



Date: 20220426

Docket: IMM-4936-21

Citation: 2022 FC 609

Ottawa, Ontario, April 26, 2022

PRESENT: The Honourable Mr. Justice Mosley

BETWEEN:

ABDELKARIM EL AYACHI

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] This is an application for judicial review of a decision made on July 13, 2021, refusing an application for a work permit submitted under the Temporary Foreign Workers Program [TFWP].

[2] For the reasons that follow the application is granted.

II. **Background**

[3] The Applicant, Abdelkarim El Ayachi, is forty-two and a citizen of Morocco. He currently resides in Italy and holds an Italian long-term resident permit. He applied to enter Canada under the TFWP, with intentions to work as a pizza maker at Gusto Ferrari Cuisine Inc. [Gusto Ferrari] in Penticton, B.C.

[4] In support of his application, the Applicant submitted duly completed forms, his résumé, a positive Labour Market Impact Assessment [LMIA], a copy of his job offer from the employer in Canada, and a reference letter from his current employer in Italy, La Piazzetta Snack Bar [La Piazzetta] indicating that Mr. El Ayachi had worked there for 18 years and was a valued employee.

[5] Marco Ferrari, the owner of the La Piazzetta in Italy, signed the reference letter. Flaminio Ferrari, the owner of Gusto Ferrari in Canada, signed the job offer made to the Applicant. There is no evidence in the record that the two Messrs. Ferrari are related but their names are relevant for reasons which will become apparent.

III. **Decision Under Review**

[6] The Officer refused the Applicant's work permit on the ground that he failed to demonstrate that he would "be able to adequately perform" the work he sought in the application. The Global Case Management System [GCMS] notes contain the Officer's reasons. Two remarks in the notes appear to substantiate the refusal.

[7] First, the Officer notes that the “Applicant submits one employment reference letter stating that he has worked as a pizza cook at La Piazzetta Snack Bar for 18 years. I note that letter is signed by Marco Ferrari – same family name as restaurant in Canada”.

[8] The Officer remarks further that the Applicant “provides minimal evidence of employment as a pizza cook – limited evidence of pay stubs, income statements, other documentary proof etc. for work at the company in Italy.”

IV. **Issues and Standard of Review**

[9] Two issues arise in this matter:

- A. Did the officer breach the principles of procedural fairness by failing to allow the Applicant an opportunity to respond to concerns about the restaurant owners in Canada and Italy sharing the same surname?
- B. Is the new evidence submitted by the Applicant admissible?

[10] The standard applicable to issues of procedural fairness is whether, “having regard to all of the circumstances and focusing on the nature of the substantive rights involved and the consequences for the individual affected,” the procedure followed by the decision-maker was fair: *Canadian Pacific Railway Company v Canada (Transportation Agency)*, 2021 FCA 69 at paras 46-47. This standard involves no deference to the decision-maker.

[11] As for the second issue, the Applicant seeks to enter into the evidentiary record an affidavit attaching articles about the commonness of the surname “Ferrari”. Generally, evidence that was not before the decision maker is inadmissible on judicial review. However, there are exceptions to the principle, as discussed by Justice Stratas in *Bernard v Professional Institute of the Public Service of Canada*, 2015 FCA 263 at paras 14 -28. Fresh affidavit evidence may be admitted on issues of procedural fairness such as in this matter. Another exception is where the material is considered general background information that would assist the Court.

V. Analysis

A. *Admissibility of the new evidence*

[12] The Respondent did not take issue with the content of the new evidence.

[13] At the hearing I advised the parties that I would accept the fresh evidence as I considered that it would greatly assist the Court. This was because it addressed a key issue that was not otherwise to be found in the record. This was that the name Ferrari is so common in Italy and Latin American countries as to be similar to “Smith” in English speaking nations.

[14] As the Officer’s refusal was largely based on a doubt about the credibility and reliability of the reference letter from Italy, since the writer bore the same surname as the Canadian employer, the new evidence supports the Applicant’s submission on procedural fairness. In my opinion, the evidence is admissible as it is both relevant and probative.

B. *Did the Officer breach the duty of procedural fairness?*

[15] It is clear from the GCMS notes that the Officer doubted the credibility of the reference letter from the owner of La Piazzetta. The Officer remarks that the surnames of the employers from Canada and Italy are both “Ferrari”. Yet, the Officer did not alert the Applicant to the concerns about the reference letter’s credibility such that Mr. Ayachi could have had an opportunity to respond.

[16] It appears that the Officer impugns the credibility of the reference letter on the assumption that the letter from the employer in Canada and the letter from the employer in Italy are written by the same person, or by persons in the same family. I would agree with the Applicant that this assumption is unreasonable, given how common the surname “Ferrari” is.

[17] The Respondent is correct that the level of procedural fairness owed to the Applicant is on the low end of the spectrum. However, the Officer’s failure to allow the Applicant an opportunity to dispel any concerns regarding the letter’s credibility amounted in this instance to a breach of procedural fairness. This Court has held repeatedly that when the Officer has doubts about the credibility of the information proffered by the Applicant, giving the Applicant an opportunity to respond is indispensable: see for example *Rani v Canada (Minister of Citizenship and Immigration)* 2015 FC, 1414 paras 20; *Mursalim v. Canada (Citizenship and Immigration)*, 2016 FC 264 at para 16; *Hassani v Canada (Minister of Citizenship and Immigration)* , 2006 FC 1283 at paras 24 to 27.

[18] The Respondent is also correct that it was within the Officer's purview to refuse the application because of the lack of supporting evidence to corroborate his work experience as a pizza chef in Italy. And that is true even where, as here, the Applicant had submitted all of the documents listed in the work permit application checklist. However, the reference letter from Marco Ferrari is remarkably detailed about the Applicants work experience over the 18 years during which he had been employed at the pizzeria in Brescia. In light of that, the question of whether the Officer's requirement of further documentary proof was warranted and reasonable is inextricably linked to their credibility concerns.

VI. **Conclusion**

[19] In the result, I am satisfied that this application must be granted because of the breach of procedural fairness in failing to offer the Applicant an opportunity to respond to the Officer's concerns about the credibility of the reference letter from the owner of La Piazzetta.

[20] No questions were proposed for certification.

JUDGMENT IN IMM-4936-21

THIS COURT'S JUDGMENT is that the application is granted and the matter is remitted for reconsideration by a different officer. No questions are certified.

"Richard G. Mosley"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4936-21

STYLE OF CAUSE: ABDELKARIM EL AYACHI v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

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