

Federal Court



Cour fédérale

**Date: 20240823**

**Docket: IMM-11731-22**

**Citation: 2024 FC 1314**

**Ottawa, Ontario, August 23, 2024**

**PRESENT: Madam Justice Sadrehashemi**

**BETWEEN:**

**YOUSEF SHAHRYARANBARDAN**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. Overview

[1] The Applicant, Yousef Shahryaranbardan, applied for a permit to work as a self-employed business owner of a clothing business in Canada. An Officer at Immigration, Refugees and Citizenship Canada [IRCC] refused his application on November 17, 2022. Mr. Shahryaranbardan is challenging this refusal on judicial review. I do not find that Mr.

Shahryaranbardan has raised any significant shortcoming in the Officer's decision and accordingly dismiss the judicial review.

## II. Preliminary Objection about New Arguments

[2] In his written materials filed prior to this Court granting leave, the Applicant focused their arguments primarily on fairness concerns. In their Further Memorandum of Argument and orally at the judicial review hearing, the Applicant abandoned the fairness arguments and challenged the merits of the decision. It is understandable why counsel chose to abandon the fairness arguments; identical arguments were made by the same law firm in a number of cases and dismissed by this Court (see for example: *Edalat v Canada (Citizenship and Immigration)*, 2024 FC 738 at para 5; *Shahbazian v Canada (Citizenship and Immigration)*, 2023 FC 1556 at paras 23–24; *Shidfar v Canada (Citizenship and Immigration)*, 2023 FC 1241 at para 31).

[3] The Respondent asked the Court to not entertain the Applicant's challenges to the merits of the decision because these were new arguments not raised prior to leave being granted. I do not agree and have considered these arguments.

[4] I agree that the Applicant's memorandum at leave was primarily focused on procedural fairness. However, in my view, there was an indication in the leave materials that the Applicant was also challenging the substance of the decision with respect to the Officer's determinations about his finances and his English language ability. The only argument that is entirely new relates to the Officer's reference to a non-functioning website. As I explain below, this is not the determinative issue and therefore unnecessary for me to consider. Further, the issues raised in

this application are not complex and arise directly from the materials before the Court. The Respondent has responded to these arguments both in writing in their Further Memorandum of Argument and orally at the judicial review hearing. In these circumstances, I find that it is appropriate for me to consider the Applicant's arguments challenging the merits of the decision.

[5] I note, soon after I heard the judicial review, my colleagues in four different cases issued decisions relating to a similar issue with the same law firm and found that the arguments raised after leave were new and would not be entertained by the Court (see *Mousavimianji v Canada (Citizenship and Immigration)*, 2024 FC 726; *Khodayarinezhad v Canada (Citizenship and Immigration)*, 2024 FC 818; *Naeini v Canada (Citizenship and Immigration)*, 2024 FC 899; and *Vaghayenegar v Canada (Citizenship and Immigration)*, 2024 FC 1033).

### III. Background to the Decision under Review

[6] Mr. Shahryaranbardan applied for a work permit to operate his own business selling clothing in Canada under the self-employed or entrepreneur category, also known as the C11 category. As he was applying under paragraph 205(a) of the *Immigration and Refugee Protection Regulations*, SOR/2002-277 [IRPR], Mr. Shahryaranbardan was not required to obtain a Labour Market Impact Assessment, but did have to establish that his business would generate a “significant economic, social or cultural benefit or opportunities for Canadian citizens or permanent residents.”

[7] The Officer found that Mr. Shahryaranbardan had not established that he met the exemption requirements for the C11 category under section 205(a) of the IRPR. The Officer

explained that they were not satisfied that: i) the Applicant had the linguistic profile to conduct the duties described; ii) he had sufficient ties back home with his spouse and parents accompanying him to Canada; and iii) he had sufficient means to fund the expenses of the business based on the financial statements provided.

#### IV. Analysis

[8] In my view, the determinative issue is the Officer's finding that Mr. Shahryaranbardan had not established that he had sufficient English language ability to perform the duties of the job he was seeking in Canada. I say this is determinative because section 200(3)(a) of the IRPR requires officers to not issue work permits where "there are reasonable grounds to believe that the foreign national is unable to perform the work sought."

[9] The Officer found:

Based on the duties in the job description, ...[the Applicant] is to recruit, interview and oversee multiple employees among other duties. However,... [the Applicant] only provided a certificate stating the completion of 96 hours of English training. Therefore I am not satisfied that ... [the Applicant] has the linguistic profile to conduct the duties described in the application.

[10] Mr. Shahryaranbardan argues that it was unreasonable for the Officer to impose a "new requirement" by requiring English language ability. He states that the requirement is new and was not in place at the time of his application. Mr. Shahryaranbardan asserts that the requirement was introduced in the Program Delivery Instructions (PDI) for C11 work permits dated November 21, 2022, after the decision was made in his application, where officers are asked to assess whether applicants have the language ability needed to operate the business.

[11] There is no merit to this submission. As was argued by the Respondent, the requirement that an officer be satisfied that an individual can perform the work sought is found in section 200(3)(a) of the IRPR. This necessarily can include a person's ability to communicate in a language needed to operate their business (see for example *Sen v Canada (Citizenship and Immigration)*, 2022 FC 777).

[12] Mr. Shahryaranbardan also argues that the Officer should have considered that he had international business and travel experience and therefore necessarily this must have meant that he had sufficient English language ability. It is the Applicant's onus to provide sufficient evidence that he meets the requirements. The inferences Mr. Shahryaranbardan is asking that the Officer ought to have made are not set out in the submissions before the Officer, nor are they plainly obvious in the record. I cannot find the Officer's failure to assess this aspect of his experience in relation to English language ability is a significant shortcoming.

[13] As already noted, the Officer's findings on language ability are determinative because section 200(3)(a) of the IRPR states that an officer "shall not issue a work permit to a foreign national if there are reasonable grounds to believe that the foreign national is unable to perform the work sought". As I have found the Officer's evaluation of the evidence of the Applicant's language ability to be reasonable, it is unnecessary for me to address the Applicant's other arguments.

[14] Neither party raised a question for certification and I agree none arises.

**JUDGMENT in IMM-11731-22**

**THIS COURT'S JUDGMENT is that:**

1. The application for judicial review is dismissed; and
2. No serious question of general importance is certified.

"Lobat Sadrehashemi"

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Judge

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

**DOCKET:** IMM-11731-22

**STYLE OF CAUSE:** YOUSEF SHAHRYARANBARDAN v THE MINISTER  
OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** MAY 2, 2024

**JUDGMENT AND REASONS:** SADREHASHEMI J.

**DATED:** AUGUST 23, 2024

**APPEARANCES:**

Nga Kit “Christy” Tang FOR THE APPLICANT

Andrea Mauti FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

YLG Professional Corporation FOR THE APPLICANT  
Barristers and Solicitors  
Toronto, Ontario

Attorney General of Canada FOR THE RESPONDENT  
Toronto, Ontario