

Federal Court



Cour fédérale

Date: 20230628

Docket: IMM-2930-22

Citation: 2023 FC 905

Ottawa, Ontario, June 28, 2023

PRESENT: Madam Justice McDonald

BETWEEN:

MARYAMALSADAT ZARGAR

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] This is an Application for judicial review of a decision by a visa officer [Officer], dated March 17, 2022 [Decision], denying the Applicant's work permit under subsection 205(a) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [Regulations]. For the reasons that follow, this judicial review is dismissed.

I. Background

[2] The Applicant is a 44-year-old citizen of Iran. She applied for a work permit as a self-employed business owner pursuant to subsection 205(a) of the *Regulations*. These work permits are known as C11 visas. The Applicant sought a C11 visa to establish a fitness club in Vancouver.

A. *Decision Under Review*

[3] The Decision states the work permit was refused as the Officer was not satisfied the Applicant would leave Canada at the end of her stay, based on the purpose of her visit.

[4] The Global Case Management System [GCMS] notes state:

I have reviewed the application.

The applicant's intended employment in Canada does not appear reasonable given:

The applicant has applied as an entrepreneur to establish a fitness club in Vancouver.

The business plan proposes to employ 1 receptionist, 1 fitness instructor and 1 maintenance staff. All projected salaries are near minimum wage for the province. Despite the very small size of the operation, projected revenues in the first year are over \$380,000 increasing to over \$600,000 in year 5 without an increase in fitness trainers.

Projected start up costs of \$120,000 appear low considering the significant physical space investment required.

The business plan does include the cost of a rental space but little research appears to have been done to assess realistic costs of a suitable space in metro Vancouver.

Based on the aforementioned I am not satisfied that the applicant has presented a viable business plan that would represent a significant benefit to Canada.

Weighing the factors in this application. I am not satisfied that the applicant will depart Canada at the end of the period authorized for their stay.

For the reasons above, I have refused this application.

II. Issues and Standard of Review

[5] On this Application, the Applicant raises a series of procedural fairness issues and she also submits the Decision is unreasonable.

[6] On judicial review, issues of procedural fairness are considered on the correctness standard (*Mission Institution v Khela*, 2014 SCC 24 at para 79; *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at paras 37-56).

[7] The merits of the Officer's Decision are reviewed on the reasonableness standard, as described in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*]). As stated in *Vavilov*, a reasonable decision is one that possesses the three hallmarks of reasonableness – justification, transparency, and intelligibility – within the decision-making process (at paras 86, 99). Any “flaws or shortcomings must be more than merely superficial or peripheral to the merits of the decision”, or more than a minor misstep (*Vavilov* at para 100).

[8] On a reasonableness review, the Court must refrain from reweighing the evidence before the decision-maker, and it should not interfere with factual findings absent exceptional circumstances (*Vavilov* at para 125).

III. Analysis

A. *Was There a Breach of Procedural Fairness?*

[9] The Applicant submits that she was owed a high degree of procedural fairness and that her fairness rights were breached in a number of ways, which I have summarized as follows:

- (a) The Officer used the Chinook program;
- (b) The Officer did not provide reasons until after her judicial review Application was filed;
- (c) The work permit application took five months to process, rather than the stated two-week processing time, thus breaching her legitimate expectations that her application be processed within a reasonable timeframe;
- (d) The Officer demonstrated bias and made a veiled credibility finding by questioning the purpose of her visit, despite the evidence of her travel history and ability to return to Iran at the end of her stay; and
- (e) The Applicant should have been afforded the right to be heard to address the Officer's concerns with her application.

[10] Although the Applicant makes these sweeping procedural fairness arguments, she does not point to any particular evidence or documents on the record to support these allegations.

[11] As a starting point, I agree with the Respondent that the level of procedural fairness owed in the work permit context is at the low end of the scale (*Wang v Canada (Citizenship and Immigration)*, 2021 FC 1002 [*Wang*] at para 34). Accordingly, in this context, there must be strong evidence to support the breach of fairness allegations.

[12] Firstly, the allegations regarding: (a) the use of Chinook, (b) reasons only being provided after the judicial review Application was filed, and (c) the length of the processing time were fully canvassed in both *Haghshenas v Canada (Citizenship and Immigration)*, 2023 FC 464 [*Haghshenas*] and *Raja v Canada (Citizenship and Immigration)*, 2023 FC 719 [*Raja*]. In the absence of any specific evidence to support these allegations in this case, I adopt the analysis from those cases (*Haghshenas* paras 22-25, 28; *Raja* at paras 28-38) and can likewise conclude that the Applicant has not established any breach of procedural fairness on these grounds.

[13] With respect to the allegations of a veiled credibility finding, a review of the Officer's Decision and the GCMS notes does not indicate or raise any flags that the Officer had credibility concerns with the Applicant's work permit application and the supporting information. Rather, the record indicates the Officer was concerned about the sufficiency and accuracy of the evidence provided. The Officer does not imply the Applicant herself had some other motive in applying for a work permit. I do not agree with the Applicant's position that the Officer's conclusion that she will not leave Canada at the end of her stay is sufficient to establish a veiled credibility finding. In fact, the Officer was reciting the relevant legislative language.

[14] Further, a finding that the business plan was not sufficient on some key metrics is an assessment within the Officer's discretion. Relatedly, the Officer is under no obligation to advise the Applicant that the business plan was insufficient (*Igbedion v Canada (Citizenship and Immigration)*, 2022 FC 275 at para 16).

[15] Finally, there is no merit to the allegation of bias. The threshold for establishing bias is high and the grounds must be substantial (*R v S (RD)*, [1997] 3 SCR 484 at para 34). There is simply nothing on the record that the Applicant can point to in support of this allegation (*Raja* at para 42).

[16] Overall, the Applicant has not convinced me there were any breaches of her procedural fairness rights.

B. *Is the Officer's Decision Reasonable?*

[17] The Applicant argues the Officer's Decision is unreasonable because it lacks adequate justification and is not sufficiently responsive to her submissions and evidence. She submits there is nothing in her work permit application that suggests she would not leave Canada at the end of her authorized stay. Further, she challenges the Officer's conclusions on the weaknesses in the business plan and argues there was evidence in her work permit application that addressed each of these concerns.

[18] As noted, the Officer considered the Applicant and her supporting documents, but had concerns with the viability of the proposed business as outlined in the business plan. In

particular, the Officer noted the space and limited staffing for the proposed gym appeared to be inadequate when considered against the Applicant's revenue projections. The Officer also noted the projected start-up costs for the gym were not realistic, as the Applicant did not appear to factor any renovations that might be required to the rented space, such as change rooms, which would be required to operate a gym.

[19] In the circumstances, the Officer engaged with the evidence and provided an explanation as to why the Applicant failed to satisfy the statutory requirements. Such analysis was sufficient and reasonable within the applicable legislative and regulatory requirements (*Wang*). The Applicant's arguments on these points amount to a request for the Court to reweigh the evidence in her work permit application.

IV. Conclusion

[20] For the reasons outlined above, the Applicant has not established any breach of procedural fairness. Further, having considered the Decision, the evidence before the Officer, and the applicable law, I conclude that the Officer's Decision is reasonable. This Application is therefore dismissed.

[21] There is no question for certification.

JUDGMENT IN IMM-2930-22

THIS COURT'S JUDGMENT is that:

1. The Application for judicial review is dismissed; and
2. There is no question for certification.

"Ann Marie McDonald"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2930-22

STYLE OF CAUSE: ZARGAR v THE MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: HELD BY VIDEOCONFERENCE

DATE OF HEARING: JUNE 21, 2023

JUDGMENT AND REASONS: MCDONALD J.

DATED: JUNE 28, 2023

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