

Federal Court



Cour fédérale

Date: 20250204

Docket: IMM-1995-24

Citation: 2025 FC 227

Ottawa, Ontario, February 4, 2025

PRESENT: The Honourable Madam Justice Kane

BETWEEN:

GURWINDERPAL SINGH

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION CANADA**

Respondent

JUDGMENT AND REASONS

[1] The Applicant, Gurwinderpal Singh [Mr. Singh], seeks judicial review of the decision of an officer at Immigration, Refugees and Citizenship Canada [the Officer], dated January 18, 2024, refusing his open work permit pursuant to the International Mobility Program. The Officer was not satisfied that Mr. Singh would leave Canada at the end of his stay because of his past non-compliance with immigration conditions imposed in another country (in Mr. Singh's case, the United States of America [USA]).

[2] For the reasons that follow, this Application is granted.

I. Background

[3] Mr. Singh, a citizen of India, submitted an application for an open work permit under the International Mobility Program, hoping to join his wife, who is in Canada on a work permit and who issued a letter of invitation to him.

[4] Mr. Singh's wife was first granted a study permit in 2019 and subsequently a visitor visa and post-graduate work permit in 2021, valid until August 2024. Mr. Singh explains that his spouse is gaining work experience in Canada with a view to qualifying for permanent resident status.

[5] Mr. Singh was previously refused a temporary resident visa and work permit in April 2023. Mr. Singh initially pursued an application for leave and for judicial review, but upon receiving the reasons for the refusal, withdrew the application for leave and for judicial review and decided to make a fresh application for an open work permit that addressed the concerns noted in the previous refusal.

[6] On October 17, 2023, Mr. Singh applied again for an open work permit pursuant to the Labour Market Impact Assessment exemption based on the invitation from his spouse. The Officer's refusal of the work permit is the subject of this Application for Judicial Review.

[7] Mr. Singh's affidavit, provided in support of his application for the work permit, acknowledges that he previously entered the USA illegally. He describes his travel from India to Greece in March 2019, then Mexico and his crossing into the USA by jumping over a wall on the Mexico-USA border. He notes that he was arrested and detained in the USA. He explains that he sought refugee protection in the USA because he was "being attacked" and receiving death threats from a political party in India that he refused to join. Mr. Singh's refugee claim in the USA was denied and he was deported to India on January 16, 2020.

[8] Mr. Singh attests that since his return to India, he has not faced the threats that led him to flee in 2019 and that he would not be seeking refugee protection in Canada.

[9] Mr. Singh's affidavit also described his relationship with his wife, their marriage ceremony, and their family support. Mr. Singh's application for his work permit included information about his property in India, his establishment, his work in the agricultural sector, his net worth, as well as information about his wife's employment in Canada.

II. The Decision

[10] The Decision is set out in the Officer's letter dated January 18, 2024, and in the Officer's notes in the Global Case Management System [GCMS].

[11] The letter states that the Officer has determined that Mr. Singh's application does not meet the requirements of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the Act]. The Officer states that the application is refused on the following grounds:

- I am not satisfied that you will leave Canada at the end of your stay as required by paragraph 200(1)(b) of the [Immigration and Refugee Protection Regulations, SOR/2002-227]. I am refusing your application because you have not established that you will leave Canada based on the following factors:
- In the past, you did not comply with all immigration conditions imposed in another country.

[12] The GCMS notes acknowledge that Mr. Singh is applying for an open work permit to accompany his spouse who is on a work permit in Canada. The GCMS notes reiterate, “[i]n the past, you did not comply with all immigration conditions imposed in another country”. The notes add that the Officer reviewed Mr. Singh’s declaration explaining his reasons for entering the USA without obtaining authorization and acknowledge that Mr. Singh has been truthful in disclosing the reasons for his deportation from the USA. The Officer notes, “[t]aking the nature of the deportation into consideration, I am not compelled that the client will comply with Canadian immigration terms and conditions and therefore be a genuine temporary resident of Canada.”

[13] The Officer notes that all factors have been weighed but that the Officer is not satisfied that Mr. Singh will depart Canada at the end of the period authorized for his stay.

III. The Standard of Review

[14] The standard of review of a decision regarding a work permit is reasonableness (*Kaur v Canada (Citizenship and Immigration)*, 2022 FC 270 at para 21; *Bains v Canada (Citizenship and Immigration)*, 2020 FC 57 at para 49; *Lin v Canada (Citizenship and Immigration)*, 2019 FC 1284 at para 23; *Ocran v Canada (Citizenship and Immigration)*, 2022 FC 175 at para 16).

[15] A reasonable decision is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision-maker (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 85, 102, 105–07 [*Vavilov*]). A decision should not be set aside unless it contains “sufficiently serious shortcomings ... such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency” (*Vavilov* at para 100).

[16] Reasons are not held to a standard of perfection (*Vavilov* at para 91). In the context of decisions for work permits and similar applications, it is understood that the reasons are brief (*Patel v Canada (Citizenship and Immigration)*, 2020 FC 77 at para 17); nonetheless, the reasons must permit the Court to understand why the application was refused and to determine that the conclusion falls within the range of reasonable outcomes.

[17] Where issues of procedural fairness arise, the Court must determine whether the procedure followed by the decision-maker is fair having regard to all of the circumstances; this is akin to a standard of correctness (*Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54). The scope of the duty of procedural fairness owed varies with the circumstances and is informed by several factors (*Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 at para 21). Where a breach of procedural fairness is found, no deference is owed.

[18] The duty of procedural fairness owed to an applicant for a temporary work permit is at the low end of the spectrum (*Singh Grewal v Canada (Citizenship and Immigration)*, 2013 FC

627 at para 19; *Sulce v Canada (Citizenship and Immigration)*, 2015 FC 1132 at para 10; *Kaur v Canada (Citizenship and Immigration)*, 2017 FC 782 at para 19; *Li v Canada (Citizenship and Immigration)*, 2012 FC 484 at para 31).

IV. The Applicant's Submissions

[19] Mr. Singh submits that the decision is not reasonable, the reasons are inadequate, and that the Officer breached the duty of procedural fairness by not providing him with an opportunity to address the Officer's concerns about the nature of his deportation from the USA.

[20] Mr. Singh suggests that the Officer has penalized him for having entered the USA without authorization to claim refugee protection. He submits that he was entitled to seek refugee protection in the USA and notes that, once refused, he was deported to India. Mr. Singh submits that Canada has an obligation under article 31 of the United Nations *Convention Relating to the Status of Refugees*, 28 July 1951, [1969] Can TS No 6, to not impose any penalty on the Applicant for seeking refugee protection in the USA.

[21] Mr. Singh submits that his claim for refugee protection in the USA is not a valid basis for the Officer to conclude that he will not comply with Canadian immigration requirements. He submits that his only non-compliance with the immigration laws in the USA was entering the USA without authorization, but he followed the law by seeking refugee protection. He argues that he did not remain in the USA illegally. He further submits that the Officer failed to appreciate why he was deported from the USA as no mention is made of his claim for refugee protection.

[22] Mr. Singh further submits that the Officer failed to give the proper weight to his Statutory Declaration or to the legal submissions made by his counsel, which explained his claim in the USA.

[23] Mr. Singh submits that the issue for the Officer was not simply whether he would leave Canada at the expiration of his work permit but whether he would remain in Canada illegally upon the expiration of his authorized stay or, if he and his spouse in Canada are not eventually approved for permanent residency, whether they will return to their home country (relying on *Murai v Canada (Minister of Citizenship and Immigration)*, 2006 FC 186 at para 16 and *Palogan v Canada (Citizenship and Immigration)*, 2013 FC 889 at para 14).

[24] Mr. Singh argues that the Officer prematurely concluded that he would not abide by terms and conditions imposed on him because of “the nature of the deportation from the USA” without considering the circumstances.

[25] Mr. Singh submits that his experience in the USA does not establish that he will remain in Canada illegally. He attests to being remorseful for entering the USA without authorization, noting that the persecution he sought to escape from is no longer present and he only wants to reunite with his wife.

V. The Respondent's Submissions

[26] The Respondent submits that the Officer reasonably refused Mr. Singh's work permit because the evidence before the Officer was not enough to satisfy the Officer that Mr. Singh met

the requirements for the open work permit he sought. The Respondent notes that the onus is on an applicant to support their application.

[27] The Respondent notes that the Officer considered Mr. Singh's travel history, which is a relevant factor, and which revealed that Mr. Singh had entered the USA via Europe and Mexico to claim asylum.

[28] The Respondent submits that Mr. Singh has not established that the Officer ignored any evidence; visa officers are assumed to have weighed and considered all of the evidence presented unless the contrary is proven, citing *Obeng v Canada (Citizenship and Immigration)*, 2008 FC 754 at para 35 and *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 59.

[29] The Respondent disputes Mr. Singh's assertion that the Officer failed to appreciate that he sought refugee protection in the USA. The Respondent notes that the Officer specifically noted that the declaration of Mr. Singh explaining his reasons for entering the USA without authorization were considered. The Officer did not have to specifically repeat the phrase "refugee protection" as it is clear that the Officer was aware of the explanation provided.

[30] The Respondent further submits that the Officer's reasons are adequate and provide sufficient justification, transparency and intelligibility; it is clear why the Officer refused the work permit based on the evidence before the Officer.

[31] The Respondent disputes that the Officer breached procedural fairness, noting that the Officer's concerns did not relate to Mr. Singh's credibility.

VI. The Decision is not reasonable

[32] Mr. Singh's allegation that the Officer "penalized" him for seeking refugee status in the USA is a mischaracterization. The Officer was tasked with considering Mr. Singh's travel and immigration history in the context of assessing whether Mr. Singh met the requirements of the work permit he sought, which includes assessing whether he would leave Canada at the end of his authorized stay, or put another way, whether he would remain in Canada illegally. A range of factors may be considered to make such an assessment, and the Officer would have been remiss in not considering Mr. Singh's travel to the USA seeking refugee protection. However, this should not have been the only consideration.

[33] It is acknowledged that the reasons for refusing a work permit or other temporary resident permit are typically brief. However, it is not possible for the Court to determine whether the Officer considered the documents submitted in support of the application and the explanation provided by Mr. Singh, despite that the Officer acknowledged that he was truthful and remorseful and despite that the GCMS notes state that all factors were considered. The decision reflects that the Officer concluded that Mr. Singh would not leave Canada at the end of his authorized stay only because of his deportation from the USA.

[34] As Mr. Singh explained, he entered the USA illegally to seek refugee protection, albeit unsuccessfully. He was detained and deported. There is no other evidence of remaining in a country beyond an authorized stay.

[35] The reality for Mr. Singh is that his failed claim for refugee protection in the USA cannot be undone. If this is a reason—on its own—to conclude that Mr. Singh will not leave Canada at the end of his authorized stay and to refuse the work permit, then Mr. Singh may never be successful in obtaining a work permit or other authorization to join his wife in Canada. The Officer does not appear to have considered this impact. As Mr. Singh notes, he submitted all the relevant information and supporting documents with his application; there is nothing more that he could provide. While the weight to give to the evidence provided in support of the application is for the Officer to determine, the reasons do not reflect that the positive factors that may have supported the work permit were weighed against the past deportation from the USA.

VII. There was no breach of procedural fairness

[36] As noted, the duty of procedural fairness owed by an officer in processing a visa application is at the low end of the spectrum. The Officer did not breach the duty of procedural fairness by not convoking an interview or otherwise providing Mr. Singh with an opportunity to address the Officer's concerns about the nature of his deportation from the USA, as these concerns were not related to his credibility or the authenticity of his documents.

JUDGMENT in file IMM-1995-24

THIS COURT'S JUDGMENT is that:

1. The Application for Judicial Review is granted.
2. The application for the open work permit must be remitted for redetermination by a different decision-maker.
3. There is no question for certification.

"Catherine M. Kane"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-1995-24

STYLE OF CAUSE: GURWINDERPAL SINGH v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION CANADA

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