

Federal Court



Cour fédérale

Date: 20200123

Docket: IMM-2613-19

Citation: 2020 FC 115

Ottawa, Ontario, January 23, 2020

PRESENT: Mr. Justice Russell

BETWEEN:

AYESHA AZAM

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. INTRODUCTION

[1] This is an application under s 72 (1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA], for judicial review of the decision of an Immigration Officer [Officer], dated April 6, 2019 [Decision], denying the Applicant's work permit application.

II. BACKGROUND

[2] The Applicant is a citizen of Pakistan. She is a widow and mother of two children. She is currently seeking to obtain a two-year permit to work as an Office Administrator for Rapri Transport Ltd [Company] in Brampton, Ontario.

[3] The Applicant currently lives in Pakistan with her parents and two children. Her two sisters and her deceased husband's family remain in Pakistan, while her two brothers live in Canada. She holds a bachelor's degree and a master's degree in English literature. Following the death of her husband, the Applicant began working as an Assistant Manager at Toyota Garden Motors [Toyota Garden] in Pakistan in June 2015. She was later promoted to Manager of Administration in October 2017.

[4] In 2018, the Applicant states that she was advised by her brother, a lawyer in Canada, that the Company was looking to hire an Officer Administrator. Following multiple phone interviews, the Applicant says that she was offered the position on July 17, 2018. On August 31, 2018, the Company received a Labour Market Impact Assessment [LMIA] from Employment and Social Development Canada/Service Canada, which concluded that hiring a foreign national to work as an Office Administrator would have a "positive or neutral impact on the Canadian labour market." The LMIA invited the Applicant to submit her work permit application to Immigration, Refugees and Citizenship Canada [IRCC]. The LMIA noted that the job requirements included a secondary school diploma as well as written and verbal English.

[5] The Applicant submitted an application for a two-year work permit on February 13, 2019. Along with her application she included, among other documents, her bank statements, International English Language Testing System [IELTS] test results and an affidavit from her brother.

[6] Following an initial review of the evidence submitted, the Applicant was interviewed by the Officer in Islamabad, Pakistan on March 6, 2019. During the interview, the Applicant explained that she had applied for the position in order to gain international experience on her *Curriculum Vitae*. She also explained that she was made aware of the position by her brother, that she was interviewed for the position via three telephone calls, that she was asked about her work experience and education during these interviews, and that her prospective employer had had trouble filling the position. When asked to explain the sudden growth of her bank account, she explained that she receives lump sum returns on the investment of her husband's life insurance payout.

[7] A month later, the Officer advised the Applicant that her application for a work permit was rejected.

III. DECISION UNDER REVIEW

[8] On April 6, 2019, the Officer rejected the Applicant's application for a work permit stating that she was not satisfied that the Applicant would be a genuine temporary visitor who would depart Canada at the end of her authorized stay. The Officer found that the Applicant had demonstrated limited personal and financial ties to Pakistan and had familial pull factors in

Canada. The Officer also found that the job recruitment process was not sufficiently substantiated and insufficient evidence existed to explain why the Applicant would uproot her family and leave a higher level job in Pakistan for a 24-month work offer at a lower level in Canada.

[9] The Officer found that the Applicant had provided no evidence to support her statement that the recent lump sum deposits in her bank accounts were the result of investments made with her husband's life insurance payout. The Officer acknowledged that the Applicant's two sisters and parents lived in Pakistan; however, the Officer found that she had familial pull factors in Canada, including her brothers and the two children she intended to bring to Canada should she receive the work permit. As such, the Officer concluded that the Applicant had limited financial and personal ties to Pakistan but several familial pull factors in Canada.

[10] The Officer also found that there was limited corroborative evidence to establish the recruitment process. The Officer found that her brother's affidavit was not sufficient. For instance, it was unclear how her brother would know why the prospective employer chose to conduct phone interviews instead of communicate with the Applicant via email. Moreover, the Officer noted that the Applicant's answers regarding the recruitment process were vague as she was unable to provide examples of the questions she was asked during her interview. Nor was she able to provide concrete examples about how she would go about completing the tasks set out in the job description. The Officer also found that the Applicant appeared to lack knowledge concerning Excel and exhibited difficulty in English during the interview despite her IELTS test results. In addition, the Officer stated that the Applicant provided insufficient evidence and

explanations as to why she was seeking to uproot her family and leave her management position in Pakistan to obtain a temporary lower level position in Canada.

IV. ISSUES

[11] The issues raised in the present application are as follows:

1. Did the Officer breach the Applicant's right to procedural fairness?
2. Did the Officer err by failing to consider critical evidence when assessing the Applicant's financial status?
3. Did the Officer err in assessing the purpose of the Applicant's visit to Canada?
4. Did the Officer err in failing to consider critical evidence when assessing the Applicant's family ties?

V. STANDARD OF REVIEW

[12] This application was argued prior to the Supreme Court of Canada's recent decisions in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] and *Bell Canada v Canada (Attorney General)*, 2019 SCC 66. This Court's judgment was taken under reserve. The parties' submissions on the standard of review were therefore made under the *Dunsmuir v New Brunswick*, 2008 SCC 9 [*Dunsmuir*] framework. However, given the circumstances in this matter, and the Supreme Court of Canada's instructions in *Vavilov* at para 144, this Court found that it was not necessary to ask the parties to make additional submissions on the standard of review. I have applied the *Vavilov* framework in my

consideration of the application and it does not change the applicable standards of review in this case nor my conclusions.

[13] In *Vavilov*, at paras 23-32, the majority sought to simplify how a court selects the standard of review applicable to the issues before it. The majority did away with the contextual and categorical approach taken in *Dunsmuir* in favour of instating a presumption that the reasonableness standard applies. However, the majority noted that this presumption can be set aside on the basis of (1) clear legislative intent to prescribe a different standard of review (*Vavilov*, at paras 33-52), and (2) certain scenarios where the rule of law requires the application of the standard of correctness, such as constitutional questions, general questions of law of central importance to the legal system as a whole and questions regarding the jurisdictional boundaries between two or more administrative bodies (*Vavilov*, at paras 53-64).

[14] The Applicant submitted that the standard of reasonableness applies to the Officer's assessment of the evidence submitted in this case, while the standard of correctness applies to the issue of procedural fairness. The Respondent agreed that the standard of reasonableness applies to the Officer's assessment of the evidence and appeared to agree that the standard of correctness applies to the issue of procedural fairness, although submits that the duty of procedural fairness owed by visa officers is at the low end of the spectrum.

[15] Some courts have held that the standard of review for an allegation of procedural unfairness is "correctness" (*Mission Institution v Khela*, 2014 SCC 24 at para 79; *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at paras 59 and 61 [*Khosa*]). The Supreme

Court of Canada's decision in *Vavilov* does not address the standard of review applicable to issues of procedural fairness (*Vavilov*, at para 23). However, a more doctrinally sound approach is that no standard of review at all is applicable to the question of procedural fairness. The Supreme Court of Canada in *Moreau-Bérubé v New Brunswick (Judicial Council)*, 2002 SCC 11 stated that the issue of procedural fairness:

requires no assessment of the appropriate standard of judicial review. Evaluating whether procedural fairness, or the duty of fairness, has been adhered to by a tribunal requires an assessment of the procedures and safeguards required in a particular situation (*Moreau-Bérubé*, para 74).

[16] As for the standard of review applicable to the Officer's assessment of the evidence submitted with a work permit application, there is nothing to rebut the presumption that the standard of reasonableness applies in this case. The application of the standard of reasonableness to this issue is also consistent with the existing jurisprudence prior to the Supreme Court of Canada's decision in *Vavilov*. See *Cruz v Canada (Citizenship and Immigration)*, 2018 FC 1283 at para 3 and *Liu v Canada (Citizenship and Immigration)*, 2018 FC 954 at para 15.

[17] When reviewing a decision on the standard of reasonableness, the analysis will be concerned with whether it "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" (*Vavilov*, at para 99). Reasonableness is a single standard of review that varies and "takes its colour from the context" (*Vavilov*, at para 89 citing *Khosa*, above, at para 59). These contextual constraints "dictate the limits and contours of the space in which the decision maker may act and the types of solutions it may adopt" (*Vavilov*, at para 90). Put in another way, the Court should intervene only when "there are sufficiently serious

shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency” (*Vavilov*, at para 100). The Supreme Court of Canada lists two types of fundamental flaws that make a decision unreasonable: (1) a failure of rationality internal to the decision-maker’s reasoning process; and (2) untenability “in light of the relevant factual and legal constraints that bear on it” (*Vavilov*, at para 101).

VI. STATUTORY PROVISIONS

[18] The following provisions of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [*Regulations*] are relevant to this application for judicial review:

Work permits

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

(b) the foreign national will leave Canada by the end of the period authorized for their stay under Division 2 of Part 9;

200 (3) An officer shall not issue a work permit to a foreign national if

(a) there are reasonable grounds to believe that the foreign national is unable to

Permis de travail — demande préalable à l’entrée au Canada

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) 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;

200 (3) Le permis de travail ne peut être délivré à l’étranger dans les cas suivants :

a) l’agent a des motifs raisonnables de croire que l’étranger est incapable

perform the work sought;	d'exercer l'emploi pour lequel le permis de travail est demandé ;
200 (5) A determination of whether an offer of employment is genuine shall be based on the following factors:	200 (5) L'évaluation de l'authenticité de l'offre d'emploi est fondée sur les facteurs suivants :
(a) whether the offer is made by an employer that is actively engaged in the business in respect of which the offer is made, unless the offer is made for employment as a live-in caregiver;	a) l'offre est présentée par un employeur véritablement actif dans l'entreprise à l'égard de laquelle elle est faite, sauf si elle vise un emploi d'aide familial;
(b) whether the offer is consistent with the reasonable employment needs of the employer;	b) l'offre correspond aux besoins légitimes en main-d'oeuvre de l'employeur;
(c) whether the terms of the offer are terms that the employer is reasonably able to fulfil; and	c) l'employeur peut raisonnablement respecter les conditions de l'offre;
(d) the past compliance of the employer, or any person who recruited the foreign national for the employer, with the federal or provincial laws that regulate employment, or the recruiting of employees, in the province in which it is intended that the foreign national work.	d) l'employeur – ou la personne qui recrute des travailleurs étrangers en son nom – s'est conformé aux lois et aux règlements fédéraux et provinciaux régissant le travail ou le recrutement de main-d'oeuvre dans la province où il est prévu que l'étranger travaillera.

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VII. ARGUMENTS

A. *Applicant*

[19] The Applicant submits that the Officer erred by: (1) failing to provide the Applicant with an opportunity to disabuse the Officer of her credibility concerns thus breaching her right to procedural fairness; (2) unreasonably ignoring the vast majority of the Applicant's financial evidence while erroneously focusing on stale bank account balances; (3) unreasonably disbelieving the purpose of the Applicant's visit to Canada despite her clear explanations; and (4) ignoring critical evidence of the Applicant's important and numerous family ties to Pakistan.

[20] For these reasons, the Applicant submits that this application for judicial review should be granted and remitted for reconsideration before a different decision-maker.

(1) Procedural Fairness

[21] The Applicant argues that the Officer breached her right to procedural fairness by failing to give her an opportunity to address the negative credibility inferences drawn by the Officer, which the Applicant could not have reasonably anticipated. The Applicant notes that the large amount of evidence submitted in this case that contradicted the Officer's findings illustrates that the Officer's concerns did not rest with the sufficiency of the evidence but rather with the credibility of the information. As such, the Applicant states that the Officer should have provided her with an opportunity to address the Officer's credibility concerns regarding her financial status, her family ties, her English language skills, and the recruitment process.

[22] First, the Applicant notes that, despite the plethora of evidence submitted concerning her financial status, the Officer was not satisfied that the Applicant had sufficient financial ties in Pakistan. The Applicant submits that had she been made aware of the Officer's skepticism concerning the investment of her deceased husband's life insurance payout, she could have disabused the Officer of this concern. The Applicant notes that this Court has held that where a decision-maker has an impression of deficiency in the evidence, fairness requires that they give an applicant the opportunity to disabuse them of that impression, citing *Gay v Canada (Citizenship and Immigration)*, 2007 FC 1280 at para 31 [*Gay*] and *Rukmangathan v Canada (Minister of Citizenship and Immigration)*, 2004 FC 284 at para 22.

[23] Second, the Applicant notes that she was not made aware of the concerns regarding her family ties in Pakistan. In fact, the Applicant notes that the Decision does not make it clear as to whether she even believed that the Applicant had family in Pakistan. As such, the Applicant argues that it was incumbent upon the Officer to ask for clarification if this was the case. The Applicant states that this Court has found that an applicant's right to procedural fairness is breached in such situations where an applicant has been advised of one set of concerns, but then their application is later refused for other reasons. See *Jin v Canada (Citizenship and Immigration)*, 2014 FC 612 at paras 12-13.

[24] Third, the Applicant states that the Officer breached her right to procedural fairness by finding that her English language skills were not consistent with her IELTS test results despite failing to directly put this concern to the Applicant during the interview.

[25] Fourth, the Applicant notes that the Officer breached her right to procedural fairness by failing to raise her concerns regarding the generic nature of the Applicant's response to the question regarding the recruitment process. The Applicant notes that she was asked one general question regarding the recruitment process but was not made aware of the Officer's desire for more detail.

(2) Assessment of Financial Status

[26] The Applicant submits that the Officer's finding that she was unlikely to leave Canada due to her financial status and limited personal assets in Pakistan is unreasonable as it is clear that the Officer ignored the plethora of financial evidence submitted which contradicts this finding.

[27] Indeed, the Applicant notes that the evidence before the Officer indicated that she had substantial funds in her bank accounts, had ample income from Toyota Garden, owned land in Pakistan, and co-owned a house with her parents. However, the Applicant notes that the Officer failed to even cite this financial evidence.

[28] Moreover, the Applicant submits that it was unreasonable for the Officer to focus exclusively on the lower stale balances of the Applicant's bank accounts rather than the most recent elevated balances. The Applicant notes that there is no reason to doubt that the recent lump sum deposits emanate from the investment of her deceased husband's life insurance payout.

(3) Purpose of Visit to Canada

[29] The Applicant states that the Officer also erred in finding that she was not a genuine temporary visitor who would depart Canada at the end of her authorized stay. Specifically, the Applicant notes that the Officer: (1) ignored the explanation she gave as to why she would accept a lower level job in Canada; (2) inadequately assessed her language skills; and (3) improperly focused on the recruitment process.

[30] First, the Applicant argues that she clearly explained to the Officer that she sought the position in Canada because she wanted to add international experience on her *Curriculum Vitae*. The Applicant notes that she clearly explained that, despite the fact that the position represents a lower level of work, this international experience will be beneficial to her career upon her return because such experience is highly valued in Pakistan. As such, it is not clear what the Officer meant when she stated that the Applicant provided an insufficient explanation. The Decision does not cite or engage with the Applicant's explanation.

[31] Second, the Applicant submits that the Officer's conclusion concerning the Applicant's English language skills is unclear as the Officer simply comments that the Applicant exhibited some difficulty in speaking English during the interview despite her IELTS test results. Moreover, the Applicant notes that this finding is unreasonable and fails to take account of the fact that the Applicant would naturally be nervous in such a situation.

[32] Third, the Applicant states that the Officer's finding concerning the recruitment process is unclear. Absent a finding that the job offer was not genuine, the Applicant notes that this consideration was irrelevant to the conclusion reached by the Officer regarding the Applicant's willingness to leave Canada.

(4) Assessment of Family Ties

[33] The Applicant also argues that, in finding that she would be unlikely to leave Canada at the end of her authorized stay, the Officer unreasonably ignored her evidence of numerous and important family ties in Pakistan. The Applicant notes that her family ties in Pakistan are far more important in numbers and in strength as compared to those in Canada.

[34] The Applicant notes that she and her children are very close to her aging parents with whom they reside, and are also very close with her two sisters who live in Pakistan. They are also very close to her deceased husband's family, with whom the Applicant's children remain in close contact. In contrast, the Applicant notes that she only has two brothers living in Canada.

[35] Given this overwhelming evidence of strong family ties in Pakistan, together with the Officer's failure to explain why she simply focussed on the Applicant's ties to Canada, the Decision reveals an unreasonable failure to consider critical evidence. The Applicant cites this Court's decisions in *Gay* at paras 33-34 and *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, 157 FTR 35 at para 17.

B. *Respondent*

[36] The Respondent argues that the Officer did not err in reaching her Decision as the Officer: (1) was under no obligation to notify the Applicant of the many deficiencies in her application; (2) reasonably found that the Applicant provided insufficient evidence of financial ties to Pakistan; (3) reasonably assessed the purpose of the Applicant's visit; and (4) properly assessed all relevant evidence in determining the pull of the Applicant's familial ties to Canada. For these reasons, the Respondent argues that this application for judicial review should be dismissed.

(1) Procedural Fairness

[37] The Respondent argues that there was no obligation on the Officer to notify the Applicant of the deficiencies in her application or the deficiencies in the supporting documents submitted. Furthermore, the Respondent says there was no obligation on the Officer to provide the Applicant with an opportunity to address any concerns regarding incomplete, unclear, or insufficient supporting documents to satisfy the Officer that the Applicant met the requirements of the *IRPA* and the *Regulations*.

[38] The Respondent submits that the Applicant's position is not supported by recent jurisprudence. The Respondent notes that this Court has held that decision-makers are not required to apprise an applicant of concerns that arise from the requirements of the *IRPA* or *Regulations*, citing *Bighashi v Canada (Citizenship and Immigration)*, 2013 FC 1110 at para 12.

The Respondent also notes that the factual circumstances in this case differ from *Gay*, as *Gay* dealt with a specific request for evidence with which the applicant clearly complied.

[39] The Respondent submits that the Officer was not required to advise the Applicant of the deficiencies in the evidence submitted regarding her financial status, nor the deficiencies in the evidence concerning the recruitment process, as these issues were raised during the interview. Similarly, the Officer was not required to advise the Applicant that her family ties in Canada were a pull factor as this was simply an issue of weight.

(2) Assessment of Financial Status

[40] The Respondent submits that the Officer did not err in concluding that the evidence of the Applicant's financial ties in Pakistan was insufficient. It was reasonable for the Officer to conclude that the Applicant's evidence of her finances did not demonstrate a stable pattern of readily available financial resources, particularly given the fact that the Applicant failed to provide corroborating evidence supporting her explanation for the large recent lump sum deposits. It was reasonable for the Officer to expect the Applicant to provide evidence demonstrating any life insurance payout and subsequent investments.

[41] Moreover, concerning the financial evidence not explicitly referred to by the Officer, the Respondent argues that it is trite law that the Officer is presumed to have considered all the evidence submitted. The Respondent notes that, considering all the financial evidence in this case, it was reasonable for the Officer to conclude that the Applicant had not sufficiently established strong financial ties to Pakistan, particularly since she would no longer receive a

salary from Toyota Garden should the work permit be granted. Also, no value was provided for the land she owned, and her house in Pakistan was co-owned by her parents.

(3) Purpose of Visit to Canada

[42] The Respondent submits that it was reasonable for the Officer to find that the Applicant had not adequately demonstrated the purpose of her proposed visit to Canada. Specifically, the Respondent notes that it was reasonable for the Officer to find that the Applicant's explanation was inadequate as to why she was willing to uproot her family for two years and leave her management position in Pakistan in order to take a lower position as an Office Administrator in Canada.

[43] Though the Respondent notes that the Officer considered the Applicant's explanation, it was open for the Officer to find it illogical, notably in light of the further deficiencies in the Applicant's evidence. For instance, the Respondent notes that the Applicant provided limited evidence concerning the recruitment process. The affidavit from her brother was unclear as to how he would have personal knowledge, and the Applicant provided vague responses when questioned about the tasks she would be undertaking as Office Manager. She also provided no specific examples of the interview questions asked by her prospective employer, and demonstrated clear difficulties in English during the interview with the Officer.

(4) Assessment of Family Ties

[44] The Respondent submits that the Officer reasonably assessed the Applicant's familial pull factors in Canada. The Officer clearly noted in her Decision that the Applicant had family in Pakistan as well in Canada. However, the Respondent holds that she was not required to engage in a mathematical enquiry of the Applicant's family ties in Canada as compared to those in Pakistan.

VIII. ANALYSIS

[45] I agree with the Respondent that the onus was upon the Applicant to demonstrate that she would leave Canada at the end of the temporary authorized period. See, for example, *Dhillan v Canada (Citizenship and Immigration)*, 2009 FC 614 at para 41.

[46] I also agree with the Respondent that, generally speaking, the law is clear that, apart from a few exceptions that are mostly credibility concerns, there is no obligation on a visa officer to notify an applicant of deficiencies in their application or to provide an opportunity to supplement the application with better supporting documents. An applicant is not entitled to a running tally or an opportunity to correct deficiencies in their application. See, for example, *Singh v Canada (Citizenship and Immigration)*, 2016 FC 509 at para 38.

[47] Clearly, a visa officer has a wide discretion in these matters and the Court must respect that. However, a decision must be intelligible, the officer's discretion cannot be exercised in an arbitrary way, and the result must be reasonable and fair.

[48] The Applicant was interviewed in Islamabad and explained why she wanted to come to Canada: she wanted to add international experience to her *Curriculum Vitae* so that when she returned to Pakistan, she would get a “well-paid job.”

[49] At the interview, the Applicant was questioned closely on this issue because, in Pakistan, she was employed as a Manager of Administration and HR at Toyota Garden, while the position she sought in Canada was as an office administrator (NOC 1221) for the Company. The concern was legitimate. Why would the Applicant seek what looks like a less senior position in Canada if she wishes to enhance her credentials in Pakistan? The Applicant provided the following answer:

... 38. What is the job he is hiring you for? They are located at 252 Clarence Street, Brampton, ON 39. Repeated question Office Administrator. 40. Do you think that job is more or less senior than Manager? It is less senior. But I am ready for it, I want to add international experience on my CV. I can come back to Pakistan and will get a well-paid job. 41. But why wouldn't you want to get international experience at the manager level? Ugh...Because I want to you know to go higher for higher positions, this will benefit me, in the future more. 42. Okay, but wouldn't a position as a manager help you more? I want a higher position to earn more and more. 43. No I meant a manager position in Canada? Through this opportunity, I will learn a lot. 44. Can you give some specific examples apart from just being from Canada. It will ugh... it sounds impressive that I have Canadian, international credentials. I will also have more money. 45. Repeat question. In Pakistan, people give importance to this thing, you know these qualities have more potential on other CVs. It will be beneficial for me. 46. The employer in Canada said he liked your qualifications but you were never an office administrator, can you explain this to me? I still had a lot of admin work. So I still handled a lot of admin work. I have transferable skills. I can learn a lot, I have done a lot of admin work...

[50] In other words, the Applicant explains that, although the job in Canada looks like a lower position, it will, in fact, pay her more money than she earns in Pakistan and, more importantly, it

will provide her with the kind of international experience that will allow her, as it has allowed others, to advance her career in Pakistan and earn more there.

[51] The Applicant's assertion that the prospective job will provide her with international experience that will assist her in Pakistan, is nowhere questioned. In the Decision, the Officer simply says that:

[T]he PA provided insufficient evidence and explanation as to why she would leave a higher level job in Pakistan and uproot her family, for a 24 month work offer, at a lower level, in Canada.

[52] It isn't clear, here, what additional "evidence" the Officer has in mind, but the Applicant provided a very clear and solid explanation as to why she would leave a higher level job for 24 months in Canada: (1) the job in Canada pays more than her job in Pakistan, and (2) more importantly, the job in Canada will give her international qualifications that she can use on her return to Pakistan to seek promotions and better pay. I don't think her motives could be clearer, and there is nothing to suggest that such motives are false or unreasonable. If the Officer does not accept this clear and reasonable explanation for credibility concerns, then those concerns should have been put to the Applicant. She gave a full explanation and had no reason to think it would be regarded as inadequate.

[53] In my view, then, the Officer is too cavalier in stating the case against the Applicant on this issue. He or she overlooks a full explanation that addressed the concern raised at the interview as to why she would seek a lower ranking job in Canada. There is no indication of what the Applicant could have provided by way of further explanation. It is also not clear why the finding of insufficient evidence and explanation on this issue made it less likely that she

would leave Canada at the end of the visa period. There is no finding that the job in Canada was not genuine. It looks to me as though the Officer is making an implausibility finding regarding the Applicant's explanation. An implausibility finding should only be made in the clearest of cases, and this isn't one of them.

[54] The problem is compounded by a similar cavalier approach to family ties; always an important consideration in this kind of decision.

[55] The Applicant provided significant evidence of her family situation in Pakistan, yet the Officer cites only "familial pull factors" that "exist in Canada, including both children she seeks to bring with her." No mention is made of the much more significant "familial pull factors" that exist in Pakistan. On this issue, the Officer does not assert a lack of evidence on the family situation in Pakistan.

[56] The Applicant only has two brothers in Canada, one of whom alerted her to the job she seeks, and who assisted her in her visa application. There is nothing negative about this. Canada is a desirable location for those seeking international experience that will enhance their credentials in their home country. And it only makes sense to use the assistance of family members who are already in Canada. But this does not mean that such a connection inevitably outweighs any incentive to return to Pakistan. The Officer was unreasonable in simply adding "familial pull factors" as a negative factor without considering the full context that includes "familial pull factors" in Pakistan. This is simply a refusal to consider evidence that is directly

linked to the issue of whether the Applicant will return to Pakistan at the end of the permitted period. See *Gay*, above, at paras 33-34.

[57] The Applicant has raised other points for review, but I am satisfied that these significant errors render the Decision unreasonable and there is no need to proceed with further analysis.

[58] The fact is that this Decision is not entirely intelligible for a number of reasons. For example:

- (a) It is unclear what the Officer's finding on the Applicant's English language ability is or why it is not adequate for the proposed employment in Canada, or why it means she is less likely to return to Pakistan;
- (b) The Officer appears to have reservations about the recruitment process but does not adequately or reasonably explain what they are and/or why they suggest the Applicant is less likely to return to Pakistan.

[59] In addition, there are a number of concerns related to procedural fairness. For example, having produced bank statements as required, the Officer faults the Applicant in the Decision for not producing "substantiating documents" of her various investments. At the interview, the Applicant was simply asked "I notice your Bank AlFahah statements show a serious lump sum cheque deposits. What is the source of these funds?" The Applicant explained that when she got the insurance money on the death of her husband she invested the amount in various businesses. The Officer does not ask for anything further and the Applicant could have no idea that she needed to produce further "substantiating documents" than she had already produced. Behind the

Officer's finding there is a suggestion that the Applicant is not believed; yet this is masked by an insufficient evidence finding. The Applicant was given no opportunity to satisfy the Officer on a matter that she could not have anticipated would be an issue after she had produced the required bank statements.

[60] Similar problems arise with regards to the Officer's treatment of the Applicant's English language skills. The Applicant produced acceptable IELTS scores but the Officer discounted these as follows:

Additionally, although I note her IELTS score, many questions had to be repeated and re-explained at the interview due to her misunderstanding of questions being asked.

[61] The misunderstanding of questions could arise in many ways. However, what the Officer does here is discount formal IELTS scores from tests that are specifically designed to test language ability in favour of her own assessment based upon having to repeat questions at the interview. The Officer does not explain precisely what questions were asked or provide actual responses, so I have no way of knowing if this amounted to any kind of meaningful test of the Applicant's abilities in English that could reasonably supplant formal IELTS scores. And, as with so many of the Officer's findings, there is no explanation of what the Applicant's English language ability has to do with the issue of whether she will leave Canada at the end of the work period.

[62] In my view, then, the Decision is unreasonable on important issues and, at times, unintelligible. All of which means that it must be returned for reconsideration.

[63] Counsel agree there is no question for certification and I concur.

JUDGMENT IN IMM-2613-19

THIS COURT'S JUDGMENT is that

1. The application is allowed. The Decision is quashed and the matter is returned for reconsideration by a different officer.
2. There is no question for certification.

“James Russell”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2613-19

STYLE OF CAUSE: AYESHA AZAM v THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

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JUDGMENT AND REASONS: RUSSELL J.

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APPEARANCES:

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FOR THE APPLICANT

Amy King

FOR THE RESPONDENT

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