to be “more of the same” retrospectively, now that we know the precise nature of the Officer’s concerns, related to the bank balances. However, if (as the Applicants appeared to believe) the concern related to the consultant’s alteration of the documents, the reply was not “more of the same” but was, in fact, a response to the perceived problem. To this extent, then, the Respondent’s argument is predicated on the adequacy of the PFL, which I addressed above.

[27] Second, and perhaps more importantly, I disagree with the premise of the Respondent’s argument. As mentioned, the reply consisted of an affidavit from the Applicants, affirming the genuineness of the mobile app statements, explaining the difficulties they experienced obtaining these statements, and enclosing signed and sealed versions of the bank statements which supported the authenticity and accuracy of the original documents provided. In other words, this was corroborative evidence, which should not be confused with duplicative evidence.

[28] Given that the evidence provided in the PFL reply was *not* the same as that originally provided, the question becomes whether the Officer adequately considered this new information. In considering this question, I acknowledge that the Officer reproduced the Applicants’ submissions into the GCMS notes. I also acknowledge that the Officer stated (for the first time) that their concern was not over the consultant’s alteration of the bank statement, but over the bank balances. Notably absent, however, is any precise explanation of that concern, aside from the fact that it was identified by IRCC’s Risk Assessment Unit, and that Alfa-Bank confirmed that the original document was either fraudulent or altered. Also absent from the reasons is any indication that the Officer meaningfully considered the new information and whether it cast any

doubt on the reliability of the concern raised through the verification process. As Justice Grammond further noted in *Villanueva* (at para 29):

> Most importantly, if the notice requirement is to have any usefulness, the decision maker must have a mind willing to understand the applicant's response and be prepared to reconsider the initial results of their investigation. Indeed, the whole point of the notice requirement is that an officer's initial assessment may be wrong and that obtaining more information may enable the correction of a mistake. Thus, when receiving submissions in response to a PFL, an officer must be prepared to question their own initial finding. They must ask themselves, "Is it possible that I was wrong?"

[29] This case raises one further concern that was addressed in both *Albrifcani* and *Villanueva*, which relates to the transparency of both the decision-making process and the reasons that emerged from that process. The concern is that, as Justice Grammond noted in *Villanueva*, when third parties are used to authenticate documents, they essentially become witnesses who provide evidence in relation to the application. The role of decision-makers in this context is not to blindly adopt this information, but to assess it in light of the other information in the record. Absent any indication that the decision-maker has evaluated this information, the ensuing decision "can hardly be intelligible or justifiable": *Villanueva* at para 22. This is particularly the case when no documentation from the third-party is disclosed to the applicant or produced in the Certified Tribunal Record: see *Albrifcani* at paras 24-26.

[30] In this case, the failure to adequately describe or disclose the information contained in the verification process, and the failure to demonstrate a genuine assessment of this information calls into question both the fairness and the reasonableness of the decision under review.

V. CONCLUSION

[31] For the above reasons, this application for judicial review will be granted. The parties did not propose a question for certification, and I agree that none arises.

JUDGMENT in IMM-6163-24

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is granted.

2. The matter is remitted to a different decision-maker for reconsideration in accordance with these reasons.

3. No question is certified for appeal.

"Angus G. Grant"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-6163-24
STYLE OF CAUSE:	KSENIIA NANIKOVA AND RAZMIK GEVORGIAN v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	MAY 21, 2025
JUDGMENT AND REASONS:	GRANT J.
DATED:	JUNE 17, 2025

APPEARANCES:

KRYSTYNA JONES	FOR THE APPLICANTS
STEPHEN JARVIS	FOR THE RESPONDENT

SOLICITORS OF RECORD:

ZAREI LAW PROFESSIONAL CORPORATION TORONTO, ONTARIO	FOR THE APPLICANTS
ATTORNEY GENERAL OF CANADA TORONTO, ONTARIO	FOR THE RESPONDENT