Federal Court Cour fédérale

Date: 20250102

Docket: IMM-1293-24

Citation: 2025 FC 12

Ottawa, Ontario, January 2, 2025

PRESENT: The Honourable Mr. Justice Zinn

BETWEEN:

MOHAMAD SHOAIE

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Mr. Mohamad Shoaie, asks the Court to set aside a November 29, 2023 decision made by a visa officer [Officer] refusing his labour market impact assessment [LMIA] exempt work permit application under the Start-Up Business Class of the International Mobility Program.

[2] For the following reasons, the Court agrees with the Applicant that material aspects of the decision are unreasonable and cannot support the rejection of his application.

II. Facts

[3] The Applicant is a citizen of Iran. He applied for a work permit under the A77 category of the International Mobility Program, pursuant to paragraph 205(a) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [*Regulations*].

[4] The application is based on the Applicant's role as Co-Founder and Chief Technology Officer of a start-up company in the emergency response technology industry, incorporated on January 17, 2023. Pycap Inc., a designated business incubator authorized under the Start-Up Business Class program, provided a Letter of Support confirming the Applicant's role and detailing the company's business plan. The shareholder agreement submitted with the application indicates an allocation of 30,000 company shares to the Applicant.

[5] In support of his application, the Applicant provided comprehensive documentation including bank statements showing liquid funds of CAD $36,023.72, IELTS test results meeting the benchmark score of five (5) in all skills, and a detailed resume demonstrating project management experience.

III. Decision Below

[6] On November 29, 2023, the Officer refused the Applicant's work permit application. The reasons for refusal, as recorded in the Global Case Management System notes, focused on three grounds.

[7] First, regarding financial requirement, the Officer stated: “Financial documents on file showing CAD$ 36,023.72 in liquidities which will be used to cover LICO [Low Income Cut Off] (family of 2 - $34,254.00) and investment in the start-up company. Shareholder agreement states 30,000 shares for the applicant. I am not satisfied that the financial situation of the family is insufficient [*sic*] to support the stated purpose of travel for the applicant (and any accompanying family member(s), if applicable).”

[8] Second, concerning language ability, the Officer wrote:

> Under client information, the representative mentioned that applicant has completed IELTS and is meeting the benchmark of 5 in every skill level. However, after review of the documents submitted, those results were not found in the application. Therefore, I am not satisfied that applicant has demonstrated sufficient language abilities to perform the work of chief technology officer. [emphasis added]

[9] Third, regarding intent for temporary stay, the Officer concluded: “The purpose of the applicant’s visit to Canada is not consistent with a temporary stay given the details provided in the application...”

[10] The Officer concludes: “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.”

IV. Issues

[11] Two issues are raised. First, whether the Officer’s decision was reasonable in finding insufficient financial means, inadequate language ability, and lack of intent for temporary stay. Second, whether procedural fairness was breached when the Officer failed to provide an opportunity to address these concerns.

V. Standard of Review

[12] For procedural fairness, the applicable standard of review is one that resembles the correctness standard of view. The key question is "whether the procedure was fair having regard to all of the circumstances:" *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 [Canadian Pacific] at para 54; *Heiltsuk Horizon Maritime Services Ltd v Atlantic Towing Limited*, 2021 FCA 26 at para 107. This approach centres on addressing "the ultimate question [of] whether the applicant knew the case to meet and had a full and fair chance to respond:" *Canadian Pacific* at para 56.

[13] For substantive review, the Officer's decision is reviewable on the standard of reasonableness, as articulated by the Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*]. None of the exceptions based in legislative intent or the rule of law, as articulated by the Supreme Court in *Vavilov* and *Society of Composers, Authors and Music Publishers of Canada v Entertainment Software Association*, 2022 SCC 30, apply to displace the presumption of reasonableness as the standard of review.

[14] Reasonableness is a deferential, yet robust, standard of review: *Vavilov* at paras 12-13. The court must give considerable deference to the decision-maker, recognizing that this entity is empowered by Parliament and equipped with specialized knowledge and understanding of the "purposes and practical realities of the relevant administrative regime" and "consequences and the operational impact of the decision" that the reviewing court may not be attentive towards: *Vavilov* at para 93. Absent exceptional circumstances, reviewing courts must not interfere with

the decision maker's factual findings and cannot reweigh and reassess evidence considered by the decision-maker: *Vavilov* at para 125.

VI. Legal Framework

[15] Subparagraphs 200(1)(b) and 200(3)(a) of the *Regulations* govern the issuance of work permits in the context of this application:

Work permits	**Permis de travail — demande préalable à l'entrée au Canada**
200 (1) Subject to subsections (2) and (3) — and, in respect of a foreign national who makes an application for a work permit before entering Canada, subject to section 87.3 of the Act — an officer shall issue a work permit to a foreign national if, following an examination, it is established that	**200 (1)** Sous réserve des paragraphes (2) et (3), et de l'article 87.3 de la Loi dans le cas de l'étranger qui fait la demande préalablement à son entrée au Canada, l'agent délivre un permis de travail à l'étranger si, à l'issue d'un contrôle, les éléments ci-après sont établis :
…	[…]
(b) the foreign national will leave Canada by the end of the period authorized for their stay under Division 2 of Part 9;	**b)** il quittera le Canada à la fin de la période de séjour qui lui est applicable au titre de la section 2 de la partie 9;
…	[…]
Exceptions	**Exceptions**
(3) An officer shall not issue a work permit to a foreign national if	**(3)** Le permis de travail ne peut être délivré à l'étranger dans les cas suivants :
(a) there are reasonable grounds to believe that the	**a)** l'agent a des motifs raisonnables de croire que l'étranger est incapable d'exercer l'emploi pour

foreign national is unable to perform the work sought;	lequel le permis de travail est demandé;

[16] Sections 204 to 208 of the *Regulations* govern the issuance of LMIA exempt work permits. The applicable provision to the Applicant's situation is paragraph 205(a) of the *Regulations*:

Canadian interests	**Intérêts canadiens**
205 A work permit may be issued under section 200 to a foreign national who intends to perform work that	**205** Un permis de travail peut être délivré à l'étranger en vertu de l'article 200 si le travail pour lequel le permis est demandé satisfait à l'une ou l'autre des conditions suivantes :
(a) would create or maintain significant social, cultural or economic benefits or opportunities for Canadian citizens or permanent residents;	**a)** il permet de créer ou de conserver des débouchés ou des avantages sociaux, culturels ou économiques pour les citoyens canadiens ou les résidents permanents;

[17] The A77 Start-Up Business Class Program is governed by sections 98.01 to 98.13 of the *Regulations*. It allows for both permanent residence applications and associated work permits. At paragraphs 14 to 21 of *Serimbetov v. Canada (Immigration, Refugees and Citizenship)*, 2022 FC 1130, Justice Diner gave a thorough overview of the work permit stream under this program. He observed that while the *Regulations* outline the regulatory scheme addressing permanent residence requirements, the IRCC's operational instructions and guidelines on *Start-up business class permanent residence applicants [R205(a) – A77] – Canadian interests – International Mobility Program* [*Start-Up Business Class Guidelines*] provide key eligibility requirements specific for work permit under this category.

[18] Two parts of this guide are especially relevant. First, regarding financial requirements, the guide distinguishes between two types of funds: "Applicants should show that they have transferable and available funds… equal to the LICO for their family size for a minimum of 52 weeks... Applicants must provide proof of funds that are separate from their investment funds" [emphasis added].

[19] Second, on investment funds specifically, the guide states:

> … Applicants should demonstrate that their investment funds are available, transferable and unencumbered. The focus should be on the liquidity of the funds, rather than on the amount invested; however, officers maintain discretion in assessing the funds required for the investment. In addition, applicants should be able to provide proof of provenance of funds that they indicate they will be investing." [Emphasis added]

VII. Analysis

A. *There was no breach of procedural fairness*

[20] The duty of procedural fairness is on the lower end of the spectrum for work permit applications: *Grewal v Canada (Citizenship and Immigration)*, 2022 FC 1184 at para 17; *Sadeghieh v Canada (Citizenship and Immigration)*, 2024 FC 442 at para 22.

[21] The Applicant submits that the Officer breached procedural fairness by not providing an opportunity to address concerns about financial sufficiency, language ability, and intent for temporary stay. Relying on *Hernandez Bonilla v Canada (Minister of Citizenship and Immigration)*, 2007 FC 20 [*Bonilla*], he says that having submitted a complete application, he was entitled to an opportunity to address the Officer's concerns.

[22] I disagree and am not persuaded that this authority assists the Applicant. In *Bonilla*, the officer formed a subjective opinion based on generalizations about students studying during "formative years," a concern the applicant had no way of anticipating. Here, by contrast, the Officer's concerns arose directly from stated program requirements and statutory frameworks.

[23] The *Start-Up Business Class Guidelines* require separate support and investment funds. The requirements for language ability and temporary stay are clearly set out in the program criteria, and rooted in paragraphs 200(1)(b) and 200(3)(a) of the *Regulations*. This Court has consistently held that officers have no duty to inform applicants of concerns arising from statutory and regulatory requirements: *Kumar v Canada (Citizenship and Immigration)*, 2020 FC 935 at para 19; *Patel v Canada (Citizenship and Immigration)*, 2021 FC 483 at para 42.

[24] Therefore, I find no breach of procedural fairness.

B. *The decision is not reasonable*

[25] It is agreed that the Officer erred in stating that the Applicant's IELTS results were not included in the application. They were - and they met the benchmark in every skill level. Therefore, the Officer's conclusion from his error that the Applicant "has not demonstrated sufficient language abilities to perform the work of chief technology officer" is unreasonable.

[26] Alone, this error may have been insufficient to render the decision as a whole unreasonable; however, I find that the Officer's unintelligible treatment of the Applicant's funds, together with the IELTS assessment error, renders the decision unreasonable in its totality.

[27] The Officer writes:

> Financial documents on file showing CAD$ 36,023.72 in liquidities which will be used to cover LICO (family of 2 - $34,254.00) and investment in the start-up company. Shareholder agreement states 30,000 shares for the applicant. I am not satisfied that the financial situation of the family is insufficient [*sic*] to support the stated purpose of travel for the applicant (and any accompanying family member(s), if applicable). [Emphasis added]

[28] The *Start-Up Business Class Guidelines* distinguish between two separate financial requirements: (1) support funds meeting the LICO threshold, and (2) investment funds demonstrating liquidity, transferability, and proof of provenance. The Applicant met the support funds requirement, with $36,023.72 exceeding the LICO threshold of $34,254.00. As the Applicant notes, there is no requirement to show any specific amount of investment funds. As stated in the guidelines, the "focus should be on the liquidity of the funds, rather than on the amount invested."

[29] While the Respondent correctly submits that "officers maintain discretion in assessing the funds required for the investment," there is nothing in these reasons indicating that the amount of the funds for investment are insufficient in the Officer's view. The Respondent submits that the Applicant's shareholdings and angel investors are insufficient to meet the investment required. While this may be the case, there is nothing in these reasons from which the Court or the Applicant can determine that this was the Officer's real concern.

[30] Accordingly, this application shall be granted and the decision under review set aside. Neither party proposed a question for certification.

JUDGMENT in IMM-1293-24

THIS COURT'S JUDGMENT is that this application is granted; the decision on the Applicant's LMIA exempt work permit application under the Start-Up Business Class of the International Mobility Program, is set aside and is to be considered by a different officer; and no question is certified.

"Russel W. Zinn"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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