Federal Court

Cour fédérale

Date: 20230908

Docket: IMM-7418-22

Citation: 2023 FC 1222

Ottawa, Ontario, September 8, 2023

PRESENT: The Honourable Mr. Justice Ahmed

BETWEEN:

ARUN KUMAR PUNHANI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Arun Kumar Punhani, seeks judicial review of a decision of a visa officer (the “Officer”) of Immigration, Refugees and Citizenship Canada dated June 9, 2022, denying the Applicant’s work permit application under the Temporary Foreign Worker Program (“TFWP”).

[2] The Officer determined that the Applicant provided insufficient evidence to demonstrate that he could adequately perform the work sought in Canada.

[3] The Applicant submits that the Officer's decision was made without due regard to the supporting evidence, particularly the reference letters from the Applicant's past employers, and that the reasons contradict with the Officer's own acknowledgement that the Applicant met the necessary work experience criteria.

[4] For the reasons that follow, I find that the Officer's decision is reasonable. This application for judicial review is dismissed.

II. **Facts**

A. *The Applicant*

[5] The Applicant is a 48-year-old citizen of India. He is married and has two children. The Applicant and his family currently reside in Faridabad, India.

[6] In 1998, the Applicant obtained a bachelor's degree in engineering with a specialization in computer science from the University of Pune. He also obtained several career certificates. In 1999, the Applicant began his carer in the Information Technology ("IT") industry by joining KJ Technosoft as a software engineer. From 2001 to 2005, the Applicant worked as a senior software engineer at HCL Technologies. In May 2005, the Applicant joined NCR Corporation

as a senior software engineer, where he was then promoted to the role of IT Manager in November 2007. The Applicant held this position for 12 years.

[7] In June 2017, the Applicant joined Virtusa Consulting Services Private Ltd. (“Virtusa”) as a manager. From October 2018 to August 2019, he worked as the Operations and Delivery Head for India at UFC Technology, a start-up company providing IT consulting services to clients in the United States (“US”).

[8] In October 2017, the Applicant started his own IT consulting start-up called Emerging Solutions, through which he provided consulting services to clients in India and internationally. Through his consulting company, the Applicant helped a company called ThoughtStorm Incorporated (“ThoughtStorm”), a global firm providing technology-consulting services, to open offices in India and the US and to open grow their revenue.

[9] In January 2021, ThoughtStorm offered the Applicant the position of Vice-President of Global Delivery, which falls under National Occupational Classification (“NOC”) Code 0013 for senior managers in financial, communications and other business services. ThoughtStorm applied for a Labour Market Impact Assessment (“LMIA”) for the Applicant, which was approved on April 8, 2021.

[10] On April 20, 2021, the Applicant applied for a work permit. His application was eligible for two-week priority processing. In March 2022, the Applicant obtained Global Case Management System (“GCMS”) notes to check the status of his application, which stated that his

application met the LMIA work experience criteria. As a result of this, the Applicant claims that he saw no reason to provide further information in support of his application, noting that the GCMS notes acknowledged that he met the requirements.

[11] The Applicant received the decision letter notifying him of the refusal of his work permit application in a letter dated June 9, 2022.

B. *Decision under Review*

[12] The Officer's decision is largely contained in the GCMS notes, which form part of the reasons for the decision.

[13] The GCMS notes state:

> …Applicant is applying to go as vice president of Thought storm INC, a consultancy firm in Canada. Company's website lists applicant as VP – Strategy and Delivery. NOC lists several year (sic) of specialized experience as a requirement. Applicant has submitted employment reference letters from UFC Technologies, Virtusa and NCR Corporation India Pvt Limited. However, there are no supporting documents like salary slips, ITR, form 16 or bank statements to reflect salary transfers. Applicant stated to be the proprietor of his own firm, Emerging Solutions since 2017. Apart from copy of GST registration form, applicant has not provided any document in support of self employment. The GST number is not clearly visible in the copy provided and open web search does not give any information about applicant's company. There is insufficient information on file to establish applicant's previous employment as a senior manager. Based on the information provided, I am not satisfied that applicant meets the requirements of employment in Canada and has ability to perform the duties of the position offered in Canada. Refused under R 200(3)(a).

[14] The decision letter, dated June 9, 2022, stated that the work permit application was denied on the basis that the Applicant was unable to demonstrate that he would be able to adequately perform the work sought.

III. **Issues and Standard of Review**

[15] This application for judicial review raises the following issues:

A. *Whether the decision is unreasonable.*

B. *Whether there was a breach of procedural fairness.*

[16] I agree with the parties that the appropriate standard of review for the Officer's refusal of the work permit application is reasonableness, in accordance with the Supreme Court of Canada's decision in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 ("*Vavilov*") at paragraphs 16-17.

[17] The issue of procedural fairness is to be reviewed on the correctness standard (*Mission Institution v Khela*, 2014 SCC 24 at para 79; *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 ("*Canadian Pacific Railway Company*") at paras 37-56; *Canadian Association of Refugee Lawyers v Canada (Immigration, Refugees and Citizenship),* 2020 FCA 196 at para 35).

[18] Reasonableness is a deferential, but robust, standard of review (*Vavilov* at paras 12-13; 75; 85). 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 decision that is reasonable as a whole 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, 133-135).

[19] For a decision to be unreasonable, the applicant must establish 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; *Canada (Citizenship and Immigration) v Mason*, 2021 FCA 156 at para 36).

[20] Correctness, in contrast, is a non-deferential standard of review. The central question for issues of procedural fairness is whether the procedure was fair having regard to all of the circumstances, including the factors enumerated in *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 at paragraphs 21-28 (*Canadian Pacific Railway Company* at para 54).

IV. Analysis

[21] The Applicant submits that the Officer's decision was made without regard to the evidence submitted in support of his application, namely the several reference letters from his previous employers provided as proof of his employment experience in the IT industry. The Applicant notes that the letters from UFC Technology, Virtusa, and NCR Corporation all explicitly state the Applicant's role at each company, the time of his employment, the Applicant's responsibilities in his previous role, contact information for further inquiries, and links to the companies' websites. The Applicant submits that the Officer's statement regarding the lack of salary slips or pay stubs does not demonstrate a consideration of the substantial evidence that the Applicant *did* provide to establish his work experience. The Applicant further notes that the GCMS notes explicitly state that the LMIA work experience was met and the Officer's decision is therefore internally inconsistent.

[22] The Applicant also submits that the Officer's decision breaches procedural fairness. The Applicant submits that the impact of the decision on the parties and his legitimate expectations are to be considered in determining the procedural fairness owed in this context. The Applicant contends that while the Officer's concerns stem largely from the lack of evidence, the Officer ought to have provided the Applicant to respond to concerns about the application and evidence, particularly in light of the delay in adjudicating the application and the importance of the matter to the Applicant. The Applicant submits that had the GCMS communicated any doubts about his application, rather than indicating that he met the LMIA experience requirements, he would have taken proactive steps to address these concerns.

[23] The Respondent maintains that the Officer's decision is both reasonable and procedurally fair. The Respondent notes that a reasonable approach to assess whether the Applicant is "unable to perform the work sought" under subsection 200(3)(a) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 ("IRPR") is to assess the Applicant's experience and education against the duties of the work sought (*Musiker v Canada (Citizenship and Immigration)*, 2021 FC 1092 at para 28). The Respondent submits that the Officer was entitled to consider the evidence of his work experience and education and conclude that he would be unable to perform the work sought. Regarding the Applicant's submission that the Officer unreasonably disregarded the reference letters included as evidence, the Respondent notes that the Officer explicitly considers these letters in the reasons for the decision, rendering this particular submission meritless.

[24] In response to the Applicant's submission that the GCMS notes state that the Applicant met the LMIA requirements and the Officer's decision contradicts this finding, the Respondent notes that the prior GCMS entry was made by another officer who inputted file data before the application was sent for determination by the Officer. The Respondent submits that the Officer rendering the decision is entitled to find that upon consideration of the totality of the application and evidence, the requirements were not fulfilled within the meaning of subsection 200(3)(a) of the *IRPR*.

[25] On the procedural fairness issue, the Respondent submits that the procedural fairness requirements in the context of visa applications are on the lower end of the spectrum, particularly in the context of the sheer volume of applications officers must assess (*Yuzer v Canada*

(Citizenship and Immigration), 2019 FC 781 at paras 15-16). The Respondent further submits that where the Officer's concerns arise directly from the requirements of *Immigration and Refugee Protection* Act, SC 2001, c 27 or the *IRPR*, the Applicant is not owed a right to a dialogue with the Officer regarding his application (*Obeta v Canada (Citizenship and Immigration)*, 2012 FC 1542 ("*Obeta*") at paras 21-28, citing *Kaur v Canada (Citizenship and Immigration)*, 2010 FC 442 at para 11; *Penez v Canada (Citizenship and Immigration)*, 2017 FC 1001 ("*Penez*") at para 38).

[26] I agree with the Respondent. In my view, the Officer's decision is both reasonable and procedurally fair. The Officer's reasons demonstrate a justified and intelligible review of the Applicant's evidence, including the same letters that the Applicant contends were not considered in the assessment. While the Applicant submits that the reference letters were unreasonably disregarded, the Officer explicitly mentions that letters from three previous employers were provided and that in spite of these letters, there is no documentary evidence to corroborate salary transfers for this work, to establish his previous employment through official documentation, or to establish his self-employment in his own company.

[27] Not only does this run counter to the Applicant's submission that the Officer disregarded the evidence, but it is open to the Officer to consider this evidence and find that it is insufficient to meet the requirements for a work permit. The Applicant's submission on this point appears to take issue with the outcome of the Officer's decision and seek that this Court reassess the evidence to reach a particular conclusion, rather than raise a reviewable error in the decision-making process itself (*Vavilov* at paras 87, 125).

[28] I do not agree with the Applicant's contention that the GCMS notes stating that the LMIA experience requirements were met demonstrate an internally inconsistent reasoning when reviewed against the Officer's reasons. The previous GCMS entry refers explicitly to "pre-assessment notes" regarding the application, signifying that the Officer responsible for assessing the application and rendering the final decision had not yet seen the application in its totality. This pre-assessment note that the Applicant had met the LMIA work experience requirement is not contradictory to the Officer's finding that although he may have met the requirement on the face of the application, an assessment of the evidence demonstrates insufficient documentation to substantiate this finding.

[29] Regarding the allegation that the Officer's decision breached procedural fairness, I agree with the Respondent that in the context of this decision, the Officer was not required to engage in a dialogue with the Applicant about the deficiencies in the evidence or concerns with the application. The Applicant bore the onus to provide sufficient evidence to substantiate his application and it is open to the Officer to find that he failed to do so (*Obeta* at para 25, *Penez* at paras 35-38). For these reasons, I find that the Officer's decision is procedurally fair.

V. <u>Conclusion</u>

[30] This application for judicial review is dismissed. The Officer's decision is justified, transparent and intelligible, in light of the evidence and legal constraints (*Vavilov* at paras 99, 106). No questions for certification were raised, and I agree that none arise.

JUDGMENT in IMM-7418-22

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is dismissed.

2. There is no question to certify.

"Shirzad A."

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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