Federal Court  Cour fédérale

Date: 20221031

Docket: IMM-2060-22

Citation: 2022 FC 1486

Vancouver, British Columbia, October 31, 2022

PRESENT: Madam Justice Go

BETWEEN:

HARDEV SINGH

Applicant

and

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Hardev Singh, is a single, 24-year-old citizen of India living with his parents in his home country. The Applicant's father owns four acres of agricultural land in Punjab. In 2016, the Applicant began working on his father's farm.

[2] In March 2021, the Applicant applied for a work permit through the Temporary Foreign Worker Program [TFWP] after receiving a job offer and a positive Labour Market Impact Assessment to work for two years as a farm labourer at a blueberry farm based in Langley, British Columbia.

[3] In a letter dated February 17, 2022, an immigration officer [Officer] refused the Applicant's TFWP application because the Officer was not satisfied that the Applicant would leave Canada at the end of his stay as required by subsection 200(1) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [Decision].

[4] The Applicant seeks judicial review of the Decision. For the reasons set out below, I find the Decision reasonable and I dismiss the application.

II. Issues and Standard of Review

[5] The Applicant raises the following issues: Did the Officer (1) fetter his discretion, (2) act without regard to the evidence on record, or (3) fail to provide adequate reasons for denying the work permit application?

[6] The Applicant did not pursue his arguments concerning the fettering of discretion and the adequacy of reasons at the hearing, and I do not find it necessary to address them. The only issue before me is whether the Decision was reasonable.

[7] The parties agree that the Decision is reviewable on a reasonableness standard, per *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*].

[8] Reasonableness is a deferential, but robust, standard of review: *Vavilov* at paras 12-13. The reviewing court must determine whether the decision under review, including both its rationale and outcome, is transparent, intelligible and justified: *Vavilov* at para 15. A reasonable decision is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision-maker: *Vavilov* at para 85. Whether a decision is reasonable depends on the relevant administrative setting, the record before the decision-maker, and the impact of the decision on those affected by its consequences: *Vavilov* at paras 88-90, 94, 133-135.

[9] For a decision to be unreasonable, the applicant must establish that the decision contains flaws that are sufficiently central or significant: *Vavilov* at para 100. Not all errors or concerns about a decision will warrant intervention. A reviewing court must refrain from reweighing evidence before the decision-maker, and it should not interfere with factual findings absent exceptional circumstances: *Vavilov* at para 125. Flaws or shortcomings must be more than superficial or peripheral to the merits of the decision, or a "minor misstep": *Vavilov* at para 100.

III. Analysis

[10] The Applicant challenges the Decision on two related fronts, namely, that the Officer reached an unreasonable conclusion that the Applicant has insufficient economic ties to India,

which in turn led to the Officer's unreasonable finding about the Applicant's motivation to stay in Canada.

[11] The Officer's reasons for refusing the application were contained in the Global Case Management System [GCMS] notes, which state as follows:

> Applicant is a single adult male. Lives with his parents Employed as a farmer on family farm. Banking docs shows annual earnings of approx. 4000CAD equivalent. Little assets or property. While applicant has family ties, he lacks economic ties. I am not satisfied that the applicant will depart from Canada at the end of his authorized stay. Refused under R200(1)(b).

[12] I will address the Applicant's two arguments separately below.

A. *The Officer's findings regarding the Applicant's economic ties were reasonable*

[13] The Applicant argues that the Officer's considerations of the Applicant's circumstances were incomplete. The Applicant submits that the Officer unduly focused only on his economic ties to India, namely the lack of financial status or personal assets, and did not take into consideration his young age when finding his CAD $4,000 of annual earnings too low.

[14] Further, the Applicant submits that the Officer failed to consider the financial documents submitted showing net worth of his father's assets, which the Applicant is expected to inherit.

[15] The Applicant also notes that since the agricultural land is owned by his father, the family farm's business income from the land is declared as that of his father's, and taxes have been filed for the same by his father. The Applicant asserts that his involvement in the family farm business

and the affidavit evidence of his father, stating that the Applicant will return to India at the expiry of his visa, are demonstrative of his strong economic ties to India.

[16] I do not find the Applicant's submissions persuasive.

[17] The Applicant made no mention in his TFWP application that he would be inheriting his father's assets. In the absence of such evidence, the Applicant cannot fault the Officer for failing to consider the assets that do not belong to him. Similarly, the Applicant did not offer any clarification in his TFWP application about the income generated from the agricultural land as being separate from his own income. The Applicant's attempt to submit to this Court evidence that was not before the Officer is inappropriate.

[18] Further, as the Respondent argues, and I agree, the Applicant's arguments amount to a disagreement of how the Officer weighed the evidence before him. Based on the GCMS notes, the Officer was alive to the details of the application and was not satisfied after weighing evidence on the Applicant's lack of personal assets and financial status in India. As this Court found in *Aghaalikhani v Canada (Minister of Citizenship and Immigration)*, 2019 FC 1080 at para 24, officers are "presumed to have weighed and considered all the evidence presented" unless proven otherwise. The Applicant simply has not shown on what basis evidence was ignored.

B. *The Officer made no error regarding the Applicant's motivation to stay in Canada*

[19] The Applicant argues that the Officer's finding that he would be motivated to stay in Canada upon the expiry of his visa was speculative. The Applicant submits that there was no evidence on the record showing ties to Canada. To the contrary, the Applicant submits that there was evidence of his strong familial ties to India, which the Officer acknowledged. The Applicant argues that it was unreasonable for the Officer, based on this evidence, to find that his financial incentive to work in Canada would motivate to him to stay beyond his authorized period.

[20] The Applicant relies on various cases where the Court has found it unreasonable to impute the likelihood of a foreign national staying beyond their authorized period, including *Momi v Canada (Minister of Citizenship and Immigration),* 2013 FC 162 [*Momi*]. At paragraph 21 of *Momi,* Justice Roy found that "having a 'permanent job' in Canada does not allow for an inference that the applicant will break the law and remain in this country past the expiry of the work permit" when there is no evidence "that the applicant would have ties in Canada such that he would be tempted to stay for that reason alone."

[21] The Applicant also emphasizes his incentives to stay in India, notably his inheritance of property from his father and the agricultural business he would carry on. The Applicant relies on *Dhanoa v Canada (Minister of Citizenship and Immigration),* 2009 FC 729 [*Dhanoa*] to argue that the Applicant's intent of coming to Canada to gain international experience and financial incentive cannot be inferred as outweighing these ties to India. The Applicant cites *Dhanoa* at para 16:

> It is rather sanctimonious to suggest that our society is more of a draw for him than India, where he would be in the bosom of his family, simply because he would have 30 pieces of silver in his pocket.

[22] The Applicant also refers to *Brar v Canada (Minister of Citizenship and Immigration)*, 2009 FC 697 [*Brar*] at paras 11-12, a case cited by the Respondent, for the proposition that proof of establishment can go beyond money saved in a bank, including valuation documents of land held by the applicant.

[23] Finally, the Applicant submits case law that supports the proposition that "[t]he possibility of financial betterment or career experience cannot, in and of itself, constitute a valid reason for rejecting an application": *Chhetri v Canada (Citizenship and Immigration)* 2011 FC 872 [*Chhetri*] at para 12.

[24] While I agree that financial incentive alone ought not to form the basis for rejecting a TFWP application, I find the cases cited by the Applicant distinguishable from the case at hand.

[25] For instance, in *Chhetri*, in addition to the economic incentives that played a determinative role in the officer's decision, there were other aspects of the decision that the Court found unreasonable: at para 15. In *Momi*, the Applicant had prior history living and working in Australia without overstaying his visa: at paras 16, 25. Finally, the applicant in *Dhanoa* was a married man with two children who stayed in India, who provided evidence that half of his family farm in India would devolve to him: at para 3.

[26] I have already noted that the Applicant provided no evidence that he would be inheriting his father's land. I further note that the Applicant made no submissions in the TFWP application with respect to his family ties in India. The only evidence concerning the Applicant's motivation

was contained in the affidavit of the Applicant's father, stating that the Applicant will return to India. This distinguishes his case from that of *Brar* as well as *Dhanoa*.

[27] I agree with the Respondent that this case is more on all fours with *Perez Pena v Canada (Minister of Citizenship and Immigration),* 2020 FC 796, where this Court found it reasonable for the officer to conclude that the applicant would not leave Canada at the end of their authorized stay because they had no spouse, children, or tangible assets in their country of origin: at paras 13 and 17. The Respondent submits, and I concur, that the Applicant needed to provide more evidence other than the presence of immediate family members to establish that he would return to India.

[28] I find that the Decision is reasonable in view of the evidence submitted by the Applicant and the onus placed on the Applicant to put his best case forward to demonstrate that he meets the statutory requirements: *Sulce v Canada (Minister of Citizenship and Immigration),* 2015 FC 1132 at para 10. The Decision is based on an internally coherent and rational chain of analysis and is justified in relation to the facts and the law.

IV. Conclusion

[29] The application for judicial review is dismissed.

[30] There is no question for certification.

JUDGMENT in IMM-2060-22

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. There is no question for certification.

"Avvy Yao-Yao Go"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-2060-22
STYLE OF CAUSE:	HARDEV SINGH v MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	HELD VIA VIDEOCONFERENCE
DATE OF HEARING:	OCTOBER 18, 2022
JUDGMENT AND REASONS:	GO J.
DATED:	OCTOBER 31, 2022

APPEARANCES:

Neha Bains	FOR THE APPLICANT
Mary Murray	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Neha Bains Barrister and Solicitor Surrey, British Columbia	FOR THE APPLICANT
Attorney General of Canada Vancouver, British Columbia	FOR THE RESPONDENT