Federal Court  Cour fédérale

Date: 20250210

Docket: IMM-9300-23

Citation: 2025 FC 254

Ottawa, Ontario, February 10, 2025

PRESENT: The Honourable Mr. Justice Favel

BETWEEN:

BRANDON HERVERTH FERRA

Applicant

and

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Brandon Herverth Ferra [Applicant], a 28-year-old citizen of Mexico, seeks judicial review of the May 25, 2023 decision [Decision] of an immigration officer [Officer] refusing his work permit application. The Officer was not satisfied the Applicant would leave Canada at the end of his stay pursuant to section 200(1)(b) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [*IRPR*]. Specifically, the Officer determined that the Applicant

overstayed his previous temporary resident visa [TRV] and did not have sufficient establishment in Mexico to compel his departure from Canada.

[2] This application for judicial review is allowed. The Decision is unreasonable.

II. Background

[3] The Applicant entered Canada on April 9, 2022 on a TRV valid until October 8, 2022. The Applicant was required to depart Canada following the expiry of his TRV and he did not do so.

[4] On October 17, 2022, the Applicant received a 24-month full-time job offer to work as a Light Duty Cleaner with Purus Building Maintenance [Employer], located in Toronto, Ontario. The Employer received a positive Labour Market Impact Assessment [LMIA] decision on October 26, 2022, supporting the offer of employment. On November 7, 2022, with the assistance of an immigration representative [Representative], the Applicant submitted a work permit application [Former Application]. The Former Application was denied on March 16, 2023, because the Applicant was present in Canada without legal status. On March 19, 2023, the Applicant returned to Mexico.

[5] On April 26, 2023, while in Mexico, the Applicant re-applied for a work permit [Present Application] with the assistance of the same Representative. The denial of the Present Application is the subject of this judicial review.

III. Decision

[6] The Officer denied the Present Application because they were not satisfied the Applicant would leave Canada at the end of his stay. The Officer's reasons are contained in the Global Case Management System notes, reproduced in their entirety below:

> I have reviewed the application.
>
> I have considered the following factors in my decision.
>
> On a past visit to Canada the applicant did not comply with all conditions outlined in R183 of the IRPR or written on their previous Canadian Immigration document.
>
> Client last entered Canada on 2022/04/09 and was authorized to remain in Canada as a temporary resident on a TRV until 2022/10/08. Has remained in Canada since that date without authorization. Has failed to comply with the condition imposed under R185(a) to leave Canada by 2022/10/08. Considering how recent this is I am not satisfied that applicant has sufficient establishment or would comply and respect conditions and leave Canada after expiry of their work permit.
>
> 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.

IV. Issues and Standard of Review

[7] The only issue for determination is whether the Decision is reasonable.

[8] The parties agree that the Officer's Decision is reviewable on a standard of reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65

[*Vavilov*]). I agree. None of the situations that could rebut the presumption of reasonableness are present in this case (*Vavilov* at paras 16-17).

V. Analysis

A. *Applicant's Position*

[9] The Decision is unreasonable on two bases. First, the Officer failed to render a Decision on the Applicant's eligibility. Rather, the Officer based their determination solely on the Applicant's prior immigration history. Therefore, the Decision is not based on an internally coherent and rational chain of analysis that is justified in relation to the facts and law (*Vavilov* at para 85).

[10] Second, the Officer's reasons lack transparency and intelligibility. The Officer failed to consider the Applicant's reason for overstaying his TRV. The Applicant honestly believed his Representative had applied for restoration of status. The Applicant understood he was permitted to remain in Canada until the Former Application was decided. The Applicant claims he miscalculated the time for restoration and reported this to his Representative accordingly. The Representative advised the Applicant he was still under the restoration period and his status could be restored. The Applicant followed the Representative's advice and submitted a restoration fee with the Former Application. It is unreasonable for the Officer to assume that the Applicant would not comply with the work permit based on a previous unintentional breach.

[11] The Officer did not consider the Applicant's intention to comply with the work permit, nor his knowledge and reasonable reliance on the Representative. The Officer failed to consider all the evidence before them, in particular, that the Applicant departed Canada three days after learning his Former Application was denied. Rather, the Officer relied solely on the Applicant's immigration history. As a result, the Officer drew inappropriate inferences regarding the Applicant's intentions to comply with the work permit, if granted.

B. *Respondent's Position*

[12] The Decision is reasonable. The Officer was not satisfied the Applicant would depart Canada at the end of his authorized stay pursuant to *IRPR* section 200(1)(b). The Applicant's argument is without merit and raises no issue warranting the Court's intervention.

[13] Submission of the Former Application and restoration fee did not entitle the Applicant to remain in Canada, nor did it provide implied temporary resident status. *IRPR* section 183(5) provides temporary resident status may only be extended via application submitted on or before the expiry of temporary resident status. The Former Application was submitted one month after the Applicant's TRV expired. As such, the Applicant was not entitled to remain in Canada. Though the Applicant sought to restore his TRV, relying on his Representative's advice, this does not overcome the fact that he remained in Canada without status (*Igbedion v Canada (Citizenship and Immigration),* 2022 FC 275 at para 21).

[14] The Applicant overstayed his temporary resident status, remaining in Canada without valid status for more than five months. Given these facts, the Officer properly assumed the Applicant would not leave Canada following expiration of a work permit.

[15] The Officer did not ignore evidence, nor fail to decide the Present Application on its merits. Even if the Applicant met the eligibility requirements for a work permit, he failed to satisfy the Officer he would depart Canada following his stay.

[16] Visa officers are presumed to have considered the entirety of the evidence received in support of an application for a TRV. However, they are not required to mention every piece of evidence adduced. Likewise, there is no requirement to enumerate the details of the evidence relied on in their decision (*D'Almeida v Canada (Citizenship and Immigration)*, 2019 FC 308 at para 42; *Solopova* v Canada (*Citizenship and Immigration*), 2016 FC 690 at para 28 [*Solopova*]; *Watts v Canada (Citizenship and Immigration)*, 2020 FC 158 at para 27; *Vavilov* at para 301).

[17] The reasonableness of any decision depends upon the constraints imposed by the legal and factual context of the particular decision under review (*Vavilov* at paras 89-90). In the context of TRV's, due to the high volume of applications processed, there is typically minimal need to provide reasons (*Touré c Canada (Citizenship and Immigration)*, 2020 FC 932 at para 11; *Solopova* at para 32; *Afuah v Canada (Citizenship and Immigration)*, 2021 FC 596 at para 9; *Khan v Canada (Minister of Citizenship and Immigration)*, 2001 FC 345 at para 32). This Court recognizes decisions of this type need not be extensive. Where the record is clear, the Court can connect the dots (*Persuad v Canada (Citizenship and Immigration)*, 2021 FC 1252 at para 8;

Akhtar v Canada (Immigration, Refugees and Citizenship), 2022 FC 595 at para 23). This Decision is clear, justified by the evidentiary record, and allows the Applicant to understand why the Present Application was rejected.

C. *Conclusion*

[18] The Decision is unreasonable.

[19] The Officer's conclusion that the Applicant would not leave Canada following expiration of a work permit, given the Applicant's previous overstay, is illogical. The Applicant's overstay was based on his assumption that his TRV was valid when the Former Application was submitted, allowing him to remain in Canada until a decision was made. This is not addressed anywhere in the Officer's reasons. Even if the Applicant remained in Canada without status while waiting to learn the result of the Former Application, the Officer's conclusion still fails to consider that the Applicant left Canada on March 19, 2023, a mere three days after learning the Former Application was denied.

[20] It is not apparent from the Officer's reasons that they considered the Applicant's explanation for overstay, nor the Applicant's honest belief that he was following the law. As explained in the Representative's letter dated April 26, 2023, the Applicant miscalculated the expiry of his TRV, assuming it expired in November 2022 rather than October 2022. As soon as the Applicant learned of this, he applied for a work permit along with restoration of status.

[21] While I agree with the Respondent that visa officers are not required to list all evidence relied upon in their reasons and the duty to provide reasons is minimal, they are still required to provide a transparent, intelligible, and justified decision (*Vavilov* at para 95). In my view, the fact that the Applicant departed Canada after learning his Former Application was denied indicates he would depart Canada following expiration of his work permit. This evidence points in the opposite direction of the Officer's Decision and warrants this Court's intervention (*Solopova* at para 28).

VI. Conclusion

[22] The application for judicial review is allowed.

[23] The parties do not propose a question for certification, and I agree that none arises.

JUDGMENT in IMM-9300-23

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is allowed. The matter is remitted for redetermination by a different officer.
2. There is no question for certification.

"Paul Favel"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-9300-23
STYLE OF CAUSE:	BRANDON HERVERTH FERRA v MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	HELD BY VIDEOCONFERENCE
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