

Federal Court



Cour fédérale

Date: 20210630

Docket: IMM-1152-20

Citation: 2021 FC 691

Ottawa, Ontario, June 30, 2021

PRESENT: The Honourable Justice Fuhrer

BETWEEN:

SIMRANPREET SINGH

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Simranpreet Singh applied in March 2019 for a work permit, under the Temporary Foreign Worker Program, to work as a long-haul truck driver in Canada for two years. He worked for several years prior to that as a truck driver in the United Arab Emirates [UAE] with two different companies that provided him with “Experience Certificates” or letters of reference. Mr. Singh submitted these documents, and others, with his work permit application.

[2] A Visa Officer with the Canadian Embassy in Abu Dhabi, UAE refused Mr. Singh's application on two grounds. The Officer was not satisfied that Mr. Singh (i) would leave Canada at the end of his stay as stipulated in subsection 200(1) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [IRPR], "based on family ties in Canada and in your country of residence;" and (ii) would be able to perform the work adequately. See Annex "A" to this Judgment and Reasons for the IRPR s 200(1).

[3] Mr. Singh seeks judicial review of the Officer's decision. For the more detailed reasons below, I find that the Officer's decision lacks justification, intelligibility and transparency and, therefore, I grant the Applicant's application for judicial review.

II. Issue and Standard of Review

[4] There is no disagreement that the only issue for determination is whether the Officer's decision is reasonable. I find that none of the situations in which the presumption of reasonableness can be rebutted, as described by the Supreme Court of Canada, is present in the matter before me for review: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov] at paras 17 and 69.

III. Analysis

A. *Family Ties*

[5] Regarding the first ground of refusal, I find that the absence of any articulated reasons for the Officer's determination that Mr. Singh would not leave Canada at the end of his stay because

of family ties in Canada renders the decision unreasonable for lack of justification: *Vavilov*, above at para 86. In my view, it is clear on the face of the record, and the Respondent admitted in both written and oral submissions to the Court, that there is no evidence Mr. Singh has any family ties in Canada. To the contrary, Mr. Singh's evidence is that his spouse, child and parents live in India. I add that it is not evident which country the Officer meant by "your country of residence," whether the UAE, India, or another country.

[6] Nor is there any discussion at all in the brief Global Case Management System [GCMS] notes, which form part of the Officer's reasons for refusing Mr. Singh's work permit application, about his family. To be clear, my concern with the GCMS notes is not their length. Rather, the outcome of Mr. Singh's application on this basis is at odds with the factual context, and is not supported by any reasons, let alone intelligible and rational reasoning: paraphrasing *Vavilov*, above at para 86.

B. Ability to Perform the Work

[7] Although the above finding is determinative, nonetheless I next provide a few comments regarding the second ground of refusal because in my view the Officer erred here too. In particular, I find the Officer's rationale regarding evidentiary insufficiency, as a basis for why Mr. Singh would not be able to perform the work adequately in a manner that protects the safety of Canadians, lacks intelligibility and transparency, thus also rendering the decision unreasonable.

[8] The Officer made the determination, about whether Mr. Singh would be able to perform the work for which Calgary-based Light Speed Logistics Inc. offered him a job as a long-haul truck driver, for two reasons. First, the Officer found there was insufficient evidence of Mr. Singh's experience as a truck driver. Second, the Officer was not satisfied that Mr. Singh has a sufficient level of English language ability to perform the job based on his IELTS [International English Language Testing System] score of 4.5 for reading. I deal with each of these reasons in turn below.

(1) Evidentiary Insufficiency

[9] Regarding the insufficiency of evidence, the Officer acknowledged that Mr. Singh holds a UAE driving licence that permits him to drive heavy vehicles but reasoned that the reference letters alone do not demonstrate that Mr. Singh has undertaken the work claimed. I note that all three reference letters confirm that Mr. Singh was employed as a heavy truck driver. Further, the Officer did not challenge expressly the authenticity of the reference letters. Rather, the Officer noted, "there are no payslips for example to show salary deposits nor has [Mr. Singh] provided a copy of his UAE visa which would indicate his profession."

[10] At the hearing before me, the Minister argued that the reference letters do not provide details of the actual duties of Mr. Singh's employment, namely his "experience" as a truck driver. In other words, the letters do not demonstrate the job requirements align with the NOC [National Occupation Classification] for a "long haul truck driver" and, hence, his ability to do the work. I do not disagree. On the other hand, this is not what the Officer said about the

evidentiary insufficiency. Further, it is not for this Court to back fill gaps in the decision maker's reasons: *Vavilov*, above at para 96.

[11] Instead, I find the Officer's rationale consistent with doubting the authenticity of the reference letters, as argued by the Applicant; hence, the need for corroboration expressed by the Officer, such as payslips, salary deposits and the UAE visa. I agree with the Applicant that none of the latter types of evidence would speak to Mr. Singh's experience in the sense of his ability to perform the work in a manner that protects the safety of Canadians, as opposed to verifying that he actually held or performed the positions he claimed.

[12] Although there is no express reference to credibility in the GCMS notes, I find the Officer's reference to evidence that the Applicant could or should have produced to corroborate his employment as a truck driver, rather than his ability to perform the work, is tantamount to "a manner of disguising an unexplained (or 'veiled') credibility finding": *Magonza v Canada (Citizenship and Immigration)*, 2019 FC 14 at para 35. In my view, the Officer's explanation for the evidentiary insufficiency, as the basis for not being satisfied about Mr. Singh's ability to perform the work, is flawed or unintelligible and not transparent, thus warranting the Court's intervention.

(2) IELTS Reading Score

[13] Regarding Mr. Singh's IELTS score of 4.5 for reading, the Officer was "not satisfied that [Mr. Singh] has sufficient level of language ability to perform the job adequately especially as he will be required to read driving manuals, rules, forms, etc." Brief as these reasons are,

nonetheless I find they are sufficient to understand the Officer's concerns regarding Mr. Singh's ability to perform the work sought. Noting the considerable discretion and deference visa officers are given in matters such as this, I conclude it was for the Officer to determine the importance of the Applicant's reading level in the circumstances: *Patel v Canada (Citizenship and Immigration)*, 2021 FC 573 at paras 26 and 27. That said, it will be incumbent on the different visa officer, who will reconsider the Applicant's work permit application, to examine the totality of the Applicant's documentation afresh, including his overall IELTS score, and make their own determinations.

IV. Conclusion

[14] For the above reasons, I grant the Applicant's judicial review application. The Visa Officer's February 12, 2020 decision is set aside and the matter will be remitted to a different visa officer for redetermination.

[15] Neither party proposed a serious question of general importance for certification and I find that none arises in the circumstances.

JUDGMENT in IMM-1152-20

THIS COURT'S JUDGMENT is that:

1. The Applicant's judicial review application is granted.
2. The Visa Officer's February 12, 2020 decision is set aside and the matter will be remitted to a different visa officer for redetermination.
3. There is no question for certification.

"Janet M. Fuhrer"

Judge

Annex “A”: Relevant Provisions***Immigration and Refugee Protection Regulations, SOR/2002-227***

Issuance of Work Permits	Délivrance du permis de travail
<p data-bbox="228 464 440 499">Work permits</p> <p data-bbox="228 554 776 842">200 (1) Subject to subsections (2) and (3) — and, in respect of a foreign national who makes an application for a work permit before entering Canada, subject to section 87.3 of the Act — an officer shall issue a work permit to a foreign national if, following an examination, it is established that</p> <ul style="list-style-type: none"> <li data-bbox="277 863 753 932">(a) the foreign national applied for it in accordance with Division 2; <li data-bbox="277 953 711 1094">(b) the foreign national will leave Canada by the end of the period authorized for their stay under Division 2 of Part 9; <li data-bbox="277 1115 776 1892">(c) the foreign national <ul style="list-style-type: none"> <li data-bbox="310 1205 643 1274">(i) is described in section 206 or 208, <li data-bbox="310 1295 776 1547">(ii) intends to perform work described in section 204 or 205 but does not have an offer of employment to perform that work or is described in section 207 or 207.1 but does not have an offer of employment, <li data-bbox="310 1568 776 1892">(ii.1) intends to perform work described in section 204 or 205 and has an offer of employment to perform that work or is described in section 207 and has an offer of employment, and an officer has determined, on the basis of any information provided on the officer’s request by the employer 	<p data-bbox="797 464 1230 533">Permis de travail — demande préalable à l’entrée au Canada</p> <p data-bbox="797 554 1333 806">200 (1) Sous réserve des paragraphes (2) et (3), et de l’article 87.3 de la Loi dans le cas de l’étranger qui fait la demande préalablement à son entrée au Canada, l’agent délivre un permis de travail à l’étranger si, à l’issue d’un contrôle, les éléments ci-après sont établis :</p> <ul style="list-style-type: none"> <li data-bbox="846 863 1321 932">a) l’étranger a demandé un permis de travail conformément à la section 2; <li data-bbox="846 953 1341 1058">b) il quittera le Canada à la fin de la période de séjour qui lui est applicable au titre de la section 2 de la partie 9; <li data-bbox="846 1115 1214 1184">c) il se trouve dans l’une des situations suivantes : <ul style="list-style-type: none"> <li data-bbox="878 1205 1198 1274">(i) il est visé aux articles 206 ou 208, <li data-bbox="878 1295 1333 1514">(ii) il entend exercer un travail visé aux articles 204 ou 205 pour lequel aucune offre d’emploi ne lui a été présentée ou il est visé aux articles 207 ou 207.1 et aucune offre d’emploi ne lui a été présentée, <li data-bbox="878 1568 1341 1892">(ii.1) il entend exercer un travail visé aux articles 204 ou 205 pour lequel une offre d’emploi lui a été présentée ou il est visé à l’article 207 et une offre d’emploi lui a été présentée, et l’agent a conclu, en se fondant sur tout renseignement fourni, à la demande de l’agent, par l’employeur qui présente l’offre

<p>making the offer and any other relevant information,</p> <p>(A) that the offer is genuine under subsection (5), and</p> <p>(B) that the employer, except an employer referred to in any of paragraphs 209.91(a) to (d),</p> <p>(I) during the six-year period before the day on which the application for the work permit is received by the Department, provided each foreign national employed by the employer with employment in the same occupation as that set out in the foreign national's offer of employment and with wages and working conditions that were substantially the same as — but not less favourable than — those set out in that offer, or</p> <p>(II) is able to justify, under subsection 203(1.1), any failure to satisfy the criteria set out in subclause (I), or</p> <p>(iii) has been offered employment, and an officer has made a positive determination under paragraphs 203(1)(a) to (e); and</p> <p>(d) [Repealed, SOR/2004-167, s. 56]</p> <p>(e) the requirements of subsections 30(2) and (3) are met, if they must submit to a medical examination under paragraph 16(2)(b) of the Act.</p>	<p>d'emploi et tout autre renseignement pertinent, que :</p> <p>(A) l'offre était authentique conformément au paragraphe (5),</p> <p>(B) l'employeur, sauf l'employeur visé à l'un des alinéas 209.91a) à d), selon le cas :</p> <p>(I) au cours des six années précédant la date de la réception de la demande de permis de travail par le ministère, a confié à tout étranger à son service un emploi dans la même profession que celle précisée dans l'offre d'emploi et lui a versé un salaire et ménagé des conditions de travail qui étaient essentiellement les mêmes — mais non moins avantageux — que ceux précisés dans l'offre,</p> <p>(II) peut justifier le non-respect des critères prévus à la sous-division (I) au titre du paragraphe 203(1.1),</p> <p>(iii) il a reçu une offre d'emploi et l'agent a rendu une décision positive conformément aux alinéas 203(1)a) à e);</p> <p>d) [Abrogé, DORS/2004-167, art. 56]</p> <p>e) s'il est tenu de se soumettre à une visite médicale en application du paragraphe 16(2) de la Loi, il satisfait aux exigences prévues aux paragraphes 30(2) et (3).</p>
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FEDERAL COURT
SOLICITORS OF RECORD

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