

Federal Court



Cour fédérale

**Date: 20230728**

**Docket: IMM-6464-22**

**Citation: 2023 FC 1036**

**Ottawa, Ontario, July 28, 2023**

**PRESENT: The Honourable Mr. Justice Mosley**

**BETWEEN:**

**SANTOKH SINGH**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

**I. Overview**

[1] This is an Application for judicial review of a decision made by an immigration officer [the Officer] at the High Commission of Canada in New Delhi, dated June 8, 2022, refusing the Applicant's application for a work permit under the Temporary Foreign Worker Program pursuant to subsection 200(3)(a) of the *Immigration and Refugee Protection Regulations* SOR/2022-227 [IRPR].

[2] For the reasons that follow, the application is granted.

## II. **Facts**

### A. *Background Facts*

[3] The Applicant is a 49 years old citizen of India. He lives in Village Chakowal Sheikhan, Hoshiarpur, Punjab, with his wife and two children. Two of his siblings live in Surrey, British Columbia, while other siblings and his parents reside in India. The Applicant has been working as a farm labourer in India since 2012 and has been assisting his father in agricultural work since 2002. In October 2020, the Applicant applied for a work permit in Canada.

[4] The Applicant had received and accepted a job offer from an employer in British Columbia, Didar Agriculture, under the title “Farm worker”, for 40 hours a week at 14.60\$/hour, for 12 months. The job offer states there are no formal education requirements. The job position falls under the NOC 6431 General Farm Workers. The duties required by this job are:

- Plant, cultivate and harvest Blueberries
- Operate farm machinery and equipment
- Maintain and repair farm equipment
- Examining produce for quality and preparing for market.
- Report to and follow the directions of a farm supervisor
- Other general farm duties as assigned.

[5] In November 2021, the Applicant received a procedural fairness letter [PFL] stating that the Officer was concerned he did not have the ability to complete all of his duties. Specifically, the Officer wrote that his job offer indicates he will be required to “operate farm machinery and equipment” and to “maintain and repair farm equipment” and that, according to the Officer, this

required a level of reading and comprehension in how to operate the machines and to know safety procedures. The Officer wrote that the application did not contain sufficient evidence to demonstrate the Applicant's language abilities to complete these duties.

[6] In response, the Applicant provided written submissions and submitted the following supporting information:

- A. A copy of his affidavit wherein he deposed that he completed his diploma in Software Application and the medium of instruction for that program was English;
- B. A certificate from the headmaster from Government High School, Hoshiarpur, India (the "School") certifying that the Applicant was a student at the School and passed his 10<sup>th</sup> grade there. The headmaster further certified that throughout his studies, English was the main language of instruction and that the Applicant has good understanding of basic reading and writing in English;
- C. A certificate from the Principal of S.D. College, Hoshiarpur, India (the "College") certifying that the Applicant was a student at the College and passed his 12th grade there. The Principal further certified that English was one of the languages that the Applicant studied and that he has a good understanding of the language in terms of basic reading and writing;
- D. A letter of support from a local business owner, who deals in the repair of farm machinery and equipment, stating that the Applicant has all the basic knowledge of maintenance of his farm equipment; and
- E. Pictures of the applicant working in the farm and handling farm machinery.

[7] In June 2022, the application was refused.

B. *Decision under review*

[8] In the decision dated June 8, 2022, the application for a work permit under the Temporary Foreign Worker Program was refused on the grounds that it does not meet the

requirements of *IRPA* and *IRPR*, and, more specifically, that the Applicant was not able to demonstrate that he will be able to adequately perform the work he seeks.

[9] The accompanying GCMS notes, which form part of the reasons, also stated:

*[...] LMIA is confirmed, was valid at the time of application, and lists the applicant's name and DOB. Application and submissions reviewed. The application is for a LMIA WP under R203, for employment as NOC 8431-General farm worker. Applicant provided a secondary school mark sheet from the Punjab School Education Board indicating he took an English class with a score of 58%. It is unclear at what level this English class was provided. While the LMIA does not require any language ability, I note that the duties in the offer of employment state that the applicant will be required to "operate and maintain farm machinery and equipment" and to "maintain and repair farm equipment". These duties will require the applicant to know about operation and safety procedures. I have concerns that the information provided by the applicant does not contain sufficient evidence to demonstrate the language ability required to complete the duties of the position. Non-A40 PFL to be sent with the following paragraph, BF 15 days: I am concerned that you do not have the ability to complete all of your duties. Specifically, your offer of employment indicates that you will be required to "operate farm machinery and equipment" and to "maintain and repair farm equipment". This requires a level of reading and comprehension to learn how to operate the machines, as well as to know the safety procedures and regulations required to operate them. This is important as it is for your health and safety, as well as for the health and safety of other workers on the job site. Your application submission does not contain sufficient evidence to demonstrate your language ability to complete these duties.*

*Response to PFL reviewed. Offer of employment state that the applicant will be required to "operate and maintain farm machinery and equipment" and to "maintain and repair farm equipment". To learn how to operate such machines and the safety procedures/regulations related to those machines will require a level of reading and comprehension of the English language. I note that the applicant has not provided English language test results. Rep submissions indicate that the applicant has completed grade 12<sup>th</sup> and that the medium of instruction was English. Further, states that the applicant has also attended a program in software*

*application taught in English. I note that the applicant scored a 58% in English language, it is not clear at what level was this English class was provided. I note that the English language requirement is primarily for the health and safety of the applicant, as well as for the health and safety of other workers on the job site as mechanized farm machinery could lead to severe injury or death if improperly operated. Application refused under R200(3)(a).*

### III. **Issues and standard of review**

[10] The parties submit that this Application raises two issues:

1. Whether the Officer breached procedural fairness by not providing the Applicant with an opportunity to address the Officer's concerns; and
2. Whether the Officer's decision was unreasonable.

[11] The parties agree that the standard of review of a visa officer's decision is reasonableness: *Canada (Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 10, 85, 99. Issues related to procedural fairness are subject to the standard of what level of fairness the circumstances require: *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 51.

### IV. **Analysis**

#### *A. Applicant's submissions*

[12] On procedural fairness, the Applicant submits that although he received a PFL in November 2021 regarding the Officer's concerns about his language abilities to complete the

required duties, he was not provided a right to be heard and the opportunity to know and respond to the complete case against him.

[13] The Applicant argues that it is clear from the Officer's GCMS notes that the Officer had the following concern before issuing the PFL in November 2021 that was not put to the Applicant: "*Applicant provided a secondary school mark sheet from the Punjab School Education Board indicating he took an English class with a score of 58%. It is unclear at what level this English class was provided.*" It is argued that the PFL was an opportunity to clarify this issue and the Applicant deserved to know this concern. Because this was not in the PFL, the Officer still lacked clarity after the Applicant's response and still had the same concern. The Applicant submits he responded to the PFL letter to the best of his ability but the Officer rejected his application based on concerns that were not properly put to him. Thus, the process was procedurally unfair.

[14] On reasonableness, the Applicant submits that the decision is neither intelligible nor reasonable when read in conjunction with the evidence provided on the record. The Applicant submits that a holistic reading of the decision reveals that the Officer refused the application because they found that the Applicant would not be able to adequately perform the work based on his language scores.

[15] The Applicant argues that the Officer misapprehended the evidence and made a significant reviewable error of fact in the GCMS notes. It is submitted that the Officer misapprehended the evidence when they stated that to learn how to operate farm machinery and

the safety procedures and regulations related to them requires a level of reading and comprehension of the English language, and that the Applicant had not provided English language test results. In this, the Officer failed to recognize the level of English of the Applicant and that he can read and write.

[16] The Applicant submits he has completed a diploma in Software Application in which the language of instruction was English. The Applicant also completed high school in India where English was the main language of studies, and completed College (12<sup>th</sup> grade) where he also studied English, and contends that this demonstrates that he has a good understanding of basic reading and writing in the language. Additionally, the Applicant submits he provided a letter of support from a local business owner who deals with farm machinery and equipment stating that the Applicant has all the basic knowledge of maintenance of his farm equipment.

[17] The Applicant notes that although jurisprudence has established that visa officers are entitled to a high degree of deference regarding language assessment, they must nonetheless properly justify their interpretation of the evidence before them. The Applicant submits that the Officer must explain how the Applicant failed to meet the language standard and how it does not fulfill the eligibility requirement: *Safdar v Canada (Citizenship and Immigration)*, 2022 FC 189 at para 11.

[18] The Applicant argues the Officer's finding is subjective and arbitrarily decided that the Applicant's speaking and reading scores are insufficient. There is no evidence in the record

confirming this finding that the Applicant's English abilities are insufficient for their position with the employer. The Officer based their decision on intuition or a hunch, which is not allowed: *Demyati v Canada (Citizenship and Immigration)*, 2018 FC 701 at para 16.

*B. Respondent's submissions*

[19] The Respondent submits that visa officers have a wide discretion in their assessment and the Court ought to provide considerable deference to an officer's decision given the level of expertise they bring to these matters: *Singh v Canada (Citizenship and Immigration)*, 2022 FC 240 at para 8.

[20] First, on the issue of procedural fairness, the Respondent argues that the Applicant's arguments amount to a disagreement with the Officer's decision rather than the procedure. The Respondent submits that officers making decisions on work permits are not required to request additional information unless issues arise related to the credibility, accuracy or genuine nature of the information. The Respondent argues the Officer was not required to spell out exactly what evidence was required to establish a sufficient level of English. The Respondent adds that *Purashaj v Canada (Citizenship and Immigration)*, 2021 FC 663 at para 18 demonstrates that there is no requirement to issue a further PFL for a concern previously conveyed to an applicant. The Respondent submits the Officer met the low level of procedural fairness required.

[21] Second, on reasonableness, the Respondent argues it was reasonable for the Officer to refuse the Application based on insufficient evidence of English language skills given the



requirements of the work sought. The Respondent submits that IRCC guidelines indicate that an officer can assess language ability through an interview or official testing and that when determining the level of language required for the work, the officer must provide notes that indicate clearly the assessment done and refer to the LMIA or NOC requirements and working conditions. It is submitted that the Officer did consider the requirements under the LMIA, NOC and job offer, and found that a certain level of English language skills would be required to “maintain and repair farm machinery and equipment”.

[22] The Respondent submits officers are not bound by the LMIA or the views of prospective employers when it comes to assessing language requirements. The Respondent points to IRCC guidelines that state officers should not limit their assessment of language requirements solely to those in the LMIA and may instead independently exercise their discretion: *Singh v Canada (Citizenship and Immigration)*, 2022 FC 266 at paras 31-32. It is argued that in this case, the Officer reasonably exercised this discretion to make a language assessment: the Officer found that the position required a certain level of reading and comprehension of the English language for the Applicant to learn how to operate and maintain the farm equipment and to understand the safety procedures. The Respondent submits that where safety concerns arise, officers may incorporate those concerns into their competency assessments: *Sangha v Canada (Citizenship and Immigration)*, 2020 FC 95 at para 42.

[23] Since the Applicant failed to demonstrate a sufficient level of English language skills, the Officer refused the work permit and provided an analysis on how the applicant failed to satisfy them that they would be able to perform the work sought, as recommended in the IRCC

guidelines. The Respondent notes that the Applicant failed to express how he has maintained his English language skills since he obtained his diploma and completed his schooling in the 90s. The Respondent sees an ambiguity regarding the level of English studied and considering also the timespan between the Applicant's studies and now, the Respondent argues that the Officer reasonably found the information insufficient.

[24] The Respondent submits that officers are not required to refer to every piece of evidence in their reasons, and the decision may be set aside only where the non-mentioned evidence is critical and contradicts the decision such that the court infers that the decision-maker must have ignored it: *Akhtar v Canada (Citizenship and Immigration)*, 2022 FC 595 at para 24. The Respondent thus submits that the Applicant's images of himself operating farm machinery and the letter from M/S Sighu do not represent a critical contradiction of the Officer's determination and does not indicate an ability to learn safety procedures and regulations in English.

[25] Finally, the Respondent argues that the Applicant has the burden to establish that he can adequately perform his work duties and failed to satisfy it and to provide sufficient evidence of the English skills required to comprehend machinery operation manuals and regulations. Therefore, it was reasonable for the Officer to conclude that the Applicant could not adequately perform his work duties and did not meet the *Regulations* requirements: *Chhetri v Canada (Citizenship and Immigration)*, 2011 FC 872 at paras 9 and 14.

*C. Analysis*

[26] The Applicant's procedural fairness argument is predicated on the basis that the officer's concern that the level of the English class he had taken was not conveyed to him in the fairness letter. In my view, this did not amount to a breach of procedural fairness.

[27] The fairness obligations required on an application for a temporary work permit are on the low end of the spectrum: *Patel v Canada (Citizenship and Immigration)*, 2021 FC 483 at para 40. It is not required that applicants for temporary work permits be granted an opportunity to address an officer's concern on compliance with requirements of *IRPA* or *IRPR*, unless the concerns relates to the credibility, accuracy or genuine nature of the information: *Sulce v Canada (Citizenship and Immigration)*, 2015 FC 1132 at para 10-11. That was not the case in this instance.

[28] However, the officer's assessment of the Applicant's language abilities was not, in my view, reasonable. While there is no dispute between the parties that officers have a discretion in determining language sufficiency, it is unreasonable for a visa officer to substitute a language requirement without justification: *Bano v Canada (Citizenship and Immigration)*, 2020 FC 568 at para 21. Here, the Officer substituted their own appreciation of the language requirements to that of the LMIA and NOC description, which imposed none.

[29] The departmental guidelines which the officer was to apply in assessing language sufficiency state as follows:

System notes must clearly indicate the officer's language assessment, and in the case of a refusal, clearly show a detailed analysis on how the applicant failed to satisfy the officer that they would be able to perform the work sought.

[Emphasis added]

[30] Here, there was no detailed analysis on why the Applicant's English abilities were not sufficient to operate and repair farm machinery and understand safety procedures. There was a considerable amount of evidence submitted by the Applicant to the effect that he had studied in the English language at the high school and college levels and could read and write the language. Moreover, he submitted evidence that he was experienced in the use and maintenance of farm equipment.

[31] It was incumbent on the officer to evaluate the evidence and explain how it did not fulfill the eligibility requirement for which they are refusing the application: *Lakhanpal v Canada (Citizenship and Immigration)*, 2021 FC 694 at para 27; *Safdar v Canada (Citizenship and Immigration)*, 2022 FC 189 at para 11.

[32] While it is true, as the Respondent submits, that there was a considerable passage of time between when the Applicant studied English and submitted his application, this was not one of the reasons provided by the Officer for refusing it. Nor is there anything in the record to suggest that the Applicant had lost whatever language ability he gained while at school.

[33] In his affidavit submitted in reply to the procedural fairness letter the Applicant stated “...I’m quite fluent in English and possess basic to moderate reading and writing skills”. Why this was considered insufficient to operate machinery in a small blueberry bog operation in British Columbia was not explained by the Officer.

V. **Conclusion**

[34] In the result, I am satisfied that the decision is unreasonable and the matter must be returned for reconsideration by another officer. No serious questions of general importance were proposed and none will be certified.

**JUDGMENT IN IMM-6464-22**

**THIS COURT'S JUDGMENT is that** the application is granted and the matter is remitted for reconsideration by another officer. No questions are certified.

"Richard G. Mosley"

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-6464-22

**STYLE OF CAUSE:** SANTOKH SINGH V THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** VANCOUVER, BRITISH COLUMBIA

**DATE OF HEARING:** APRIL 24, 2023

**JUDGMENT AND REASONS:** MOSLEY J.

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