

Federal Court



Cour fédérale

**Date: 20220516**

**Docket: IMM-3356-21**

**Citation: 2022 FC 724**

**Ottawa, Ontario, May 16, 2022**

**PRESENT: Madam Justice Sadrehashemi**

**BETWEEN:**

**NEVEN BELCHINOV MINDOV**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. Overview

[1] The Applicant, Mr. Mindov, was refused a work permit for work as a wholesale establishment manager for a cosmetic company he owns in Canada. He is challenging this refusal in this judicial review.

[2] Mr. Mindov's work permit was refused on three principal grounds: i) that he had worked without authorization in Canada; ii) that he had not established that he would leave Canada at the end of his authorized stay; and iii) that he had not demonstrated he would be able to perform the work sought in Canada. Mr. Mindov argues that the Officer's decision was unreasonable in relation to each of these grounds of refusal.

[3] While I agree that the Officer's reasons were not transparent or intelligible with respect to the first issue — whether he had worked without authorization in Canada — I do not see a basis to interfere with the Officer's decision with respect to other two grounds of the refusal, namely whether he had established he would be able to do the work sought in Canada and whether he would leave at the end of his authorized stay. The Officer justified their refusal on these two grounds with transparent and intelligible reasons.

[4] Based on the reasons set out below, the application for judicial review is dismissed.

## II. Factual Content

[5] Mr. Mindov is a dual citizen of Bulgaria and Turkey. He came to Canada as a visitor with his spouse and two children in 2018. The stated purpose of his visit was to learn English and explore investment opportunities.

[6] Mr. Mindov invested in one company, which imported marble, that he later claimed to have been subject to fraud and lost a significant amount of money.

[7] Mr. Mindov then began a new business in Canada, a cosmetics company, for which he then sought a Labour Market Impact Assessment (“LMIA”) under the owner-operator stream. He received a positive LMIA and then applied for a work permit on October 8, 2020.

[8] In a decision dated May 4, 2021, the work permit application was refused.

### III. Issues and Standard of Review

[9] The issues raised by Mr. Mindov go to the substance of the refusal decision and therefore are to be reviewed on a reasonableness standard. Both parties agree that the reasonableness standard applies. 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.

### IV. Analysis

[10] There were three grounds relied upon to refuse Mr. Mindov’s application: i) working without authorization; ii) inability to do the work being sought; and iii) overstay risk.

#### A. *Working without authorization*

[11] Section 2 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227

[Regulations] sets out the definition of “work”: “an activity for which wages are paid or commission is earned, or that is in direct competition with the activities of Canadian citizens or

permanent residents in the Canadian labour market”. In Mr. Mindov’s case, there is no allegation that he was paid for his work at his company; the refusal is based on the second part of the definition, i.e. activity that is in “direct competition with the activities of Canadian citizens or permanent residents in the Canadian labour market”.

[12] The Officer’s reasons in support of their finding that Mr. Mindov worked without authorization at the cosmetics company in respect of which he was now seeking a work permit were unintelligible.

[13] I have only considered the Officer’s comments about Mr. Mindov’s work at the cosmetics company, and not the previous marble-importing company. There were a number of notes in relation to Mr. Mindov’s previous company, including, for example, that by seeking out suppliers, he was engaged in “work.” But ultimately, the Officer does not rely on these facts to form their conclusion that Mr. Mindov had engaged in unauthorized work. Their decision is clear that that the unauthorized work finding was in relation to the cosmetics company, for which Mr. Mindov was seeking a work permit. Accordingly, I find the parties’ submissions about the reasonableness of the Officer’s findings in relation to this first company to be irrelevant because that is not what the Officer ultimately rested their unauthorized work determination upon.

[14] The Officer’s reasons in relation to the alleged unauthorized work are difficult to follow and incoherent. The Officer’s reasons state:

It is unclear to me that [the Applicant] is or is not working for [the cosmetic company] in Cda. It is reasonable that the person who incorporates a business, and invests their own money into that

business, and is the only official director of the business, would work at that business. Particularly to hire someone.

[15] The reasons do not follow a rational chain of analysis. It is not apparent how these statements lead the Officer to the final conclusion that Mr. Mindov had engaged in unauthorized work, particularly given that the Officer stated it is not clear to them whether or not he was engaging in “work” at the cosmetics company. Moreover, there is little engagement in the substantive question of determining how to assess whether activities that are unpaid constitute work in the context of self-employment. Overall, I do not find the Officer’s evaluation to be reasonable on this issue.

B. *Suitability for work sought*

[16] The Officer listed several factors that led them to conclude that Mr. Mindov’s application should be refused on the ground that Mr. Mindov was not suitable for the work he was seeking to do. Paragraph 200(3)(a) of the Regulations provides that “an officer shall not issue a work permit to a foreign national if there are reasonable grounds to believe that the foreign national is unable to perform the work sought”.

[17] The Officer noted the following issues: Mr. Mindov did not have a university degree — though not required, it may be required for the relevant NOC 0621, retail and wholesale trade manager, under which he received his positive LMIA. The Officer also noted that the NOC stated that it was usually required to have related retail sales experience at increasing levels of responsibility. The Officer evaluated Mr. Mindov’s stated experience as a “contracted salesperson” and determined it was not equivalent to the usual requirements of increasing

responsibilities. I do not find this assessment to be unreasonable based on the evidence in the record. The Officer was also not satisfied that Mr. Mindov provided sufficient evidence of his past work experience.

[18] Mr. Mindov has not argued that the Officer made factual errors or missed relevant evidence in this assessment. He is asking the Court to reweigh the factors already reviewed by the Officer. This is not the Court's role on judicial review. There is no basis to interfere with the Officer's determination on this issue.

C. *Overstay risk*

[19] Similarly, Mr. Mindov has not raised any serious shortcomings with the Officer's decision on whether he would be likely to leave Canada at the end of his authorized stay. Paragraph 200(1)(b) of the Regulations provides that a foreign national who makes an application for a work permit before entering Canada must establish that they will leave Canada by the end of their authorized stay.

[20] The Officer considered the relevant factors: family ties in the home country, the family's characterization of their visit to Canada as a "temporary move," the sale of multiple residential properties in their home country prior to coming to Canada, the ceasing of employment in the home country and the changing of the children's schools to Canadian ones. Ultimately, the Officer weighed these factors and determined they were not satisfied, based on the information provided, that Mr. Mindov would leave Canada at the end of his authorized stay. There is no basis for me to intervene on this determination.

V. Conclusion

[21] The application for judicial review is dismissed. No question for certification was raised by the parties and none arises.

**JUDGMENT IN IMM-3356-21**

**THIS COURT'S JUDGMENT is that:**

1. The application for judicial review is dismissed;
2. No question for certification was raised by the parties and none arises.

"Lobat Sadrehashemi"

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Judge



**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-3356-21

**STYLE OF CAUSE:** NEVEN BELCHINOV MINDOV v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** HELD BY VIDEOCONFERENCE

**DATE OF HEARING:** NOVEMBER 29, 2021

**JUDGMENT AND REASONS:** SADREHASHEMI J.

**DATED:** MAY 16, 2022

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