Federal Court  Cour fédérale

Date: 20230726

Docket: IMM-3048-22

Citation: 2023 FC 1022

Ottawa, Ontario, July 26, 2023

PRESENT: Madam Justice McDonald

BETWEEN:

MARJAN SHIRKAVAND

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] This is an Application for judicial review of a decision of a visa officer [Officer], dated March 22, 2022 [Decision], denying the Applicant's work permit under subsection 205(a) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [*IRPR*].

[2] For the reasons that follow, this Application for judicial review is dismissed, as the Decision of the Officer is reasonable and no procedural fairness issues have been established.

I. Background and Decision Under Review

[3] The Applicant is a 47-year-old citizen of Iran. She applied for a work permit as a self-employed business owner under the Global Skills Strategy, pursuant to subsection 205(a) of the *IRPR*. These work permits are known as C11 visas. The Applicant applied for the C11 visa to establish a beauty and skincare supply company in Vancouver.

[4] 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.

[5] 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 proposing to establish Olva Beauty and Skincare Supply Inc. which will sell beauty and skincare products in the Vancouver area.
>
> The applicant has not provided any evidence of English or French language comprehension therefore there are concerns with the applicant’s qualifications to carry out the roles described in the business plan.
>
> The business plan projects significant sales of over $370,000 in the first year but it is unclear how these sales figures would be achieved. No details have been provided on prospective clients or contracts with Canadian businesses. In addition, the business plan proposes to hire only one marketing specialist so it is unclear how the sales projections would be achieved with the proposed work force. Based on this the estimated sales revenues appear to be speculative.
>
> Based on the aforementioned I am not satisfied that the requirements for LMIA exemption have been met not that

> 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

[6] The Applicant raises both procedural fairness and reasonableness issues.

[7] The procedural fairness issues are assessed on the correctness standard (*Canadian Pacific Railway Company v Canada (Attorney General),* 2018 FCA 69 at para 54).

[8] Otherwise, the standard of review is reasonableness (*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).

[9] 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. *Procedural Fairness*

[10] The Applicant argues there are a number of procedural fairness issues that arise in the Decision, including: (1) the use of the Chinook program; (2) the failure to provide detailed reasons until this Application was filed; (3) the failure of the Officer to put their concerns to her; (4) the processing of her application took seven months, contrary to the two weeks noted for the Global Skills Strategy; (5) the Officer was biased against her; and (6) the Officer made a veiled credibility finding against her.

[11] As a starting point for the assessment of the procedural fairness issues, it is important to note that the level of procedural fairness owed to work permit applicants is at the low end of the range (*Brar v Canada (Citizenship and Immigration)*, 2020 FC 70 at para 22 and *Haghshenas v Canada (Citizenship and Immigration)*, 2023 FC 464 at para 20 [*Haghshenas*]).

[12] First, with respect to the use of the Chinook program, similar arguments have been raised and dismissed in other cases (see *Haghshenas*, *Raja v Canada (Citizenship and Immigration)*, 2023 FC 719 [*Raja*], and *Zargar v Canada (Citizenship and Immigration)*, 2023 FC 905 [*Zargar*]). That is not to say the use of the program will never raise procedural fairness issues. However, the mere use of the program, without evidence that the use of the program led to an unfair decision, is not sufficient.

[13] The only specific argument raised about Chinook is where the Applicant argues the Officer erred in stating she projected $370,000 in sales, whereas her business plan projected $320,460 in sales. She argues this error indicates the Officer did not review the business plan and relied upon Chinook to generate the reasons. This is, at best, a speculative argument. Moreover, the Officer also notes that the business plan does not explain how the sales figures would be achieved, regardless of the amount, as there were no details on prospective clients or contracts with Canadian businesses.

[14] The allegations raised by the Applicant regarding the use of the Chinook program are speculative and no procedural fairness failure has been identified.

[15] On the failure to provide reasons, I would note that the certified tribunal record, which includes the detailed reasons, was disclosed pursuant to Rule 9 of the *Federal Courts Rules,* SOR/98-106. A similar argument was made and dismissed by Justice Brown in *Haghshenas* at paragraph 25. Similarly here, disclosure pursuant to Rule 9 does not support an argument that detailed reasons were not otherwise provided or that the provision of detailed reasons after filing this judicial review Application is a breach of procedural fairness. Further, it is well settled that the requirement for reasons in the visa context is on the low end.

[16] On the argument that the Officer failed to raise the concerns with the work permit application to the Applicant, I note there was no obligation on the Officer to inform the Applicant of concerns or weaknesses with her application (see *Haghshenas* at para 21; *Singh v*

Canada (Citizenship and Immigration), 2021 FC 790 at para 9; *Sulce v Canada (Citizenship and Immigration)*, 2015 FC 1132 at para 16).

[17] The Applicant asserts she had a right to have her application processed in two weeks, but that it took nearly seven months to receive the Decision. The Applicant argues her legitimate expectations were breached, as she expected her application to be processed according to the procedure set out in the Global Skills Strategy.

[18] Although the Global Skills Strategy notes a two-week processing time, that is aspirational and not enshrined in law. In other words, there is no legal onus on Immigration, Refugees and Citizenship Canada to meet a two-week processing time under this program. Furthermore, as the Applicant's application was referred for an admissibility review, this extended the processing time.

[19] The Applicant also asserts that her right to fair and impartial decision-making was breached. She alleges the Officer demonstrated bias in finding that she would not leave Canada, as the evidence demonstrates that she has always returned to Iran during previous travels. She asserts the Officer made a veiled credibility finding in concluding that she would not leave Canada, as in *Al Aridi v Canada (Citizenship and Immigration)*, 2019 FC 381.

[20] The threshold for establishing bias is high and the grounds must be substantial. Here, the Applicant has not identified any findings or evidence that support an argument of bias (*Haghshenas* at para 26).

[21] In my review of the Decision and the certified tribunal record, the Officer refused the work permit based upon an assessment of the evidence filed in support of the application. A finding that the application materials were insufficient to support the visa application is a finding of sufficiency of evidence. That is different from an adverse credibility finding (*Solopova v Canada (Citizenship and Immigration)*, 2016 FC 690 at paras 40-41).

[22] The Applicant has not pointed to any reference by the Officer to suggest the Officer was questioning the Applicant's genuine intention. The reference to not leaving Canada at the end of the stay is simply a reference to the relevant legislative provision and is not intended to imply the Officer did not believe the application was "genuine". Finally, the Applicant was invited to reapply to respond to the concerns raised by the Officer, suggesting the grounds for refusal were based upon the lack of evidence to support the application.

[23] As noted, there is a low degree of procedural fairness owed to visa applicants. Given this low standard, in my view, the Applicant has not established any breach of procedural fairness.

B. *Reasonableness*

[24] The Applicant argues the Decision is unreasonable on a number of grounds, including improperly importing a language requirement, misstating her projected sales figure indicating a reliance on Chinook, and requiring proof of Canadian contracts and clients.

[25] In assessing the reasonableness of this Decision, it is important to note that the Officer is guided by paragraph 200(3)(a) of the *IRPR*, which states an officer shall not issue a work permit if there are reasons to believe they are unable to perform the work sought. The onus is on the Applicant to satisfy the Officer that she is able to perform the work.

[26] As noted in *Safdar v Canada (Citizenship and Immigration)*, 2022 FC 189 at paragraph 10:

> … The onus is on the applicant to provide sufficient supporting documentation to establish that they meet the requirements of the IRP Regulations … including that they have the requisite language skills to perform the work offered where there are reasonable grounds to believe that such language skills are necessary to perform the work sought [Citations omitted].

[27] The operational instructions and guidelines for the C11 program note that one of the questions the officer must assess is "[d]oes the applicant have the language abilities needed to operate the business?" In the circumstances, it was reasonable for the Officer to consider the Applicant's language skills (*Sun v Canada (Citizenship and Immigration)*, 2019 FC 1548 at paras 19-28).

[28] Further, the Officer assessed the business plan and found that the sales figures were speculative. As noted in *Haghshenas* at paragraph 32, it was reasonably open to the Officer to be sceptical of sales figures without evidence of potential clients or contracts. Further, the error regarding the sales figure, $370,000 instead of $320,000, was minor and not sufficiently central to render the Decision unreasonable (*Vavilov* at para 100).

[29] It is clear from the reasons that the Officer conducted an individualized assessment of this case. The Officer specifically referenced the Applicant's proposed business and identified weaknesses in her business plan.

[30] Overall, the Applicant has failed to demonstrate the Decision is unreasonable. The majority of the Applicant's submissions amount to a request to reweigh the evidence, which is not the role of the Court.

IV. Conclusion

[31] This Application for judicial review is dismissed.

JUDGMENT IN IMM-3048-22

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

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