

Federal Court



Cour fédérale

Date: 20220304

Docket: IMM-2738-20

Citation: 2022 FC 309

Ottawa, Ontario, March 4, 2022

PRESENT: The Honourable Mr. Justice Manson

BETWEEN:

HARVINDER SINGH SANGHA

Applicant

and

**THE 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 High Commission of Canada in New Delhi, India dated March 6, 2020, refusing the Applicant’s application for a work permit under the Temporary Foreign Worker Program [the “Decision”].

II. Background

[2] The Applicant, Harvinder Singh Sangha, is a 36-year-old male citizen of India. On February 11, 2020, he applied for a work permit as a long-haul truck driver with a job offer from KingK Transport Ltd. in Surrey, British Columbia.

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

- i. Documentary support of his experience as a Long Haul Truck Driver from July 2017 to October 2018 and from April 2019 to present with Lidder Star Transports and Harman Star Trucks Transportation, respectively, both in the United Arab Emirates [UAE];
- ii. Training certificates in driving and road safety;
- iii. Driving licenses from India and UAE;
- iv. His International English Language Testing System [IELTS] Test Report Form, showing a Common European Framework of Reference [CEFR] level of B2 and an overall IELTS band score of 6.5;
- v. Higher Secondary certificate from S.D. College, Hoshiarpur, dated March 2005;
- vi. The Labour Market Impact Assessment [LMIA] issued to KingK Transport Ltd. for 4 long-haul truck drivers; and
- vii. His signed job offer from KingK Transport Ltd. as a long haul truck driver.

[4] The Officer refused the application by Decision dated March 6, 2020, on the ground that 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 reconsideration; 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 ground that the Applicant was not able to demonstrate that he would be able to adequately perform the work pursuant to paragraph 200(3)(a) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [the "*Regulations*"].

[7] In their Global Case Management System [GCMS] notes, the Officer highlights:

- i. The refusal of a previous application to the United States by the Applicant in 2010, where he applied as a spouse;
- ii. The current marital status of the Applicant as "legally separated" as of 2013; and

- iii. The Applicant's experience as a Long Haul Truck Driver in the UAE, supported by reference letters and salary certificates/payment vouchers from Harman Star Trucks (both dated February 2020) and Lidder Star Transports (dated November 2018 and 2019, respectively).

[8] The Officer finds that the evidence put forward by the Applicant in support of his employment experience does not appear sufficient or satisfactory due to a lack of salary deposits/transfers in the UAE and other/older documents in support of the Applicant's alleged employment.

IV. Issues

[9] 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

[10] 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].

[11] 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

[12] A foreign national may be authorized to work in Canada if they meet the conditions set out in the *Regulations* [subsections 30(1) and 30(1.1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the “Act”]].

[13] 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 *Regulations*].

[14] 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*]].

[15] National Occupational Classification [NOC] 7511 (Skill Level of Type C) describes the main duties and requirements of “transport truck drivers,” including long haul truck drivers.

[16] NOC 7511 does not require any work experience, but does state that completion of secondary school and an accredited driver-training course *may* be required, as well as relevant drivers' licenses.

A. *Was the Decision reasonable?*

[17] The Applicant argues that the Officer's refusal of the Applicant's application was unreasonable because the Applicant met and surpassed the requirements of the NOC 7511 position and the Officer did not give due regard to the materials before them in the assessment of the application, thus failing to reasonably weigh the Applicant's work experience evidence.

[18] The Respondent argues that the supporting documents submitted by the Applicant did not provide details regarding whether the Applicant possesses the skills and experience to perform the duties set out in NOC 7511. As such, it was open for the Officer to refuse the Applicant's application.

[19] The Officer's Decision to refuse the Applicant's application is unreasonable. The Officer refused the application on the ground that the Applicant had not demonstrated that he is able to perform the work in Canada, yet their reasons (*i.e.* their GCMS notes) do not support this conclusion. The Officer appears to accept the reference letters and salary certificates provided to demonstrate the Applicant's approximately three years' experience as a long haul truck driver. However, they then appear to require proof of deposits of this salary and other documents to support the experience.

[20] The NOC 7511 description does not require any work experience. It is clear from the other documents provided by the Applicant (which were not referenced in the Officer's Decision or reasons), that the Applicant does meet the education and training requirements in NOC 7511. It is unreasonable for the Officer to refuse the application based on unnecessary proof of salary deposits and seemingly ignore the other relevant documents that were at their disposal.

[21] The Respondent's arguments read into the Decision and GCMS notes justification and intelligibility that are not present. The Decision lacks clarity and a detailed analysis weighing the evidence before the Officer.

B. *Was the Decision procedurally fair?*

[22] 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].

[23] 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* [*Singh v. Canada (Citizenship and Immigration)*, 2021 FC 635 [*Singh*] at paragraph 19].

[24] The Applicant submits that the Officer breached their duty of procedural fairness by not providing the Applicant an opportunity to provide further information to address their concerns.

[25] The Officer does not appear to have concerns relating to the credibility, accuracy, or genuine nature of the information that the Applicant submitted. The Officer states that the Applicant's materials were simply insufficient. Therefore, the Officer had no obligation to notify or provide the Applicant an opportunity to respond to the deficiencies and did not breach procedural fairness.

JUDGMENT in IMM-2738-20

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-2738-20

STYLE OF CAUSE: HARVINDER SINGH SANGHA v MCI

PLACE OF HEARING: HELD BY VIDEOCONFERENCE

DATE OF HEARING: MARCH 3, 2022

JUDGMENT AND REASONS: MANSON J.

DATED: MARCH 4, 2022

APPEARANCES:

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