

Federal Court



Cour fédérale

**Date: 20220601**

**Docket: IMM-7155-21**

**Citation: 2022 FC 801**

**Ottawa, Ontario, June 1, 2022**

**PRESENT: The Honourable Mr. Justice Manson**

**BETWEEN:**

**HARSIMRAN SINGH KHARAUD**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

**I. Introduction**

[1] This is an application for judicial review of a decision by a visa officer (the “Officer”) located at the High Commission of Canada in New Delhi, India dated August 21, 2021, refusing the Applicant’s application for a work permit under the Temporary Foreign Worker Program on the grounds that the Applicant was not be able to demonstrate that he will be able to adequately

perform the work he sought as required under the *Immigration and Refugee Protection Act*, SC 2001, c 27 (the “Act”) and the *Immigration and Refugee Protection Regulations*, SOR/2002-227 (the “Regulations”), (the “Decision”).

## II. Background

[2] The Applicant, Harsimran Singh Kharaud, is a 28-year-old male citizen of India. In April 2021, he applied for a work permit as a plumber (National Occupational Classification (NOC) 7251) at 121 Plumbing Solutions Ltd. based in Surrey, British Columbia.

[3] The Applicant’s work permit application included, *inter alia*, proof of education (Bachelor’s degree awarded in 2015) and certification as a plumber (vocational training in plumbing from August 2015 to July 2016; apprenticeship certification awarded in April 2019) and three experience letters from employers in India in the plumbing sector (from August 2016 to the time of the work permit application).

[4] The Officer refused the Applicant’s work permit application in the Decision dated August 21, 2022, on the grounds that they were not satisfied that the Applicant was able to demonstrate that he would be able to adequately perform the work he sought.

[5] The Applicant is seeking an order setting aside the Decision and referring the matter back to a different officer for redetermination.

III. Decision Under Review

[6] In their Global Case Management System notes, the Officer noted several issues in the Applicant's work permit application:

- i. Two of the three reference letters were “on plain paper and appear to be manufactured for the purposes for this [work permit] application” and one reference letter did “not indicate the name of the signatory and is illegibly signed;”
- ii. While tax returns and bank deposits were provided, there were no pay slips from the employers for 2019 and 2020 and the bank deposits for 2021 were “not indicated as a salary deposit;” and
- iii. The Applicant did not declare his employment activities from the completion of his Bachelor's degree in April 2015 until he started working as a plumber in August 2016.

[7] As a result of the foregoing, the Officer found, on a balance of probabilities, that the Applicant has insufficient experience, skills, and ability to perform the duties of the position and the work permit application was refused pursuant to paragraph 200(3)(a) of the *Regulations*.

IV. Issues

[8] The issues to be decided on this judicial review are:

(1) Was the Decision reasonable?

(2) Was the Decision procedurally fair?

V. Standard of Review

[9] Where a Court reviews the merits of an administrative decision the standard of review is reasonableness (*Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 at paragraph 23).

[10] Issues that relate to a breach of procedural fairness are reviewed on the standard of correctness or a standard with the same import (*Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at paragraphs 34-35 and 54-55, citing *Mission Institution v. Khela*, 2014 SCC 24 at paragraph 79).

VI. Analysis

[11] A foreign national may be authorized to work in Canada if they meet the conditions set out in the *Regulations* (subsections 30(1) and 30(1.1) of the *Act*).

[12] 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 (paragraph 200(3)(a) of the *Regulations*).

[13] Subsection 200(3) of the *Regulations* does not stipulate a level of competence or safety. In this regard, the jurisprudence is clear: the onus is upon the applicant for a work permit to provide sufficient evidence to establish competence; that a visa officer has a wide discretion to decide this issue; and that their decision is entitled to a high degree of deference (*Sangha v. Canada (MCI)*, 2020 FC 95 [*Sangha*] at paragraph 42).

[14] NOC 7251 describes the main duties and employment requirements of plumbers as follows:

**Main duties**

Plumbers perform some or all of the following duties:

- Read blueprints, drawings, and specifications to determine layout of plumbing system, water supply network, and waste and drainage systems;
- Install, repair, and maintain domestic, commercial, or industrial plumbing fixtures and systems;
- Locate and mark positions for pipe connections, passage holes, and fixtures in walls and floors;
- Cut opening in walls and floors to accommodate pipe and pipe fittings;
- Measure, cut, bend, and thread pipes using hand and power tools or machines;
- Join pipes using couplings, clamps, screws, bolts, cement or soldering, brazing, and welding equipment;
- Test pipes for leaks using air and water pressure gauges;
- May prepare cost estimates.

### **Employment requirements**

- Completion of a secondary school is usually required.
- Completion of a four-to-five year apprenticeship program or a combination of over five years of work experience in the trade and some high school, college, or industry courses in plumbing is usually required to be eligible for a trade certification.
- Trade certification is voluntary in British Columbia.

A. *Was the Decision reasonable?*

[15] The Applicant argues that the Decision is unreasonable because the Officer misconstrued the facts and failed to consider the circumstances and evidence on record. The Applicant highlights the following four concerns with the Decision:

*i. The Officer misconstrued the employment requirements.*

As stated above, while not mandatory, the employment requirements for NOC 7251 include secondary school and a trade certification.

The Applicant has secondary school diploma, a bachelor's degree, trade certification in plumbing, including one year of vocational training and approximately five years of work experience in plumbing (as of the date of the Decision).

The above demonstrates that the Applicant meets the employment requirements for NOC 7251, and without a doubt within the requirements in British Columbia.

The Respondent's argument that the Officer was reasonable to find that the Applicant's apprenticeship was education and not employment is without merit; this reasoning was not part of the Officer's Decision. In addition, even if the Applicant did not have approximately five years of work experience, this experience is not mandatory and he does have a training certification (also not mandatory but for which the work experience is applied under the NOC 7251 employment requirements).

- ii. The reference letters demonstrate that the Applicant has experience performing the main duties as set out in the NOC 7251 description.*

The Applicant's reference letters and résumé demonstrate that the Applicant has experience with the majority, if not all, of the main duties set out in the NOC 7251 description.

- iii. The reference letters stated that the Applicant was paid electronically and his tax return declared the 2021 income from his most recent employment.*

Each of the three reference letters sets out the remuneration and the Applicant's most recent employer states that the Applicant was paid electronically. These amounts are reflected in the income tax returns and bank statements. While pay slips from the employer may also be useful evidence, they are not necessary to demonstrate that the Applicant was receiving wages for his work as a plumber from these three separate employers.

While one letter does have an illegible signature, it bears a stamp that the signatory has the authority of the employer.

*iv. The Officer's finding that there is a gap in the Applicant's employment record demonstrates that they failed to consider the evidence in its entirety which provides the Applicant's resume and training certificates.*

The Officer cites a gap in the Applicant's employment record between the completion of his bachelor's degree and when he started working as a plumber.

The evidence shows that the Applicant was acquiring his plumbing training during this time. There is no gap.

[16] Either the Officer did not consider the evidence as a whole, or mistakenly considered the evidence on record. The Decision is unreasonable.

B. *Was the Decision procedurally fair?*

[17] Procedural fairness dictates that a visa officer must ensure that an applicant has the opportunity to meaningfully participate in the application process. This includes being informed of and provided an opportunity to respond to perceived material inconsistencies, credibility concerns, accuracy or authenticity concerns, or the reliance of a visa officer on extrinsic evidence (*Bui v. Canada (Minister of Citizenship and Immigration)*, 2019 FC 440 at paragraph 27).

[18] While the decision to issue a temporary visa typically attracts a low or minimal level of procedural fairness, in situations where an officer doubts the credibility, accuracy, or genuine



nature of the information submitted, the Applicant should be provided an opportunity to address these concerns (*Sangha* at paragraphs 21 to 22, citing *Hassani v. Canada (Citizenship and Immigration)*, 2006 FC 1283 at paragraph 24 and *Madadi v. Canada (Citizenship and Immigration)*, 2013 FC 716 at paragraph 6).

[19] In the Decision, the Officer questions the credibility and authenticity of the three reference letters stating that they “are on plain paper and appear to be manufactured for the purposes for this [work permit] application” and one of the letters did “not indicate the name of the signatory and it illegibly signed.”

[20] The Officer did not provide the Applicant with an opportunity to address these concerns; there was a breach of procedural fairness.

**JUDGMENT in IMM-7155-21**

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

1. This application is allowed and the matter is referred to a different officer for reconsideration.
2. There is no question for certification.

**"Michael D. Manson"**

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Judge

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

**DOCKET:** IMM-7155-21

**STYLE OF CAUSE:** HARSIMRAN SINGH KHARAUD v THE MINISTER  
OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** HELD BY VIDEOCONFERENCE

**DATE OF HEARING:** MAY 31, 2022

**JUDGMENT AND REASONS:** MANSON J.

**DATED:** JUNE 1, 2022

**APPEARANCES:**

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