Federal Court  Cour fédérale

Date: 20230412

Docket: IMM-2628-22

Citation: 2023 FC 530

Toronto, Ontario, April 12, 2023

PRESENT: Madam Justice Go

BETWEEN:

Karamjit Kaur BHULLAR

Applicant

And

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Ms. Karamjit Kaur Bhullar [Applicant] is a 37-year-old citizen of India. She applied for a work permit on July 30, 2021, after receiving a positive Labour Market Impact Assessment on May 12, 2021 and an employment offer on June 5, 2021. The Applicant was accepted to work as a Food Service Supervisor at a Tim Hortons in Fort St. John, British Columbia.

[2] An immigration officer [Officer] at the High Commission of Canada in New Delhi, India, refused her application to enter Canada on a work permit in a decision dated February 10, 2022 [Decision]. The Officer was not satisfied that the Applicant would be able to perform the work adequately, as required by paragraph 200(3)(a) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [*IRPR*].

[3] The Applicant seeks judicial review of the Decision. For the reasons set out below, I find that there was no breach of procedural fairness and that the Decision is reasonable. I therefore dismiss the application.

II. Issues and Standard of Review

[4] The Applicant raises the following issues:

a. The Officer breached procedural fairness by making a veiled credibility finding regarding the Applicant's work experience; and

b. The Officer's assessment of the evidence of the Applicant's work experience was unreasonable.

[5] The Applicant submits that issues of procedural fairness are reviewable on a correctness standard, and the parties agree that issues related to the merits of the Decision are reviewable on a reasonableness standard: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 10 and 23.

[6] Reasonableness is a deferential, but robust, standard of review: *Vavilov* at paras 12-13. The reviewing court must determine whether the decision under review, including both its rationale and outcome, is transparent, intelligible and justified: *Vavilov* at para 15. 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: *Vavilov* at para 85. Whether a decision is reasonable depends on the relevant administrative setting, the record before the decision-maker, and the impact of the decision on those affected by its consequences: *Vavilov* at paras 88-90, 94 and 133-135.

[7] For a decision to be unreasonable, the applicant must establish that the decision contains flaws that are sufficiently central or significant: *Vavilov* at para 100. Not all errors or concerns about a decision will warrant intervention. A reviewing court must refrain from reweighing evidence before the decision-maker, and it should not interfere with factual findings absent exceptional circumstances: *Vavilov* at para 125. Flaws or shortcomings must be more than superficial or peripheral to the merits of the decision, or a "minor misstep": *Vavilov* at para 100.

III. Analysis

[8] The Applicant argues that the Officer breached procedural fairness by making a veiled credibility finding and not providing her an opportunity to respond. Specifically, the Applicant points to the portion of the Officer's reasons reviewing the evidence of her work experience, which highlighted among other concerns language errors and the lack of dates on the documentation.

[9] The Applicant compares the Officer's reasons to *Singh v Canada (Citizenship and Immigration)*, 2021 FC 691 [*Singh*], where an officer took issue with the lack of corroborating documents to support the applicant's alleged work experience, such as payslips, and found insufficient evidence of the requisite level of experience according to the relevant National Occupation Classification [NOC]: at para 12. The Court found that this finding was actually a veiled credibility finding, and that the officer's reasons did not show an assessment of the applicant's ability to perform the work: *Singh* at para 12.

[10] Similarly, the Applicant contends that the Officer's findings here were not based on the sufficiency of evidence, as represented, but were rather based on concerns over the veracity and authenticity of the Applicant's documents surrounding her work experience. The Applicant asserts therefore that the Officer had an obligation to provide her with an opportunity to respond to the credibility concerns: *Bajwa v Canada (Immigration, Refugees and Citizenship)*, 2017 FC 202 [*Bajwa*] at paras 60-67.

[11] I am not persuaded by the Applicant's arguments.

[12] The Officer's reasons for refusing the application are contained in the Global Case Management System [GCMS] notes, which state in part as follows:

> States experience as a Food service Supervisor with Big B Bar & Restaurant from 2005 till date. Docs provided in support include: Reference letter dated May 2021. Undated appointment letter Undated promotion letter Few salary slips of 2020-21 indicating payment in cash. Not satisfied that sufficient evidence of the stated experience has been provided. Reference letter shows language errors, 2 letters are undated, no older proof of salary/ payment provided. PA states [no] other employment/ experience. Given

> insufficient evidence, I am not satisfied that PA meets the job requirements. Refused pursuant to R200(3)(a).

[13] The GCMS notes also set out that for a "Food Service Supervisor" role, NOC 6311 requires the Applicant to either have completed a community college program in food service administration, or several years of experience in food service. In this case, there is no dispute that the Applicant did not meet the former requirement, and therefore had to provide sufficient evidence to demonstrate that she has the requisite work experience.

[14] The Officer observed in the GCMS notes that there were a number of concerns with regard to the documents provided by the Applicant as proof of her work experience. The Applicant argues that the Officer questioned the authenticity of these letters. I am not convinced that was the case.

[15] Unlike *Singh*, the Officer did not concern themselves with what the Applicant could or should have produced to establish her ability to perform the work: at para 12. Rather, the Officer pointed out the deficiencies that existed in the documents submitted by the Applicant. Further, the Officer did not make any determination that the Applicant is not a *bona fide* worker, as was the case in *Bajwa*: at paras 60-61.

[16] Pursuant to paragraph 200(3)(a) of the *IRPR*, an officer shall not issue a work permit if there are reasonable grounds to believe that the applicant is unable to perform the work sought. The Applicant bears the burden of providing sufficient evidence to establish her ability to perform the work of a Food Service Supervisor, in this case by demonstrating that she had

several years of work experience in food service. The deficiencies noted by the Officer were related to the evidence submitted by the Applicant to demonstrate such experience. The Officer's concerns about the sufficiency of such evidence did not amount to a finding of authenticity.

[17] As the Court confirmed in *Solopova v Canada (Citizenship and Immigration)*, 2016 FC 690 [*Solopova*]:

> [38] It is well established that a visa officer has no legal obligation to seek to clarify a deficient application, to reach out and make the applicant's case, to apprise an applicant of concerns relating to whether the requirements set out in the legislation have been met, or to provide the applicant with a running score at every step of the application process (*Sharma v Canada (Citizenship and Immigration)*, 2009 FC 786 at para 8; *Fernandez v Canada (Minister of Citizenship and Immigration)*, [1999] FCJ No 994 (QL) at para 13; *Lam v Canada (Minister of Citizenship and Immigration)* (1998), 152 FTR 316 (FCTD) at para 4)…

[18] Given the low level of procedural fairness required in visa applications, and because the Officer's findings stemmed from the deficiencies in the evidence submitted by the Applicant, I agree with the Respondent that the Officer did not have an obligation to seek clarification of the deficient application: *Patel v Canada (Citizenship and Immigration)*, 2021 FC 573 at paras 14 and 20; *Solopova* at para 38.

[19] As to the reasonableness of the Decision, the Officer was entitled to determine whether the Applicant met the requirement under NOC 6311. Based on the evidence submitted, the Officer was simply not satisfied that the Applicant had the ability to perform the work sought as required by paragraph 200(3)(a) of the *IRPR*. The Officer provided sufficient reasons for their

conclusion, and did not ignore or misapprehend any evidence. As such, I see no basis to interfere with the Officer's findings.

IV. Conclusion

[20] The application for judicial review is dismissed.

[21] There is no question for certification.

JUDGMENT in IMM-2628-22

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. There is no question for certification.

"Avvy Yao-Yao Go"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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