Federal Court  Cour fédérale

Date: 20220729

Docket: IMM-6465-19

Citation: 2022 FC 1144

Ottawa, Ontario, July 29, 2022

PRESENT: The Honourable Madam Justice Elliott

BETWEEN:

SUKHWINDER SINGH

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, a citizen of India, seeks judicial review of a decision by an Immigration Officer (the Officer) denying his application for a work permit as a temporary foreign worker (the Decision).

[2] The Officer denied the application for two reasons: (1) they were not satisfied the Applicant had sufficient ties to India; (2) they were not satisfied the Applicant would return to India given the financial incentives to stay in Canada.

[3] For the reasons that follow, this application will be allowed. The Officer failed to consider the family ties of the Applicant in India, and this Court has held that financial incentive alone is not a sufficient reason to deny an application.

II. **Background Facts**

[4] The Applicant is a 35-year-old citizen India who lives in the village of Khanna. He is a self-employed farmer since 2009. He works on the family farm that he co-owns with his father. His father, grandfather and great-grandfather all worked on the farm.

[5] The Applicant has been married since 2009. He has a son who was born in 2010. The Applicant's wife and child are to remain in India. He has no relatives in Canada.

[6] On September 11, 2019, the Applicant applied for a work visa as a temporary foreign worker, the refusal of which is the subject of this application. A previous application was denied because an Immigration Officer was not satisfied the Applicant would leave Canada at the end of his authorized period of stay.

[7] The Applicant included in his second application an employment contract with Satnam Deenshaw, a farming company in British Columbia, signed on May 2, 2019. He also included an

April 12, 2019 positive Labour Market Impact Assessment (LMIA) for the role. The LMIA was to expire on December 19, 2019.

[8] The Applicant stated in a letter accompanying his application that he hoped to learn new farming techniques in Canada in order to improve production on his family farm back in India. He also stated that he was committed to the family farm business, his parents and other family members.

[9] According to the Global Case Management System (GCMS) notes in the Certified Tribunal Record (CTR), an Immigration Officer at the High Commission of Canada, New Delhi, reviewed the Applicant's submissions on September 20, 2019. The notes indicate that after reviewing the Applicant's submissions, the Officer was not satisfied that:

> . . . the applicant is indeed sufficiently established in India and that he would leave Canada upon expiry of any status granted to him in Canada. Given the great disparity in applicants earning power in Canada versus in India, as well as the better working condition available in Canada, it appears that applicant would have little financial incentive to return to India if admitted to Canada. I am therefore not satisfied the applicant is a genuine worker who will leave Canada at the end of his temporary authorized stay. Refused R200(l)(b).

[10] Subsection 200(1) of the *Immigration and Refugee Protection Regulations*, SOR 2002/227 provides that, in respect of a foreign national who makes an application for a work permit before entering Canada, an Officer shall issue a work permit if, following an examination, certain things are established. Paragraph (b), referred to above, sets out the requirement that "the foreign national will leave Canada by the end of the period authorized for their stay …".

[11] By letter dated September 20, 2019 the Applicant was informed that his application was refused because the Officer was "not satisfied that you will leave Canada at the end of your stay, as stipulated in subsection 200(1) of the IRPR, based on the purpose of your visit."

III. **Issue and Standard of Review**

[12] The Applicant raised a number of concerns, all of which I find boil down to whether the Decision is reasonable given the information before the Officer.

[13] The Respondent submits the only issue is whether the Decision is reasonable.

[14] The Supreme Court of Canada has established that when conducting judicial review of the merits of an administrative decision, other than a review related to a breach of natural justice and/or the duty of procedural fairness, the presumptive standard of review is reasonableness: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2015 SCC 65 [*Vavilov*] at para 23.

[15] *Vavilov* also confirmed, citing *New Brunswick (Board of Management) v Dunsmuir*, 2008 SCC 9 at paragraphs 47-48, that a reasonable decision is one that displays justification, transparency and intelligibility with a focus on the decision actually made, including the justification for it: *Vavilov* at para 15.

IV. **Analysis**

[16] The Applicant submits the Officer failed to consider all the evidence before them prior to making the credibility assessment. The Applicant noted that he has his own family farm and

many years of farming experience and that the goal of working in Canada was to gain Canadian experience and learn new farming techniques.

[17] The Respondent replies that the onus is on the Applicant to satisfy the Immigration Officer that he is eligible for a visa. They add that it was reasonable for the Officer to conclude that the Applicant would have a financial disincentive to return to India because his earning potential in Canada is higher. The Respondent points out that according to the CTR, the Applicant co-owns and co-leases farmland with his brother and father. He does not own his own farm and, in the view of the Respondent, he does not earn a significant income in India.

A. *The Officer's Financial Incentive Analysis*

[18] The Officer concluded that the Applicant would not have an incentive to leave Canada, given the disparity in earning potential between Canada and India.

[19] The Officer appears not to have considered the relative purchasing power of that income in each country in order to ascertain or even approximate, the actual practical difference the income would make to the Applicant and his family.

[20] In any event, considering the jurisprudence of this Court, I find that it was unreasonable for the Officer to rely on a financial incentive in Canada as the basis for refusing the Applicant's visa.

[21] Generally, individuals applying for temporary work visas in Canada are doing so because of the higher earning potential in Canada. A financial incentive to work in Canada, cannot be the determinative factor for denying an application.

[22] This is well stated by Mr. Justice Pamel in *Ul Zaman v Canada (Citizenship and Immigration)*, 2020 FC 268:

> [53] Indeed, it is now well settled that relying on an economic incentive to come to Canada cannot be the determinative factor to refuse a work permit application (*Cao v Canada (Citizenship and Immigration*), 2010 FC 941 at paras 7-11; *Dhanoa v Canada (Citizenship and Immigration*), 2009 FC 729 at para 18). The reason for this is simple: "[o]bviously, persons who apply for temporary work permits in Canada are doing so because they can earn more money here than at home" (*Rengasamy v Canada (Citizenship and Immigration)*, 2009 FC 1229 at para 14; see also *Kindie v Canada (Citizenship and Immigration)*, 2011 FC 850 at para 13).
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> . . .
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> [55] By simply relying on the Applicant's financial incentive to work in Canada without addressing the evidence of the Applicant's stable employment history, family ties in Pakistan, and job offer in Pakistan, I cannot see how the decision of the visa officer can be reasonable.

[23] I find *Cao v Canada (Citizenship and Immigration)*, 2010 FC 941, cited above by Justice Pamel, is highly relevant to the Applicant's situation:

> [7] As is the case with virtually all applicants for temporary work permits, there is a financial incentive to work in Canada. This fact cannot be held against an applicant, as to do so would result in the rejection of the vast majority of such applications (*Rengasamy v. Canada (Minister of Citizenship & Immigration*), 2009 FC 1229 at paragraph 14). There must be objective reasons to reasonably question the motivation of an applicant. Just to cite a few examples, past immigration attempts, overstaying in other countries, a criminal past, may provide sufficient basis to doubt

> that an applicant will leave Canada by the end of the authorized period.

[24] Given this jurisprudence I find the Officer's finding that there was a financial incentive for the Applicant not to leave Canada was unreasonable.

B. *The Officer's Establishment Analysis*

[25] The Officer found the financial documentation from the Applicant did not satisfy them that the Applicant was sufficiently established in India.

[26] The only references to support that finding are, once again, financial. The Officer relied upon both "financial documentation" and "little financial incentive to return to India" to find the Applicant would not leave Canada at the end of their authorized period of stay. There is no elaboration by the Officer of the basis for those statements. Having made the statements, the Officer then states their conclusion that they are not satisfied the Applicant is a genuine worker who will leave Canada at the end of his temporary authorized stay.

[27] The Officer did not mention the Applicant's stated goal of learning new farming techniques in Canada to enhance production and growth in his home country and his indication that he would go back to India to "resume cultivation with learnt high techniques and methods".

[28] Generally, an officer is presumed to have considered all the evidence and a decision maker need not mention every piece of evidence. However, the more important the evidence that is not mentioned specifically and analyzed in the Officer's reasons, the more willing a court may

be to infer from the silence that the Officer made an erroneous finding of fact "without regard to the evidence" that is not mentioned: *Cepeda-Gutierrez v. Canada (Minister of Citizenship & Immigration)* (1998), 157 F.T.R. 35 (Fed. T.D) at paras 15 and 17.

[29] In this application, whether the Applicant will return to India is a relevant consideration as the Officer specifically mentioned that they felt the Applicant was not established in India.

[30] The Officer failed to mention the Applicant's long family history of farming in India over multiple generations, the fact that the Applicant's wife and young son, siblings and parents were all in India and that the Applicant had no relatives in Canada.

[31] For all the foregoing reasons, I find that the Officer's conclusion that the Applicant would not return to India was unreasonable.

V. **Conclusion**

[32] While an Officer does not have to write extensive reasons to support their conclusion, they should grapple with the evidence sufficiently to show that they considered the factors put forward by the Applicant.

[33] The Officer's decision did not take into account the evidence before them or the jurisprudence of this Court. On that basis, the Decision is unreasonable and is set aside.

[34] No question was posed for certification nor does one exist on these facts.

JUDGMENT IN IMM-6465-19

THIS COURT'S JUDGMENT is that

1. The application for judicial review is allowed. The decision of the Visa Section of the High Commission of Canada, in New Delhi, India, dated September 20, 2019, refusing the applicant's application for a work permit as a temporary foreign worker is set aside.

2. There is no serious question of general importance for certification.

"E. Susan Elliott"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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