Federal Court  Cour fédérale

Date: 20230210

Docket: IMM-631-22

Citation: 2023 FC 202

Ottawa, Ontario, February 10, 2023

PRESENT: The Honourable Mr. Justice Favel

BETWEEN:

SURJIT KAUR

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Nature of the Matter

[1] Surjit Kaur [Applicant] seeks judicial review of an immigration officer's [Officer] January 7, 2022 decision refusing the Applicant's application for permanent residence under the Home Support Worker Class [Decision]. The Officer determined that the Applicant did not meet the eligibility requirement for permanent residence, having not obtained at least 24 months of full-time work experience in Canada in the 36 months preceding her application.

[2] The application for judicial review is dismissed.

II. Background

[3] On March 6, 2019, the Applicant, a citizen of India, arrived in Canada on a two-year work permit as a Home Support Worker. The Home Support Worker Class is captured under National Occupational Classification 4412 [NOC 4412].

[4] Between March 9, 2019 and February 26, 2021, the Applicant worked for Mr. Rai. On February 26, 2021, the Applicant submitted both an application for permanent residence under the Home Support Worker Class as a Category B applicant and an application to extend her work permit. Immigration, Refugees and Citizenship Canada informed the Applicant that the applications were received on March 3, 2021.

III. The Decision

[5] The Officer refused the Applicant's application for permanent residence. The Officer's Global Case Management System [GCMS] notes indicate that the Applicant had only 23 months and 20 days of eligible work experience in Canada, rather than the required 24 months in the 36 months preceding the application date.

[6] The Officer determined that the 36-month period of qualifying Canadian work experience ran from March 3, 2018 to March 3, 2021, the date the application was received. During this period, the Applicant claimed time worked for an overseas employer from September 14, 2016 to

February 15, 2019, and her Canadian employer from March 9, 2019 to February 26, 2021. The Officer did not include the overseas work experience in the calculation of eligible work experience.

IV. Issues and Standard of Review

[7] The Applicant submits that the issues are:

1. Was there a breach of procedural fairness?
2. Was the Decision reasonable?

[8] The standard of review for procedural fairness is essentially correctness (*Canadian Pacific Railway Company v Canada (AG)*, 2018 FCA 69 at paras 49, 54 [*CP Railway*]; *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 43). The Court has no margin of appreciation or deference on questions of procedural fairness. Rather, when evaluating whether there has been a breach of procedural fairness, a reviewing court must determine if the procedure followed by the decision-maker was fair, having regard to all the circumstances (*CP Railway* at para 54; *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 at 837-41).

[9] Both parties agree that the merits of the Decision are reviewable on the presumptive standard of reasonableness. In this case, the presumption is not rebutted by the rule of law or through clear legislative intent (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16-17 [*Vavilov*]).

[10] To determine whether a decision is reasonable, a reviewing court must ask whether the "decision bears the hallmarks of reasonableness — justification, transparency and intelligibility —and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision" (*Vavilov* at para 99). A decision may be unreasonable where there is a fatal flaw in the decision maker's overarching logic or where it is untenable within the applicable law and facts (*Vavilov* at paras 102, 105). The party challenging the decision bears the burden of showing that the decision is unreasonable (*Vavilov* at para 100).

V. Analysis

A. *Did the Officer breach the Applicant's right to procedural fairness?*

(1) Applicant's Position

[11] The Officer should have processed the work permit extension before the permanent resident application. However, there was an undue delay of nearly 11 months to process the Applicant's application for permanent residence. The Officer also failed to justify the Decision or afford the Applicant an opportunity for an interview.

(2) Respondent's Position

[12] There were was no breach of procedural fairness as the matter involved a straightforward mathematical calculation of the Applicant's eligible work experience. There is no authority for the Applicant's submission that a work permit extension must be processed before an application for permanent residence.

(3) Conclusion

[13] I find that the Officer did not breach the Applicant's right to procedural fairness. An applicant may establish that a delay is unreasonable where (1) the delay is *prima facie* longer than the nature of the process required; (2) the applicant is not responsible for the delay; and (3) the authority responsible for the delay has not provided a satisfactory explanation for the delay (*Thomas v Canada (Public Safety and Emergency Preparedness)*, 2020 FC 164 at para 19, citing *Conille v Canada (Minister of Citizenship and Immigration)*, [1999] 2 FC 33 at para 23). Bearing in mind that there are no time estimates to assess the reasonable processing of a permanent resident application under the Home Support Worker Class, the Applicant has failed to establish the unreasonableness of an 11-month processing time.

[14] Further, I disagree with the Applicant that the Officer failed to provide reasons to justify the Decision, as evidenced by the Decision letter and the GCMS notes. Any issues with the Decision will be assessed under the reasonableness issue below.

[15] I also disagree that the Applicant was entitled to an interview. There is no statutory right to an interview in a permanent resident application and there were no issues with the *bona fides* of the materials submitted.

[16] Lastly, I agree with the Respondent's submissions that there is no authority that requires the Officer to process a work permit extension before a permanent resident application. More will be said of this below.

B. *Was the Decision reasonable?*

(1) Applicant's Position

[17] The Officer erred in assessing the Applicant's eligible work experience. The Applicant continued to work as a caregiver after submitting her application for permanent residence. Accordingly, the Officer should have considered her work experience accumulated up to the date of the Decision, being January 7, 2022, rather than the date she submitted her application, being February 26, 2021.

[18] Further, the Officer should have considered the Applicant's application for a work permit extension prior to her application for permanent residence.

(2) Respondent's Position

[19] The Officer correctly calculated that the Applicant's eligible work experience was for a period of 23 months and 20 days. The Ministerial Instructions require applicants to accumulate at least 24 months of qualifying Canadian work experience within 36 months preceding the date on which the application is made.

[20] Further, the Program Delivery Instructions [PDI] for processing work permit applications under NOC 4412 provide that the Applicant's work permit application could not be processed until an eligibility decision was made on their application for permanent residence. The

Applicant provides no authority to support the assertion that her work permit extension should have been processed prior to her application for permanent residence.

(3) Conclusion

[21] I find that the Decision reasonable. Though brief, the Officer provided a line of reasoning that allows this Court to understand how the Officer reached their conclusion (*Vavilov* at para 84).

[22] The Respondent correctly notes that the Ministerial Instructions clearly set out that the 24 months of eligible work experience must be within 36 months preceding the application date, and not the date the Decision is made (Ministerial Instructions Respecting the Home Child Care Provider Class, (2019) C Gaz I, 3174, s 2(4)).

[23] The only qualifying Canadian work experience cited by the Applicant within this 36-month period was her work for Mr. Rai from March 9, 2019 to February 26, 2021. The Applicant's other work from September 14, 2016 to February 15, 2019 was completed overseas, and the Officer correctly determined that it could not be counted towards the 24 months of eligible work experience.

[24] Although the shortfall in the amount of work experience boils down to a number of days, the Officer is bound by the legislative requirements. I find the Officer reasonably concluded that the Applicant did not meet the eligibility requirement for permanent residence.

[25] Lastly, I agree with the Respondent that the PDI indicates that the Officer could not process the Applicant's work permit application until an eligibility decision was made on her permanent resident application. The Applicant has not provided any authority to support her assertion that her work permit extension should have been processed prior to her application for permanent residence.

VI. Conclusion

[26] The application for judicial review is dismissed.

[27] The parties have not proposed any question for certification and I agree that none arises.

JUDGMENT in IMM-631-22

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. There is no question for certification.

"Paul Favel"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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