Federal Court  Cour fédérale

Date: 20230215

Docket: IMM-4682-22

Citation: 2023 FC 219

Ottawa, Ontario, February 15, 2023

PRESENT: Madam Justice Sadrehashemi

BETWEEN:

DIGPAL SINGH

Applicant

and

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Digpal Singh ("Mr. Singh"), applied for permanent residence through the Home Child Care Provider Pilot Program. An officer at Immigration, Refugees and Citizenship Canada [IRCC] ("the Officer") refused this application, finding that Mr. Singh did not complete the required 24 months of eligible work in the 36 months preceding his application. Mr. Singh asked for reconsideration of this determination and the Officer confirmed the refusal.

[2] Mr. Singh raises multiple grounds to challenge the refusal in this judicial review. First, Mr. Singh argues that the Officer should have considered that he had completed the required 24 months of work by the time the Officer either considered his application or rendered a decision on his application. Second, Mr. Singh argues that even if the Officer had to consider his work experience from the time the application was made, and not when it was considered, he still would have met the requirement; he argues that since "full-time work" is defined in the regulations as 30 hours a week and he worked 40 hours a week, he met the required number of hours to be eligible for the program.

[3] I do not agree with either of these arguments. The language in the Ministerial Instructions, which the Officer was required to follow, is clear that an applicant needs "at least 24 months of full-time work experience" provided that "their work experience was accumulated within the 36 months preceding the date on which the application is made."

[4] Mr. Singh also raises a procedural fairness claim. He argues that the Officer should have provided him notice that they would be deciding his eligibility based on the work experience he had acquired at the time the application was made. As I have explained, this requirement is clear in the Ministerial Instructions. Moreover, in this case, Mr. Singh filed a reconsideration request in which he explained that he was aware of this basis of the refusal. In these circumstances, there is no requirement for additional notice to have been given.

[5] Based on the reasons below, I dismiss the application for judicial review.

II. Background

A. *Home Child Care Provider Pilot Program*

[6] On June 14, 2019, the Minister of Citizenship and Immigration created the Home Child Care Provider Pilot Program through Ministerial Instructions 32 ("MI32"). These instructions were issued through the Minister's authority under section 14.1 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*]. MI32 established the Home Child Care Provider class as part of the economic class referred to in subsection 12(2) of *IRPA* and defined two categories within that class.

[7] Category A encompasses any applicant who has acquired in Canada less than 24 months of full-time work experience in an eligible occupation during the 36 months preceding the date on which the application is made. Category B encompasses any applicant for a permanent residence visa as a member of the Home Child Care Provider class who has acquired in Canada at least 24 months of full-time work experience in an eligible occupation. For applicants in Category B, MI32 requires that the applicant's "work experience was accumulated within the 36 months preceding the date on which the application is made" (MI32, s 2(4)(a)).

[8] Mr. Singh applied under Category B, requesting permanent residence based on completing 24 months of full-time home child care work in the preceding 36 months.

[9] The pilot program, according to the MI32, is in effect from June 18, 2019 to June 17, 2024.

B. *Procedural History*

[10] Mr. Singh is a citizen of India. He arrived in Canada in April 2019 as a Temporary Foreign Worker under the in-home caregiver category. In Canada, the Applicant worked as a childcare provider for one employer beginning on April 22, 2019. He performed this work in accordance with his employer-specific work permit valid until April 15, 2021.

[11] In April 2021, Mr. Singh submitted an application for permanent residence under the Home Child Care Provider Pilot Program, Category B and an application for a bridging work permit. The Case Processing Centre in Edmonton received Mr. Singh's application on April 12, 2021 and sent him a letter confirming receipt of the application on that day.

[12] The parties agree that, as of April 12, 2021, Mr. Singh had 23 months and 21 days of eligible work experience. In the cover letter accompanying the application, Mr. Singh's representative provided his schedule for the following week, when Mr. Singh would have completed the required 24 months. On May 3, 2021, Mr. Singh provided an additional pay stub for April 2021. On August 17, 2021, Mr. Singh provided further pay stubs from March 2021 to August 2021 to IRCC via the IRCC web form.

[13] On April 20, 2022, the Officer refused Mr. Singh's application on the basis that he had not fulfilled the requirement of 24 months of full-time work within the 36 months preceding the date on which the application was made. The letter to Mr. Singh explained that if he had

different or additional information he would like assessed, it must be submitted with a new application and applicable fees.

[14] The following day, on April 21, 2022, Mr. Singh's representative filed a request for reconsideration and enclosed a letter explaining why Mr. Singh filed the application early and providing copies of his pay stubs from April 2019 to April 2021.

[15] On April 27, 2022, Mr. Singh's Member of Parliament submitted a reconsideration request on Mr. Singh's behalf, stating that it is common for applicants to apply for permanent residence before their status expires and that Mr. Singh did complete the required 24 months of work.

[16] The Officer considered the additional submissions on reconsideration and, on May 10, 2022, maintained their refusal of the application.

[17] On May 12, 2022, Mr. Singh filed an application for leave and judicial review of the Officer's decision to maintain the refusal.

III. Issues and Standard of Review

[18] Mr. Singh is challenging the Officer's determination that he is ineligible for permanent residence through the Home Child Care Provider Pilot Program. In challenging this ineligibility finding, Mr. Singh raises arguments related to the merits of the decision and, as agreed by the parties, the general presumption of reasonableness standard of review applies. With respect to

the procedural fairness issue, the presumption of reasonableness review does not apply (Canada (*Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at paras 23, 77). The question I need to ask is whether the procedure was fair in all the circumstances (*Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 43; *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54).

IV. Analysis

A. *No Breach of Procedural Fairness*

[19] Mr. Singh argues in his written materials that the Officer should have provided him with notice that they would calculate his full-time work experience from the date he had applied, not the date that IRCC considered the application. As I will explain further below, and as is set out above, this requirement is set out clearly in MI32, which says that relevant work experience must be accumulated "within the 36 months preceding the date on which the application is made" (MI32, s 2(4)(a)). The Officer was not required to provide additional notice to the Applicant of this requirement. Further, in this case, the Officer considered Mr. Singh's additional submissions and evidence on reconsideration, where Mr. Singh explained that he was aware of this basis for the refusal. In these circumstances, there is no basis to find that additional notice was required.

B. *Reasonable Application of Eligibility Requirements in Ministerial Instructions*

[20] Mr. Singh makes two arguments challenging the Officer's eligibility determination. First, he argues that the Officer should not have considered whether Mr. Singh met the requirement at the time he made the application, but rather at the time the Officer either opened the file (a time

he cannot specifically identify) or when the Officer considered and decided the application, approximately a year after Mr. Singh filed it. There is no basis to support Mr. Singh's interpretation of the eligibility requirement.

[21] Subsection 14.1(7) of *IRPA* provides that an officer "must comply with the instructions before processing an application and when processing one." MI32 is clear that an applicant applying under Category B has to meet the required 24 months of full-time work experience on "the date on which the application is made." There is no basis to find the Officer's interpretation of the eligibility requirement to be unreasonable.

[22] The second argument advanced related to the definition of "full-time work." In his written materials, Mr. Singh argued that the Officer ought to have given a broad interpretation to subsection 73(1) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [*IRPR*] that define full-time work as at least 30 hours of work over a period of one week. It is unclear how a broad interpretation of this provision would assist Mr. Singh in the argument he is making here. There is no doubt he eventually acquired 24 months of eligible full-time work experience. The issue is the time period over which this work took place. During the oral hearing, Mr. Singh's counsel argued that since Mr. Singh was working 40 hours a week and full-time work is defined in *IRPR* as at least 30 hours a week, the Officer should have come to the conclusion that Mr. Singh met the 24-month requirement because he worked more than 30 hours a week.

[23] Again, the language of MI32 is clear in that it says the work experience had to be done over a 24-month period. It does not say that a certain number of hours are required, regardless of the time period. The Officer's interpretation was reasonable.

V. Disposition

[24] The application for judicial review is dismissed. The parties did not raise a question for certification and I agree that none arises.

JUDGMENT IN IMM-4682-22

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed; and

2. No serious question of general importance is certified.

"Lobat Sadrehashemi"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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