

Federal Court



Cour fédérale

Date: 20221213

Docket: IMM-3331-22

Citation: 2022 FC 1718

Ottawa, Ontario, December 13, 2022

PRESENT: The Honourable Mr. Justice Lafrenière

BETWEEN:

BALJINDER SINGH

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant seeks judicial review of a decision of a visa officer [Officer] dated March 15, 2022 [Decision] refusing his work permit application under the Temporary Foreign Worker Program pursuant to subsection 200(1) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [IRPR]. The Applicant also sought an award of costs pursuant to section 22 of

the *Federal Courts Citizenship, Immigration and Refugee Protection Rules*, SOR/93-22 [Rules] based on the alleged bad faith of the Officer; however, the matter was not pursued at the hearing.

[2] For the reasons that follow, the application for judicial review is granted.

II. Background

[3] The Applicant is a 31-year-old citizen of India. He married in January 2020 and has one child. His wife and child reside in India.

[4] The Applicant was employed as a heavy truck driver with the same employer in Qatar from March 2017 to November 2019 and from November 2020 to at least the time of his application for a work permit in Canada.

[5] In December 2020, Maple Eagle Freight System Inc. [Maple Eagle], a company located in Delta, British Columbia received permission to hire five foreign workers as long-haul truck drivers due to labour shortages through the Canadian government's approval of its Labour Market Impact Assessment [LMIA] application. The Applicant was hired by Maple Eagle and named on the Maple Eagle LMIA. An offer letter from Maple Eagle set out a number of job duties, including operation of "straight or articulated trucks," conducting truck and cargo safety inspections, and keeping records, including responsibility for "trans-border documentation."

[6] On December 21, 2020, the Applicant applied for a work permit from outside Canada.

[7] On March 15, 2022, the Officer advised the Applicant that his work permit application was refused on two grounds. First, the Applicant did not establish that he could adequately perform the work of a long-haul truck driver in Canada. Second, he did not satisfy the Officer that he would depart Canada at the end of an authorized stay.

[8] The Officer's Global Case Management System [GCMS] notes form part of the reasons for their decision (*Torres v Canada (Citizenship and Immigration)*, 2019 FC 150 at para 19). After setting out the Applicant's language scores, level of education, and previous employment, the Officer notes that the Applicant's spouse and child reside in India and were not accompanying the Applicant. They find the Applicant's immigration status in his country of residence is temporary, which reduces his ties to that country.

[9] The Officer goes on to state that they are not satisfied that the Applicant demonstrated that he can perform the work in a way that does not put the safety of Canadians at risk. They note that the Applicant's work experience as a Truck Driver is "entirely limited to Qatar, the terrain and weather conditions of which are significantly different compared to those in Canada." Moreover, the Applicant did not provide a "Traffic Fine Clearance Certificate" to indicate whether he had received traffic fines during the course of his employment. The Officer states that they are unable to assess the Applicant's "level of adherence to traffic rules and regulations" in Qatar, which they consider an important factor in "determining the likelihood of the applicant adhering to the traffic rules and regulations of Canada."

III. Issue and Standard of Review

[10] The issue to be determined is whether the Officer's decision is reasonable.

[11] The standard of review applicable to work permit determinations is that of reasonableness. A reasonable decision is one 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 (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at para 85). The burden is on the Applicant to satisfy the Court "that any shortcomings or flaws relied on...are sufficiently central or significant to render the decision unreasonable" (*Vavilov* at para 100). A reasonable decision is justified in light of the facts and "the reasonableness of a decision may be jeopardized where the decision maker has fundamentally misapprehended or failed to account for the evidence before it" (*Vavilov* at para 126).

[12] Courts should not overturn a decision based on a "minor misstep" (*Vavilov* at para 100). Rather, any deficiencies in a decision must be "sufficiently central or significant to render the decision unreasonable" (*Vavilov* at para 100). Reasons should be considered as a whole and within the context of the institutional setting and the record, including the issues raised by the parties: *Canada (MCI) v Mason*, 2021 FCA 156 at paras 31-34, 36, 40; *Vavilov* at paras 85, 91, 96-97, 100.

IV. Analysis

[13] Subsection 200(1) of the IRPR outlines the criteria for the issuance of work permits to a foreign national. An officer shall not issue a work permit if it is established that the foreign national will not leave Canada by the end of their authorized stay, or there are reasonable grounds to believe the foreign national is unable to perform the work sought (see *Gill v Canada (Citizenship and Immigration)*, 2021 FC 934 at para 12).

[14] The Officer determined that the Applicant had not established that he would depart Canada in accordance with the terms of a temporary resident based on the Applicant's family ties in Canada, his country of residence and his immigration status. As explained below, these findings are not justified in relation to the facts and law that constrain the Officer.

[15] The only reason that can be discerned from the Officer's GCMS notes for reaching this conclusion is that the Applicant's "residence [in Qatar] is temporary, which reduces their ties to that country." However, the Officer does not explain why they discounted evidence of the Applicant's ties to his home country, in particular the Applicant's close family ties with his spouse and child in India, and his previous travel history and compliance with immigration rules of other countries.

[16] While an officer is presumed to have weighed and considered all of the evidence on file, if they ignore relevant evidence pointing to an opposite conclusion and contradicting the officer's findings, it can be inferred that the officer did not review the evidence or arbitrarily

disregarded it: *Shakeri v Canada (Citizenship and Immigration)*, 2016 FC 1327 at para 22. In the absence of any analysis of the Applicant's ties to India, I conclude that the Decision to refuse the work permit application on the first ground is not justified based on the record before the Officer.

[17] Considering the record in the present matter and that the Applicant's family ties was one of only two reasons given for refusing the work permit application, I find that this issue was sufficiently central to render the entire Decision unreasonable.

[18] The Decision is therefore set aside, and the application is referred back for redetermination by a different officer. In order to avoid any further delay in processing the application, the Applicant should be provided an opportunity to complete his application by submitting a "Traffic Fine Clearance Certificate," if so advised. After all, as stated in *Sangha v Canada (Citizenship and Immigration)*, 2020 FC 95 at para 42 and repeated by the Officer, safety is a paramount consideration for assessing the competency of long-haul truck drivers and that the onus is on an applicant to provide sufficient evidence to establish competence.

V. Conclusion

[19] For the reasons above, the application for judicial review is allowed. The matter is remitted for reconsideration by a different officer.

[20] There is no question of general importance for certification.

JUDGMENT IN IMM-3331-22

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is granted.
2. The matter is remitted to a different officer for reconsideration.
3. There is no question of general importance for certification.

“Roger R. Lafrenière:

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3331-22

STYLE OF CAUSE: BALJINDER SINGH v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: HELD BY VIDEOCONFERENCE

DATE OF HEARING: NOVEMBER 9, 2022

JUDGMENT AND REASONS: LAFRENIÈRE J.

DATED: DECEMBER 13, 2022

APPEARANCES:

Gabriel Chand FOR THE APPLICANT

Robert L. Gibson FOR THE RESPONDENT

SOLICITORS OF RECORD:

Chand & Company Law FOR THE APPLICANT
Corporation
Vancouver, British Columbia

Attorney General of Canada FOR THE RESPONDENT
Vancouver, British Columbia