

Federal Court



Cour fédérale

Date: 20220304

Docket: IMM-1090-20

Citation: 2022 FC 301

Ottawa, Ontario, March 4, 2022

PRESENT: The Honourable Mr. Justice Manson

BETWEEN:

GURIQBAL SINGH SANDHU

Applicant

and

**MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] This is an application for judicial review of a decision by a visa officer [the “Officer”] located at the Canadian Consulate in New Delhi, India, dated February 10, 2020, refusing the Applicant’s application for a work permit under the Temporary Foreign Worker Program [the “Decision”].

II. Background

[2] The Applicant, Guriqbal Singh Sandhu, is a 35-year-old male citizen of India employed as a truck driver with Oberoi Land Transport LLC in Dubai, United Arab Emirates. On January 14, 2020, the Applicant applied for a work permit as a long-haul truck driver with a job offer from SGL Trucking Ltd. in Delta, British Columbia [the “Application”].

[3] In support of his Application, the Applicant provided:

- i. A letter dated November 20, 2019 from Oberoi Land Transport LLC in Dubai, United Arab Emirates, certifying his employment and describing his duties as a “Heavy truck driver” since August 2012;
- ii. An Experience Certificate from the Government of Dubai’s Roads and Transport Authority certifying that he has no offences or traffic fines as a Heavy Vehicle driver as of December 4, 2019 (the Experience Certificate’s date of issue);
- iii. His Heavy Vehicle driver’s license issued December 26, 2012 and expiring December 26, 2022;
- iv. His signed job offer from SGL Trucking Ltd., describing the duties of his prospective job;
- v. The Labour Market Impact Assessment [the “LMIA”] issued to SGL Trucking Ltd. for 15 long-haul truck drivers, which includes the requirement of verbal and written English but no specified proficiency level; and

- vi. His International English Language Testing System [“IELTS”] Report Form, showing a Common European Framework of Reference [“CEFR”] level of B1 and an overall IELTS band score of 5.0, along with specific IELTS scores: Listening – 5.5, Reading 4.0, Writing – 5.0, and Speaking – 5.0.

[4] The Officer refused the Application by Decision dated February 10, 2020, on the grounds that i) the Applicant did not demonstrate that he met the requirements for the job in Canada and ii) the Applicant was not able to demonstrate that he would be able to adequately perform the work. No interview of the Applicant was conducted.

[5] The Applicant seeks:

- i. An Order for a writ of *certiorari* quashing the Decision;
- ii. An Order remitting the matter to a different officer for re-determination; and
- iii. Such other relief as this Honourable Court may deem just.

III. Decision Under Review

[6] As stated above, the Officer refused the Applicant’s Application on the grounds that:

- i. The Applicant did not demonstrate that he met the requirements for the job in Canada; and

- ii. The Applicant was not able to demonstrate that he would be able to adequately perform the work.

[7] The entirety of the Officer's reasons for the Decision are as follows:

I have concerns regarding the applicant's English language skills, which are also listed as a requirement for the position on the LMIA. I have noted his IELTS scores. I am not satisfied that the applicant can read, write and speak English sufficiently to converse with the general public, to understand highway traffic signs and signals in the English language, to respond to official inquiries and to interact effectively with law enforcement and emergency personnel. Overall, I am not satisfied that the applicant has sufficient ability to perform the duties of the position offered in Canada. He does not meet job requirements. Refused.

IV. Issues

[8] The issues to be decided on this judicial review are:

- (1) Was the Decision reasonable?
- (2) Was the Decision procedurally fair?

V. Standard of Review

[9] Where a Court reviews the merits of an administrative decision the standard of review is reasonableness [*Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 at paragraph 23].

[10] Issues that relate to a breach of procedural fairness are reviewed on the standard of correctness or a standard with the same import [*Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at paragraphs 34-35 and 54-55, citing *Mission Institution v. Khela*, 2014 SCC 24 at paragraph 79].

VI. Analysis

[11] A foreign national may be issued a visa if, following an examination, the visa officer is satisfied that the foreign national is not inadmissible and meets the requirements of the *Act* [subsection 11(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27].

[12] An Officer shall not issue a work permit to a foreign national if there are reasonable grounds to believe that the foreign national is unable to perform the work sought [paragraph 200(3)(a) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [the “*Regulations*”]].

[13] Subsection 200(3) of the *Regulations* does not stipulate a level of competence or safety, but in the case of a long-haul truck driver, safety must surely be a paramount requirement for competence. In this regard, the jurisprudence is clear: the onus is upon the applicant for a work permit to provide sufficient evidence to establish competence; that a visa officer has a wide discretion to decide this issue; and that their decision is entitled to a high degree of deference [*Sangha v. Canada (MCI)*, 2020 FC 95 at paragraph 42 [*Sangha*]; *Santos v Canada (Minister of Citizenship and Immigration)*, 2016 FC 1360 at paragraph 15; *Singh v Minister of Citizenship and Immigration*, 2022 FC 2066, at paragraphs 33, 34].

[14] Immigration officers should not limit their assessment of language, or other requirements to perform the work sought, solely to those described in the LMIA. However, the language requirement stated in the LMIA should be part of the officer's assessment of the applicant's ability to perform the specific work sought because it is the employer's assessment on the language requirement(s) for the job.

[15] Additionally, the officer can consider:

- i. The specific work conditions and any arrangements the employer has made or has undertaken to make to accommodate the applicant's limited ability in English or French and to address potential safety concerns if any; and
- ii. The terms in the actual job offer, in addition to general requirements set out in the National Occupational Classification ["NOC"] description for the occupation.
This is applied in assessing the extent to which weak official language skills could compromise the applicant's ability to perform the work sought.

[16] An officer should *not* consider perceived challenges the applicant might face in interacting with the broader community if this is not relevant to their job performance. Such a consideration is beyond the scope of the current legislation.

[17] The same principles respecting official language capability and the applicant's ability to perform the work sought apply irrespective of the skill level of the intended occupation.

[18] An applicant's language ability can be assessed through an interview or official testing such as IELTS/TEF or in-house mission testing practice. In deciding to require proof of language ability, the officer's notes should refer to the LMIA requirements, working conditions as described in the job offer, and NOC requirements for the specific occupation, in determining what level of language requirement is necessary to perform the work sought. System notes must clearly indicate the officer's language assessment, and in the case of a refusal, clearly show a detailed analysis on how the applicant failed to satisfy the officer that they would be able to perform the work sought.

[19] NOC 7511 (Skill Level C) governs the description and main duties and requirements of "transport truck drivers," e.g. long haul truck driver. There are no language requirements specific to NOC 7511. As stated previously, the LMIA states only that verbal and written language skills in English are required – no skill level is identified.

A. *Was the Decision Reasonable?*

[20] The Applicant argues two key issues in challenging the reasonableness of the Officer's Decision:

- i. The Applicant's IELTS results meet or exceed the required Canadian Language Benchmarks ["CLB"] under the Federal Skilled Trades Program ["FSTP"] for the same job, therefore, the Officer's concerns are unintelligible; and
- ii. The Officer considered perceived challenges the Applicant might face in interacting with the broader community which are not relevant to the job (*i.e.*

sufficiently conversing with the general public and responding to official inquiries) contrary to the Respondent's operational instructions and guidelines.

[21] The Respondent argues that the Decision was reasonable because it is apparent in the reasons that the Officer had concerns about the Applicant's language skills and that these skills are a requirement for the job sought by the Applicant.

[22] The Respondent further claims that the Applicant is asking this Court to reinterpret his IELTS scores based on the criteria for the FSTP, which is not applicable in the Temporary Foreign Worker program. The Court cautions that care must be taken in applying jurisprudence from one process to another because the associated rights differ [*Singh Grewal v. Canada (Citizenship and Immigration)*, 2013 FC 627 [*Grewal*] at paragraph 16] and highlights that officers are entitled to consider a number of factors in addition to the IELTS scores when assessing language requirements given the difference between the processes [*Brar v. Canada (Citizenship and Immigration)*, 2020 FC 70 [*Brar*] at paragraph 14].

[23] The case law submitted by the Respondent in support of their arguments is distinguishable from the current case – in those cases the applicant failed to provide IELTS test results [*Sangha* at paragraph 7]; the applicant's IELTS scores were low; or the applicant was interviewed and demonstrated a lack of English language skills notwithstanding of their IELTS scores.

[24] Contrary to the Applicant's argument, NOC 7511 does not appear to be governed by the FSTP. However, given that the NOC and the LMIA, in this case, do not provide any specific language skill requirements, the FSTP language requirements provide an instructive comparator. For example, the Applicant's IELTS results meet or exceed the required CLB language scores to immigrate to Canada under the FSTP for occupations with NOC Skill Level B:

	CLB requirement under FSTP NOC Skill Level B	Conversion from CLB to IELTS	The Applicant's IELTS Score
Speaking	5	5	5
Listening	5	5	5.5
Reading	4	3.5	4
Writing	4	4	5

Given that the Applicant is applying for a work permit for an occupation at NOC Skill Level C – a lower skill level than NOC Skill Level B that his language requirements would satisfy – the Officer's Decision is unreasonable.

[25] The Officer's reasons do not provide any explanation for why the Applicant's IELTS scores caused concern about 'safety' due to language issues, no other factors were considered in the reasons, and an interview was not conducted. In addition, the Respondent's case law states that an overall IELTS score of 5 (which the Applicant has) is required for a job as a long haul trucker [*Grewal* at paragraph 20]. Furthermore, recent jurisprudence demonstrates that the refusal of a work permit with an overall IELTS of 5 was unreasonable where the NOC did not

provide a proficiency requirement and no justification was provided by the Officer [*Safdar v. Canada (Citizenship and Immigration)*, 2022 FC 189 at paragraphs 2, 17, and 18].

[26] While the Officer does not need to be constrained or fettered by the Respondent's operational instructions and guidelines and is primarily governed by the *Act* and *Regulations*, the Officer's Decision was nonetheless inconsistent with the guideline that "an officer should *not* consider perceived challenges the applicant might face in interacting with the broader community, such as availing him/herself of community services, if this is not relevant to their job performance."

[27] The Officer does just this in concluding that they are not satisfied that the Applicant can sufficiently converse with the general public or respond to official inquiries. The Officer makes this conclusion without any clear rationale, particularly in light of the Applicant's IELTS scores meeting or exceeding the CLB requirements of a higher skill level occupation and particularly given there was no interview.

[28] The Officer's Decision is unreasonable.

[29] While counsel for the Applicant invited the Court to also consider "culture of justification" for the Decision, I fail to see how that argument is relevant in the context of this case and these facts.

B. *Was the Decision procedurally fair?*

[30] The decision to issue a temporary visa typically attracts a low or minimal level of procedural fairness [*Jiayan He v. The Minister of Citizenship and Immigration*, 2022 FC 112 at paragraph 20].

[31] Work permit applicants are not generally granted an opportunity to respond to an officer's concerns, where such concerns arise from a requirement set out in the *Act* and *Regulations*. The jurisprudence demonstrates that this is the case where IELTS scores, or other requirements, are not provided as part of a work permit application [see for example, *Sangha* at paragraph 49; *Singh* at paragraphs at paragraph 19 to 20]. However, interviews have been conducted and are an available avenue for officers where IELTS scores were provided [see for example, *Brar* at paragraphs 2 to 4].

[32] The Applicant argues that the Officer breached their duty of procedural fairness by not allowing the Applicant to respond to their concerns about meeting the language requirement.

[33] The Respondent claims that the Officer may assess an applicant's language requirement based on either an interview *or* IELTS scores – there is no requirement for an interview.

[34] As stated previously, there does not appear to be a requirement by the Officer to interview the Applicant, so the minimal procedural fairness owed to the Applicant has been discharged in this case.

JUDGMENT in IMM-1090-20

THIS COURT'S JUDGMENT is that:

1. The application is allowed and the matter is remitted to a different Officer for reconsideration.
2. There is no question for certification.

"Michael D. Manson"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-1090-20

STYLE OF CAUSE: GURIQBAL SINGH SANDHU v MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: HELD BY VIDEOCONFERENCE

DATE OF HEARING: MARCH 2, 2022

JUDGMENT AND REASONS: MANSON J.

DATED: MARCH 4, 2022

APPEARANCES:

RICHARD KURLAND FOR THE APPLICANT

AMINOLLAH SABZEVARI FOR THE RESPONDENT

SOLICITORS OF RECORD:

KURLAND, TOBE FOR THE APPLICANT
VANCOUVER, BRITISH
COLUMBIA

DEPARTMENT OF JUSTICE FOR THE RESPONDENT
VANCOUVER, BRITISH
COLUMBIA