Federal Court  Cour fédérale

Date: 20230213

Docket: IMM-1508-22

Citation: 2023 FC 209

Montréal, Quebec, February 13, 2023

PRESENT: Mr. Justice Gascon

BETWEEN:

JIANGPING LIN

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION CANADA

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The applicant, Ms. Jiangping Lin, is a citizen of China. She seeks judicial review of a decision rendered on February 7, 2022 [Decision] by the Canadian Embassy in Beijing, China [Canadian Embassy]. The Canadian Embassy denied Ms. Lin's work permit [WP] application

under the Temporary Foreign Worker Program because it was not satisfied that Ms. Lin would leave Canada at the end of her stay, due to the purpose of her visit and her employment situation.

[2] Ms. Lin submits that the Decision is unreasonable, as it relies on an illogical analysis of the facts underlying her WP application. She asks this Court to quash the Decision and to send it back for redetermination by a different visa officer.

[3] For the following reasons, Ms. Lin's application for judicial review will be granted. Having considered the evidence before the Canadian Embassy and the applicable law, I conclude that the Decision is unreasonable, as no evidence supports the key factual findings of the visa officers. Moreover, the Decision lacks a clear and logical justification of its outcome. In the circumstances, this is sufficient to justify the Court's intervention.

II. Background

A. *The factual context*

[4] Ms. Lin comes from a family of farmers living in a rural area of China. From 2005 to 2021, which covers most of her adult life, Ms. Lin worked as a packing worker for different shoe companies in China. Her highest level of education is a major in Practical English, obtained from a Technical Secondary School.

[5] When she heard about the possibility that working on a farm in Canada could allow her and her family to eventually immigrate to Canada, she decided to apply for a position with the

Sharon Mushroom Farm located in Ontario. On April 18, 2021, the Sharon Mushroom Farm received a positive Labour Market Impact Assessment [LMIA] for 42 mushroom pickers, including Ms. Lin. The LMIA's date of expiry was December 24, 2021.

[6] In November 2021, Ms. Lin started working as a mushroom grower and picker in China.

[7] The next month, on December 23, 2021, she applied for her Canadian WP.

B. *The Canadian Embassy Decision*

[8] As is typically the case for WP applications, the Decision of the Canadian Embassy is brief. It takes the form of a standardized letter where a visa officer indicates that he/she was not satisfied that Ms. Lin will leave Canada at the end of her stay, as stipulated in subsection 200(1) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227. In the Decision, the Canadian Embassy singled out two bases to conclude that Ms. Lin would not leave Canada: the purpose of her visit and her current employment situation. No other reasons were given.

[9] The Decision also includes the Global Case Management System [GCMS] notes of the Canadian Embassy visa officers who reviewed Ms. Lin's application (*Sharma v Canada (Citizenship and Immigration)*, 2020 FC 381 at para 7).

[10] The GCMS notes dated February 4, 2022 indicate that a first visa officer [First Officer] recommended the refusal of Ms. Lin's WP application and provided the following explanations:

> Application reviewed. PA is applying for a WP under LMIA. PA seeks to work at Sharon Mushroom Farm as a Mushroom Picker for the duration of 2 years. LMIA statement provided, statement letter expires on 2021/12/24. Application submitted on 2021/12/24. Noted PA's p[re]vious education in practical English. Noted PA's employment history in packing. Given PA's education background, the career progression does not make sense. Noted PA's p[re]vious work experience in shoe production. [A]nd noted PA started to work as a Mushroom grower/picker just one month before the submission of her WP application (2021/11). Weighing the factors in this application. I am not satisfied that the applicant is a genuine WP applicant, and the applicant will depart Canada at the end of the period authorized for their stay.

[11] A second visa officer [Second Officer], having looked at the assessment notes of the First Officer, refused Ms. Lin's WP application and explained as follows, in a note dated February 7 2022:

> As a result of my careful review and considering all relevant factors presented, on balance, I am not satisfied the applicant is a genuine worker who would comply with the conditions of temporary entry. Refused.

[12] I pause to underscore that the excerpts cited above represent the entirety of the reasons underlying the Decision.

C. *The standard of review*

[13] Ms. Lin and the Minister of Citizenship and Immigration of Canada [Minister] both submit that the standard of review applicable to the Decision is reasonableness (*Singh v Canada (Citizenship and Immigration)*, 2022 FC 1645 at paras 12–13). I agree.

[14] Reasonableness is the presumptive standard that reviewing courts must apply when conducting a judicial review of the merits of an administrative decision. Reasonableness focuses on the decision made by the administrative decision maker, which encompasses both the reasoning process and the outcome (*Canada (Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at paras 83, 87). Where the applicable standard of review is reasonableness, the role of a reviewing court is to examine the reasons given by the administrative decision maker and to determine whether the decision 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" (*Vavilov* at para 85). The reviewing court must therefore consider whether the "decision bears the hallmarks of reasonableness—justification, transparency and intelligibility" (*Vavilov* at para 99).

[15] A judicial review must include a rigorous evaluation of administrative decisions. However, as part of its analysis of the reasonableness of a decision, the reviewing court must begin its inquiry by examining the reasons provided with "respectful attention," and seek to understand the reasoning process followed by the decision maker to arrive at its conclusion (*Vavilov* at para 84). The reviewing court must adopt an attitude of restraint and intervene "only where it is truly necessary to do so in order to safeguard the legality, rationality and fairness of the administrative process" (*Vavilov* at para 13), without "reweighing and reassessing the evidence" before it (*Vavilov* at para 125).

[16] The onus is on the party challenging the administrative decision to prove that it is unreasonable. Flaws must be more than superficial for the reviewing court to overturn an

administrative decision. The court must be satisfied that there are "sufficiently serious shortcomings" (*Vavilov* at para 100).

III. Analysis

[17] Ms. Lin submits that the Decision is unreasonable because the First and Second Officers' assessments of her situation are illogical in relation to her education and work experience. Ms. Lin's "career" change, from a packing worker in the shoe industry to a mushroom grower and picker, was motivated by her desire to apply for the Agri-Food Pilot Program. This program was put in place by the government of Canada to recruit foreign workers who wish to work in specific industries within the agri-food sector, and it provides a pathway to permanent residence in Canada. One of the requirements of the Agri-Food Pilot Program is that the applicant must have completed at least one year of full-time, non-seasonal work in Canada, hence Ms. Lin's application for a WP. Ms. Lin also argues that the Second Officer did not properly review her application before refusing it and simply relied on the First Officer's assessment notes.

[18] The Minister responds that Ms. Lin did not identify a reviewable question in her application for judicial review. He also submits that the Decision is reasonable and that there is no evidence of fettering as the Second Officer made his own analysis of the evidence.

[19] I disagree with the Minister, and I do not share his reading of the Decision and of the evidence on the record.

[20] At the outset, it is worth noting that "while an intention to become a permanent resident does not preclude an applicant from becoming a temporary resident, the officer who reviews an application for a temporary work permit must nevertheless be satisfied that the applicant will leave Canada by the end of the period authorized for the applicant's stay" (*Ramos v Canada (Immigration, Refugees and Citizenship)*, 2017 FC 768 at para 13; paragraph 22(2) of the *Immigration and Refugee Protection Act*, SC 2001, c 27). Accordingly, while Ms. Lin's ultimate goal may be to obtain permanent residency through the Agri-Food Pilot Program, the Canadian Embassy still had to be satisfied, in its assessment of Ms. Lin's WP application, that she would leave Canada at the end of her authorized stay.

[21] I accept that the obligation to give reasons for a decision on a temporary resident visa application such as a WP is minimal due to reasons of practical efficiency (*Marcelin v Canada (Citizenship and Immigration)*, 2021 FC 761 at para 9; *Zamor v Canada (Citizenship and Immigration)*, 2021 FC 479 at para 22; *Nimely v Canada (Citizenship and Immigration)*, 2020 FC 282 [*Nimely*] at para 7; *Hajiyeva v Canada (Citizenship and Immigration)*, 2020 FC 71 [*Hajiyeva*] at para 6). This is in line with *Vavilov*, which states that the "context" in which an administrative decision is rendered must be taken into account (*Vavilov* at para 94; *Hajiyeva* at para 6). Additionally, it bears reminding that visa officers have considerable expertise in hearing and determining visa applications (including WP applications), and this requires the reviewing court to accord them a high degree of deference on evidentiary issues (*Mohammadzadeh v Canada (Citizenship and Immigration)*, 2022 FC 75 at paras 18–19; *Nimely* at para 7). The role of this Court is not to reweigh the evidence on the record nor to substitute its own conclusions to those of visa officers.

[22] However, while the duty to provide reasons is minimal and brief reasons are often the norm in the context of WP applications, the Court must still be "able to understand why the decision was made" (*Solopova v Canada (Citizenship and Immigration)*, 2016 FC 690 at para 32). Even for WP applications where reasons are not required to be extensive or exhaustive, administrative decision makers have the obligation to provide transparent, justified, and intelligible reasons (*He v Canada (Citizenship and Immigration)*, 2021 FC 1027 [*He*] at para 20). True, reasons need not be comprehensive or perfect; however, they need to be comprehensible. It is crucial for an applicant, and the Court, to "understand the basis on which [an] application has been refused" (*He* at para 18).

[23] Moreover, while a reviewing court must resist the temptation to intervene and to usurp the specialized expertise that Parliament has opted to confer to visa officers, it cannot show blind reverence to an administrative decision maker's interpretation and assessment of the evidence.

[24] In this case, I am not satisfied that the reasons provide an adequate justification for the Decision nor do they reflect a logical and rational fact-finding process. The visa officers' reasons are incomprehensible because there is no evidence on the record to support them and they appear to be completely arbitrary in light of the evidence submitted by Ms. Lin. In the words of the Federal Court of Appeal in *Delios v Canada (Attorney General)*, 2015 FCA 117 at paragraph 27, the Decision contains numerous "badges of unreasonableness."

[25] There are two main reasons underpinning my conclusion. First, the Canadian Embassy did not explain why Ms. Lin's so-called "career progression" did not "make sense" given her "education background." The GCMS notes suggest that the First Officer found it implausible that

Ms. Lin would truly want to move from a factory worker job to an agricultural worker job. I find that this conclusion is illogical and unjustified. The First Officer appears to forget that Ms. Lin's English degree is a high school level technical diploma. Following her education, Ms. Lin has spent over 15 years — most of her adult life — working in packing and performing the low-skilled job of a factory worker, as she has herself described it. Given Ms. Lin's work history, I fail to understand how moving from a factory worker position to an agricultural worker position cannot be a reasonable and logical career progression. Both jobs are similar in that they are easy-to-learn, repetitive, and physical jobs requiring little education.

[26] To state, as did the First Officer, that Ms. Lin's career change does not make sense in light of her education background also ignores the relevant evidence in the record. Ms. Lin's WP application is for an agricultural job which involves similar tasks and requires a similar set of skills as the factory worker job she held for 15 years. In addition, changing fields and obtaining the agricultural worker position in Canada would translate into a significant improvement in Ms. Lin's monthly salary and working conditions. Finally, Ms. Lin's WP application was very transparent about the fact that it was made in the context of the Agri-Food Pilot Program. As pointed out by Ms. Lin, her WP application makes it clear that there are no specific education or training requirements for the agricultural worker job she applied to. In those circumstances, to disqualify her on the basis of her educational background is illogical and unsupported by any evidence on the record.

[27] In sum, even on a most generous reading, I can only conclude that the Canadian Embassy's Decision does not make sense from any angle.

[28] Turning to the second reason for my conclusion, I can find no evidence on the record and no rational basis to support the determination, made by both the First and Second Officers, that Ms. Lin is not a "genuine" worker or WP applicant. The GCMS notes are totally silent on the grounds or the evidence underlying this conclusion.

[29] In fact, from the Decision itself, it is not possible to assess which elements were considered negative, positive, or neutral by the First and Second Officers. The First Officer simply provided a list of factors considered while indicating that he had weighed them, and then concluded that he was not satisfied that Ms. Lin would leave Canada at the end of her authorized stay. As Justice McVeigh held in *Liu v Canada (Citizenship and Immigration)*, 2018 FC 954 [*Liu*] at paragraph 23:

> The Officer's notes do not speak for themselves in determining what part of the application is deficient, and if so, as to what aspects of the application were considered negatively. In reading the notes, the Officer simply listed the "factors" considered, and we are left to infer from the file our own conclusions of which of the factors drew positive inferences and which of the factors drew negative inferences.

[30] Given the lack of justification for the Decision, it is impossible for the Court to assess its reasonableness, even when reading the reasons "in light of the record and with due sensitivity to the administrative regime in which they were given" (*Vavilov* at para 103). Left with a simple list of factors drawn from the record without further analysis of how the facts led the First and Second Officers to determine that Ms. Lin would not leave Canada at the end of her stay, "we are left to infer our own reasons as to why the Officer[s] decided that way" (*Liu* at para 28). This is a

fatal flaw and a fundamental gap in the overarching logic of the Canadian Embassy (*Vavilov* at para 102).

[31] Following *Vavilov*, the reasons given by administrative decision makers have taken on a greater importance and are now the starting point for the analysis on an application for judicial review. They are the primary mechanism by which administrative decision makers show that their decisions are reasonable, both to the affected parties and to the reviewing courts (*Vavilov* at para 81). They serve to state "how and why a decision was made," demonstrate that "the decision was made in a fair and lawful manner," and shield against "the perception of arbitrariness in the exercise of public power" (*Vavilov* at para 79). In short, it is the reasons that establish the justification for the decision, and the reviewing courts must read them "holistically and contextually" in "light of the record and with due sensitivity to the administrative regime in which they were given" (*Vavilov* at paras 97, 103; *Alexion Pharmaceuticals Inc v Canada (Attorney General)*, 2021 FCA 157 at para 15).

[32] Here, I am of the view that the Canadian Embassy's reasons in the GCMS notes do not provide a transparent and intelligible justification for the Decision (*Vavilov* at paras 81, 136). They instead leave the impression that the visa officers failed to consider the evidence adduced by Ms. Lin and did not follow a rational, coherent and logical reasoning in their analysis.

[33] At paragraph 102 of *Vavilov*, the Supreme Court held that the reviewing court "must be satisfied that 'there is [a] line of analysis within the given reasons that could reasonably lead the tribunal from the evidence before it to the conclusion at which it arrived'." Here, there is simply

no line of analysis to trace or to follow, and the Decision does not bear the hallmarks of reasonableness, which are justification, transparency, and intelligibility (*Vavilov* at para 99).

IV. Conclusion

[34] For the above-mentioned reasons, Ms. Lin's application for judicial review is granted. The Decision does not constitute a reasonable outcome based on the law and the evidence, and is not justified in relation to the facts and law that constrain the decision maker. Therefore, the matter must be referred back to a new visa officer for redetermination.

[35] There are no questions of general importance to be certified.

JUDGMENT in IMM-1508-22

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is granted, without costs.

2. The February 7, 2022 decision of the Canadian Embassy in Beijing, China, denying Ms. Jiangping Lin's work permit application, is set aside.

3. The matter is referred back to the Canadian Embassy for re-determination on the merits by a different visa officer.

4. No question of general importance is certified.

"Denis Gascon"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-1508-22
STYLE OF CAUSE:	JIANGPING LIN v THE MINISTER OF CITIZENSHIP AND IMMIGRATION CANADA
PLACE OF HEARING:	HELD BY VIDEOCONFERENCE
DATE OF HEARING:	FEBRUARY 8, 2023
JUDGMENT AND REASONS:	GASCON J.
DATED:	FEBRUARY 13, 2023

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