

Federal Court



Cour fédérale

Date: 20240827

Docket: IMM-12197-23

Citation: 2024 FC 1328

Toronto, Ontario, August 27, 2024

PRESENT: Mr. Justice Diner

BETWEEN:

ARSHDEEP SINGH KHOSA

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] Mr. Singh Khosa seeks judicial review of a decision made by an immigration officer [Officer] dated September 20, 2023 [Decision], denying his work permit application. For the reasons below, this application is granted.

[2] In brief, the Applicant is a citizen of India. He has experience working as a PVC and plaster installer. He was offered a full-time position with a Canadian company as a Construction

Helper. He submitted a Labour Market Impact Assessment [LMIA] work permit application under the Temporary Foreign Worker [TFW] Program. His application was denied because the Officer was not satisfied that Mr. Singh Khosa would leave Canada at the end of his stay, as required by paragraph 200(1)(b) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227, on the basis that his compensation, assets and financial situation were – and would be – insufficient to support his stated purpose of travel. The Officer wrote as follows:

Noted several previous CDA and US refusals. The applicant is applying for a LMIA WP as a Construction Helper earning 26.5\$/hr in Surrey. While I acknowledge the applicant will be earning a wage of 26.5\$/hr, the applicant provided a ICICI Bank statement dated 2022/11/02, and that it did not include a bank transaction history as listed on the WP documents checklist. Due to the amount of time elapsed between when the statement was created and when this application was submitted, in addition to the provenance of these funds being unclear, I have given it minimal weight towards evidence of available and unencumbered funds. The compensation indicated in the applicant's job offer and their assets and financial situation are insufficient to support the stated purpose of travel for the applicant, particularly considering Surrey is a high cost of living city and that the applicant would have cost related to transport to Canada and initial settlement in Canada.

Weighing the factors in this application. I am not satisfied that the applicant will depart Canada at the end of the period authorized for their stay.

For the reasons above, I have refused this application.

[3] The sole issue before this Court is whether the Decision was reasonable (*Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 at paras 59–63; *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 99 [*Vavilov*]).

[4] Mr. Singh Khosa claims that the Officer's findings are unreasonable for two reasons – first, because there was no requirement to submit a bank statement or bank/transaction history,

and second, because he submitted sufficient evidence to demonstrate that he can support himself financially during his stay in Canada.

[5] I cannot agree with Mr. Singh Khosa's first argument. Temporary entrants to Canada must comply with relevant policies, guidelines and directions (*Hassanpour v Canada (Citizenship and Immigration)*, 2022 FC 1738 at para 29; see also, *Davoodabadi v Canada (Citizenship and Immigration)*, 2024 FC 85 at paras 13–14 and *Aghvamiyamoli v Canada (Citizenship and Immigration)*, 2023 FC 1613 at para 28). In this case, the New Delhi Checklist for TFWs (IMM5905E) was applicable, since Mr. Singh Khosa applied through that visa office.

[6] The New Delhi Checklist for Work Permits under the heading “Additional Supporting Documents to be submitted” [emphasis added], requires “proof of personal funds, including income tax returns for the past two years, bank statements or book from the past three months. Property documents or other proof of income or investments.” Mr. Singh Khosa failed to do so. Rather, he only provided a “balance certificate” indicating the balance of his bank account 10 months prior to this application. This did not meet the checklist requirement.

[7] The determinative issue in this application revolves around Mr. Singh Khosa's second argument. Here, the Officer concluded that the Applicant may not have sufficient funds to support his stay based on his current funds/assets, the wage he would be earning in Canada, and the high cost of living in Surrey that the Officer pointed to.

[8] Specifically, the Officer fails to adequately explain why Mr. Singh Khosa's application leads to this finding. First, the Officer notes that Mr. Singh Khosa's funds may not be sufficient in light of the transport costs to Canada, when in fact, the employment contract states that the employer will bear the employee's transport costs. That is an error of fact, and one unreasonable element of the Decision.

[9] Second, and more importantly, the wage that Mr. Singh Khosa will be earning has been tested during the LMIA process and found to be an acceptable wage, and was actually significantly higher than the median wage at the time that Mr. Singh Khosa applied. The Officer does not consider this fact or explain why he disagrees with the labour market assessment, when the wage was determined to be sufficient by Employment and Social Development Canada when it approved the LMIA. This absence of rationale also renders the conclusion on the sufficiency of funds unreasonable (see, for instance, *Nguyen v Canada (Citizenship and Immigration)*, 2023 FC 1617 at para 24).

[10] I note that the Respondent raised decisions from this Court to justify the Officer's findings on the sufficiency of funds, but these cases were in the context of study permit applications. There is a clear difference with how those are treated considering that there is a financial burden borne by the applicants while they study in Canada, as opposed to work permit applications, where the applicant is relocating to Canada for the primary purpose to earn a wage.

[11] The Respondent pointed to *Vergel v Canada (Citizenship and Immigration)*, 2023 FC 873 [*Vergel*], which it urged this Court to follow. However, I find that to be a different situation. In

Vergel, funds were found to be insufficient to cover the relocation of the applicant and her family, in which case the transport costs were not covered by her employer. In this case, Mr. Singh Khosa would be relocating by himself, the transports costs would be covered by the employer, and he would be earning a LMIA-approved wage.

[12] In light of the foregoing, the Decision does not bear the hallmarks of reasonableness in light of the evidentiary record, and the factual and legal constraints in this matter (*Vavilov* at paras 99–101). This application for judicial review is thus granted.

JUDGMENT in file IMM-12197-23

THIS COURT'S JUDGMENT is that:

1. The judicial review is granted.
2. There is no question to certify.
3. No costs will issue.

"Alan S. Diner"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-12197-23

STYLE OF CAUSE: ARSHDEEP SINGH KHOSA v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: VANCOUVER, BRITISH COLUMBIA

DATE OF HEARING: AUGUST 20, 2024

JUDGMENT AND REASONS: DINER J.

DATED: AUGUST 27, 2024

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