

Federal Court



Cour fédérale

**Date: 20240909**

**Docket: IMM-14311-23**

**Citation: 2024 FC 1412**

**Toronto, Ontario, September 9, 2024**

**PRESENT: Madam Justice Go**

**BETWEEN:**

**SOHAN SINGH**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. Overview

[1] Mr. Sohan Singh [Applicant] is a citizen of India. He received an offer of employment to work as a cook at a restaurant in Canada. The Applicant's employer obtained a positive Labour Market Impact Assessment [LMIA], which included the job requirements of secondary school completion and English language proficiency.

[2] On June 29, 2023, the Applicant applied for a work permit under the Temporary Foreign Worker Program. On September 27, 2023, a visa officer [Officer] denied the Applicant's work permit because they were not satisfied that the Applicant would leave Canada at the end of his stay [Decision], as required by subsection 200(1)(b) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227.

[3] The Applicant seeks judicial review the Decision, arguing that the Officer breached procedural fairness and that the Decision was unreasonable. I agree with the Applicant, and I grant the application.

## II. Analysis

[4] For issues concerning the merits of the Decision, the presumptive reasonableness standard will apply per *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65. When it comes to procedural fairness the standard of review does not apply. The Court's focus is on whether or not the procedure allowed the applicant to know the case to be met and to have a full and fair opportunity to respond: *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at paras 54-56.

[5] In this case, I find the Officer breached procedural fairness by failing to provide the Applicant an opportunity to address their concern about the institution where the Applicant completed their secondary school education. I also find reviewable errors arising from the Officer's findings that the Applicant did not meet the education and language requirements.

[6] According to the Global Case Management System notes that set out the reasons for the Decision, the Officer remarked that the Applicant has provided documents from Gurukul Vishwavidyalaya, Vrindavan, Mathura [Gurukul Vishwavidyalaya], the secondary school that the Applicant attended. The Officer noted that Gurukul Vishwavidyalaya “is not an authorised/recognised institution.” The Officer was therefore not satisfied that the Applicant met the education requirement.

[7] The Officer did not explain their basis for finding that Gurukul Vishwavidyalaya is not an authorised/recognised institution.

[8] The Applicant submits the Officer must have referred to a circular issued in 2014 by the University Grants Commission [UGC] of India that de-recognized Gurukul Vishwavidyalaya as a university [UGC circular]. The Applicant included a copy of the UGC circular in the Applicant’s Record [AR]. However, the Applicant also included in the AR a 2018 decision from the High Court of Judicature at Allahabad [High Court decision], which held that certificates issued by the Gurukul Vishwavidyalaya up to 2008 are valid qualifications equivalent to secondary school—2008 being the time at which the UGC deemed Gurukul Vishwavidyalaya a “fake” institution with no right to confer or grant degrees.

[9] In light of the High Court decision, the Applicant argues that his certificate, issued in 1994, is valid proof that he completed secondary school. Further, the Applicant points out that the UGC only regulates post-secondary education, whereas he had only attended Gurukul Vishwavidyalaya for secondary school.

[10] At the hearing, the Respondent conceded that there were “inaccuracy” with regard to the Officer’s assessment of Gurukul Vishwavidyalaya not being an authorised/recognised institution. However, the Respondent maintains that the Officer had no obligation to inform the Applicant of their concern because the issue was about sufficiency of the evidence. The Officer did not raise any credibility concerns.

[11] The Respondent further argues that any evidence that was not before the Officer at the time of their decision is to be disregarded by the reviewing Court on judicial review, citing *Mohamed v The Minister of Citizenship and Immigration*, 2023 FC 1297 [*Mohamed*] at para 23.

[12] I acknowledge that the general rule for the reviewing court is to not consider evidence that was not put before the initial decision-maker. However, as the Court in *Mohamed* explained, there are exceptions to this general rule. One of the exceptions permits the Court to receive new evidence relevant to an issue of procedural fairness that could not have been placed before the administrative decision-maker and that does not interfere with the role of the administrative decision-maker as the merits-decider: *Bernard v Canada (Revenue Agency)*, 2015 FCA 263 at para 27.

[13] I find this exception applies to the case at hand. Had the Officer advised the Applicant of their concern that Gurukul Vishwavidyalaya is not an authorised/recognised institution, the Applicant would have been in a position to provide the UGC circular and the High Court decision to the Officer in order to respond to the Officer’s concerns. I will therefore admit these two documents and consider them in my decision.

[14] I also acknowledge that the degree of procedural fairness to which a visa applicant is entitled is at the low end of the spectrum: *Khan v Canada (Minister of Citizenship and Immigration)*, 2001 FCA 345 at paras 30-32. However, contrary to the Respondent's submission, procedural fairness does not arise only in cases that raise credibility concerns.

[15] This Court has found procedural fairness breaches when a decision-maker relied on extrinsic information that was not brought forward by the applicant, when the applicant was not given an opportunity to respond to the decision-maker's concerns, and when the information was critical to or determinative of the ultimate decision: *Level v Canada (Public Safety and Emergency Preparedness)*, 2008 FC 227; *Begum v Canada (Citizenship and Immigration)*, 2013 FC 824; *Tariku v Canada (Citizenship and Immigration)*, 2007 FC 474; *Lopez Arteaga v Canada (Citizenship and Immigration)*, 2013 FC 778 and *Rukmangathan v Canada (Citizenship v Immigration)*, 2004 FC 284.

[16] However, the Court has also found that reliance on extrinsic evidence does not automatically trigger a duty to provide an applicant with an opportunity to respond. Instead, the Court employs a contextual approach, taking into consideration relevant factors including, among others, the reliability of the source of the information, the extent to which the applicant could be reasonably expected to know of the information, and the novelty and significance of the information: *Bhujel v Canada (Citizenship and Immigration)*, 2023 FC 828 at para 18.

[17] In this case, the Officer did not disclose their source of information that led them to find Gurukul Vishwavidyalaya is an unauthorized institution. As such, it is impossible for the Court

to assess the reliability of the source of the information that the Officer relied on, and whether the Applicant could have reasonably been expected to know of the information. However, there is no question that the information relied on by the Officer was significant, as it led the Officer to conclude the Applicant did not meet the education requirement.

[18] Taking a contextual approach, the Officer's failure to advise the Applicant of their concern about the status of Gurukul Vishwavidyalaya and to give the Applicant an opportunity to provide submissions in response to the Officer's concern was a breach of procedural fairness.

[19] In addition, the Decision was also unreasonable as the Officer failed to explain why the status of Gurukul Vishwavidyalaya as an unauthorized institution would invalidate the Applicant's secondary school education, an error that the Respondent conceded at the hearing.

[20] Moreover, I reject the Respondent's submission that even with the error regarding the educational requirement, the Decision was reasonable because the Applicant did not provide sufficient information to support that he met the English language requirement. The Officer's finding with respect to the Applicant's language requirement was based partly on the Officer's conclusion about Gurukul Vishwavidyalaya as an unauthorized institution. The Officer's error with respect to the institution thus tainted their analysis about the Applicant's ability to meet the language requirement.

[21] For these reasons, I grant the application.

III. Conclusion

[22] The application for judicial review is granted.

[23] There is no question for certification.

**JUDGMENT in IMM-14311-23**

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

1. The application for judicial review is granted and the matter sent back for redetermination by a different officer.
2. There is no question for certification.

"Avvy Yao-Yao Go"  
Judge



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

**DOCKET:** IMM-14311-23

**STYLE OF CAUSE:** SOHAN SINGH v THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION

**PLACE OF HEARING:** HELD VIA VIDEOCONFERENCE

**DATE OF HEARING:** AUGUST 26, 2024

**JUDGMENT AND REASONS:** GO J.

**DATED:** SEPTEMBER 9, 2024

**APPEARANCES:**

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