Federal Court Cour fédérale

Date: 20250926

Docket: IMM-8689-24

Citation: 2025 FC 1589

Ottawa, Ontario, September 26, 2025

PRESENT: The Honourable Mr. Justice Ahmed

BETWEEN:

HSIAO-CHIU WU
LUNG-CHEN LEE
YU-JIE LEE
YUE-TING LEE

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicants seek judicial review of their refused application for permanent residence ("PR") under the Home Support Worker ("HSW") Class by a senior immigration officer (the "Officer") on April 18, 2024.

[2] The Applicants submit that the Officer's decision is unreasonable and procedurally unfair, as the Officer failed to properly apply the selection criteria for HSW applications and refused to grant their request for a 60-day extension to submit further documents.

[3] I disagree. I find no reviewable error in the Officer's decision. I also do not find that the Officer infringed the Applicants' procedural rights. For the following reasons, this application for judicial review is dismissed.

II. **Background**

[4] The Applicants are citizens of the Republic of China. For several years, they have lived in Taiwan.

[5] The Principal Applicant, Hsiao-Chiu Wu, obtained a bachelor's degree in education from the Department of Business Education in 2003 and a Secondary School Teachers' Certificate in 2004. Since 2013, she has worked as a Project Manager in the private sector.

[6] In 2021, the Principal Applicant commenced a one-year professional diploma. She graduated with an In-Home Caregiver Diploma on December 9, 2022.

[7] On January 2, 2023, the Principal Applicant submitted a PR application in the HSW class. During the application process, an agency matched the Principal Applicant with an employer in Canada (the "Employer") who was seeking care for his two disabled, autistic

children. An immigration consultant prepared the Principal Applicant's HSW application. The Associate Applicant and Minor Applicants were included as dependents in the HSW application.

[8] On January 10, 2024, the Officer contacted the Applicants to request further documents, including Notices of Assessment from the Employer for the previous two years.

[9] The Applicants submitted a response on January 18, 2024. In their response package, they included the Employer's 2022 Notice of Assessment, which the Principal Applicant's immigration consultant had obtained.

[10] On March 1, 2024, the Officer issued a procedural fairness letter (the "PFL") to the Applicants. The Officer wrote:

> Based on the information you have provided with regards to your previous education and work experience, I am not satisfied that you have the ability to be able to perform the work, and that this is a genuine offer of employment.
>
> You have not submitted any documents which support that you have previous experience and have the ability to [p]erform duties of employment.
>
> You have not submitted documents from you[r] employer which support his/her ability to pay your salary. These could be the last 2 years of T4 and Notice of Assessment.

[11] On March 28, 2024, the Principal Applicant submitted a response. She stated that she was unable to provide "the supplementary materials required" for the Employer as the Employer "never replies to [her] messages. When [she] called him, he always said he was busy then hung up the phone immediately." The Principal Applicant requested "an extension of 60 days to allow

[her] sufficient time to secure alternative employment with a new employer who can provide the necessary documents." With respect to her previous work experience, the Principal Applicant stated that "[her] employment history may appear unconventional due to [her] previous employer's family circumstances." She stated that "[she is] currently in discussions with a prospective employer who requires assistance in caring for an elderly individual. However, the preparation of contractual agreements and supporting documents may take some time."

[12] On April 18, 2024, the Officer refused the Applicants' HSW application. The Officer was not satisfied that the Principal Applicant was "able to perform the work and duties" of a home support worker. The Officer denied the Principal Applicant's request for an extension of time "as [she] did not provide documents to support [her] previous employment as requested in [the PFL.]"

[13] The refusal of the Applicant's HSW application is presently under review.

III. **Issues and Standard of Review**

[14] The Applicants raise two issues: whether the Officer's decision is reasonable and procedurally fair.

[15] The parties submit that the applicable standard of review for the merits of the decision is that of reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 25, 86-87 ("*Vavilov*")). I agree.

[16] The issue of procedural fairness is to be reviewed on the correctness standard (*Mission Institution v Khela*, 2014 SCC 24 at para 79; *Canadian Pacific Railway Company v Canada (Attorney General*), 2018 FCA 69 at paras 37-56 ("*Canadian Pacific Railway Company*"); *Canadian Association of Refugee Lawyers v Canada (Immigration, Refugees and Citizenship)*, 2020 FCA 196 at para 35). I find that this conclusion accords with the Supreme Court of Canada's decision in *Vavilov* (at paras 16-17).

[17] Reasonableness is a deferential, but robust, standard of review (*Vavilov* at paras 12-13). The reviewing court must determine whether the decision under review, including both its rationale and outcome, is transparent, intelligible, and justified (*Vavilov* at para 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 (*Vavilov* at para 85). Whether a decision is reasonable depends on the relevant administrative setting, the record before the decision-maker, and the impact of the decision on those affected by its consequences (*Vavilov* at paras 88-90, 94, 133-135).

[18] For a decision to be unreasonable, the applicant must establish the decision contains flaws that are sufficiently central or significant (*Vavilov* at para 100). Not all errors or concerns about a decision will warrant intervention. A reviewing court must refrain from reweighing evidence before the decision-maker, and it should not interfere with factual findings absent exceptional circumstances (*Vavilov* at para 125). Flaws or shortcomings must be more than superficial or peripheral to the merits of the decision, or a "minor misstep" (*Vavilov* at para 100).

[19] Correctness, by contrast, is a non-deferential standard of review. The central question for issues of procedural fairness is whether the procedure was fair having regard to all of the circumstances, including the factors enumerated in *Baker v Canada (Minister of Citizenship and Immigration)*, 1999 CanLII 699 (SCC), [1999] 2 SCR 817 (at paras 21-28; see also *Canadian Pacific Railway Company* at para 54). In comparable contexts to HSW decisions, the procedural fairness required has been considered to be at the low end of the spectrum (*Gumtang v Canada (Citizenship and Immigration)*, 2023 FC 758 at para 17).

IV. **Analysis**

A. *The Officer's Decision on the Applicant's Suitability was Reasonable*

[20] The Applicants submit that the Officer's decision was unreasonable in applying the selection criteria for HSW applications. According to the Applicants, the Officer disregarded the Principal Applicant's credentials, which demonstrate that she is capable of performing the role described in the job offer. The Applicants further submit that the Officer should not have questioned the Principal Applicant's qualifications once the Employer decided to hire her.

[21] The Respondent submits that the Officer's decision is reasonable. Noting that the Principal Applicant "did not include any statements or confirmation that she has the ability to be a home support worker" or "any documentation…of [her or the Employer's] ability to fulfill the terms of the employment offer," the Respondent submits that "it was reasonable for the [O]fficer to refuse the application" due to deficiencies in the PFL response.

[22] I agree with the Respondent. I am not persuaded that the Officer disregarded the Principal Applicant's credentials. Officers are presumed to have considered all the material before them (*Hashem v Canada (Citizenship and Immigration)*, 2020 FC 41 at para 2). Evidence that squarely contradicts the Officer's conclusions may displace this presumption (*Khir v Canada (Citizenship and Immigration)*, 2021 FC 160 at para 48, citing *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, 1998 CanLII 8667 at para 16 (FC)). Although the Applicants rightly note that the Officer's reasons do not contain an explicit reference to the Principal Applicant's education, this does not constitute a contradiction.

[23] I note that the Principal Applicant held an "in-home caregiver training certificate, her first aid certification, her bachelor's degree in education," and "her secondary school teacher certification." However, the Principal Applicant's bachelor's degree and secondary school teacher certification were awarded in 2003 and 2004, respectively. Her first aid certification, while "an asset" according to the job offer, does not address home support workers' core competencies. The strongest evidence of the Principal Applicant's ability to work is her 2022 in-home caregiver diploma. However, this credential was awarded following just one year of study.

[24] As stated in her work permit application, the Principal Applicant has no work experience as a home support worker. The Principal Applicant's only exposure to being a home support worker was the one-year diploma program. As stated in the job offer, the Employer sought an individual to provide care for his two disabled, autistic children. This evidence does not contradict the Officer's finding that the Principal Applicant lacked the ability to perform this work.

[25] I further note that the Applicants were provided an opportunity to address the Officer's concerns and failed to do so. In the PFL dated March 1, 2024, the Officer explicitly advised the Applicants that "[they] have not submitted any documents which support that [the Principal Applicant has] previous experience and ha[s] the ability to [p]erform duties of employment." The Principal Applicant's only remark on this point was that "[her] employment history may appear unconventional due to [her] previous employer's family circumstances." The Principal Applicant did not explain what those circumstances were. She did not explain whether relevant work experience was obscured because it appeared "unconventional." The Principal Applicant's response was entirely insufficient considering that applicants bear the burden to demonstrate they meet the requirements of the HSW class.

[26] Citing the National Occupational Classification (NOC) 2016 Version 1.3 (the "NOC Description"), the Applicants also submit that work experience is not one of the employment requirements for NOC 4412. I agree. The NOC Description simply states that "[c]ollege or other courses in home support may be required" [emphasis added]. However, the NOC Description is a guideline. The Officer was not obliged to strictly apply the requirements in the NOC Description or to limit their assessment to only the requirements listed in the NOC Description. In fact, the Officer in this case could not have been bound by the NOC Description in this manner, as the NOC Description lists only permissive employment requirements against which to assess an HSW application.

[27] The Applicants further submit that the Officer was not permitted to assess the Principal Applicant's suitability for her position. Relying on *Portillo v Canada (Citizenship and*

Immigration), 2014 FC 866 ("*Portillo*"), the Applicants submit that the employer – not an immigration officer – determines the suitability of an HSW applicant for their role.

[28] I find the Applicants' reliance on *Portillo* to be misguided. For HSW applicants with less than 24 months' experience in an eligible occupation, the ability to work is a selection criterion embedded within the legal framework for the HSW program. This distinguishes the present application from *Portillo*, in which the applicants applied for work permits under the Temporary Foreign Worker Program (at para 2). The Ministerial Instructions that created the HSW program state that HSW applicants must demonstrate "they are able to perform the work and duties described for the eligible occupation in the *National Occupation Classification*." The eligible occupation for HSW applications is NOC 4412. The Officer did not err by assessing this factor.

[29] In my view, the Applicants have not established a reviewable error in the Officer's assessment of the Principal Applicant's ability to work. The Principal Applicant's only relevant experience was a one-year diploma program. The job offer states that the Principal Applicant would be required to care for two disabled, autistic children. In light of the Applicants' submissions and the evidence before the Officer, I do not find that the Officer erred by determining that the Principal Applicant failed to demonstrate her "ability to perform the work."

B. *The Officer's Decision was Procedurally Fair*

[30] The Applicants submit that the Officer breached their procedural rights by requiring the Principal Applicant to produce financial documents on the Employer's behalf, faulting her for being unable to do so, and denying her request for an extension of time.

[31] The Respondent submits that the Officer did not err by asking the Applicants for the Employer's financial documents. Rather, it is the Respondent's position that the onus was on the Applicants to bring evidence of the Employer's ability to fulfill the employment contract underlying the HSW application. The Respondent maintains that the Officer made no error in expecting the Applicants to fulfill this obligation.

[32] I agree with the Respondent that the Officer made no reviewable error and did not infringe the Applicants' procedural rights.

[33] The Applicants submit that they had a legitimate expectation that the Officer would contact the Employer directly for the Employer's financial documents, based on IRCC's guidelines entitled "Home Child Care Provider Pilot and Home Support Worker Pilot: Assessing the application against selection criteria" (the "Guidelines") and the decision in *Jandu v Canada (Citizenship and Immigration)*, 2022 FC 1787 ("*Jandu*").

[34] However, the Guidelines' permissive language does not give rise to a legitimate expectation. The Guidelines state, "[t]o assess the validity of the job offer, officers can request further information from the employer" [emphasis added].

[35] Moreover, this case is distinguishable from *Jandu* principally because *Jandu* was based on a work permit involving a Labour Market Impact Assessment from Employment and Social Development Canada, a context in which IRCC must consider different factors (at para 31).

[36] In any event, the Officer did not breach their duty of procedural fairness by requesting that the Principal Applicant obtain financial information from the Employer. The Applicants had previously responded to the Officer's request for financial documents with the Employer's 2022 Notice of Assessment and did not relay any concerns about obtaining financial documents to the Officer. Thus, the record does not clearly establish that the Applicants had actual difficulty in obtaining documents from the Employer.

[37] Further, the Officer was informed of communication difficulties between the Applicants and the Employer at the same time that they were informed of the Principal Applicant's intention to abandon her job offer in favour of a new arrangement. When the Officer reiterated their request for more documents in the PFL dated March 1, 2024, the Principal Applicant stated that she is "not able to provide" the requested document as the Employer "never replies to [her] messages" and "[hangs] up the phone immediately" when she calls. She sought an extension "to allow [her] sufficient time to secure alternative employment with a new employer who can provide the necessary documents." The Officer did not have an opportunity to rectify any potential procedural issues arising from their request for documents to the Applicants, because the Applicants had already decided to seek alternative employment.

[38] I also find no procedural defect in the Officer's refusal to grant an extension of time. The PFL dated March 1, 2024, identified two concerns with the Applicants' application: the Principal Applicant's ability to work and the Employer's ability to fulfill the terms of the job offer. In their PFL response, the Applicants stated that "[the Principal Applicant's] employment history may appear unconventional due to [her] previous employer's family circumstances" and that she intended to obtain a new job offer from "a prospective employer who requires assistance in

caring for an elderly individual." Neither statement was an adequate response to the Officer's concerns. Granting the Applicants an additional 60 days to obtain a job offer from a new employer would not have cured the deficiencies in the HSW application. Although the Applicants requested an extension, they did so in order to secure a new job offer, not to successfully contact the Employer.

[39] I cannot fault the Officer for failing to accommodate challenges which were not substantiated by the record, which the Applicants did not raise during the application process, and which would have had no bearing on the outcome of the HSW application.

V. **Conclusion**

[40] For these reasons, I find that the Officer's decision is reasonable and procedurally fair. The Officer's decision is justified in light of the Applicants' submissions and the legal and factual constraints of the HSW application (*Vavilov* at paras 99, 126). The Officer adequately discharged their duty of procedural fairness. The procedural defects the Applicants pleaded are not supported by the record and were, in any event, not material to the refusal. This application for judicial review is dismissed.

[41] No questions for certification were raised, and I agree that none arise.

JUDGMENT in IMM-8689-24

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. There is no question to certify.

"Shirzad A."
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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