Federal Court Cour fédérale

Date: 20220518

Docket: IMM-6427-20

Citation: 2022 FC 727

Ottawa, Ontario, May 18, 2022

PRESENT: The Honourable Mr. Justice Favel

BETWEEN:

JAVED IQBAL

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Nature of the Matter

[1] Javed Iqbal [Applicant] seeks judicial review of a visa officer's November 18, 2020 decision denying his work permit application [Decision].

[2] The application for judicial review is dismissed.

II. Background

[3] The Applicant is a 50-year-old citizen of Pakistan. He is married and has three daughters. The Applicant obtained a Bachelor of Science and a Masters of Science in Statistics from universities in Pakistan. From August 1993 to March 2019, the Applicant worked as a Senior Auditor for a company called "CMA" in Lahore, Pakistan. From April 2016 to present, the Applicant has been employed as an Operations Research Analyst at Saint Joseph's Science Academy in Gujranwala, Pakistan.

[4] On March 16, 2020, Canadian Consulting Engineers Inc. [CCE] offered the Applicant a job as an Operations Research Analyst in Drayton Valley, Alberta. The job offer was based on a Labour Market Impact Assessment [LMIA] obtained by CCE on November 5, 2019. On March 25, 2020, the Applicant applied for a two-year work permit so he could accept the position. The LMIA lists verbal and written English as requirements for the position.

III. Decision

[5] The visa officer [Officer] refused the Applicant's work permit pursuant to paragraph 200(3)(a) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [*IRPR*]. That paragraph states 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."

[6] The Decision letter states that the Applicant did not demonstrate that he could adequately perform the work and that he did not submit "sufficient evidence of abilities in English (a

requirement listed on the LMIA), such as test results from an approved testing organization.”

The Officer’s Global Case Management System [GCMS] notes state:

> Application and submissions reviewed. [The Applicant] has an LMIA to work as an operations research analyst in Canada. LMIA requires abilities in English. [The Applicant] failed to submit sufficient evidence of abilities in English in support of his application. Educational transcripts reviewed, however, on basis of info provided, am not satisfied that [the Applicant] indeed has sufficient abilities in English. Therefore, based on a review, I am not satisfied that the applicant has sufficiently demonstrated that he is able to perform the work offered in Canada. Refused pursuant to R200(3)(a).

IV. Preliminary Matter

[7] On judicial review, the Applicant submitted an affidavit sworn February 13, 2021, attaching his International English Language Testing System [IELTS] test result. He states that he submitted the IELTS test result with his work permit application. However, the IELTS test result does not appear in the Certified Tribunal Record.

[8] The Respondent filed a March 22, 2022 affidavit sworn by the Officer. In that affidavit the Officer deposes that he reviewed the application in its entirety and that the IELTS test result was not included with the Applicant’s permit application. Furthermore, the Officer states that the IELTS test result was not on the Applicant’s file at the time that he refused the work permit. The Officer also states that he reviewed the Applicant’s file again on March 19, 2022 and the Applicant had not provided his IELTS test result at that time.

[9] The Respondent submits that the Court should not consider the Applicant’s IELTS test result. The Applicant states that the immigration consultant who was assisting the Applicant did

in fact submit the IELTS test result. However, there is no evidence of this other than the Applicant's assertion.

[10] I agree with the Respondent. Generally, the evidentiary record before a reviewing court is restricted to that before the decision-maker. Although there are exceptions to this rule, those exceptions are not engaged in the present case: the Applicant's IELTS test result is clearly relevant to the merits of the matter; the IELTS test result does not bring procedural defects to the attention of the Court; and the new evidence is not intended to highlight the lack of evidence before the Officer (*Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22 at paras 19-20). Accordingly, I find that the Applicant's IELTS test result is inadmissible. I will not give it any weight.

V. Issues

[11] After considering the submissions of the parties, the issues are best characterized as:

(1) Is the Decision reasonable?

(2) Was there a breach of procedural fairness?

VI. Standard of Review

[12] I agree with the parties that the appropriate standard of review for the first issue is reasonableness. None of the exceptions outlined in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] arise in this matter (at paras 16-17). A reasonableness review requires the Court to examine the decision for intelligibility, transparency,

and justification and whether the decision "is justified in relation to the relevant factual and legal constraints that bear on the decision" (*Vavilov* at para 99). If the reasons of the decision-maker allow a reviewing Court to understand why the decision was made, and determine whether the decision falls within the range of acceptable outcomes defensible in respect of the facts and law, the decision will be reasonable (*Vavilov* at paras 85-86). In conducting a reasonableness review, the reviewing court must look to both the outcome of the decision and the justification of the result (*Vavilov* at para 87).

[13] The second issue concerns procedural fairness and is therefore reviewable on the standard of correctness (*Mission Institution v Khela*, 2014 SCC 24 at para 79; *Oleynik v Canada (AG)*, 2020 FCA 5 at para 39; *Ebrahimshani v Canada (MCI)*, 2020 FC 89 at para 12). No deference is afforded to the underlying decision-maker on questions of procedural fairness (*Del Vecchio v Canada (AG)*, 2018 FCA 168 at para 4).

VII. Analysis

A. *Is the Decision reasonable?*

[14] The Applicant submits that the Decision is unreasonable because the Officer ignored relevant evidence that demonstrates the Applicant's proficiency in English (*Canada (MCI) v Tefera*, 2017 FC 204 at paras 30-31; *Shakeri v Canada (MCI)*, 2016 FC 1327 at paras 21-23). The Applicant states that the Officer failed to account for the fact that he communicates in English in his current job. The Applicant points to the reference letter from his current employer, which states all of the Applicant's duties. Similarly, the Applicant submits that the Officer failed

to consider that the Applicant has two degrees and that according to his Intermediary and Second School transcripts, he completed all of his studies in English. Finally, the Applicant submits that the Officer did not consider his IELTS test result.

[15] The Respondent submits that the Officer properly reviewed the evidence within the permit application and made a reasonable decision. The Respondent points to the Officer's affidavit, which clearly states that the IELTS test result was not included in the permit application. The Respondent submits that in the absence of the IELTS test result, the Officer reasonably reviewed the Applicant's transcripts. The undergraduate transcript indicates that the Applicant took an English course and received a mark of 47 out of 100, which may indicate that he did not pass. The Applicant's Intermediate and Secondary Education transcripts indicate that he took English courses in 1985 and 1987, in which he received a mark of 104 and 120, respectively. Based on the record, there is no way to tell what these marks mean. Ultimately, the Respondent states that the Applicant failed to submit sufficient persuasive evidence that he had the English language skills to adequately perform the work he sought (*Virk v Canada (MCI)*, 2014 FC 150 at para 6 [*Virk*]; *Kumar v Canada (MCI)*, 2020 FC 935 at para 30).

[16] Before turning to the Decision itself, it is helpful to set out some general principles applicable to visa officer's decisions. First, a reasonableness review must be sensitive to the institutional context in which the decision was made. I agree with the Respondent that visa officers are under pressure to produce a large volume of decisions every day and that this does not allow for extensive reasons. Justice McHaffie recently stated, "this institutional constraint, together with the discretionary nature of a visa officer's decision and the onus on an applicant to

satisfy the statutory requirements, must inform the assessment of reasonableness” (*Rodriguez Martinez v Canada (MCI)*, 2020 FC 293 at para 13). A concise and simple justification will be reasonable as long as the decision is responsive to the evidence (*Patel v Canada (MCI)*, 2020 FC 77 at para 17).

[17] In the present matter, the LMIA clearly states that the position requires verbal and written English skills. It is trite law that the burden is on an applicant to satisfy an officer that they meet all of the requirements for a work permit (*Hassan v Canada (MCI)*, 1999 CanLII 9142 at para 13).

[18] I disagree with the Applicant that the Officer failed to account for evidence that contradicts the Officer’s conclusion. I find that the Officer did look at the Applicant’s academic transcripts and certifications and the Officer states as much in the GCMS notes. In the absence of test results from an approved testing organization, doing so was reasonable (*Cf Li v Canada (MCI)*, 2012 FC 484 at paras 7, 43 where an officer’s failure to refer to transcripts was unreasonable). The Applicant failed to provide information so that the Officer could meaningfully interpret the Applicant’s English marks. Furthermore, while I accept that the Applicant is highly educated, it does not follow that the Applicant possesses the required English language skills.

[19] The permit application included a reference letter listing his duties, but there is no evidence in the record that the Applicant performs those duties in English (*Sun v Canada (MCI)*, 2019 FC 1548 at para 37). Accordingly, the Court is unable to infer that the Applicant performs

his work in English. Similarly, although that letter, the application forms, the Applicant's resume, and the Applicant's academic transcripts are in English, English documents will generally not be enough to establish that the Applicant has the requisite English language skills. For example, this Court has held that a visa officer may require something more than an English application, cover letter, or resume as evidence of proficiency in English (*Virk* at para 6; *Puyda v Canada (MCI)*, 2022 FC 82 at para 11).

[20] Ultimately, the Officer's conclusion was reasonable in light of the record provided. The Applicant failed to establish that he has the necessary English language skills. I also note that in the case of a temporary worker's visa, the Applicant can simply reapply to the Officer and provide further information, such as his IELTS test results.

B. *Was there a breach of procedural fairness?*

[21] The Applicant submits that the Officer breached his rights to procedural fairness. The Applicant states that if the Officer required further proof of his proficiency in English, the Applicant was entitled to notice and the opportunity to respond to the Officer's concerns.

[22] The Respondent submits that there was no breach of procedural fairness. The Respondent states that the Officer was not obligated to prompt or remind the Applicant that he was required to provide evidence of his English language skills (*Virk* at para 6).

[23] The requirements of procedural fairness vary with the circumstances. In the context of a temporary work permit, the scope of procedural fairness is relatively minimal (*Qin v Canada (MCI)*, 2002 FCT 815 at para 5, [2002] FCJ No 1098).

[24] As already mentioned, the LMIA clearly states that the position requires verbal and written English skills. The Applicant knew that he had to provide evidence that he possessed the requisite English language skills. As such, the Officer was not obligated to notify the Applicant or "seek out the missing evidence" (*Virk* at para 6).

[25] Accordingly, I do not find that the Applicant's rights to procedural fairness were breached.

VIII. Conclusion

[26] There is no breach of procedural fairness in these circumstances and the Officer's finding that the Applicant lacked an essential aspect of the work sought was reasonable. The application for judicial review is dismissed. Neither party proposes a question for certification. I agree that none arises.

JUDGMENT in IMM-6427-20

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.
2. There is no question for certification.
3. There is no order as to costs.

"Paul Favel"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-6427-20
STYLE OF CAUSE:	JAVED IQBAL v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	HELD BY VIDEOCONFERENCE
DATE OF HEARING:	MAY 11, 2022
JUDGMENT AND REASONS:	FAVEL J.
DATED:	MAY 18, 2022

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