Federal Court  Cour fédérale

**Date: 20200129**

**Docket: IMM-3669-19**

**Citation: 2020 FC 157**

**Ottawa, Ontario, January 29, 2020**

**PRESENT: The Honourable Mr. Justice Favel**

**BETWEEN:**

**BALKAR SINGH SAMRA**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION**

**Respondent**

# JUDGMENT AND REASONS

## I. Background

[1] Mr. Balkar Singh Samra, the Applicant, is a citizen of India. He applies for judicial review, pursuant to s 72 of the *Immigration and Refugee Protection Act*, SC 2001, c 27, of a decision of the High Commission of Canada in India on May 29, 2019 that refused his work permit application under the Temporary Foreign Worker Program. The Applicant requests that the decision be set aside and remitted to a different decision-maker for redetermination. Should

the Court grant said relief, the Applicant also requests that he be allowed to submit further documents in support of his application. For the following reasons, the application for judicial review is allowed.

## II. Decision under Review

[3] In May 2019, the Applicant applied for a work permit to work in Canada as a plumber. National Occupation Code [NOC] 7251, which lists the duties of a plumber and provides guidance to assess whether an individual meets the requirements.

[4] In his application, the Applicant submitted an application including a job offer with a British Columbia plumbing company under NOC 7251, proof of IELTS scores, Indian National Trade Certificate in Plumbing, and his work experience as a plumber—one year of part-time work for a business, around two years of self-employed work, and one more year of work for a business.

[5] An officer refused the application on May 29, 2019. After summarizing the evidence, the officer concluded that, based on the documents and information on file, the Applicant was "not able to demonstrate that [he] will be able to adequately perform the work". The GCMS notes also show that the officer was not satisfied, having reviewed the evidence, that the Applicant is, "a bona fide temporary resident who would depart Canada at the end of the authorized period of stay".

## III. Issues and Standard of Review

[6] The Applicant presents the issues as:

1. Did the officer fetter his discretion, act without regard to the evidence, or fail to provide sufficient reasons for denying the work permit application?

2. Did the visa officer fail in procedural fairness by failing to conduct an interview with the Applicant or reaching a decision without conscientious analysis of the documents submitted with the application?

[7] The Respondent argues that the decision was both reasonable and procedurally fair.

[8] I will consider the issues to be:

(A) Was the officer's decision reasonable?

(B) Was the decision procedurally fair?

[9] Reasonableness is now the presumptive standard of review. Accordingly, the decision as a whole will be assessed on a reasonableness standard, as I can see no reason to rebut this standard in the context of a work permit. The two features of a reasonable decision are that it is based on an internally coherent and rational chain of analysis, and that it justified in relation to the facts and the law that constrain the decision maker. (*Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 at paras 16–17, 101–102).

[10] Questions of procedural fairness afford no deference to the decision-maker (*Yankson v. Canada (Citizenship and Immigration)*, 2019 FC 1608 at para 14).

## IV. Submissions and Analysis

### A. *Was the officer's decision reasonable?*

#### (1) Applicant's Position

[11] On my review of the Applicant's written submissions, I see no specific arguments related to the officer fettering his discretion. The Applicant does cite several cases for the following propositions relating to work permits: It is reasonable to require that an applicant meets job requirements, but unreasonable not to take into account the fact that some orientation training may be available (*Portillo v. Canada (Citizenship and Immigration)*, 2014 FC 866 [*Portillo*]). The possibility of financial betterment or work experience cannot, in itself, constitute grounds for rejection of a work permit (*Chhetri v. Canada (Citizenship and Immigration)*, 2011 FC 872 [*Chhetri*]). While economic incentive to stay in Canada is a reasonable consideration, the majority of applicants have some economic reason to come to Canada, so this cannot easily correlate with them being likely to overstay (*Rengasamy v Canada (Citizenship and Immigration)*, 2009 FC 1229 at para 14). An officer's failure to consider relevant evidence renders erroneous factual and legal inferences which can make conclusions unreasonable (*Wijesinghe v Canada (Citizenship and Immigration)*, 2010 FC 54 [*Wijesinghe*]). Generally, officers are not in the position to assess an applicant's job skills (*Randhawa v Canada (Citizenship and Immigration)*, 2006 FC 1294 at para 12 [*Randhawa*])

[12] The Applicant claims that he met the requirements of his job offer because he met the required IELTS score and has extensive work experience in the industry. He claims that the officer provided insufficient reasons about why he could not have performed his duties.

(2) Respondent's Position

[13] The Respondent takes the position that the decision was reasonable. The Applicant was unable to demonstrate that he met the requirements of NOC 7251 because his work education and experience was deficient—his education was for a one-year program and his work experience was only four years instead of five. In addition, the officer wrote that the Applicant did not provide sufficient detail of his duties to allow the officer to determine that he could perform the work required.

[14] The Respondent submits that the officer is presumed to have weighed and considered all evidence unless the Applicant proves the contrary (*Rahman v Canada (Citizenship and Immigration)*, 2016 FC 793 at para 17 [*Rahman*]). The officer was not required to refer to every piece of evidence, provide extensive reasons, nor provide the applicant with a running score of his application (*Sulce v Canada (Citizenship and Immigration)*, 2015 FC 1132 at paras 16, 31 [*Sulce*]; *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para 16).

[15] The Respondent distinguishes most of the cases cited by the Applicant. First, this case is not similar to *Portillo and Chherti*, where the officers in those cases used their own standards to determine the applicant's eligibility. Second, *Wijesinghe* does not apply because, unlike in that

case, the Applicant is not overqualified for a position. Third, unlike in *Dhanoa*, the officer in this case did not rely on stereotypes about why the Applicant would want to come to Canada. Finally, *Randhawa* is distinguishable because the officer did not import her own standards into the NOC requirements in this case.

[16] In short, the Applicant was simply unable to meet the NOC Requirements. Therefore, it was reasonable to reject the application.

(3) Analysis

[17] Work permits are refused if officers have reasonable grounds to believe that the foreign national is unable to perform the work sought: *Immigration and Refugee Protection Regulations*, SOR/2002-227:

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| 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 : |
| […] | […] |
| (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 foreign national is unable to | a) l'agent a des motifs raisonnables de croire que l'étranger est incapable d'exercer l'emploi pour lequel |

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| perform the work sought; | le permis de travail est demandé ; |

[18] In this context and as the Respondent highlights, the officer's requirements surrounding the decision are quite low. There is no duty to engage in a dialogue with Applicants regarding the strengths or weaknesses of their application, nor to provide extensive reasons (*Sulce* at paras 16, 31). The officer is also presumed to have considered all evidence before him (*Rahman* at para 17).

[19] In *Vavilov*, the Supreme Court has made it clear that decisions must be properly reasoned. They must not simply be justifiable, but justified. Decision makers must show clear chains of analysis in reaching their conclusions. If they do not, the decision is at risk of being unreasonable (*Vavilov* at paras 101-104).

[20] The Applicant has not seriously argued that the officer has fettered his discretion nor, in my view, does such a finding arise from the record. I note that the officer seems to have been alive to the evidence before him, as he listed the Applicant's documents in his decision notes.

[21] I am persuaded by the Respondent's argument that many of the cases cited by the Applicant are distinguishable and do not apply.

[22] However, I find the decision unreasonable because the officer's decision is merely a recitation of the evidence before him followed by a conclusion. There is a lack of analysis. Although it is certainly possible to speculate that the Applicant did not meet the requirements to

attain a work visa, this is not stated in the decision or GCMS notes in the form of an analysis. It is only stated as a conclusion. There is no appropriate link between them.

[23] Reading the reasons and outcome as an organic whole, the decision does not meet the *Vavilov* requirement of showing a logical chain of reasoning. Extensive reasons are not required; but there must be more than in the instant case—there must be some statement about *why* the officer reached the conclusions that he did.

B. *Was the decision procedurally fair?*

(1) Applicant's Position

[24] The Applicant argues that the officer, "speculated about the Applicant's education and work experience and ability to work adequately"—therefore, he argues that the officer was required to give him an interview. He cites a passage from *Kaur v Canada (Citizenship and Immigration)*, 2017 FC 782 explaining how an applicant's language ability can be assessed through "an interview or official testing".

(2) Respondent's Position

[25] The Respondent notes that the officer's duty of procedural fairness in this context is low, with the officer having no obligation to notify the Applicant of deficiencies in the application or supporting documentation. The officer only needs to offer the opportunity to address credibility, accuracy, or the genuine nature of the applicant's submitted information (*Lazar v Canada (Citizenship and Immigration)*, 2017 FC 16 at paras 20-21).

[26] The Respondent argues that there were no issues of credibility, accuracy, or the genuine nature of the applicant's submitted information. Therefore, there was no obligation to grant the Applicant an interview.

(3) Analysis

[27] I am persuaded by the Respondent's argument. There were no issues relating to credibility or accuracy of evidence, so no interview was required.

## V. Conclusion

[28] The application for judicial review is allowed. The Applicant is not granted leave to submit new materials.

[29] There is no order for costs and there is no question for certification.

**JUDGMENT in IMM-3669-19**

**THIS COURT'S JUDGMENT is that**:

1. The application for judicial review is allowed and the matter is referred to another officer to be re-determined.

2. There is no question for certification and none arises.

3. There is no order as to costs.

"Paul Favel"
Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

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| **DOCKET:** | IMM-3669-19 |
| **STYLE OF CAUSE:** | BALKAR SINGH SAMRA v THE MINISTER OF CITIZENSHIP AND IMMIGRATION |
| **PLACE OF HEARING:** | VANCOUVER, BRITISH COLUMBIA |
| **DATE OF HEARING:** | DECEMBER 2, 2019 |
| **JUDGMENT AND REASONS:** | FAVEL J. |
| **DATED:** | JANUARY 29, 2020 |

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| Erica Louie | FOR THE RESPONDENT |

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