Federal Court Cour fédérale

Date: 20230327

Docket: IMM-5408-21

Citation: 2023 FC 417

Ottawa, Ontario, March 27, 2023

PRESENT: Mr. Justice Norris

BETWEEN:

QIAOQIN YUE

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The applicant is a citizen of China. Through a numbered company, she owns a majority stake in Little Szechuan Restaurant, located in Saskatoon, Saskatchewan. After the company received a positive Labour Market Impact Assessment ("LMIA") under section 203 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 ("*IRPR*") authorizing it to hire a temporary foreign worker to manage the restaurant, the applicant applied to Immigration, Refugees and Citizenship Canada ("IRCC") for a work permit under section 200 of the *IRPR* to

allow her to hire herself as the manager. The work permit application was refused in a decision dated June 14, 2021. The visa officer was not satisfied that, as required by paragraph 200(3)(a) of the *IRPR*, the applicant had established that she could perform the work she was seeking. The officer was also not satisfied that, as required by paragraph 200(1)(b) of the *IRPR*, the applicant would leave Canada at the end of her authorized stay.

[2] The applicant has now applied for judicial review of this decision under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 ("*IRPA*"). She submits that the officer's determinations under both paragraph 200(3)(a) and paragraph 200(1)(b) of the *IRPR* are unreasonable. As I explain in the reasons that follow, I do not agree. In particular, I am not persuaded that the officer's determination that the applicant had failed to demonstrate that she could perform the work she was seeking is unreasonable. Given this, it is not necessary to address the officer's additional determination that the applicant had not established that she would leave Canada at the end of her authorized stay. This application for judicial review will, therefore, be dismissed.

[3] The parties agree, as do I, that the officer's decision should be reviewed on a reasonableness standard. A reasonable decision "is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker" (*Canada (Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 85). A decision that displays these qualities is entitled to deference from the reviewing court (*ibid.*). On the other hand, "where reasons are provided but they fail to provide a transparent and intelligible justification [. . .], the decision will be unreasonable" (*Vavilov* at para 136). The onus

is on the applicant to demonstrate that the officer's decision is unreasonable. To set aside a decision on this basis, the reviewing court must be satisfied that "there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency" (*Vavilov* at para 100).

[4] The applicant's principal submission is that the officer's conclusion that she had not established that she will be able to perform the work of restaurant manager is unreasonable because it is inconsistent with the positive LMIA, which was granted on the basis of a business plan that expressly contemplated the applicant managing the restaurant.

[5] I am unable to agree. As the respondent points out, the purpose of an LMIA is for Employment and Social Development Canada to assess the impact of employing a foreign national on the labour market in Canada. It does not assess the ability of the foreign national to perform the work in question. That is the responsibility of the IRCC visa officer who determines whether to issue a work permit for the foreign national (*Singh v Canada (Citizenship and Immigration)*, 2015 FC 115 at para 20). Moreover, it does not follow from the fact that employing a particular foreign national would not have a negative impact on the Canadian labour market that this individual is capable of performing the work in question. The visa officer is required to make an independent determination of whether the preconditions for issuing a work permit are satisfied, including being satisfied that the foreign national is capable of doing the work for which authorization is being sought (*Patel v Canada (Citizenship and Immigration)*, 2021 FC 483 at para 31). In short, a positive LMIA "is not determinative of a temporary work visa application and the officer is not bound by its contents" (*Patel* at para 32).

[6] The applicant applied for a permit to work as a restaurant manager. National Occupation Classification ("NOC") 0631 (restaurant and food services manager) specifies that, among other things, this position requires several years of experience in the food service sector, including supervisory experience. As well, completion of a college or other program related to hospitality and beverage service management and, in the case of establishments serving alcoholic beverages, responsible beverage service certification are usually required. Although the officer who refused the application does not expressly refer to NOC 0631 in their Global Case Management System ("GCMS") notes setting out why the application is being refused, it is referred to in the "Employment Details" of the positive LMIA decision, which was before the officer. As well, these requirements were entered into GCMS by another officer approximately one month earlier. The visa officer who refused the application also considered in detail the role envisioned for the restaurant manager in the business plan the applicant submitted in support of both the LMIA and the work permit application.

[7] Against the backdrop of NOC 0631 and the business plan, the officer found that there was "insufficient evidence of subject's education and training relevant to food service." Indeed, on my review of the record, there was none. While the applicant did have experience as an accountant and business owner in China, her work permit application was supported by nothing more than the bald assertion that this experience had prepared her to take on this entirely new role. It was altogether reasonable for the officer to conclude that there was "a lack of evidence showing why subject would be qualified to operate this business" and "has the required understanding, qualifications and knowledge to operate a restaurant." Contrary to the applicant's

submission, the officer did not “overrule” or “undermine” the positive LMIA decision in any sense given that the two decisions address entirely different issues.

[8] The officer also found that the applicant had not established her proficiency in English, as required in the LMIA. There is some question about how this requirement came to be included in the LMIA. However, it is not necessary to resolve this issue or whether, in any event, it was reasonable for the officer to take the LMIA at face value. This is because, in addition to the English language requirement set out in the LMIA, the officer also considered that the applicant had not established her English proficiency at a level that would reasonably be expected to be required “given the duties and responsibilities of the managerial job offered, which may include hiring, training and supervising cooking personnel and kitchen staff, as well as the potential safety concerns in the workplace.” This was a pertinent consideration separate and apart from the LMIA (*Chen v Canada (Citizenship and Immigration)*, 2005 FC 1378 at para 13). On the record before the officer, the conclusion that the applicant had failed to establish the necessary proficiency in English was reasonable.

[9] In sum, the officer concluded that the applicant had failed to demonstrate that she is able to perform the work sought and that, on the contrary, there were reasonable grounds to believe that the applicant is unable to do so. Under paragraph 200(3)(a) of the *IRPR*, the officer was therefore required to refuse the application. There is no basis to interfere with this determination.

[10] Since this is sufficient to uphold the officer's decision, it is not necessary to address the officer's additional determination under paragraph 200(1)(b) of the *IRPR* that the applicant had not established that she would leave Canada at the end of her authorized stay. Nevertheless, I would note that, very fairly, counsel for the respondent stated that he would not have continued to defend the decision on this basis alone. In his view, the determinative issue is the reasonableness of the conclusion under paragraph 200(3)(a) of the *IRPR*. I agree.

[11] For these reasons, the application for judicial review is dismissed.

[12] The parties did not propose any serious questions of general importance for certification under paragraph 74(d) of the *IRPA*. I agree that no question arises.

[13] Finally, the original style of cause names the respondent as the Minister of Immigration, Refugees and Citizenship Canada. Although that is how the respondent is now commonly known, its name under statute remains the Minister of Citizenship and Immigration: *Federal Courts Citizenship, Immigration and Refugee Protection Rules*, SOR/93-22, s 5(2) and *IRPA*, s 4(1). Accordingly, as part of this judgment, the style of cause is amended to name the respondent as the Minister of Citizenship and Immigration.

JUDGMENT IN IMM-5408-21

THIS COURT'S JUDGMENT is that

1. The style of cause is amended to reflect the Minister of Citizenship and Immigration as the correct respondent.

2. The application for judicial review is dismissed.

"John Norris"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-5408-21
STYLE OF CAUSE:	QIAOQIN YUE v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	HELD BY VIDEOCONFERENCE
DATE OF HEARING:	AUGUST 9, 2022
JUDGMENT AND REASONS:	NORRIS J.
DATED:	MARCH 27, 2023

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