Federal Court  Cour fédérale

Date: 20210727

Docket: IMM-5944-20

Citation: 2021 FC 790

Ottawa, Ontario, July 27, 2021

PRESENT: Madam Justice Walker

BETWEEN:

SUKHPREET SINGH

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The Applicant, Mr. Sukhpreet Singh, is a citizen of India where he lives and works as a self-employed farmer. He seeks judicial review of a decision of a visa officer (Officer) in the Canadian consulate in Guangzhou, China, refusing his application under the Temporary Foreign Worker Program (TFWP) for a work permit and temporary resident visa. The Officer was not satisfied that the Applicant would leave Canada at the end of his stay based on: the Applicant's personal assets and financial status; the purpose of his visit; and his travel history.

[2] The Applicant submits that the Officer's decision is unreasonable for several reasons. He also alleges that the Officer breached his right to procedural fairness by making adverse credibility findings and failing to provide him an opportunity to respond to those findings.

[3] While I have found that the Officer's process was fair and that the Decision was not based on credibility findings, I agree with the Applicant that the Decision is not reasonable within the framework established in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 (*Vavilov*). As a result, the application will be allowed and the matter returned to another visa officer for redetermination.

I. Background

[4] The Applicant obtained an offer for employment as a farm labourer from Anjie Orchard Maintenance Contractors located in Kelowna, British Columbia. The offer was based on a positive Labour Market Impact Assessment (LMIA) issued by Service Canada to Anjie Orchard. The Applicant's name was listed as a foreign worker in the issued LMIA.

[5] The Applicant applied to enter Canada under the TFWP on August 12, 2020. His representative was notified of the Officer's decision refusing his application on September 15, 2020. The Officer's refusal was made in reliance on subsection 200(1) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227. The Officer's decision is comprised of a decision letter and Global Case Management System (GCMS) notes.

II. Analysis

1. *Procedural fairness*

[6] The Applicant submits that the Officer acted unfairly in basing the refusal of his work permit on credibility and extrinsic information without notification and without opportunity to respond.

[7] The parties agree that issues of procedural fairness are effectively reviewed for correctness (*Canadian Association of Refugee Lawyers v Canada (Immigration, Refugees and Citizenship)*, 2020 FCA 196 at para 35; *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at paras 34-56 (*Canadian Pacific*)). My review asks whether the Officer's process was just and fair focusing on the Applicant's substantive rights and the consequences to him of the refusal of the work permit (*Canadian Pacific* at para 54; *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817), 174 DLR (4th) 193).

[8] The Applicant acknowledges that the level of procedural fairness owed to work permit and visa applicants falls at the low end of the spectrum (see, e.g., *Charara v Canada (Citizenship and Immigration)*, 2016 FC 1176 at paras 26-27; *Trivedi v Canada (Citizenship and Immigration)*, 2010 FC 422 at para 39) but argues that a visa officer is required to raise credibility concerns with an applicant and afford the applicant an opportunity to respond, whether orally or in writing.

[9] I am not persuaded by the Applicant's argument. While a duty of fairness to applicants exists in work permit cases, the duty does not require an officer to notify an applicant of a

concern that arises directly from the legislation or related requirements (*Masam v Canada (Citizenship and Immigration)*, 2018 FC 751 at para 11; *Penez v Canada (Citizenship and Immigration)*, 2017 FC 1001 at para 37). The onus is on applicants to provide all the necessary information to support their application, not on the officer to seek it out.

[10] The Applicant submits that the Officer made veiled credibility references as to the genuineness of his prospective employer and his own evidence that he would return to India at the end of his authorized stay. I disagree. The Officer makes no reference to Anjie Orchard and, while I have found the Officer's reasoning lacks transparency and justification, the decision contains no veiled credibility finding. It rests on the Officer's assessment of the sufficiency of the information in the Applicant's work permit application.

[11] In addition, the Applicant submits that the Officer may have relied on extrinsic information when considering his application and making the decision. I agree that, where an officer considers issues or facts extraneous to the application requirements, a duty arises to advise the applicant of the issue or concern. The applicant would not have known that the particular issue or concern was relevant to their application and, in fairness, should be given an opportunity to make submissions. In this case, I find no basis for the Applicant's reliance on this principle in the record or in the decision.

2. *Is the Officer's decision reasonable?*

[12] The merits of the Officer's decision are subject to review for reasonableness (*Vavilov* at paras 10, 23). A visa officer's decision is owed a high level of deference by the Court and may

not be long or perfect but it must respond to the requirements for a reasonable decision: 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). The Supreme Court emphasizes two components to a reasonable decision: the decision maker's reasoning process and the outcome (*Vavilov* at para 86).

[13] As noted above, the Applicant submits that the Officer did not provide any explanation of the basis for the decision. He argues that the decision is limited to a recitation of conclusions and contains no analysis of his evidence and circumstances.

[14] The basis of the Officer's refusal is set out in the GCMS notes and consists of the following paragraph:

> Application and supporting documents reviewed. The applicant is applying for a work permit (LMIA) as a Farm Labourer planning to work for Anjie Orchard Maintenance Contractors. Integrated Search completed and reveals no record. The following information was noted during my review of the documentation presented: - PA does not have strong family and material ties to home country conducive of an eventual return - PA does not appear to be financially well-established in country of origin - Given other factors in application, PA presents insufficient travel experience to show desire to return to country of origin[.] As a result of my careful review and considering all relevant factors presented, on balance, I am not satisfied the applicant is a genuine worker who would comply with the conditions of temporary entry. Application is refused.

[15] The Respondent submits that the issue of whether a visa officer's decision is reasonable involves a determination by the Court of the scope of analysis required of the officer. The Respondent refers to excerpts from two recent decisions of this Court to highlight different

approaches to this issue. In *Samra v Canada (Citizenship and Immigration)*, 2020 FC 157, a post-*Vavilov* case, Justice Favel considered a work permit refusal and concluded that the refusal was unreasonable (para 22):

> [22] However, I find the decision unreasonable because the officer's decision is merely a recitation of the evidence before him followed by a conclusion. There is a lack of analysis. Although it is certainly possible to speculate that the Applicant did not meet the requirements to attain a work visa, this is not stated in the decision or GCMS notes in the form of an analysis. It is only stated as a conclusion. There is no appropriate link between them.

[16] The Respondent contrasts the language used by Justice Manson in a study permit case (*Peiro v Canada (Citizenship and Immigration)*, 2019 FC 1146 at para 15 (*Peiro*)):

> [15] Decisions of a visa officer need not be comprehensive, and the officer can provide brief or limited reasons. However, decisions need to be comprehensible (*Penez v Canada (Citizenship and Immigration)*, 2017 FC 1001 at paras 25, 30 [*Penez*]). The reasons must permit this Court to understand why the decision was made and determine whether the conclusion falls within a range of possible, acceptable outcomes (*Penez*, above at para 30).

[17] In my opinion, my colleagues use different language but agree that a decision must contain reasons that explain the decision maker's reasoning process and conclusion. A visa officer's decision will necessarily be brief but "the decision must be based on reasonable findings of fact" (*Peiro* at para 16).

[18] By way of example, I note that, in *Peiro*, Justice Manson considered the decision before him and concluded that the visa officer's reasons regarding the applicant's family ties provided no reasonable basis for the officer's conclusion. The decision contained no explanation of the

officer's assessment of the applicant's family relationships in Canada as opposed to those in their home country.

[19] In this matter, I find that the Officer's decision lacks a coherent chain of analysis or explanation linking the information and documents submitted by the Applicant to the Officer's conclusion that he would not leave Canada at the end of his stay. I agree with the Applicant's statement that it is not sufficient for an officer to "run through" the grounds or elements of a refusal as an apparent checklist. I emphasize that an officer's reasoning may be quite short and may only reference the material elements of the officer's assessment and conclusion. Nevertheless, in order to meet the Supreme Court's requirements of transparency and intelligibility, the officer must explain why an applicant has failed to satisfy the particular, material element at issue.

[20] The Officer concluded that the Applicant does not have strong family ties to India. However, the Applicant's only family, his father and a younger sister, live in India and the Applicant lives with them. There is no evidence that the Applicant has family in Canada or elsewhere. Admittedly, the Applicant does not have a large or extended family but the family he does have are immediate family with whom he resides. If the Officer had concerns regarding the Applicant's relationship with his family, an explanation of the concerns was required in the decision.

[21] The Officer also concluded that the Applicant has insufficient material ties to India. I acknowledge that, by Canadian standards, the Applicant may not be financially well established,

but the Officer provides no context for their conclusion. The Applicant lives permanently in India and submitted evidence of his annual income and farm work. The Respondent argues that the Applicant does not own farmland and equipment in India, and that the land he farms is leased and may not be available should he leave India for an extended period. These concerns may be reasonable considerations for the Officer to weigh against the likelihood of the Applicant returning to India. The difficulty with this argument is that there is no suggestion in the decision that the Officer considered these aspects of the Applicant's circumstances.

[22] In summary, the Officer provides no rationale for arriving at their conclusion, stating only that they had reviewed the Applicant's application and supporting documents. It is not possible for a reader to conclude that the decision is justified against the Applicant's evidence and the legislative constraints surrounding the issuance of a work permit.

[23] For these reasons, the application is allowed.

[24] No question for certification was proposed by the parties and none arises in this case.

JUDGMENT IN IMM-5944-20

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is allowed.

2. No question of general importance is certified.

"Elizabeth Walker"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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