Federal Court  Cour fédérale

Date: 20220125

Docket: IMM-2919-20

Citation: 2022 FC 80

Ottawa, Ontario, January 25, 2022

PRESENT: The Honourable Mr. Justice Pamel

BETWEEN:

HARJINDER SINGH

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The Applicant, Mr. Harjinder Singh, is a citizen of India and has been working as a truck driver in the United Arab Emirates [UAE] since 2012. He seeks judicial review of a redetermination decision of a visa officer [Officer] at the Canadian Embassy in Abu Dhabi [Embassy] dated July 2, 2020 [Decision] denying his application for temporary residence and for a work permit as a long-haul truck driver in British Columbia. The Officer found that Mr. Singh did not establish that he was able to perform the duties of a truck driver in Canada; he provided

only limited details of his experience as a long-haul truck driver, no indication of his history of traffic violations while working in the UAE, and only two years of evidence of relevant employment – from December 2018 to December 2020 – rather than evidence of relevant employment going back to 2012. The Officer was also not convinced that Mr. Singh had the language skills necessary to adequately perform the work to be undertaken.

[2] Mr. Singh was hired by a Canadian company, Regal Transport Ltd [Regal], which received a positive Labour Market Impact Assessment [LMIA] for the job to be performed by Mr. Singh. Along with his visa application, Mr. Singh provided his International English Language Testing System [IELTS] exam results, which, once converted to the Canadian Language Benchmark [CLB], showed that his English language skills generally exceed CLB 4, which, as argued by Mr. Singh, is the required minimum threshold for long-haul truck drivers in Canada. According to Mr. Singh, previously, the Embassy assessed language abilities based on a minimum of CLB 4 and an overall IELTS score of at least 5.0, which Mr. Singh had met; Mr. Singh's English reading skills, his lowest score, was CLB 5. It was on this basis that Mr. Singh was expecting his application to be processed, however, it would seem that sometime in 2020, the Embassy changed its policy on the language requirement for long-haul truck drivers and ceased using a minimum threshold – assuming they ever did – preferring to allow visa officers to assess individual applicants during the interview process.

[3] LMIAs typically identify specific requirements that a foreign worker must meet for an occupation in Canada, such as education, language and experience requirements. The LMIA issued to Regal requires that all foreign heavy truck drivers applying for the position of long-haul

driver obtain a British Columbia Class 1 heavy vehicle licence and an air brake endorsement from the Insurance Corporation of British Columbia [ICBC] after arriving in Canada, have "basic English language abilities", and have completed secondary school. All of these requirements are in line with the National Occupational Classification [NOC], which is the Canadian government's list of occupations with education and employment requirements attached; long-haul truck drivers are identified under NOC 7511, which provides that the industry standard is "on-the-job-training", and there is no requirement under either the LMIA or the NOC for foreign drivers to have Canadian experience.

[4] Mr. Singh raises two issues: first, he submits that the Decision is unreasonable because the Officer required a language competency level that was higher than the provincial and NOC requirements, and the Officer added job requirements for the proposed position that were not found in the LMIA or the NOC. Second, Mr. Singh had argued in his written submissions that the Officer breached procedural fairness by, first, assessing his language proficiency on a higher standard than used for other applicants – breaching the doctrine of legitimate expectations – and also by not providing Mr. Singh an opportunity to respond to the Officer's decision to add job requirements not found in the LMIA or the NOC for the position for which he was applying. However, the issue of procedural fairness was subsequently abandoned and not argued before me.

[5] There is consensus that the standard of review is one of reasonableness (*Patel v Canada (Citizenship and Immigration)*, 2020 FC 672 at para 8 [*Patel*]). The Court must show deference to the visa officer's determination, and the decision is reasonable if it is based on an internally

coherent and rational chain of analysis that is justified in relation to the facts and relevant law (*Patel* at para 9; *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*]).

[6] The starting premise is that a visa officer shall not issue a work permit if she/he has reasonable grounds to believe that an applicant is unable to perform the employment for which the work permit is requested (paragraph 200(3)(a) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [IRPR]). The onus is on the applicant for a work permit to provide sufficient evidence to demonstrate his or her competence, and the visa officer has broad discretion to decide the case (*Sangha v Canada (Citizenship and Immigration)*, 2020 FC 95 at para 42; *Liu v Canada (Citizenship and Immigration)*, 2018 FC 527 at para 52; *Patel* at para 20).

[7] On the language competency issue, findings on language levels for foreign workers have been held to be "highly discretionary decisions" (*Sulce v Canada (Citizenship and Immigration)*, 2015 FC 1132 at para 8 [*Sulce*]; *Singh Grewal v Canada (Citizenship and Immigration)*, 2013 FC 627 at para 17), and in my view, Mr. Singh has not demonstrated that the Officer was bound by the language requirements set out in the NOC and the LMIA to the point that the Officer's own assessment was unreasonable.

[8] Mr. Singh cites this Court's decisions in *Begum v Canada (Citizenship and Immigration)*, 2020 FC 162 [*Begum*] and *Bano v Canada (Citizenship and Immigration)*, 2020 FC 568 [*Bano*], for the proposition that a visa officer cannot demand a higher language ability than is required by the LMIA and the NOC for the desired position and that it was not open to the Officer to reject

his application on the basis of his language skills, considering that he scored equal the minimum language requirement of the NOC. For my part, I cannot see how those decisions assist Mr. Singh. Putting aside that both *Begum* and *Bano* involved permanent residency applications as opposed to temporary residency applications, the cases did not involve job positions where public safety was a relevant issue; the question was whether the applicant met the language requirements to become economically established in Canada, and the determinative finding in both cases was the lack of justification in the visa officer's decision. Here, there is no doubt that Mr. Singh met the linguistic thresholds set out in the NOC, however, the Officer was not satisfied that he had the reading skills – Mr. Singh's lowest score – to "study and learn the rules of driving in Canada, and thereby ensure he is aware of what is expected in order to drive safely by Canadian standards." The Officer made it clear that the position being sought by Mr. Singh involves the safety of others, and was not satisfied that Mr. Singh's English reading skills were "sufficient to understand highway traffic signs and signals in the English language, to respond to official inquiries, to interact effectively with law enforcement and emergency personnel, and to make entries on reports and records." The Officer's reasoning was clear and justified, and I have not been convinced that such a determination was unreasonable.

[9] I accept that, following the decision in *Vavilov*, departure from past policy must be justified, however, Mr. Singh has not demonstrated that a policy existed to the effect that once an applicant meets the language requirement set out in either the NOC or the LMIA, the applicant must be admitted. To the contrary, the current policy – being the policy applied to Mr. Singh – is to give the visa officer the discretion to decide whether or not an applicant meets the language requirements using the IELTS results as well as the NOC and the LMIA as guidelines, not

binding instruments. In any event, NOC 7511 sets out a number of duties expected of long-haul truck drivers – such as obtaining permits and other transport documents, and communicating via on-board computers – that would necessarily involve a certain level of reading skills. The fact that the Officer assessed the reading skills of an applicant independently of what the language tests would indicate does not seem unreasonable to me given the nature of the proposed position.

[10] Mr. Justice Diner stated the following in *Brar v Canada (Citizenship and Immigration)*, 2020 FC 70:

> Ultimately, officers must make their own determinations of the abilities based on the evidence and, here, the Officer simply placed more weight on the real-time interview with Mr. Brar than test scores. An officer's findings of language proficiency under paragraph 200(3)(a) are both factual and discretionary (*Singh Grewal v Canada (Citizenship and Immigration)*, 2013 FC 627 at para 17 [*Grewal*]; *Sulce v Canada (Citizenship and Immigration)*, 2015 FC 1132 at para 8 [*Sulce*]). As such, I find that the Officer's determinations of language proficiency were reasonable in this case.

I would echo the words of Mr. Justice Diner in the present situation.

[11] On the issue of whether the Officer added new job requirements to the position that were not identified in either the LMIA or the NOC – evidence of past employment, driving experience and history of traffic violations – the Officer stated:

> While the applicant has provided a UAE Traffic Clearance Certificate, he has not provided any evidence to show if he has had any traffic violations in the UAE during the course of his employment. PA's applicant's level of adherence to the traffic rules and regulations of the UAE is an important factor in determining the likelihood of the applicant adhering to the traffic rules and regulations of Canada, and therefore whether he can perform the work sought and in a way which does not put the safety of Canadians at risk.

[12] Mr. Singh argues that the Officer's requirement of evidence of the history of traffic violations is bizarre because the UAE Traffic Clearance Certificate itself indicates that there are "no fines recorded on the federal traffic & license program" in relation to Mr. Singh. In other words, the UAE Traffic Clearance Certificate confirmed that Mr. Singh had no history of traffic violations in the UAE. However, as I discussed with Mr. Singh's counsel during the hearing, it is not clear from the UAE Traffic Clearance Certificate whether it only lists outstanding traffic violations as opposed to Mr. Singh's entire violation history, including traffic violations that have been paid. There is no evidence as to how I should read the statement on the UAE Traffic Clearance Certificate, and given that the Officer was fully aware of and specifically mentions this document in the Decision, I have no reason to believe that the Officer understood the UAE Traffic Clearance Certificate otherwise than to mean that Mr. Singh had no current outstanding traffic violations. That is the only interpretation that makes sense given the manner in which the Officer wrote his/her decision.

[13] Mr. Singh also takes issue with the final section of the Decision, where the Officer states:

> Given that this employment involves safety of others and PA's poor reading ability, and that Canadian roads and driving conditions are much different to those in the UAE, I am not satisfied on balance PA has demonstrated that he is able to perform the work sought in a way that does not put the safety of Canadians at risk.

[14] Mr. Singh argues that the conclusions are contradicted by the facts, which include an affidavit from the proposed employer, Regal, that was before the Officer and that outlined the company's experience with drivers from the UAE, finding them over the last ten years to be exceptional drivers, skilled and safe, and able to transition well to North American driving

conditions. I must admit that the evidence of Regal's history with drivers from the UAE is impressive, however, I fail to see how that would assist the Officer in assessing whether Mr. Singh is able to perform the work for which he has applied. In the end, the Officer is assessing the individual visa applicant, and there is nothing in the affidavit from Regal that would have me believe that the Officer failed to appreciate evidence which contradicted his/her assessment of Mr. Singh.

[15] Mr. Singh concedes that the Officer had discretion in assessing visa applicants and was clearly concerned with his driving experience, but adds that previous experience for driving heavy vehicles was not a requirement for the job – the job specifically called for "on-the-job-training". Mr. Singh argues that discretion does not include the expansion of jurisdiction to add new requirements to a particular job. That may be so, however, the fact remains that the Officer is not bound by provincial, NOC or LMIA requirements (*Sulce* at para 29; *Singh v Canada (Citizenship and Immigration)*, 2015 FC 115 at para 20). If Mr. Singh is correct, visa officers should be granting work permits for truck driving positions to individuals with absolutely no experience driving trucks only because the job requirement specifies "on-the-job-training"; such a proposition would ride roughshod over paragraph 200(3)(a) of the IRPR.

[16] Visa officers retain the final decision on whether an applicant is qualified for a job and may reasonably find an applicant unqualified, even if the applicant meets the requirements of an LMIA; "a positive LMIA is not determinative of how visa officers exercise their discretion; it is simply a procedural pre-condition to the exercise of such discretion" (*Sharma v Canada (Citizenship and Immigration)*, 2020 FC 381 at para 19). In the present matter, the Officer's

decision is consistent with this Court's recent decision in *Sangha v Canada (Citizenship and Immigration)*, 2020 FC 95 [*Sangha*], where the Court addressed the role of the visa officer in assessing the safety of truck drivers. In *Sangha*, the Court found that while subsection 200(3) of the IRPR does not stipulate a level of competence or safety, safety is a paramount consideration for assessing the competency of long-haul truck drivers and that the onus is on an applicant to provide sufficient evidence to establish competence; findings of the visa officer on this issue are subject to a high degree of deference. Mr. Singh may disagree with the decision and obviously feels that evidence of two and a half years of driving in the UAE is sufficient, but the Officer thought otherwise and I do not think that the Court is in a position to substitute its opinion for that of the Officer on this issue, given his/her broad discretion (*Vavilov* at para 83; *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at paras 59-61).

[17] Nor do I think that this Court's decisions in *Tan v Canada (Citizenship and Immigration)*, 2012 FC 1079 [*Tan*], or *Gill v Canada (Citizenship and Immigration)*, 2021 FC 934 [*Gill*], are instructive in this case. In *Gill*, the Court found that the visa officer did not provide a decision that was intelligible, transparent and justified. In *Tan*, an arranged employment opinion [AEO] stated that Mr. Tan's job required oral English proficiency but not written English proficiency, yet the visa officer found that Mr. Tan also needed written English proficiency to perform the job. The Court concluded that the visa officer erred by requiring written language competence – in fact, importing non-existent language requirements – that exceeded the requirements listed in the AEO. That is not the case here; the Officer assessed Mr. Singh's experience and his ability to transition to driving safely in Canada not as stand-alone elements, but in light of his unacceptable language skills. I see nothing unreasonable in that approach.

[18] The Officer found that Mr. Singh's evidence of experience did not coincide with that set out in his résumé, that the record was deficient as to his history of compliance with the traffic rules and regulations of the UAE, and that given his language skills, amongst other things, Mr. Singh had not convinced the Officer that he would be able to transition to safely driving in Canada. When determining whether a foreign national is unable to perform the work sought pursuant to paragraph 200(3)(a) of the IRPR, it is open to the officer to require evidence that is relevant to the applicant's ability to perform the desired occupation. Here, the relevance of the required evidence is apparent from the Officer's reasons, and given that the primary concern of the Officer was road safety, I find nothing unreasonable in the Decision.

I. Conclusion

[19] I would dismiss the application.

JUDGMENT in IMM-2919-20

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. There are no questions for certification.

"Peter G. Pamel"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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