Federal Court Cour fédérale

Date: 20210917

Docket: IMM-724-21

Citation: 2021 FC 961

Ottawa, Ontario, September 17, 2021

PRESENT: The Honourable Mr. Justice Ahmed

BETWEEN:

OMID RASSOULI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Mr. Omid Rassouli, seeks judicial review of the decision of an immigration officer (the "Officer") of Immigration, Refugees and Citizenship Canada ("IRCC"), refusing the Applicant's permanent residency application under the self-employed persons class. By letter dated September 17, 2020, the Officer found that the Applicant did not meet the definition of a "self-employed person" as defined under subsection 88(1) of the *Immigration and*

Refugee Protection Regulations, SOR/2002-227 ("*IRPR*"), as the Applicant provided insufficient details as to how he intends to become self-employed.

[2] The Applicant submits the Officer erred by concluding that the Applicant did not have the relevant experience required by subsection 88(1) of the *IRPR*, and that the Applicant did not have the ability and intent to become self-employed in Canada.

[3] For the reasons set out below, I find the Officer's decision reasonable. The Officer's determination that the Applicant did not have the ability and intent to become self-employed in Canada is justified, transparent, and intelligible. I therefore dismiss this application for judicial review.

II. **Facts**

A. *The Applicant*

[4] The Applicant is a 27-year-old citizen of Iran and competitive martial arts athlete. He began kickboxing in 2012 and started competing at an international level in 2015. He applied for permanent residence in Canada with the intention to become a Martial Arts and Athletics Instructor under National Occupational Classification 5254 — Program leaders and instructors in recreation, sport and fitness. The Applicant's application indicated that he intended to be a self-employed martial arts and athletics instructor with the goal of eventually opening his own gym and fitness centre.

[5] Based on the record, it does not appear that the Applicant has any history of employment in the field of athletic coaching or instructing, nor has he received any training to coach, teach or lead activities related to sports, fitness or recreation. Although the Applicant submits that he has the requisite relevant experience to become self-employed in Canada, the Applicant's evidence before the Officer consisted of athletic certificates, awards and news stories demonstrating his participation in various athletic events.

[6] On February 18, 2019, the Applicant applied for a permanent residence visa under the self-employed class as an athlete. His application was refused on September 17, 2020.

B. *Decision under Review*

[7] In his Notice of Application for Leave and Judicial Review, the Applicant seeks judicial review of the Officer's September 17, 2020 decision. In his reply memorandum, however, the Applicant states that he is challenging the September 29, 2020 decision to refuse to re-open his file for re-consideration. The Applicant's reply submissions remain directed at the September 17, 2020 decision.

[8] Rule 302 of the *Federal Courts Rules* states that "Unless the Court orders otherwise, an application for judicial review shall be limited to a single order in respect of which relief is sought" (*Federal Courts Rules,* SOR/98-106, R 302). In this case, leave was only granted with respect to the Officer's September 17, 2020 decision. As such, this decision does not review the September 29, 2020 application for reconsideration.

[9] In assessing the application for a permanent residence visa, the Officer concluded that the Applicant did not have the ability and intent to be self-employed and, therefore, did not meet the definition of a self-employed person under subsection 88(1) of *IRPR*. No interview was held, nor did the Officer request any further documentation from the Applicant. The Officer's decision is largely contained in their Global Case Management System ("GCMS") notes, which form part of the reasons for their decision (*Torres v Canada (Citizenship and Immigration)*, 2019 FC 150 at para 19).

[10] The Officer noted that the Applicant provided insufficient information to indicate he had conducted adequate research of the market or made contacts in Canada to assess the feasibility of his plan. The Officer further stated that the Applicant had failed to show he had done adequate research specific to his intended destination in his proposed business field or that he had adopted a comprehensive business plan that would reasonably be expected to lead to future self-employment. The GCMS notes state, "other than a short statement in [the Applicant's] Schedule 6A subject has provided insufficient details as to how he intends to achieve this goal."

III. <u>Issues and Standard of Review</u>

[11] This application for judicial review raises the following issues:

A. *Is the Officer's decision reasonable?*

B. *Did the Officer breach their duty of fairness?*

[12] It is common ground between the parties that the first issue is reviewed upon the reasonableness standard. I agree (*Zhang v Canada (Citizenship and Immigration)*, 2019 FC 764 at para 12). I find that this conclusion accords with the Supreme Court of Canada's decision in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 ("*Vavilov*") at paras 16-17.

[13] The second issue is reviewed upon what is best reflected in the correctness standard, as it concerns whether the Officer complied with the principles of procedural fairness (*Canadian Association of Refugee Lawyers v Canada (Immigration, Refugees and Citizenship)*, 2020 FCA 196 at para 35).

[14] 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).

[15] For a decision to be unreasonable, the applicant must establish the decision contains flaws that are sufficiently central or significant (*Vavilov* at para 100). 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).

[16] Correctness, in 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] 2 SCR 817 at paras 21-28; (*Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54).

IV. <u>Analysis</u>

A. *Is the Officer's decision reasonable?*

[17] Subsection 88(1) of the *IRPR* provides the following definition of a "self-employed person":

self-employed person means a foreign national who has relevant experience and has the intention and ability to be self-employed in Canada and to make a significant contribution to specified economic activities in Canada.	**travailleur autonome** Étranger qui a l'expérience utile et qui a l'intention et est en mesure de créer son propre emploi au Canada et de contribuer de manière importante à des activités économiques déterminées au Canada.

[18] The Applicant submits that the Officer's decision is unreasonable because the Officer erred by stating that the Applicant does not have the relevant experience under subsection 88(1)

of the *IRPR*. The Applicant further submits that the Officer erred by finding that the Applicant did not have the ability and intent to become self-employed in Canada.

[19] The Applicant asserts that the Officer's decision is not justified in relation to the evidence submitted by the Applicant, which the Officer failed to address. The Applicant submits that he established his required ability and intent to become self-employed in his Schedule 6A document; his representative's submission letter; and by submitting documents of international events that he participated and won prizes in. He cites *Wei v Canada (Citizenship and Immigration)*, 2019 FC 982 ("*Wei*"), for what is required of an applicant to demonstrate intent:

> [43] Accordingly, the test in section 88(1) of the IRPR for what might be described as "commitment or promised intention", in combination with considering the applicable experience and ability factors, would require an applicant to persuasively demonstrate past effort and commitment of sufficient weight such that the officer may conclude that the applicant has demonstrated that he or she will likely proceed as a self-employed person after obtaining permanent resident status to implement the project, which will make a significant contribution to the specified cultural activity in Canada. Under normal circumstances, this will require a demonstration of significant pre-application efforts taken with a view to advancing a well-conceived, researched and executed project that indicates a serious possibility of economic success, such that it is unlikely that the applicant would not proceed with the project so long as permanent residency is obtained to enable this to happen under normal circumstances.

[20] The Respondent notes that the Applicant's further affidavit contains a detailed business plan that did not form part of the materials before the Officer when the application was considered. As such, the Respondent submits that there was insufficient evidence to discharge the Applicant's onus to establish that he met the requirements under the *IRPR*.

[21] In determining that the Applicant did not meet the definition of a "self-employed person," I find the Officer did not rely on the Applicant's lack of relevant experience. Rather, the Officer relied on the finding that the Applicant does not have **the ability and intent** to become self-employed. The Officer did not err by failing to reference documents regarding the Applicant's experience, as alleged by the Applicant, because the Officer was instead concerned with the lack of evidence demonstrating that the Applicant had researched the market he intended to enter, or that he had adopted any plan that would lead him to become self-employed. This reasoning is displayed by the Officer's statement, "other than a short statement in his Schedule 6A form [the Applicant] provided insufficient details" to indicate he had sufficient knowledge of the business environment.

[22] The Officer's determination that the Applicant does not have the ability and intent to become self-employed is justified in relation to the relevant facts (*Vavilov* at para 85). The Applicant asserts that the nature and scope of the business were explained in section 10 of his Schedule 6A form and his representative's letter of explanation. However, the focus of the representative's letter is his athletic achievements, not his plan to become self-employed. The Applicant's Schedule 6A form also lacks information regarding such details:

> He will as a self employed athlete lead and instruct groups and individuals in recreational, sports, fitness or athletic programs using community or outdoor centers with the objective of opening his own gym and athletics sports and fitness center. Although self employed, Mr. Rassouli satisfies the qualification requirements of NOC 5254 because he holds a secondary school diploma and he has extensive Martial Arts program activity as listed in Appendix A.

[23] The Officer's determination is also justified in relation to the relevant law (*Vavilov* at para 85). The jurisprudence affirms that an insufficient plan to become self-employed is a reasonable ground to find that a foreign national does not meet the requirements of subsection 88(1) of the *IRPR*.

[24] In *Singh v Canada (Immigration, Refugees and Citizenship)*, 2018 FC 84 ("*Singh*") at para 36, Justice Manson found that where "an applicant's plans are excessively vague or unrealistic, it is unlikely that he can meet eligibility requirements. Similarly, a lack of research with respect to a proposed venture could justify a finding that the plan was not viable."

[25] As noted by the Applicant, this Court found in *Wei* that the test in subsection 88(1) of the *IRPR* under normal circumstances, "will require a demonstration of significant pre-application efforts taken with a view to advancing a well-conceived, researched and executed project that indicates a serious possibility of economic success" (*Wei* at para 43). This Court went on to find that "fundamental to every application is a demonstration that the projects have been thoroughly conceived and concrete steps taken to ensure the implementation that will result in a successful economic activity to meet the requirements of a self-employed immigrant under subsection 88(1)" (*Wei* at para 44).

[26] Finally, the Applicant submits that pursuant to subsection 100(2) of the *IRPR*, he has a total of 53 assessment points, whereas the GCMS notes show no points were afforded to the Applicant. The Applicant submits that this discrepancy indicates that the Officer did not review the complete file, or it was not before the Officer.

[27] The Applicant's submissions with regard to assessment points have no bearing on the Officer's decision. Subsection 100(2) of the *IRPR* affirms that a failure to meet the requirements of subsection 88(1) is alone sufficient to dispose of an application under the self-employed persons class:

Minimal requirements	**Exigences minimales**
100 (2) If a foreign national who applies as a member of the self-employed persons class is not a self-employed person within the meaning of subsection 88(1), the application shall be refused and no further assessment is required.	**100 (2)** Si le demandeur au titre de la catégorie des travailleurs autonomes n'est pas un travailleur autonome au sens du paragraphe 88(1), l'agent met fin à l'examen de la demande et la rejette.

[28] As the Officer reasonably determined that the Applicant did not meet the requirements of subsection 88(1) of the *IRPR*, I find it was reasonable for the Officer not to consider the Applicant's assessment points pursuant to subsection 100(2).

B. *Did the Officer breach their duty of fairness?*

[29] The Applicant submits that his right to procedural fairness was breached because the Officer did not request a business plan from the Applicant, yet faulted him for not having one. The Applicant argues that he has substantially researched his business and prepared a professional business plan that could have been submitted if requested. He contends that the Citizenship and Immigration Canada guidelines do not require a business plan to be submitted.

[30] A review of the Officer’s GCMS notes indicates that the Officer had concerns with the Applicant’s knowledge of the business environment. The Officer does not state that the Applicant was required to have a business plan; rather, the Officer notes that the Applicant has provided insufficient evidence to show that he “has adopted a plan.”

[31] The duty of procedural fairness to visa applicants is limited and on the low end of the spectrum (*Rezaei v Canada (Immigration, Refugees and Citizenship)*, 2020 FC 444 (“*Rezaei*”) at para 11). There are two circumstances where a visa applicant will be offered the opportunity to respond to an Officer’s concerns: 1) where the officer may base a conclusion on information not known to the applicant, and 2) where the officer has concerns with the applicant’s credibility or the authenticity of the applicant’s documents (*Rezaei* at para 12).

[32] The Applicant has not raised either of these grounds. The Applicant’s position is that if the Officer required more evidence from the Applicant to reach a positive decision, they should have asked him for it. The Officer was under no legal duty to ask for clarification or for more information before rejecting the application on the ground that the material submitted was insufficient (*Singh* at para 21).

[33] The onus was on the Applicant to submit a convincing application, “to anticipate adverse inferences contained in the evidence and address them, and to demonstrate that [he has] a right to enter Canada” (*Lv v Canada (Citizenship and Immigration)*, 2018 FC 935 at para 22). In my view, the Officer did not breach their duty of fairness in reasonably concluding that the Applicant failed to meet that onus.

V. **Conclusion**

[34] This application for judicial review is dismissed. The Officer's decision was reasonable and made in accordance with the principles of procedural fairness. The Officer assessed the Applicant's application within the legal framework of subsection 88(1) of the *IRPR* and reasonably concluded that insufficient details were provided to satisfy the requirements.

[35] The parties have not proposed a question for certification, and I agree that none arises.

<u>JUDGMENT in IMM-724-21</u>

THIS COURT'S JUDGMENT is that:

1. This 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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