Federal Court  Cour fédérale

Date: 20231127

Docket: IMM-11577-22

Citation: 2023 FC 1574

Ottawa, Ontario, November 27, 2023

PRESENT: The Honourable Justice Fuhrer

BETWEEN:

EDISA HOXHAJ

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Edisa Hoxhaj, is a citizen of Albania. She applied for a temporary work permit with a positive Labour Market Impact Assessment [LMIA] that was denied.

[2] The visa officer [Officer] found that her current employment situation does not demonstrate that she is financially established in her country of residence, that she has limited

employment possibilities there, and that she has not demonstrated an ability to perform the work adequately.

[3] Asserting unreasonableness and a breach of procedural fairness, the Applicant seeks judicial review of the Officer's decision to deny her application [Decision].

[4] A reasonable decision is one that exhibits the hallmarks of justification, transparency and intelligibility, and is justified in the context of the applicable factual and legal constraints: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at para 99. The party challenging an administrative decision has the burden of showing that it is unreasonable: *Vavilov*, above at para 100.

[5] Questions of procedural fairness attract a correctness like standard of review: *Benchery v Canada (Citizenship and Immigration)*, 2020 FC 217 at paras 8-9; *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54; *Vavilov*, above at para 77. The focus of the reviewing court is whether the process was fair in the circumstances: *Chaudhry v Canada (Citizenship and Immigration)*, 2019 FC 520 at para 24.

[6] For the reasons below, I find that the Applicant has not met her onus to demonstrate that the Decision is unreasonable or procedurally unfair. As a result, this judicial review application will be dismissed.

II. Analysis

A. *The Decision was not procedurally unfair*

[7] I am not persuaded that the Decision reflects any procedural unfairness on the part of the Officer, including in the Global Case Management System [GCMS] notes.

[8] This Court's jurisprudence confirms that the duty of procedural fairness is on the low end of the spectrum for work permit applications, and further, a visa officer does not have a duty to inform an applicant if the evidence provided is insufficient – unless credibility or authenticity is at issue: *Grewal v Canada (Citizenship and Immigration)*, 2022 FC 1184 at para 17. In the matter before the Court, the Applicant's ability to speak English does not raise any credibility issues, nor is there any doubt regarding the authenticity of the International English Language Testing System [IELTS] results.

[9] Further, this Court previously has rejected the duty to provide information or seek submissions regarding the language requirement, even where the LMIA and the job offer did not specify the level of proficiency required, as in the matter presently before the Court: *Sulce v Canada (Citizenship and Immigration)*, 2015 FC 1132 [*Sulce*] at para 17, citing *Singh v Canada (Minister of Citizenship and Immigration)*, 2015 FC 115.

[10] Accordingly, I conclude the Applicant has not demonstrated that the Decision was procedurally unfair in the circumstances.

B. *The Decision was not unreasonable*

[11] I also am not convinced that the Decision is unreasonable.

[12] For example, I find the Applicant has failed to show that the Officer's reasons for denying her temporary work permit on the basis of the IELTS scores are unreasonable. The GCMS notes permit the Court to follow the Officer's line of reasoning; in other words, the reasons add up: *Vavilov*, above at paras 97, 102, 104.

[13] While another officer could have arrived at a different outcome, in my view the reasons are intelligible, based on the record, and allow the Court to understand why the Officer made the Decision. According to applicable jurisprudence, it is a reasonable exercise of an officer's discretion to refuse the application of a work visa applicant who has an average IELTS level of 4, i.e. that of a "limited user": *Sulce*, above at para 26. Here, the Officer considered the IELTS results, defined "limited user," and explained that frequent problems in understanding would not permit the Applicant to provide care and companionship for individuals and families, especially those who were incapacitated (i.e. the work for which she seeks the temporary permit).

[14] The Applicant also raises issues with the Officer's brief conclusory findings on financial establishment and limited job prospects in Albania. I note, however, that these issues are not central to or determinative of the Decision and, thus, I decline to consider them further.

[15] Specifically, paragraph 200(3)(a) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 provides that an officer shall not issue a work permit if there are reasonable grounds to believe that the foreign national is unable to perform the work sought. This provision is mandatory.

[16] Here, the Officer reasonably concluded that the Applicant was unable to perform the work because of her limited English language abilities. Accordingly, the Officer was required to refuse the work permit, regardless of the findings on financial establishment and job prospects.

III. Conclusion

[17] For the above reasons, the judicial review application is dismissed.

[18] The parties did not propose a question for certification, and I agree that none arises in the circumstances.

JUDGMENT in IMM-11577-22

THIS COURT'S JUDGMENT is that:

1. The Applicant's application for judicial review of the visa officer's November 8, 2022 decision is dismissed.

2. There is no question for certification.

"Janet M. Fuhrer"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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