Federal Court   Cour fédérale

Ottawa, Ontario, February 6, 2023

PRESENT: **Madam Justice McDonald**

 BETWEEN:

KIRANJIT SINGH

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1]   This is an application for judicial review of the decision of a visa officer of the High Commission of Canada in India [the Officer], dated February 17, 2022 [Decision], who denied the Applicant's work permit as a long haul truck driver.

[2]   The determinative issue on this judicial review is the Officer's treatment of the English language requirements. The Applicant argues the Officer improperly assessed his language results, rendering the Decision unreasonable.

[3]   For the following reasons, this judicial review is dismissed as I have determined that the Officer's decision is reasonable.

I.   Background

[4]   The Applicant is a 38-year-old citizen of India. He worked as a truck driver in Dubai from November 2013 to August 2020.

[5]   He completed an International English Language Testing System [IELTS] exam on February 6, 2021. He had an overall band score of 5.5, with 6.0 in listening, 5.0 in reading, 5.0 in writing, and 6.0 in speaking.

[6]   In July 2020, Right-Link Logistics Ltd. submitted an application for a Labour Market Impact Assessment [LMIA] for Long Haul Truck Driver positions. Service Canada issued a positive LMIA on December 7, 2020. The job requirements included an English verbal and written language requirement.

[7]   On February 26, 2021, Right-Link Logistics offered the Applicant a Long Haul Truck Driver position, which the Applicant accepted. The Applicant submitted his work permit application in March 2021.

Decision Under Review

[8]   The Officer denied the Applicant's work permit, as he was not able to demonstrate he would adequately be able to perform the work sought. The GCMS notes state:

> Applicant provided IELTS test results which reflects scores of 5.0 in reading. According to https://takeielts.britishcouncil.org/teach-ielts/test-information/scores-explained, a 5.0 score means "You have a partial command of the language, and cope with overall meaning in most situations, although you are likely to make many mistakes. You should be able to handle basic communication in your own field." On reasonable grounds, I am not satisfied that a score of 5.0 as per the description provided above would be sufficient to complete the duties of the job, such as reading road signs, understanding safety procedures and regulations, recording cargo information, and administering bills. That the applicant is "likely to make many mistakes" may also have serious (and potentially deadly) consequences, especially when it comes to health and safety of both the driver and other persons on the road. Refused under R200(3)(a).

II.   Issues and Standard of Review

[9]   The following issues arise:

   a)   Was the Applicant assessed under the correct program?

   b)   Was the language assessment reasonable?

[10]   The standard of review on both of these issues is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*]).

III.   Analysis

   (a)   Was the Applicant Assessed under the Correct Program?

[11]   The Applicant argues the Officer erred in assessing his application under the
"International Mobility Program," rather than under the Temporary Foreign Worker Program for
which he applied.

[12]   The Decision letter, dated February 17, 2022, does state his application was reviewed
under the International Mobility Program. However, the GCMS notes state "Application and
submissions reviewed. PA applying for LMIA supported WP for NOC 7511". Further, the
provision of the *Immigration and Refugee Protection Regulations*, SOR/2002-227
(subsection 200(3)(a)), relied upon by the Officer in the GCMS notes, applies to foreign
nationals seeking a work permit with an LMIA.

[13]   Accordingly, despite the typographical error, the Officer otherwise referred to the correct
criteria in assessing the application.

[14]   I therefore do not agree with the Applicant that the Officer considered his submission
under the wrong program.

(b)   Was the Language Assessment Reasonable?

[15]   The core of the Applicant's challenge to the Decision is the Officer's treatment of the language scores and the metric used to measure his reading proficiency.

[16]   I start this analysis by noting the Officer's Decision is highly discretionary and there is no argument here that the Officer disregarded any pertinent evidence.

[17]   The Applicant argues the Officer applied the wrong benchmark for assessing the IELTS results. He relies upon *Singh v Canada (Citizenship and Immigration),* 2021 FC 638 [*Singh* 2021] where the officer compared the applicant's IELTS results to the British Council comparators. Justice Bell states at paragraph 9 that "the British Council referred to students' abilities. It clearly did not refer to an adult's language abilities in his or her own trade or calling." The Applicant submits, as in *Singh* 2021, that the Officer should have applied the Canadian Language Benchmark [CLB].

[18]   However, in his work visa application, the Applicant himself referred to the British Council comparators. Although the Applicant provided CLB conversions for his IELTS scores in his application, he also clearly identified that he was classified as a "'Modest user' as per British Council (Designated Assessment Body by IRCC)." Accordingly, this is not a ground upon which the Applicant can criticize the Officer, as the Officer was considering the British Council's explanation of the IELTS scores, as that was the information submitted by the Applicant himself.

[19]   Furthermore, in *Singh* 2021, the employer's letter independently verified that the applicant had sufficient language skills to perform the job, which information was not considered by the officer. That is not the situation here.

[20]   Also on this issue, the Applicant argues the Officer erred in only considering his reading score and not considering his written and verbal scores. He points out that the language requirements in the LMIA only refer to written and verbal English language requirements, not a reading requirement.

[21]   He claims his IELTS verbal score of 6.0 is equivalent to a Level 7 CLB and his ILETS written score of 5.0 is equivalent to a CLB 5. Based upon these scores, the Applicant says that a strong inference can be drawn that he has the necessary language skills to be a truck driver. Relatedly, he says that even with his reading score, he still falls within a satisfactory level of understanding.

[22]   In essence, these submissions are an invitation to the Court to reweigh the evidence considered by the Officer. That is not the role of the Court on judicial review (*Vavilov* at para 125).

[23]   *Singh v Canada (Citizenship and Immigration)*, 2015 FC 115 at paragraph 20, states that a visa officer is "entitled to determine that an applicant requires language ability different from that set forth in the LMO and job offer if relevant to the performance of the job duties."

[24]   Further, in *Patel v Canada (Citizenship and Immigration)*, 2021 FC 573 [*Patel*], Justice

Brown upheld a decision that found an ILETS score of 4.5 on reading was insufficient to

perform the job of a long-haul trucker. In *Patel,* the applicant had an overall IELTS score of 5.5,

the same as the Applicant in the case at bar. The individual IELTS scores in *Patel* were 4.5 for

reading, 5.5 for listening, 6.0 for writing and 5.0 for speaking. In dismissing the application and

upholding the officer's language assessment, Justice Brown held:

> [26] … in this respect, the Applicant fails to appreciate the
> considerable discretion and deference Officers are given in matters
> such as this, as noted above. In addition, he invites the Court to
> engage in the reweighing and reassessing of evidence, a matter that
> is expressly withheld from judicial review in many cases of the
> Supreme Court of Canada including Vavilov. It was up to the
> Officer to determine what standard testing method to use, and to
> interpret the score against the job requirements and other evidence.
>
> [27] In any event, in my respectful view, as it was reasonable to
> conclude the Applicant's English skills would impact his ability to
> read and understand manuals, course material, required
> documentation to be provided by a long-haul truck driver, not to
> mention traffic signs. It was for the Officer to determine the
> importance of reading in a case like this. In this connection and in
> my respectful view, the Officer reasonably assessed the
> Applicant's language ability in light of the job requirements in the
> National Occupational Classification for truck drivers particularly
> to "obtain special permits and other documents required to
> transport cargo on international routes" and "communicate with
> dispatcher and other drivers using two-way radio, cellular
> telephone and on-board computer".
>
> [Emphasis added].

[25]   In light of the Applicant identifying the British Council as a designated assessment body

for his IELTS scores, I agree with the reasoning in *Patel* and the Officer's decision is reasonable.

IV.   <u>Conclusion</u>

[26]   This judicial review is dismissed.

JUDGMENT IN IMM-3284-22

THIS COURT'S JUDGMENT is that:

1.   The application is dismissed; and

2.   There is no question for certification.

                                                        "Ann Marie McDonald"
                                                        Judge