

Federal Court



Cour fédérale

**Date: 20221007**

**Docket: IMM-695-21**

**Citation: 2022 FC 1385**

**Ottawa, Ontario, October 7, 2022**

**PRESENT: The Honourable Madam Justice Elliott**

**BETWEEN:**

**MUHAMMAD KHALEEL**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

**I. Overview**

[1] The Applicant seeks judicial review of a decision made by an Officer at the Embassy of Canada in Riyadh, Saudi Arabia, dated December 9, 2020 (the Decision).

[2] The Officer refused the Applicant's application for a Temporary Resident Visa (TRV) as the Officer was not satisfied the Applicant would leave Canada at the end of their temporary stay

based on the (1) purpose of their visit (POV); and (2) their immigration status and (3) their current employment.

[3] The Applicant seeks to have the Decision set aside and the matter returned for redetermination by a different Visa Officer.

[4] For the reasons that follow, this application is dismissed.

## II. **Background Facts**

[5] The Applicant is a citizen of Pakistan who resides and works with temporary status in the Kingdom of Saudi Arabia (KSA).

[6] On September 16, 2019, the Applicant applied to the Provincial Nominee Program under the British Columbia Entrepreneur Immigration- Regional Pilot Program (BC PNP) to set up a bakery business in Quesnel. He filed a Business Plan with his application indicating he had been employed in KSA as a baker with Nawami Bakeries beginning in November 2016.

[7] The materials filed with the TRV application indicate the Applicant had been approved for the first phase of the BC PNP as an economic immigrant. He had been invited by Quesnel, British Columbia for an Exploratory Visit. The community visit is a requirement of the BC PNP.

[8] On February 6, 2020, following receipt of the correspondence from the City of Quesnel, the Applicant submitted a TRV application. The TRV screening form indicates that the

Applicant had \$266,673 CAD in available funds and a monthly income of \$5000 SAR (approximately \$1686 CAD). The Applicant's proposed stay was to be between March 16, 2020 and April 5, 2020.

[9] The purpose of the TRV was to permit the Applicant, as part of his BC PNP application, to conduct the exploratory community visit. He was also to be interviewed in Quesnel by the Manager of Economic Development and Tourism for Quesnel.

### III. **Issues**

[10] The Applicant raises two issues:

- A. Was the Decision unreasonable because the Officer ignored important evidence?
- B. Did the Officer breach procedural fairness in arriving at the Decision?

[11] The first issue has several sub-issues, discussed below.

[12] The basis for the procedural fairness issue is that the Applicant says the Officer consulted extrinsic materials without giving him an opportunity to respond.

### IV. **Standard of Review**

#### A. *Reasonableness review*

[13] 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*, 2019 SCC 65 [*Vavilov*] at paragraph 23. While this presumption is rebuttable, none of the exceptions to the presumption are present here.

[14] The focus of reasonableness review must be on the decision actually made by the decision maker, including both the decision maker’s reasoning process and the outcome. The role of courts in these circumstances is to review, and at least as a general rule, to refrain from deciding the issue themselves: *Vavilov* at paragraph 83.

[15] To set a decision aside, a reviewing court must be satisfied that there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency. Any alleged flaws or shortcomings must be more than merely superficial or peripheral to the merits of the decision: *Vavilov* at para 100.

[16] The decision maker may assess and evaluate the evidence before it. Absent exceptional circumstances, a reviewing court will not interfere with its factual findings. The reviewing court must refrain from “reweighing and reassessing the evidence considered by the decision maker”: *Vavilov* at paragraph 125.

B. *Procedural fairness*

[17] The standard of review for issues of procedural fairness is generally referred to as correctness. However, it is now accepted that procedural fairness is not amenable to a standard of review. The task of the Court on judicial review is to determine whether the proceedings were

fair to the applicant in all the circumstances. This involves determining whether the applicant knew the case to be met and had a full and fair chance to respond and be heard: *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at paragraph 56.

[18] It has been established that the level of procedural fairness required when determining an application for a temporary residence visa is at the lower end of the procedural fairness spectrum. A visa applicant must put their best foot forward - a visa officer is not required to ask for further information if an applicant has not met their burden to prove they will leave Canada at the end of the authorized stay: *Singh v. Canada (Minister of Citizenship and Immigration)*, 2019 FC 969, at paragraph 23.

V. **Analysis of the Decision**

[19] The Global Case Management System (GCMS) notes contain the reasons for the Decision.

[20] Based on the GCMS notes and the Applicant's submissions, there are five discrete issues. Four of them challenge the reasonableness of the Decision and the fifth issue questions the procedural fairness of the Decision, alleging that the Officer consulted extrinsic evidence.

[21] Each will be considered in turn in the following pages.

A. *Covid-19 and Saudization*

[22] The GCMS notes for December 9, 2020 state:

Considering the current economic reforms in KSA (Saudization), PA's occupation (sales manager) is subject to plans for Saudization reforms. I am not satisfied that PA has strong future employment prospects in KSA. The saudization reforms are ongoing and due to the COVID-19 pandemic, reduction in the foreign workforce and layoffs are fast-tracking.

[23] The Applicant submits that the Officer ignored evidence with respect to the letter from the Applicant's employer in Saudi Arabia which states, "Mr. Khaleel's job was not affected due to COVID pandemic. Since our business is in food industry and is considered as an essential service, our business remained opened through the lockdown and we continued to serve our customers. During the COVID lockdown, we had to increase our productions as demand increased and employees including Mr. Khaleel, were scheduled to work overtime".

[24] The Applicant states this letter contradicts the Officer's findings that the Applicant's job will be negatively impacted by COVID-19 and Saudization. The letter states that because COVID-19 caused more demand for baked goods, the Applicant was working overtime.

[25] The Respondent submits the Applicant has taken the Officer's considerations out of context. The Officer indicated "saudization reforms are ongoing and due to the COVID-19 pandemic, reduction in the foreign workforce and layoffs are fast-tracking".

[26] I agree that the Applicant mischaracterizes the Officer's concerns.

[27] While the employer spoke to the increase in business they have experienced, the Officer is concerned with the national push to reduce foreign workers in KSA.

[28] The Applicant is part of the foreign workforce in KSA. The Officer's notes indicate the Applicant's employment is not a strong tie given the instability of foreign workers and the push to replace them with citizens of KSA which push is accelerating due to COVID-19.

[29] Regardless of the bakery's success and reliance on the Applicant's employment, the business like all others in KSA, is equally subject to the government's policies to prioritize the employment of Saudi nationals. While the Applicant is correct in stating that the employer's letter was not explicitly cited in the GCMS notes, I find that was reasonable as the letter does not address the Officer's concerns about the nation-wide Saudization policies targeting foreign workers with temporary status in KSA.

[30] In addition, the Applicant submits the Officer misapprehended the evidence before him (when he found the Applicant was a sales manager at the bakery) because the Applicant was also responsible for the operations of the company. The Applicant states the Officer failed to consider this evidence in arriving at his conclusion on the future of the Applicant's job in Saudi Arabia.

[31] The Officer did not ignore the evidence that the Applicant was also responsible for the operations of the bakery. It is referred to in the GCMS notes of December 9 and 12, 2020 and November 20, 2020. The notes indicate that the Applicant has been "Senior manager in sales and operations at Nawami Bakery since 2016."

[32] As before, the Officer's concern was the Saudization policies targeting foreign workers with temporary status in KSA. The Applicant's responsibility for operations, in addition to sales, did not need to be discussed specifically in the reasons as it did not alter the fact that he was at risk as a foreign worker in KSA.

[33] The Officer's reasons for these two sub-issues are justified, intelligible and transparent without any critical errors or serious shortcomings.

[34] As a result of the foregoing, I find the Applicant has failed to meet his onus to show the Officer erred with respect to the analysis of COVID-19 and Saudization.

B. *Purpose of visit*

[35] The GCMS notes for February 23, 2020 state "The applicant's purpose of visit appears vague and poorly documented." The December 16, 2020 GCMS notes add "POV: Exploratory visit & interview with BC PNP Program (LOI on file dated 12, March 2020)".

[36] The Applicant submits that the absence of reasons and analysis leading to the conclusion that the Applicant would not leave at the end of his stay, based on his purpose of visit, runs contrary to the principle that it is not enough for a decision to be justifiable; it must also be justified as stated in *Vavilov* at paragraph 86.



[37] The Applicant specifically points out that the Officer did not mention the submissions made by the Applicant's immigration consultant, the Applicant's written statement and the email from the Economic Development Coordinator for the City of Quesnel.

[38] Dealing with the last point first, it has been observed by Mr. Justice Mosley, as well as many others, that it is trite law that decision makers are presumed to have considered all the evidence before them. They are not required to refer to every piece of evidence and to explain how they deal with it. A failure to mention a particular piece of evidence does not mean that it was ignored: *Su v Canada (Citizenship and Immigration)*, 2017 FC 66, [*Su*] at paragraph 31, internal citations omitted.

[39] The purpose of the Applicant's visit was clearly acknowledged by the Officer in the notes. The Officer then proceeded to consider the evidence submitted to support the application. The Officer weighed the temporary nature of the Applicant's employment, the nature of his establishment and ties with his residence in KSA and his non-compliance with the Canadian immigration system against the Applicant's employment in KSA and the reason for his visit. The Officer concluded that the evidence did not satisfy him that the Applicant was "a bona fide visitor who would comply with conditions."

[40] In my view, the Applicant's argument amounts to a request to reweigh the evidence that was before the Officer. As stated in *Vavilov*, at paragraph 125, that is not the proper role of this Court upon judicial review.

C. *Strong ties and Immigration history*

[41] As noted above, the Officer considered that the Applicant's establishment and family ties in KSA were only temporary, given Saudization.

[42] The Officer reviewed the Applicant's immigration history, which included: (1) a 2012 denial of a Foreign Skilled Worker permit; (2) the granting in 2014 of a TRV that was valid until February 28, 2018; (3) the refusal on May 14, 2015, of his application for refugee protection, which was made in August 2014; (4) the denial of an appeal to the Refugee Appeal Division of the May 14, 2015 refusal; and (5) the removal of the Applicant to Pakistan on September 22, 2015.

[43] On June 2, 2016, the Applicant attempted to return to Canada using his first TRV but it had been cancelled so the Applicant was removed again with an Exclusion Order.

[44] In December 2019 and February 2020, two more TRVs were denied to the Applicant.

[45] The February 2020 TRV was subjected to an Application for Leave and for Judicial Review that was settled and sent back for redetermination. That redetermination is the TRV decision at issue in this application.

[46] The Applicant submits the Officer ignored, and failed to assess, the fact that the Applicant's wife and children live in Pakistan. The Officer also restricted the analysis to Saudi Arabia and ignored the Applicant's strong ties in Pakistan.

[47] The Respondent points out that although the Applicant suggests he has strong ties to leave Canada because his wife and children are in Pakistan, those ties have previously not been a sufficient reason to keep him in Pakistan. The Officer noted that the Applicant's wife and children remain in Pakistan.

[48] The Respondent says it is not clear if the Applicant has been in KSA on his own since 2016, with his family remaining in Pakistan. This is because the 2014 refugee claim was made without the Applicant's family and it would seem the 2016 one was too.

[49] The Respondent suggests it was reasonable for the Officer to find that the Applicant's wife and children remaining in Pakistan was not seen to be a strong tie that would motivate the Applicant, who has been in KSA since 2016, to return to his family in Pakistan.

[50] In my opinion, the Officer clearly took note of the fact that the Applicant's spouse and three children reside in Pakistan. There is nothing in the Decision or the GCMS notes to indicate there was a failure to consider this evidence. Whether or not the relationship exhibits "strong ties to Pakistan" is a factual finding for which the Officer is owed deference: *Vavilov* at para 125.

[51] The Officer noted that the Applicant's immigration history shows non-compliance. Given that, I find it was reasonable for the Officer to determine, when considered in the context of the other issues, that the Applicant was not a *bona fide* visitor who would comply with the conditions of his TRV.

D. *Procedural Fairness*

[52] The Applicant says his rights to procedural fairness were breached when the Officer relied on evidence concerning the current economic reforms in KSA and the impact of those reforms on the Applicant's occupation.

[53] The Respondent counters that visa applications do not raise substantive rights. Foreign nationals have no unqualified right to enter Canada therefore the level of procedural fairness is low and generally does not require that applicants be granted an opportunity to address the Officer's concerns. This is particularly so where an applicant, like here, may reapply and there is no evidence that doing so will cause hardship.

[54] The Applicant mischaracterizes the Officer's concerns. While the employer may be able to speak to the increase in business that they have experienced, the Officer's concerns lie in the national push to reduce foreign workers in KSA. Regardless of the individual bakery's success and reliance on the Applicant's employment, the business, as with all others in KSA, is equally subject to the government's policies to prioritize the employment of Saudi nationals. While the Applicant is correct in stating that the employer's letter was not explicitly cited in the GCMS notes, the letter's contents do not address the Officer's concerns that the nation-wide Saudization policies target foreign workers with temporary status in KSA.

[55] The Applicant relies on *Begum v Canada (Citizenship and Immigration)*, 2013 FC 824 [*Begum*] to support their position. However, *Begum* is a humanitarian and compassionate case which requires an in-depth analysis of various factors.

[56] I prefer to consider jurisprudence that addresses TRV applications.

[57] In *Mohammed v Canada (Citizenship and Immigration)*, 2017 FC 992, Mr. Justice Pentney had occasion to summarize the principles applicable to extrinsic evidence in judicial review of the denial of a TRV:

[7] It is settled law that visa officers are entitled to rely on their personal knowledge of the local conditions in assessing evidence and documents provided in support of visa applications. In *Bahr* Justice James Russell stated:

[42] So it seems to me that what applicants should expect is that the onus is upon them to make a convincing case and that, in assessing their applications, visa officers will use their general experience and knowledge of local conditions to draw inferences and reach conclusions on the basis of the information and documents provided by the applicant without necessarily putting any concerns that may arise to the applicant. The onus is upon the applicant to ensure that the application is comprehensive and contains all that is needed to make a convincing case.

[ . . . ]

[10] There is no evidence that the Officer relied on extrinsic evidence other than generally available information about the situation in Iraq at the time of the application, a matter which falls within the core of the expertise of a visa officer. In this case, in light of the recent situation in Iraq, it was entirely reasonable to expect an applicant for a TRV to anticipate this sort of concern. The Applicant here cannot claim to have been taken by surprise that the Officer would take into consideration the economic and security situation in Iraq.

[58] The Respondent also notes that as visa applications do not raise substantive rights – foreign nationals have no unqualified right to enter Canada – the level of procedural fairness they are owed is low. It generally does not require that applicants be granted an opportunity to address

the officer's concerns. This is particularly so where an applicant, like here, may reapply and there is no evidence that doing so will cause hardship: *Bautista v Canada (Citizenship and Immigration)*, 2018 FC 669, at paragraph 17.

[59] The Officer considered the Applicant only had temporary status in KSA. It is entirely reasonable to expect an applicant for a TRV to anticipate concerns of this sort in relation to their likelihood of return at the end of an authorized visit to Canada.

[60] The Officer was not required to notify the Applicant that he would be relying on public sources regarding general country conditions in KSA and conducting his own research: *Chandidas v Canada (Minister of Citizenship and Immigration)*, 2013 FC 257 at paras 25, 29-30.

[61] I do not find that the Officer's reliance on their general experience and knowledge of local conditions in KSA gave rise to a duty of procedural fairness.

## VI. Conclusion

[62] In accordance with *Vavilov* at paragraph 125, the Officer's reasons, when read in light of the underlying record, demonstrate a justifiable, intelligible and transparent assessment of the various factors to be considered in making a decision pursuant to section 179 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227.

[63] A reasonable decision is one that is based on an internally coherent and rational chain of analysis and is justified in relation to the facts and law that constrain the decision maker. The

reasonableness standard requires that a reviewing court defer to such a decision: *Vavilov* at para 85.

[64] Considering the foregoing and all the findings set out above, I find the Officer's Decision is reasonable.

[65] There is no question for certification.

**JUDGMENT IN IMM-695-21**

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

1. The application for judicial review is dismissed.
2. No question of general importance is certified.

"E. Susan Elliott"

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Judge



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

**DOCKET:** IMM-695-21

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**APPEARANCES:**

Jeremiah Eastman FOR THE APPLICANT

Prathima Prashad FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Eastman Law Office Professional Corporation FOR THE APPLICANT  
Barrister and Solicitor  
Oakville, Ontario

Attorney General of Canada FOR THE RESPONDENT  
Toronto, Ontario