

Federal Court



Cour fédérale

Date: 20211020

Docket: IMM-7415-19

Citation: 2021 FC 1107

Fredericton, New Brunswick, October 20, 2021

PRESENT: Madam Justice McDonald

BETWEEN:

GURWINDER SINGH

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The Applicant, Gurwinder Singh, seeks judicial review of the decision of the Visa Officer who refused his application for a work permit as a long-haul truck driver under the Temporary Foreign Worker Program. For the reasons that follow, this judicial review is granted.

Background

[2] Mr. Singh is a 27 year-old citizen of India who resides and works in the United Arab Emirates (UAE). He applied for a work permit to work as a long-haul truck driver for a company in Calgary. He has three years experience as a truck driver in the UAE.

[3] He has no family in Canada, is single, and his parents and brother live in India.

[4] In support of his application, Mr. Singh provided two letters from trucking companies in the UAE confirming his work as a “Heavy Truck Driver”. He also provided a copy of his heavy vehicle driver’s license. The work permit application included the employment offer letter, the Labour Market Impact Assessment (LMIA) prepared for the employer, and the International English Language Testing System (IELTS) results.

Decision Under Review

[5] In the December 5, 2019 decision, the Officer denied the work permit. The Officer was not satisfied that the Applicant would leave Canada at the end of his stay because of his:

- family ties in Canada;
- current employment situation; and,
- personal assets and financial status.

[6] The Officer concluded that Mr. Singh was “not able to demonstrate that you will be able to adequately perform the work you seek”.

Issue and Standard of Review

[7] The only issue is whether the Officer's decision is reasonable.

[8] As noted in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at parag 99, "A reviewing court must develop an understanding of the decision maker's reasoning process in order to determine whether the decision as a whole is reasonable. To make this determination, the reviewing court asks 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" [Citations omitted.]

Analysis

Failure to Demonstrate the Applicant Would Leave Canada

Family Ties

[9] The Applicant argues the Officer's conclusion that he would not leave Canada because of his family ties in Canada is not reasonable, as he has no family ties in Canada as his family resides in India.

[10] Although the evidentiary onus is on the Applicant, the Officer is obligated to consider the evidence submitted. Here it is not clear on what basis the Officer concluded that the Applicant

would not leave Canada because of family ties, when his evidence was that he does not have any family in Canada.

[11] A similar finding was under review in *Singh v Canada (Citizenship and Immigration)*, 2021 FC 691 [*Singh* #1] where Justice Fuhrer found:

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.

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 [...] (paras 5-6).

[12] A similar situation emerges in this case, where the bald conclusion reached by the Officer on "family ties in Canada" is not supported by the evidence provided by the Applicant. In the circumstances, I agree with the Applicant that this aspect of the decision lacks justification and is therefore not reasonable.

Current Employment Situation

[13] The Applicant argues that the Officer failed to consider his UAE heavy vehicle driver's licence, and the employment letters from his UAE employers when the Officer concluded: "Copy of UAE work visa not provided therefore I am unable to confirm validity or job category."

[14] Again, this is similar to *Singh #1*, where the applicant provided his UAE heavy duty driving license and reference letters, but the Officer noted that "the reference letters alone do not demonstrate that Mr. Singh has undertaken the work claimed" and noted that "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" (para 9). Justice Fuhrer found that the Officer's comments suggested he doubted the authenticity of the evidence provided, rather than their sufficiency.

[15] Here, the Officer reached the same conclusion with respect to the Applicant's current employment situation. The Officer focused on what was not provided rather than assessing the information provided by the Applicant. Likewise, it is not clear from the Officer's reasons whether the Officer's concern was with the adequacy of the evidence, as was the case in *Sangha v Canada (Citizenship and Immigration)*, 2020 FC 95, or whether the Officer doubted the authenticity of the documents.

[16] Although the Officer identifies the information he would have preferred, the Officer provides no explanation as to why the evidence provided was insufficient. Accordingly, it is not

possible to determine if the Officer reasonably considered the evidence provided. This renders the Officer's assessment of this issue unreasonable.

Personal Assets

[17] The Applicant argues that his personal assets and financial status are not relevant considerations in a work permit application. However, evidence of personal assets and financial status are appropriate factors to consider when assessing whether an Applicant will leave Canada at the end of their stay. But, as noted by the Court in *Chhetri v Canada (Citizenship and Immigration)*, 2011 FC 872, "the possibility of financial betterment or career experience cannot, in and of itself, constitute a valid reason for rejecting an application" (para 12).

[18] Although an appropriate consideration, this factor alone cannot serve as a stand-alone basis to reject an application.

Failure to Demonstrate the Applicant can Adequately Perform the Work

[19] The Officer was not satisfied the Applicant could adequately perform the work based on his IELTS reading band of 4.0, and lack of driving experience relevant to the conditions in Canada. The Officer wrote:

Considering PA will be expected to read driving manuals, instructions and forms as a long haul truck driver in Canada, I am not satisfied that he has a sufficient level of reading ability to perform the job adequately. I note that road and weather conditions, as well as speed and topography in the Gulf region is considered vastly different from road and weather conditions as well as speed and topography in Canada.

[20] The findings of Justice Bell in *Singh v Canada (Citizenship and Immigration)*, 2021 FC 638, are instructive. There the applicant, also a long-haul truck driver, was denied a work permit in part because of his IELTS reading score of 4.5. In that case, Justice Bell found that it was unreasonable for the Officer to fail to consider the employer's language requirement and that there was no minimum IELTS result required. Justice Bell went on to state that "[m]uch of the evidence contradicted the visa officer's conclusion. He or she was required to engage with that evidence and explain why it was either irrelevant or plainly wrong" (at para 12).

[21] Likewise, here the job offer does not reference the requirement to "read driving manuals" or dictate a minimum IELTS result required. Furthermore, the Officer's comments on the difference in weather and driving conditions between Canada and UAE, appear to be unrelated to the job requirements. In any event, the Officer was not in a position to assess the Applicant's skills and ability to drive in Canadian weather conditions (*Chen v Canada (Minister of Citizenship and Immigration)*, 2000 CanLII 15495 (FC)). That responsibility will fall to the employer.

[22] In this case, I am not satisfied that the Officer reasonably considered the totality of the Applicant's evidence. Although discretionary decisions of Visa Officers are afforded significant deference – deference is not a blank slate. Furthermore, although the Officer's finding that the Applicant failed to provide sufficient information on his financial status may be reasonable, when considered against the other findings, it is not obvious that the Officer reasonably considered all of the evidence. Overall, the decision lacks justification, transparency, and intelligibility, and is therefore not reasonable.

JUDGMENT IN IMM-7415-19

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is granted. The decision of the Visa Officer is set aside and the matter is remitted for redetermination by a different officer; and
2. No question of general importance is proposed by the parties and none arises.

"Ann Marie McDonald"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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