Federal Court  Cour fédérale

Date: 20220126

Docket: IMM-4044-21

Citation: 2022 FC 82

Ottawa, Ontario, January 26, 2022

PRESENT: Mr. Justice McHaffie

BETWEEN:

ROMAN IGOROVYCH PUYDA

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Roman Puyda applied for a work permit to work for Hybrid Elevator Inc (HEI) in Kelowna, British Columbia. The work permit application referred to and relied on a job offer from HEI for the position of Industrial Products Designer and a positive labour market impact assessment (LMIA) issued to HEI for that position. A visa officer concluded Mr. Puyda had not

demonstrated he met the requirements for the job, including in particular proficiency in English. They therefore refused the application.

[2] Mr. Puyda seeks judicial review of that refusal. He argues the visa officer unreasonably failed to consider evidence of his English abilities and did not indicate what level of language ability would be sufficient.

[3] I conclude the visa officer's decision with respect to the English language requirement was reasonable. As this was a sufficient basis to refuse the application, I need not address the parties' arguments as to whether the application was also reasonably refused based on education and/or portfolio requirements.

[4] The application for judicial review is therefore dismissed.

II. Issue and Standard of Review

[5] The sole issue raised by Mr. Puyda is whether the rejection of his work permit application was reasonable. The parties agree that the decision is subject to review on the reasonableness standard: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16–17, 23–25; *Sangha v Canada (Citizenship and Immigration)*, 2020 FC 95 at paras 14–15.

III. Analysis

A. *The visa officer's refusal of the work permit application*

[6] A visa officer reviewing a work permit application is required to refuse it if the applicant is "unable to perform the work sought": *Immigration and Refugee Protection Regulations*, SOR/2002-227, s 200(3)(*a*). The onus is on an applicant to demonstrate they meet the job requirements: *Singh v Canada (Citizenship and Immigration)*, 2021 FC 635 at para 15; *Sangha* at para 42; *Nwachukwu v Canada (Citizenship and Immigration)*, 2020 FC 122 at para 15; *Sulce v Canada (Citizenship and Immigration)*, 2015 FC 1132 at para 10.

[7] The job offer Mr. Puyda received from HEI for the Industrial Products Designer position set out his duties in a series of bullet points. These included using Italian equipment for light commercial elevator installations, an area in which Mr. Puyda appears to be well qualified given his experience working in Italy as a lift engineer/technician. The listed duties also stated Mr. Puyda would "Train and assist in creating training reference guides for installation of residential elevators for current staff and the employer." The LMIA that was issued based on the job offer identified English as a verbal and written language requirement.

[8] The visa officer noted that the job offer referred to creating training material, and found Mr. Puyda "has not demonstrated that he has the level of English required to do that." The officer also noted that the LMIA referred to English as a requirement and was not satisfied Mr. Puyda met that requirement. They therefore refused the application.

B. *The decision was reasonable*

[9] Mr. Puyda raises two main arguments as to the reasonableness of the visa officer's decision. First, he argues the visa officer failed to consider relevant evidence regarding his English language skills. A decision maker's failure to consider or account for relevant evidence may render their decision unreasonable: *Vavilov* at paras 125–126. Second, he argues the visa officer did not set out what level of English language ability would be sufficient, leaving him unable to discern what an acceptable level of English would be.

[10] In support of his first argument, Mr. Puyda points to two pieces of evidence: the resume he filed, which was drafted in English and referred to Mr. Puyda as having a "[k]nowledge of English (Intermediate)"; and the very fact of the job offer from HEI, which he argues implicitly shows the employer was satisfied his English was sufficient for the job. The visa officer did not refer to either the resume or the job offer in their assessment of Mr. Puyda's English.

[11] I conclude it was reasonable for the visa officer to render their decision without referring to the English resume. Mr. Puyda's application was filed under cover of a submission letter from an immigration consultant, which did not refer to the resume as demonstrating English language proficiency. There is nothing in the resume itself that objectively confirms it was prepared by Mr. Puyda without assistance. Nor does it speak to his verbal proficiency, other than through the imprecise and unsubstantiated reference to his knowledge of English as "Intermediate." This Court has found on a number of occasions that "it is reasonable for an officer to expect more than an English language application and cover letter to verify the applicant's ability to speak

and write in English": *Kumar v Canada (Citizenship and Immigration)*, 2020 FC 935 at para 30, citing *Sun v Canada (Citizenship and Immigration)*, 2019 FC 1548 at para 34; *Virk v Canada (Citizenship and Immigration)*, 2014 FC 150 at paras 5–6. The same applies to an English resume. It is perhaps worth noting that Mr. Puyda's application form indicated he had in fact taken a test from a designated testing agency to assess his proficiency in English, but those test results were not included in his application.

[12] With respect to the fact of the job offer, Mr. Puyda refers to this Court's recent decisions in *Longa Diaz v Canada (Citizenship and Immigration)*, 2021 FC 538 and *Ul Zaman v Canada (Citizenship and Immigration)*, 2020 FC 268. In *Longa Diaz*, Justice Shore concluded it was unreasonable for a visa officer to refuse a work permit for failure to meet the job requirements without considering the fact that the employer was satisfied that the applicant was qualified:

> The officer notes that the applicant was unable to demonstrate that she fully meets the requirements of the employment in question. Her history of employment as an accountant and analyst did not make use of her secretarial skills, and her studies in that field were completed twenty years ago. <u>However, the officer is silent about her receipt of an offer of employment that suggests she is qualified for the position. If the employer is satisfied that the applicant is qualified to fulfill the requirements of the offer of employment, it is unreasonable for the officer to claim the contrary without explaining the contradiction</u>.
>
> [Emphasis added; citation omitted; *Longa Diaz* at para 8.]

[13] In my view, *Longa Diaz* does not assist Mr. Puyda for two reasons. First, there is a difference between the requirements at issue in *Longa Diaz* and those in this case. In *Longa Diaz*, the issue was whether the applicant's established substantive skills and studies were sufficiently current for her to adequately act as a legal administrative assistant. The present case,

on the other hand, pertains to the very existence of language skills needed for Mr. Puyda's position. Second, Mr. Puyda's job offer from HEI does not refer to his language skills or to the employer's opportunity or ability to assess them. Nor did Mr. Puyda's submission in support of the application suggest that the sufficiency of his English was demonstrated by the fact of the job offer. In this context, it was reasonable for the officer not to have referred to the job offer as evidence of Mr. Puyda's English proficiency. Even if the employer had made an explicit statement about Mr. Puyda's English, this Court has held that "a visa officer is not bound by the statements of an employer concerning language requirements or the sufficiency of an applicant's language abilities": *Sangha* at para 36.

[14] *Ul Zaman* also does not assist Mr. Puyda. In that case, there was an express indication from the employer that notwithstanding the requirement of English in the LMIA, they could accommodate an Urdu-only speaker and there was no need for fluency in English: *Ul Zaman* at paras 8, 11, 14–15. Justice Pamel found it unreasonable not to address this evidence that contradicted the visa officer's conclusion that English was a job requirement. There are no similar statements in the present case and no indication that the job offer contradicts the LMIA statement that English was a requirement of the job. To the contrary, the visa officer reasonably relied on the duties set out in the job offer itself to conclude that the job required a degree of English proficiency.

[15] Mr. Puyda's work permit application did not include any objective evidence that he had the language skills required for the position he sought. I cannot conclude that either his English language resume or the fact of the job offer itself can be considered such evidence. I therefore

agree with the Minister that the visa officer's conclusion that Mr. Puyda had not demonstrated he met the English language requirement was reasonable, even though it did not refer to the resume and did not consider whether the job offer itself demonstrated the employer's opinion that his English was sufficient.

[16] Mr. Puyda's second main argument is that the visa officer concluded he did not have the level of English required to perform the job, but did not set out what level of English language ability would be sufficient. He argues that this shows a lack of transparency and intelligibility in the officer's reasoning that renders it unreasonable.

[17] I again cannot accept this argument. The visa officer's role was to review the evidence filed by Mr. Puyda and assess whether he had shown he fulfilled the job requirements. The officer concluded that Mr. Puyda had not demonstrated he had the English language proficiency to create training materials for installation of equipment, as the job offer required. For the reasons above, this was a reasonable conclusion given the lack of any objective evidence of any English language proficiency at all. Having failed to file such evidence, Mr. Puyda cannot fault the officer for not going further and defining a particular level of English required for the job beyond what was called for on the face of the job offer.

[18] I therefore conclude that the visa officer's conclusion that Mr. Puyda had not demonstrated that he had the English language skills required for the job was reasonable. As this is a sufficient basis for the officer to refuse the work permit application, and for the Court to

uphold that refusal, I need not address the parties' arguments about whether the officer also refused the application based on Mr. Puyda's education or the lack of a creative portfolio.

IV. Conclusion

[19] The application for judicial review is therefore dismissed. Neither party proposed a question for certification and I agree that no question meeting the test for certification arises in the matter.

JUDGMENT IN IMM-4044-21

THIS COURT'S JUDGMENT is that

1. The application for judicial review is dismissed.

"Nicholas McHaffie"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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