Federal Court  Cour fédérale

Date: 20200819

Docket: IMM-5867-19

Citation: 2020 FC 840

Ottawa, Ontario, August 19, 2020

PRESENT: The Honourable Madam Justice McVeigh

BETWEEN:

PURAN SINGH

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] The Applicant seeks a review of a decision of a visa officer of the High Commission of Canada in India [High Commission] denying him a work permit as a chef because the officer was not satisfied that he would leave Canada at the end of the period authorized for his stay.

[2] The Applicant represented himself and used a translator during the virtual hearing. The Respondent, given the circumstances, was very professional and the Court appreciated her advocacy.

Style of Cause

[3] The Style of Cause will be amended for the Respondent to be "The Minister of Citizenship and Immigration".

II. Background

A. *The Applicant*

[4] The Applicant is a citizen of India. He has a wife and two school-aged children, all of whom live in India. From 2011 to 2017, the Applicant worked as a chef in Singapore. In 2017, he obtained a work permit and then worked at a restaurant in Vancouver, British Columbia.

B. *The work permit: July 2017 – July 2018*

[5] The Applicant's work permit authorized him to work at the restaurant until May 2018. In April 2018, the Applicant applied to extend his work permit. In July 2018, Immigration Refugee and Citizenship Canada [IRCC] refused that application.

C. *"Visitor record" (TRV): July 2018 – February 2019*

[6] The Applicant then indicates he applied for a visitor record, which IRCC issued in December 2018. I assume the Applicant's use of "visitor record" should correctly be called a TRV. On January 7, 2019, the Applicant applied to extend the TRV. On January 10, it expired and then in February the IRCC refused the extension.

D. *The application to restore the work permit: February 2019 – June 2019*

[7] Before the Applicant's work permit expired, his employer applied to Employment and Social Development Canada [ESDC] for a Labour Market Impact Assessment [LMIA]. This was necessary so that the employer could rehire the Applicant. On January 24, 2019, ESDC approved the LMIA.

[8] In March 2019, the Applicant applied to restore his work permit. On June 10, IRCC refused this application. The refusal letter stated that the Applicant is "not eligible to apply for a Work Permit from within Canada" and that he is "a person in Canada without legal status and as such [is] required to leave immediately."

E. *The Applicant's departure from Canada: June 2019 – August 2019*

[9] After receiving this letter, the Applicant and his employer consulted the Applicant's present counsel, who advised them that IRCC correctly refused the application: that the Applicant was eligible to apply for a work permit from outside, but not within, Canada. On July

8, the Applicant returned to India. From there, he applied for a work permit. On August 29, an officer of the High Commission refused that application.

III. The decision under review

[10] The decision states that the work permit application did not meet the requirements of the *Immigration and Refugee Protection Act* (S.C. 2001, c. 27) [IRPA] and the *Immigration and Refugee Protection Regulations* (SOR/2002-227) [IRPR]. The officer was not satisfied that he would leave Canada on expiry of his work permit because he had contravened the conditions of his previous stay (IRPR, s. 200(1)(b)). The Global Case Management System [GCMS] notes provide some detail about the Applicant's contravention: he was authorized to stay until February 20, 2019 and did not leave until July 8, 2019. Though the Applicant disagrees and says it was not until June that he found out he had no authorization to be in Canada and then left as soon as he found out he had overstayed.

IV. Issue

[11] The issue is whether the officer erred by making the decision without regard to the evidence.

V. Standard of Review

[12] Since *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*], the Federal Court has continued to review work permit decisions made by immigration

officers on the standard of reasonableness (*Samra v Canada (Citizenship and Immigration)*, 2020 FC 157 at paras 6 and 9).

VI. Analysis

[13] The Respondent is correct that officers are presumed to have weighed and considered all of the evidence before them and that an officer is not required to refer to every piece of evidence that is contrary to the final decision. The Respondent is also correct that the officer was not wrong that the Applicant had overstayed his visa.

[14] However, "the more important the evidence that is not mentioned specifically and analyzed […], the more willing a court may be to infer from the silence that the agency made an erroneous finding."

[15] The determinative finding in the decision was that the officer was not satisfied that the Applicant would leave Canada at the end of his stay "based on [his] history of having contravened the conditions of admission on a previous stay." The only specific mention of the Applicant's contravention appears in the GCMS notes, which state that the Applicant "was authorized to remain in Canada as a temporary resident until 20 February 2019, and yet remained in Canada without authorization until 9 July 2019." This is a very superficial gloss of what the evidence was and how the Applicant came to be in Canada unauthorized. The Applicant provided a significant amount of evidence that demonstrates his good faith, albeit unsuccessful, efforts to comply with Canada's immigration laws.

[16] The officer had an obligation to make a decision that accounts for the evidence submitted by the Applicant in his work permit application. The officer did consider some of that evidence: he was clearly aware of the date on which the visitor record expired and the date on which the Applicant left Canada. However, it is not clear if the officer accounted for the underlying circumstances of the Applicant's overstay.

[17] For example, the submissions note, among other things, that the Applicant's employer had made multiple attempts to contact ESDC to determine the status of the LMIA; that the Applicant sought legal advice regarding his immigration status; and that the Applicant complied with IRCC's instruction to leave Canada when he was told he had no status.

[18] Of note also is that there was no analysis of any other facts such as first, the Applicant has a wife and two school-aged children in India. The Applicant's strong family ties to India suggest that he will leave Canada at the end of the period authorized for his stay.

[19] Secondly, the Applicant's history of compliance with Singapore's immigration system is contrary to the officer's finding. In *Singh v Canada (Citizenship and Immigration)*, 2017 FC 894, Chief Justice Paul Crampton noted in *obiter* that an applicant's history of compliance with another immigration system was contrary to an officer's finding that the applicant would not leave Canada at the end of the authorized stay:

> [24] Moreover, in finding that Mr. Singh was unlikely to return to India at the end of his two year stay in Canada, the officer failed to consider the significance of the fact that there was nothing to suggest that he had ever failed to comply with Singapore's immigration laws, since he moved to that country in 2009 (*Momi*, above, at paras 20 and 25). I do not mean to suggest that a failure

> to consider this factor alone should provide grounds for finding a decision to be unreasonable. However, on the particular facts of this case, this omission was another shortcoming which, taken together with others, collectively, rendered the Decision unreasonable.
>
> [Emphasis added]

[20] The Applicant worked for six years in Singapore before accepting an offer to work in Vancouver. Nothing on the record suggests that he failed to comply with Singapore's immigration laws. While the officer's failure to consider this factor is not alone sufficient to warrant a finding that the decision is unreasonable, it supports the above conclusion that the officer's decision was made without sufficient regard to the evidence.

[21] Justice von Finckenstein, in *Murai v Canada (Minister of Citizenship and Immigration)*, 2006 FC 186 [*Murai*], in analysing subsection 20(b) of the IRPA (see "relevant law," above), wrote:

> [16] The Officer in question asked himself the wrong question. Rather than asking himself "will she leave Canada once given ingress?" as he did […] he should have followed the Live-in Caregiver's manual and asked himself "will this person stay illegally in Canada if not successful under the program?" Based on the Applicant's past performance, any reasonable person would say "no, she will not stay in Canada illegally."
>
> [Emphasis added]

[22] In a similar vein, Justice Mosely, in *Palogan v Canada (Citizenship and Immigration)*, 2013 FC 889 [*Palogan*], analysing the same provision, wrote:

> [14] The officer need not, therefore, be convinced that the applicant wishes to return to their country of origin at the expiry of their work permit. But the officer must be satisfied that the

> applicant will not remain illegally in Canada if they fail to meet the requirements and their application for permanent residence is rejected: *Kachmazov* at para 16.
>
> [Emphasis added]

[23] Justice Rowe summarises reasonableness in *Canada Post Corp v Canadian Union of Postal Workers*, 2019 SCC 67 as follows:

> [32] A reviewing court should consider whether the decision as a whole is reasonable: "what is reasonable in a given situation will always depend on the constraints imposed by the legal and factual context of the particular decision under review" (Vavilov, at para. 90). The reviewing court must ask "whether the decision bears the hallmarks of reasonableness — justification, transparency and intelligibility — and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision" (Vavilov, at para. 99, citing Dunsmuir, at paras. 47 and 74, and Catalyst Paper Corp. v. North Cowichan (District), 2012 SCC 2 (CanLII), [2012] 1 S.C.R. 5, at para. 13).

[24] Section 200(1)(b) of the IRPR requires the same analysis. It states that an officer "shall issue a work permit" if it is established that "the foreign national will leave Canada by the end of the period authorized for their stay" [emphasis added]. The analysis should focus on whether the Applicant is likely to stay in Canada illegally. The officer ignored the Applicant's submissions showing that he attempted to comply with the law. The officer did not have an obligation to take into account and mention every single statement that supports this fact but the officer does have an obligation to show some awareness of the general circumstances surrounding the overstay.

[25] The officer shows no such awareness. The decision paints an overly-simplistic picture of the Applicant's stay in Canada after February 20, 2019.

[26] The Applicant, before he left in July 2019, tried to avail of the various legal options available to him to remain in Canada. He applied to extend his work permit. He applied for a visitor visa and an extension. And finally to restore his work permit. None of these options were successful. After he applied to restore his work permit application, IRCC advised him that he was not eligible to apply for a work permit from within Canada and that he had to leave Canada. He voluntarily left Canada within the month. The officer does not account for the positive LMIA assessment, the Applicant's apparently misguided application to restore his work permit, his consultation with present counsel, or his voluntary departure.

[27] *Vavilov* states that administrative decisions "must be justified, intelligible and transparent, not in the abstract, but to the individuals subject to it" (para 95). *Vavilov* has affirmed that, among other things, a reasonable decision must be justified in relation to the factual constraints that bear on the decision (para 99). Given the effort that the Applicant made to explain his overstay to the officer, it is hard to see how this is reasonable. Given that the officer has not engaged with this explanation or any of the evidence supporting it and thus the Applicant is left to wonder whether the officer's mind was even turned to these submissions.

[28] I will grant this application and send it back to be re determined by a different officer. The Applicant should be given the opportunity to file further material if he so wishes.

[29] No certified question will be granted.

JUDGMENT in IMM-5867-19

THIS COURT'S JUDGMENT is that:

1. The application is granted and is to be re determined by a different visa officer after the applicant is allowed to file further material;
2. The Style of Cause is amended for the Respondent to be: The Minister of Citizenship and Immigration;
3. No question is certified.

"Glennys L. McVeigh"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-5867-19
STYLE OF CAUSE:	PURAN SINGH v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	VANCOUVER, BRITISH COLUMBIA

HEARING HELD BY VIDEOCONFERENCE ON AUGUST 6, 2020, FROM VANCOUVER, BRITISH COLUMIA (COURT AND PARTIES)

JUDGMENT AND REASONS:	MCVEIGH J.
DATED:	AUGUST 19, 2020

APPEARANCES:

PURAN SINGH	FOR THE APPLICANT, ON HIS OWN BEHALF
HILLA AHARON	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Attorney General of Canada Vancouver, British Columbia	FOR THE RESPONDENT