

Federal Court



Cour fédérale

**Date: 20230719**

**Docket: IMM-1939-22**

**Citation: 2023 FC 988**

**Ottawa, Ontario, July 19, 2023**

**PRESENT: Madam Justice McDonald**

**BETWEEN:**

**MEHRI HOSSEINIBAY**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

**I. Background**

[1] The Applicant is a citizen of Iran who seeks judicial review of the January 20, 2022 decision of a visa officer [Officer], refusing to grant her a work permit under the Temporary Foreign Worker Program [Decision]. She applied to work as a Construction Project Coordinator for a landscaping company, Greenbay Northern Ltd. [Greenbay], on a one-year contract. Greenbay received a positive Labour Market Impact Assessment [LMIA] for the position.

[2] The Applicant has relevant education and work history, with six years experience as a Construction Project Coordinator and Manager in the construction industry in Iran.

[3] The Applicant's first work permit application was refused on the grounds that she had not demonstrated she could perform the work based on her language proficiency. She reapplied in March 2021. Her second application included information on her immigration history, her qualifications, the positive LMIA, further information on Greenbay, and proof of completion for the online training courses required by Greenbay.

A. *Decision Under Review*

[4] The Decision states the Officer was not satisfied that the Applicant would leave Canada at the end of her authorized stay. The Global Case Management System [GCMS] notes state:

I have reviewed the application.

pa's second application for the same position. she is a mechanical engineer who wants to work in Canada as a construction project coordinator. Her first application was refused based on limited language abilities. In this application her rep states she has taken online training courses in various packages that the potential [sic] employer uses to re-certify their employees [sic] every two years however this is not sufficient to establish her english language proficiency at a level sufficient to coordinate activities of the proposed position.

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

-insufficient ability in the language of the proposed employment

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. Issue and Standard of Review

[5] The Applicant argues the Decision is unreasonable and that procedural fairness issues arise. As the reasonableness of the Decision is determinative, I need not address the procedural fairness issues.

[6] On a reasonableness review, the Court must assess if the Decision displays justification, transparency, and intelligibility within the decision-making process (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 86, 99 [Vavilov]). With respect to justification, it is not enough for an outcome to be justifiable. Instead, “[w]here reasons for a decision are required, the decision must also be *justified*, by way of those reasons, by the decision maker to those whom the decision applies” (at para 86; emphasis in original).

III. Analysis

[7] The core challenge the Applicant makes regarding the Decision is that it is unclear how the Officer determined she did not have the necessary language skills for the job.

[8] First, there is no language requirement set out in the applicable job description for National Occupation Code 0711 (Construction Managers). Second, although not required, the Applicant did provide a copy of her IELTS English language test results indicating she was a modest or intermediate English speaker. Third, Greenbay itself indicated the Applicant met the requirements for the job.

[9] Despite this information, there is no indication as to what was lacking or how the Officer assessed the Applicant's language skills. Nor is it clear from the reasons that the Officer assessed or considered any of the evidence provided by the Applicant on her ability to perform the work sought, including her language proficiency.

[10] I acknowledge that visa officer's have discretion in the assessment of work permit applications. However, for a decision to be reasonable, the Court should be able to look at the decision-making process and understand what led the officer to their decision.

[11] During the hearing, Respondent's counsel made submissions as to why an IELTS score of 5 was insufficient to perform the work. Unfortunately, the Officer did not do any such language assessment in the GCMS notes or in the Decision. Therefore, regardless of whether such an assessment represents a possible explanation for the Officer's concerns, the Officer did not provide that explanation or justification. As noted in *Vavilov*, reasonableness review is concerned with a decision-maker's justification for their decision (at para 15).

#### IV. Conclusion

[12] In sum, the Decision is not reasonable and the Application for judicial review is granted.

**JUDGMENT IN IMM-1939-22**

**THIS COURT'S JUDGMENT is that:**

1. This Application for judicial review is granted, the decision is set aside, and the matter is remitted for redetermination by a different Officer; and
2. There is no question for certification.

"Ann Marie McDonald"

Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

**DOCKET:** IMM-1939-22

**STYLE OF CAUSE:** HOSSEINIBAY v THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ON

**DATE OF HEARING:** JUNE 6, 2023

**JUDGMENT AND REASONS:** MCDONALD J.

**DATED:** JULY 19, 2023

**APPEARANCES:**

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