

Federal Court



Cour fédérale

Date: 20220407

Docket: IMM-3075-21

Citation: 2022 FC 497

St. John's, Newfoundland and Labrador, April 7, 2022

PRESENT: The Honourable Madam Justice Heneghan

BETWEEN:

VIRGILIO AMADO CAMINO RUIZ

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS AND JUDGMENT

[1] Mr. Virgilio Amado Camino Ruiz (the “Applicant”) seeks judicial review of the decision of an Officer (the “Officer”), refusing his application for permanent residence in Canada as a self-employed person within the meaning of subsection 88(1) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 (the “Regulations”).

[2] The Applicant is a Cuban national. He arrived in Canada and applied for permanent residence in June 2016, as a self-employed person working as a wrestling coach. He currently holds a work permit and works at Kapow Sports and Entertainment Inc., as a wrestling coach.

[3] The Applicant is a wrestling coach. He submitted information and supporting documents about his education. He also provided information and documents about his training and experience as a wrestling coach, as well as about his participation in international wrestling sporting events.

[4] The Applicant also provided reference letters from his current employer and other wrestling clubs to demonstrate that there is a market in Toronto for his skills and referrals for coaching services would come his way, once he obtains permanent residence status in Canada.

[5] The Officer refused his application on the grounds that the Applicant has not demonstrated the intention and ability to be self-employed in Canada.

[6] The Applicant argues that the decision is unreasonable since the Officer failed to consider evidence that demonstrates experience at a world class level, pursuant to clause 88(1)(a)(ii)(b) of the Regulations. He also submits that the Officer unreasonably used the fact that he is now working as an “employee.”

[7] The Minister of Citizenship and Immigration (the “Respondent”) argues that the decision meets the legal test, that the Officer considered all the evidence and reasonably concluded that

the Applicant had failed to show that he has the ability and intention to become economically established in Canada. Among other things, the Officer commented on the fact that the Applicant is now working in paid employment and he had not produced a business plan relative to his proposed self-employment as a wrestling coach.

[8] The Officer's decision is reviewable on the standard of reasonableness; see the decision in *Canada (Minister of Citizenship and Immigration) v. Vavilov* (2019), 441 D.L.R. (4th) 1 (S.C.C.).

[9] In considering reasonableness, the Court is to ask if the decision under review "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 that decision"; see *Vavilov, supra* at paragraph 99.

[10] In my opinion, the decision does not meet the applicable test of reasonableness.

[11] It seems that the Officer either misunderstood or ignored the reason why the Applicant is currently working in paid employment. It is a means to support himself and his family, pending the outcome of his application for permanent residence in Canada. He is working in the field for which he is qualified and in which he has experience; he is not working in a coffee shop.

[12] I acknowledge the authorities cited by the Respondent as to the importance of a business plan when someone seeks permanent residence as a self-employed person. However, in my

opinion, the significance of that element is to be assessed against the nature of the self-employment in contemplation.

[13] The Officer speaks about the lack of contracts. In my opinion, the Officer's reliance on the lack of contracts is unreasonable, given the nature of the services which the Applicant plans to offer.

[14] As well, the Officer unreasonably failed to address the necessary elements of the definition of "relevant experience", set out in subsection 88(1) of the Regulations when refusing the Applicant's application.

[15] Subparagraph 88(1)(a)(ii) of the Regulations is relevant and provides as follows:

Business Immigrants	Gens d'affaires
Interpretation	Définitions et champ d'application
Definitions	Définitions
88 (1) The definitions in this subsection apply in this Division	88 (1) Les définitions qui suivent s'appliquent à la présente section.
...	...
(a) a self-employed person, other than a self-employed person selected by a province, means a minimum of two years of experience, during the period beginning five years before the date of application for a permanent resident visa and ending on	a) S'agissant d'un travailleur autonome, autre qu'un travailleur autonome sélectionné par une province, s'entend, d'une part, des activités culturelles et sportives et, d'autre part, de l'achat et de la gestion d'une ferme;

the day a determination is made in respect of the application, consisting of

...

(ii) in respect of athletics,

(A) two one-year periods of experience in self-employment in athletics,

(B) two one-year periods of experience in participation at a world class level in athletics, or

(C) a combination of a one-year period of experience described in clause (A) and a one-year period of experience described in clause (B), and

...

...

(i) relativement à des activités culturelles :

(A) soit de deux périodes d'un an d'expérience dans un travail autonome relatif à des activités culturelles,

(B) soit de deux périodes d'un an d'expérience dans la participation à des activités culturelles à l'échelle internationale,

(C) soit d'un an d'expérience au titre de la division (A) et d'un an d'expérience au titre de la division (B),

...

[16] The Officer noted that the Applicant has an international licence and has participated in international wrestling matches on an international level, but does not explain why this does not meet the standard of “two one-year periods of experience in participation at a world class level”.

[17] The Officer did not assess the element of participation in a world class level of athletics. The decision fails to meet the standard of justifiability, transparency and intelligibility.

[18] In the result, the application for judicial review will be allowed, the decision of the Officer will be set aside and the matter remitted to another officer for redetermination. There is not question for certification proposed.

JUDGMENT in IMM-3075-21

THIS COURT'S JUDGMENT is that the application for judicial review is allowed, the decision of the Officer is set aside and the matter is remitted to a different officer for redetermination. There is no question for certification proposed.

“E. Heneghan”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3075-21

STYLE OF CAUSE: VIRGILIO AMADO CAMINO RUIZ v THE MINISTER OF CITIZENSHIP AND IMMIGRATION

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REASONS AND JUDGMENT: HENEGHAN J.

DATED: APRIL 7, 2022

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