Federal Court  Cour fédérale

Date: 20241112

Docket: IMM-11771-23

Citation: 2024 FC 1789

Ottawa, Ontario, November 12, 2024

PRESENT: The Honourable Madam Justice Strickland

BETWEEN:

SANDEEP KAUR

Applicant

and

THE MINISTER OF CITIZENSHIP & IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The Applicant, Sandeep Kaur, seeks judicial review of the decision of an Immigration, Refugee and Citizenship Canada [IRCC] visa officer [Officer] denying her application for a work permit under the Temporary Foreign Worker Program.

[2] For the reasons that follow, I have determined that the Officer's decision was reasonable.

Background

[3] The Applicant is a citizen of India. On August 14, 2023, she filed an application for a two-year work permit as a food service supervisor (National Occupational Classification [NOC] code 6311) in connection with a positive Labour Market Impact Assessment [LMIA] obtained for a restaurant business in New Westminster, British Columbia. The documentation submitted in support of her application included her CV; her educational background, including her Bachelor of Arts and Master of Arts from Punjab University; confirmation of completion in 2010 of a Diploma of Hospitality Management and Certificate in Hospitality (Commercial Cookery) at Holmes Institute Pty Ltd [Holmes Institute] in Australia; and, letters from previous employers. She also included her International English Language Testing System [IELTS] results from June 2023.

[4] The application was denied by letter dated September 8, 2023, informing the Applicant that her application does not meet the requirements of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*] and *Immigration and Refugee Protection Regulations*, SOR/2002-227 [*IRP Regulations*]. Specifically, her application was denied because she was not able to demonstrate that she would be able to adequately perform the work she sought.

[5] The Global Case Management System notes [GCMS Notes] entered by the Officer, which form a part of their reasons, state:

> I have reviewed the application. Based on the documentation submitted, I am not satisfied that the applicant will be able to adequately perform the proposed work: - LMIA shows English Language required. Insufficient documentation to show ability in

> the language of the proposed employment. IELTS language results provided. Applicant has band score of 4.5 in reading. Applicant's proposed employment is Food service supervisors and duties include supervise, coordinate activities of staff, maintain records of stock, repairs, sales and waste, prepare and submit reports, etc. I am not satisfied that the applicant has demonstrate they possess the language proficiency to complete the duties of the job with the English levels provided. For the reasons above and weighing the factors in this application I have refused this application.

[6] The Officer's decision is the subject of this judicial review.

Issues and Standard of Care

[7] The issues raised by the Applicant can be framed as follows:

i. Did the Officer breach the duty of procedural fairness owed to the Applicant?

ii. Was the Officer's decision reasonable?

[8] The standard of review for issues of procedural fairness is correctness (see *Mission Institution v Khela*, 2014 SCC 24 at para 79; *Canadian Association of Refugee Lawyers v Canada (Immigration, Refugees and Citizenship)*, 2020 FCA 196 at para 35). Functionally, this requires the Court's analysis to focus on whether the procedure followed was fair, having regard to all the circumstances (*Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54).

[9] The parties submit and I agree that the standard of review on the merits of the Officer's decision is reasonableness. On judicial review the court "asks whether the decision bears the

hallmarks of reasonableness — justification, transparency and intelligibility — and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision" (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 99 [*Vavilov*]).

No Breach of Procedural Fairness

[10] The Applicant submits that the Officer did not send a procedural fairness letter [PFL]. Had the Officer done so, the Applicant could have provided more evidence of her eligibility for the job. As such, the Applicant submits that she was not afforded a meaningful opportunity to respond.

[11] The Respondent submits that the Applicant's argument on this point is meritless. Not only is the level of procedural fairness owed to visa applicants low, but the onus is on the foreign national to show that they are eligible for a permit (citing *Mohamud v Canada (Citizenship and Immigration)*, 2021 FC 1140 at para 11; *IRPA*, s 11(1)). Moreover, it is trite law that the Officer was not required to appraise the Applicant of their concerns or seek to clarify the deficient application (citing *Bhullar v Canada (Citizenship and Immigration)*, 2023 FC 530 at para 18 [*Bhullar*]).

[12] I agree with the Respondent. It is well established that the onus is on an applicant to demonstrate that they meet the requirements of the *IRPA* and the *IRP Regulations* by providing sufficient evidence in support of their application. The duty of procedural fairness owed by visa officers to applicants is on the low end of the spectrum. Further, officers are not obliged to:

notify an applicant of inadequacies in their applications nor in the materials provided in support of the application; seek clarification or additional documentation; or, provide an applicant with an opportunity to address the officer's concerns when the material provided in support of an application is unclear, incomplete or insufficient to convince the visa officer that the applicant meets all the requirements that stem from the *IRP Regulations*. While officers may be obliged to raise concerns relating to the authenticity or veracity of evidence (see, for example, *Singh v Canada (Citizenship and Immigration)*, 2022 FC 266 at para 38), this is not such a circumstance.

[13] As the Officer was not obliged to send a PFL, there was no breach of procedural fairness.

Decision Was Reasonable

Applicant's Position

[14] The Applicant submits that the Officer's reasons are illogical as they speculate that the Applicant will not be able to act in the role of food service supervisor because she scored a 4.5 in the "reading" portion of the IELTS. In that regard, the Applicant achieved an overall IELTS band score of 5.5, which the Officer ignored and which is much higher than what is expected for applicants applying for a NOC 6311 work permit. The Applicant also submits that the Officer overlooked or misapprehended the evidence of her studies and work experience. For example, with respect to her diploma from the Holmes Institute in Australia, she submits that as Australia is an English-speaking country, she "must have done ielts to go to Australia" and "must have spoken, read, wrote and talked in English to pass a diploma in English".

[15] The Applicant submits that the Officer did not consider that her prospective employer interviewed her and was satisfied that she met the requirements for the job and also failed to consider that she had more education and experience than was required for the position. Instead, the Officer determined, without any basis, that the Applicant had insufficient ability in the language of the proposed employment. The NOC 6311 requirements do not include a language requirement nor do the IRCC Guidelines for NOC 6311. English proficiency was also not a condition of her employment. And, though an IELTS result was not required, the Applicant provided one anyway, and her overall score of 5.5 indicates that she is overly qualified for the job of food service supervisor.

[16] Notwithstanding these arguments, with respect to her IELTS results, the Applicant also submits that she "could have been nervous" when taking the test or there could have been an "accent issue as well". In any event, her prospective employer is an Indian community business, where customers will speak to employees in their "ethnic English accent", or who speak either Hindi or Punjabi, and the employer was satisfied with the Applicant's language abilities.

[17] The Applicant submits that the Officer's reasons do not clearly indicate the Officer's language assessment and explain how the Applicant fails to meet the language standard (citing *Safdar v Canada (Citizenship and Immigration)*, 2022 FC 189 at para 11 [*Safdar*]) nor does the Officer provide a detailed analysis of how the Applicant failed to satisfy the Officer that she would be able to perform the work sought.

[18] The Applicant further asserts that the Officer's findings were subjective, outside their jurisdiction, and based on intuition or a hunch.

Respondent's Position

[19] The Respondent submits that it was open to the Officer to find that the Applicant did not establish that she could perform the work sought, given her insufficient English language competency. And, contrary to the Applicant's assertions, the LMIA required verbal and written English language competency. The Applicant's submissions also fail to account for the considerable deference and discretion afforded to visa officers in these matters (citing *Patel v Canada (Citizenship and Immigration)*, 2021 FC 573 at para 26 [*Patel*]). The Officer reasonably assessed the evidence and found it lacking in proving the requisite language abilities for the position.

[20] The Respondent submits that the Applicant's reading level of 4.5 in her IELTS results is classified as "a limited user, frequently showing problems in understanding and expression, unable to use complex language". Unlike *Safdar*, the Officer here considered the Applicant's test scores and connected them to the prospective job's duties which include, among other things, preparing, maintaining and submitting various reports. It was reasonable for the Officer to find that these duties required a degree of proficiency in English, and particularly in reading comprehension. On the evidence before them, it was reasonable for the Officer to find that the Applicant could not complete the proposed work.

[21] The Respondent submits that the Applicant's argument that her education and work experience are evidence of her language skills lacks merit. Decision makers need not refer to every piece of evidence (citing *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, [1999] 1 FC 52 at para 16). Further, the Applicant's diploma from the Holmes Institute was completed over a decade ago and does not establish that her current English language skills are sufficient to perform the work sought. As in *Sen v Canada (Citizenship and Immigration)*, 2022 FC 777 at para 18, the Applicant's previous employment letters are written in English, but they make no reference to the Applicant's language of work, nor do they establish her language ability. As such, the Respondent submits that it was reasonable for the Officer to find the evidence insufficient in proving the Applicant's language abilities as required by the LMIA and job description.

[22] The Respondent further submits that, while her job offer may not have contained a condition to meet certain English language requirements, the LMIA clearly did. The Applicant's proficiency in Hindi and Punjabi, which she argues are "the bigger requirement" have little bearing on satisfying the Officer that she could fulfil the job requirements considering her limited English language abilities.

[23] As such, the Respondent submits that the Applicant's disagreements with the way the Officer weighed the evidence are not a basis for judicial intervention.

Analysis

[24] As I have previously described in *Safdar* (at paras 10–11), pursuant to s 200(3)(a) of the *IRP Regulations*, an officer may not issue a work permit if there are reasonable grounds to believe that the applicant would be unable to perform the work sought. The onus is on the applicant to provide sufficient supporting documentation to establish that they meet the requirements of the *IRP Regulations* (*Patel v Canada (Citizenship and Immigration)*, 2021 FC 483 at para 30), including that they have the requisite language skills to perform the work offered where there are reasonable grounds to believe that such language skills are necessary to perform the work sought (*Sun v Canada (Citizenship and Immigration)*, 2019 FC 1548 at para 34). The assessment of a visa applicant's language ability is "both factual and discretionary" (*Brar v Canada (Citizenship and Immigration)*, 2020 FC 70 at para 13; *Sulce v Canada (Citizenship and Immigration)*, 2015 FC 1132 at para 8).

[25] However, "a visa officer must explain, in light of the available evidence, how an applicant fails to meet the language standard" (*Bano v Canada (Citizenship and Immigration)*, 2020 FC 568 at para 24). Put otherwise, while it is the Applicant's onus to provide sufficient evidence to meet the eligibility requirements, it remains the Officer's task to evaluate the evidence before them and explain how it does not fulfill the eligibility requirement for which they are refusing the application (*Lakhanpal v Canada (Citizenship and Immigration)*, 2021 FC 694).

Language Requirements

[26] As the Applicant submits, the employment requirements for NOC 6311 are that the completion of secondary school is usually required; completion of a community college program in food service administration, hotel and restaurant management or related discipline, or, several years of experience in food preparation or service. It does not include a language competency requirement.

[27] However, it also sets out the main duties performed by food service supervisors. These include: supervising, co-ordinating and scheduling the activities of staff; establishing work schedules and procedures; maintaining records of stock, repairs, sales and wastage; training staff in job duties, and sanitation and safety procedures; participating in the selection of food service staff; and assisting in the development of policies, procedures and budgets.

[28] And, as the Respondent points out, the LMIA, which is specific to the Applicant and her proposed employment, indicates in the job information (along with identifying NOC 6311 and education requirements) that the verbal and written language requirements are English.

[29] I note that this Court has found that when evaluating an Applicant's language competency, it is "up to the Officer to determine what standard testing method to use, and to interpret the score against the job requirements and other evidence" (*Patel*, at para 26). That is what the Officer did in this case. The Officer relied on the results of the IELTS, a standard testing method, in which the Applicant scored a 4.5 in reading. The IELTS website characterizes

a score of 4.5 as falling in between a “limited user” and “modest user”. It is slightly better than a band score of 4, which the website classifies as “basic competence […] limited to familiar situations”, frequently showing problems in understanding and expression, and unable to use complex language. The Officer then interpreted the Applicant’s reading score against the main duties for a food service supervisor contained in NOC 6311 and the duties described in the Applicant’s employment letter. Based on this assessment, the Officer was not satisfied that the Applicant had demonstrated that she had the language proficiency to enable her to perform these tasks.

[30] It bears repeating here that visa officers are afforded great deference in assessing a work permit applicant’s competence (*Patel*, at para 26). This Court has found that, while not binding instruments, IELTS results, NOC requirements and LMIAs are guidelines that assist visa officers when exercising their discretion (*Singh v Canada (Citizenship and Immigration)*, 2022 FC 80 at para 9). As such, it was open to the Officer to assess them in their determination of whether the Applicant could adequately perform the tasks of a food service supervisor in Canada.

[31] Accordingly, I do not agree with the Applicant that the Officer speculated that she would be unable to carry out her role because she scored an IELTS result of 4.5 in reading. The Officer’s line of analysis on this point is clear (*Vavilov*, at para 102). Nor is this a similar circumstance to *Safdar*. There I found that a visa officer unreasonably concluded that an applicant had not demonstrated that he could adequately perform the work he sought and that he had not submitted sufficient evidence of his abilities in English, as was required by the LMIA (para 4). In *Safdar*, the officer’s reasons did not reflect their consideration of a number of factors

including, significantly, that the officer failed to address the applicant's IELTS score in the context of the performance of his offered work or at all. As such, the officer committed a reviewable error because they did not explain why and how they arrived at the conclusion that the applicant did not have the required language ability to perform the work. Here, in contrast, and as described above, the Officer provided a clear and intelligible explanation as to how they concluded that the Applicant's IELTS reading score of 4.5 negatively influenced their assessment of whether she could adequately perform the tasks required of a food service supervisor. The Officer directly linked the score to the duties of a food service supervisor, which required proficient reading comprehension. Nor did any of the other evidence provided by the Applicant directly speak to her English proficiency, which also distinguishes this matter from the circumstances in *Safdar*.

Conclusion

[32] For the reasons above, I conclude that the Officer reasonably exercised their discretion in determining that the Applicant failed to demonstrate that she possessed the language proficiency necessary to enable her to perform the duties encompassed by the proposed work. The Officer's decision was reasonable.

JUDGMENT IN IMM-11771-23

THIS COURT'S JUDGMENT is that

1. The application for judicial review is dismissed;

2. There shall be no order as to costs; and

3. No question of general importance for certification was proposed or arises.

"Cecily Y. Strickland"
Judge

FEDERAL COURT

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