Federal Court  Cour fédérale

Date: 20230214

Docket: IMM-6734-21

Citation: 2023 FC 215

Toronto, Ontario, February 14, 2023

PRESENT: Mr. Justice Diner

BETWEEN:

SIMRANPREET SINGH

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The Applicant seeks judicial review, pursuant to section 72 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA], of a decision of a visa officer [Officer] refusing his application for a work permit under the Temporary Foreign Worker Program. For the following reasons, I will grant the Application for Judicial Review.

I. Background

[2] The principal Applicant is a 29-year-old citizen of India. He has resided in New Zealand, with temporary immigration status, since 2015.

[3] In August 2021, the Applicant submitted an application for a work permit under the Temporary Foreign Worker Program, to work in Canada as a Logistics Supervisor for Irresistible Cakes [Employer]. The Employer had made a job offer to the Applicant in January 2021 and obtained a positive Labour Market Impact Assessment [LMIA] in March 2021.

[4] On September 17, 2021, the Officer refused the Applicant's work permit application, finding that (i) the Applicant did not demonstrate that he would be able to adequately perform his work because of insufficient experience; and (ii) the Officer did not believe the Applicant would leave Canada at the end of his stay based on his immigration status.

II. Issues and Standard of Review

[5] The Applicant argues that the Officer's decision to refuse his work permit application [Decision] was unreasonable and that there was a breach of procedural fairness when the Officer made a negative credibility finding without providing the Applicant with notice or an opportunity to respond.

[6] The standard of review for the first issue is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*]) while questions of procedural

fairness are to be reviewed by asking whether the process leading to the Decision was fair in all the circumstances: *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at paras 54-55; *Do v Canada (Citizenship and Immigration)*, 2022 FC 927 at para 4.

III. Arguments and analysis

[7] The Applicant first argues that the Officer provided no justification for being unsatisfied that the Applicant would leave at the end of his authorized stay in Canada. The Respondent concedes that the Officer's reasons on this point are lacking, but that this error does not, alone, render the Decision unreasonable.

[8] I disagree. The Officer states in the Global Case Management System [GCMS] notes that "[t]he applicant's immigration status in their country of residence is temporary, which reduces their ties to that country" but does not explain how the Applicant's immigration status in his country of residence support a finding that he would remain in Canada beyond his authorized period of stay.

[9] As this was one of the only two planks upon which the Officer staked his refusal, the lack of transparency and justification on this point is a central flaw that goes directly to the heart of the Decision (*Vavilov* at para 100). It is sufficient in and of itself to render the Decision unreasonable and return the matter for re-education.

[10] However, even in the event that the Officer had staked no importance on this point, I will nonetheless explain why I feel that the other basis of refusal, namely, the Officer's conclusion

that the Applicant did not have sufficient experience to be able to do the work required by Logistics Supervisor position approved by the LMIA, was also unreasonable.

[11] The Applicant provided numerous documents to establish that he had held supervisor positions for more than three years, along with educational documents, work experience letters, payslips, proof of salary, deposits, and tax returns. All of these were from reputable sources in New Zealand, namely:

- a two-year national diploma from Royal Business College of New Zealand;
- English Language Testing System [IELTS] test results, showing a Common European Framework of Reference level of B2 and an overall IELTS band score of 6.5, which indicates proficiency in English; and
- reference letters from his two previous New Zealand employers, speaking to his increasing responsibilities, including logistics supervision.

[12] I note that many of the requirements of the Logistics Supervisor position, which were classified under National Occupation Classification code 1215 for "supervisors, supply chain, tracking and scheduling, co-ordination occupations", were entirely consistent with those he had previously undertaken in New Zealand.

[13] Yet, the Officer, while acknowledging that he worked as a supervisor and assistant manager, found that he would not be able to adequately perform the role due to insufficient

experience, in spite of the consistency in work experience, given the duties he had previously performed, with those outlined in the LMIA and its supporting documentation.

[14] I note that the reasons were simply not responsive to the evidence. In particular, there were four areas where the Officer felt the Applicant fell short in terms of his experience: supervising shipping and distribution, overseeing logistics, improving efficiency, and coordinating staff. However, these four areas were all covered in his reference letters, the veracity, quality and reliability of which were not questioned by the Officer.

[15] The reference letter from his most recent New Zealand employer states that the Applicant was responsible for communicating customer feedback and preparing and distributing reports to management, and responding to customer requests, along with having been a supervisor of staff and processes. The reference letter from his previous New Zealand employer also outlines analogous responsibilities the Applicant had in his job there.

[16] Clearly, the Officer erred in disregarding evidence relating to a central issue in the decision (see, for instance, *Sbayti v Canada (Citizenship and Immigration)*, 2019 FC 1296 at para 65.) This was a second reviewable error.

[17] When asked about why the reference letters were lacking in addressing the applicability of his experience to the prospective position in Canada, along with his competence to undertake the Canadian role, the Respondent relied on para 42 of *Sangha v Canada (Citizenship and Immigration)*, 2020 FC 95 [*Sangha*] which states:

> 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.

[18] With respect, and while the duties of supervision and logistics in the cake manufacturing industry are different from long haul trucking, the facts in *Sangha* are entirely distinguishable from this case. In *Sangha*, the applicant failed to provide evidence detailing that he had the skills to be a long-haul truck driver, most notably in terms of training or education, language skills, and experience. Here, in stark contrast, there was ample evidence addressing each of these key components.

[19] Given that the Decision cannot stand on the basis of either of the two bases for the refusal of the work permit application, the Decision is unreasonable, and will be returned for reconsideration by another officer. There is thus no need for me to rule on the other issue raised by the Applicant in his written submissions, namely that of procedural unfairness.

IV. Conclusion

[20] The Officer's Decision was unreasonable. I will therefore grant the Applicants' Judicial Review Application. The Parties propose no question of general importance for certification, and I agree that none arises.

JUDGMENT in IMM-6734-21

THIS COURT'S JUDGMENT is that:

1. The judicial review is granted.

2. No questions for certification were argued and I agree none arise.

3. There is no award as to costs.

"Alan S. Diner"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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