

Federal Court



Cour fédérale

Date: 20220510

Docket: IMM-2528-20

Citation: 2022 FC 690

Ottawa, Ontario, May 10, 2022

PRESENT: Madam Justice Sadrehashemi

BETWEEN:

SIMRANJIT SINGH

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Mr. Singh, applied for a work permit through the Temporary Foreign Worker Program to work as a long-haul truck driver in Canada. The work permit application was refused because the visa officer (“Officer”) at Immigration, Refugees and Citizenship Canada [IRCC] found that Mr. Singh had not established that he could adequately perform the work he was seeking to do in Canada, i.e. long-haul truck driving.

[2] Mr. Singh is challenging the refusal of his work permit in this judicial review. He argues that the Officer failed to justify their reason for treating his work as a “driver-tipper” for approximately six years and a “tractor driver” for another six years, as not sufficient to establish he had the ability to perform the duties for the long-haul truck driving position in Canada.

[3] While I agree the reference letters provided by Mr. Singh’s employers do not set out the duties of the driving positions he has held, Mr. Singh listed the relevant duties of these positions in his resume, which was before the Officer. The Officer’s minimal reasons do not address this evidence.

[4] Based on the reasons set out below, I find the Officer’s decision to be unreasonable.

II. Factual Content

[5] Mr. Singh is a citizen of India. In November 2019, he accepted a job offer from his prospective employer, LPS 3 Industries Ltd., as a long-haul truck driver. That same month, Employment and Social Development Canada/Service Canada approved the Labour Market Impact Assessment (“LMIA”) application for LPS 3 Industries Ltd. to hire Mr. Singh as a truck driver under the National Occupation Classification (“NOC”) 7511, “transport truck drivers.”

[6] Mr. Singh applied for a work permit based on this positive LMIA. I understand that this work permit was refused in February 2020, on the basis that he had not demonstrated that he would be able to perform the work sought. I do not have the details of this application or its refusal in the record before me.

[7] Mr. Singh reapplied for a work permit that same month. This application, which is the subject of this judicial review, was refused in a decision dated April 6, 2020.

III. Preliminary issue

[8] Mr. Singh did not have counsel represent him with respect to this judicial review.

[9] Mr. Singh included with his Application Record, an affidavit from Wesley Richards, who is the head of human resources at Mr. Singh's prospective employer in Canada. The Minister objected to the inclusion of this affidavit. Much of the information included in this affidavit relate to the merits of the decision, including: statements about the hiring process at the company, Mr. Richard's assistance with Mr. Singh's application, and the assessment of Mr. Singh's qualifications. This information was not before the Officer and does not fit within any of the exceptions to the general rule that evidence that was not before the decision-maker is not properly before this Court on judicial review (*Brink's Canada Limited v Unifor*, 2020 FCA 56 at para 13).

[10] I have not relied on Mr. Richard's affidavit in coming to my decision. I have relied on the materials contained in the Certified Tribunal Record.

IV. Issue and Standard of Review

[11] The key issue on judicial review relates to the Officer's decision to find that Mr. Singh had not demonstrated that he could perform the duties of the job he was seeking to do in Canada.

Mr. Singh also raised a procedural fairness argument, asserting that the Officer was required to put their job qualification concerns to him for a response. I decline to address the procedural fairness issue raised as I have determined the decision needs to be sent back for redetermination based on the Officer's failure to justify their decision in a transparent manner.

[12] The Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] confirmed that reasonableness is the presumptive standard of review when reviewing administrative decisions on their merits. This case raises no issue that would justify a departure from that presumption.

V. Analysis

[13] Sections 179 and 200(1) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [*Regulations*] are the principal legislative provisions governing the authority of a visa officer to issue a Temporary Resident Visa and a work permit requested by a foreign national prior to entering Canada. An officer is required to refuse an application for a work permit where "there are reasonable grounds to believe that the foreign national is unable to perform the work sought" (s 200(3) of the *Regulations*).

[14] The Officer's reasons on the issue of Mr. Singh's suitability as a long-haul truck driver was limited to the following:

Applicant has been working as a Driver-Tipper in Qatar from 2005-2011 and as a Tractor Driver from April 2014-Jan 2020 in Dubai as stated in the reference letters provided by the employer's. In review of the above, I am not satisfied that Applicant has

experience in operating and driving trucks to transport goods and materials over long distances.

[15] I accept the Respondent's ("Minister's") argument that the reference letters provided only indicated the title of the positions Mr. Singh held and the length of his service but failed to explain the duties of a "driver-tipper" or a "tractor driver." I do not accept Mr. Singh's position that his employer's reference letters were "well-detailed" nor do I accept that the letters confirmed that Mr. Singh had 12 years of experience as a long-haul truck driver.

[16] However, the Officer's reasons do not address whether they considered Mr. Singh's description of his work for both of these positions set out in his resume, where the details of his duties were listed. The duties described for both positions involved "operating and driving trucks to transport goods and materials over long distances" — equivalent to the work done by long-haul truck drivers in Canada.

[17] The Minister argued that the resume is not an "objective" piece of evidence, and that in Mr. Singh's resume, the duties listed were identical for both positions and mirrored the language found in the relevant NOC for truck drivers. The problem with this submission is the Officer did not explain that this was the basis for their decision. The Officer did not provide this critique of Mr. Singh's resume or find the listing of duties there, in conjunction with the employer's letters, was not sufficient to establish relevant work experience.

[18] The Supreme Court of Canada in *Vavilov* explained that "[t]he reasonableness of a decision may be jeopardized where the decision maker has [...] failed to account for the

evidence before it” (at para 126). I find it unreasonable that the Officer reached their conclusion about the nature of Mr. Singh’s work experience without addressing the information in the record contained in Mr. Singh’s resume. Reasons do not need to be lengthy, but at minimum, the decision-maker must justify their decision based on the evidence before them (*Samra v Canada (Citizenship and Immigration)*, 2020 FC 157 at para 23).

[19] The application for judicial review is granted and sent back to a different officer to be redetermined. No party raised a question for certification and none arises.

JUDGMENT IN IMM-2528-20

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is granted and sent back to be redetermined by a different visa officer;
2. No question for certification was raised by either party and none arises.

"Lobat Sadrehashemi"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2528-20

STYLE OF CAUSE: SIMRANJIT SINGH v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: VANCOUVER, BRITISH COLUMBIA

DATE OF HEARING: MAY 6, 2022

JUDGMENT AND REASONS: SADREHASHEMI J.

DATED: MAY 10, 2022

APPEARANCES:

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FOR THE APPLICANT,
ON HIS OWN BEHALF

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FOR THE RESPONDENT