

Federal Court



Cour fédérale

Date: 20240131¹²

Docket: IMM-1159-23

Citation: 2024 FC 162

Ottawa, Ontario, January 31, 2024

PRESENT: Madam Justice Azmudeh

BETWEEN:

RAMANDEEP SINGH BRAR

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Ramandeep Singh Brar, is a citizen of India and has filed an Application for Judicial Review against the decision of a Visa Officer [Officer] rendered on November 29, 2022, at the High Commission of Canada in New Delhi. The Officer had refused the Applicant's application for permanent residence on the basis that he was inadmissible to Canada for misrepresentation under subsection 40(1)(a) of the *Immigration and Refugee Protection Act* [IRPA]. The Officer found that the Applicant was inadmissible to Canada because he had misrepresented his work experience.

[2] By way of background, in support of his application, the Applicant had alleged to work for Tez Engineering & Infrastructures Pvt. Ltd. [the “Employer”] as an administrative officer. To verify his work experience, the Officer sent a verification email to an email address indicated on the Employer’s website. The email exchange is as follows:

Dear Sir/Madam,

... This is regarding verification of employment/job offer/experience letter/records issued to the following subject. The attached employment letter was submitted to our office as supporting document along with an application.

NAME:	Ramandeep Singh
NAME OF COMPANY:	Tez Engineering & Infrastructures
POSITION:	Administrative Officer

We request you to kindly confirm the authenticity of the documents to confirm the subject / client is / was an employee of your Company / Organisation. This information /confirmation is important for aiding the applicant’s application process. We look forward to your cooperation and urgent response so that we can proceed accordingly. Kindly mentioned your credential position on the email. Thanking you in advance for your co-operation. Sincerely,

Regards, [Emphasis added]

Employer Response:

Dear Sir/Madam,

Greetings from Tez Engineering & Infrastructures Pvt Ltd. I have not recognized Ramandeep Singh. As per our record, Ramandeep Singh is not current or ex-employee of Tez Engineering & infrastructures Pvt Ltd or any sister concern companies. Thank you for your patience and cooperation. If you have any other query, please feel free to ask through Email: hardeepsingh@tezengineering.com

[Emphasis added]

[3] After receiving the Employer's response that contradicted the Applicant's allegations on his employment history, the Officer then sent a procedural fairness letter to the Applicant to provide him with an opportunity for an explanation. The Applicant argues that the following is a summary of the information supplied to the Officer in response to their letter but ignored:

- The Applicant claimed that he started working with the Employer on March 17, 2017, as an 'Administrative Officer' and that he reported to work at the physical location of the Employer.
- The Applicant objected that the Officer had used an email address on the Employer website for when three other emails were provided to them.
- The Applicant provided information on one of the Employer's manager's, Hardeep Singh's poor English language ability and that a secretary, without proper verification, knowledge or authority, had provided the answer to the Officer's inquiry. I note that Hardeep Singh's email address was also cited in the Employer reply.
- The Applicant explained that Hardeep Singh was in poor health and had become a silent partner to the Employer in 2015 (ie, approximately two years prior to the email exchange) but that the Employer had not updated the contact email address on its website.
- The Officer communicated with the Employer under the name of Ramandeep Singh and omitted "Brar" from his last name which likely resulted in a mistaken response that he did not work there.
- The Applicant provided a number of photographs with various men, including the Applicant, at a desk with the Employer name visible in the photo.

[4] On the Global Case Management System [GCMS] notes recorded by the Officer on November 9, 2022, which also constitute their reasons, the Officer stated the following:

Employment verification was done by our office in Aug2022. The employer (Tez Engineering infrastructure Ltd) confirmed through email that the applicant did not work, with the company. PFL was sent in October 2022. In response to PFL, applicant through his representative states that the applicant has worked with Tez Engineering infrastructure Ltd and provided explanation and documents in the support of employment.

The applicant states that verification email was sent to Mr. Hardeep Singh (Partner) on email id mentioned on the website of the company. Mr. Hardeep was on long leave due to his health condition and his personal secretary replied the mail. The personal secretary replied that the applicant was not working with the company without checking information with anyone. Affidavit from owner/partner, other colleagues and health records of Mr. Hardeep Singh submitted. I have reviewed all documents submitted in response to the Procedural Fairness Letter sent by us. I would assign little weight to the documents/affidavit submitted by the applicant or his employer post our letter. It is unusual that the personal secretary of the owner would reply to verification email without verifying facts about the employee. Basis the documents on file, I am not satisfied that the applicant has stated experience.

By providing false information regarding his employment, the applicant misrepresented a material fact related to a relevant matter that could have induced an error in the administration of the IRPA. Recommended for refusal for misrepresentation as per A40

II. Decision

[5] I dismiss the Applicant's judicial review application because I find the decision made by the Officer was reasonable and that it was reached in a procedurally fair manner.

III. The Issues and Standard of Review

[6] I summarize the issues articulated by the Applicants as follows:

- I. Was the Officer's decision unreasonable?
- II. Did the Officer breach the principles of procedural fairness in reaching their decision?

[7] The standard of review applicable to visa decisions is reasonableness (*Vavilov* at para 23; *Singh v Canada (Citizenship and Immigration)*, 2022 FC 1645 at para 13; *Shah v Canada (Citizenship and Immigration)*, 2022 FC 1741 at para 15). A reasonable decision is “one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker” (*Vavilov* at para 85). The reviewing court must ensure that the decision is justifiable, intelligible, and transparent (*Vavilov* at para 95). Justifiable and transparent decisions account for central issues and concerns raised in the parties’ submissions to the decision maker (*Vavilov* at para 127).

[8] In addition, in assessing the reasonableness of the decision, the Court recognizes that the high volume of visa decisions are such that extensive reasons are not required: *Vavilov* at paras 88, 91; *Lingepo v Canada (Citizenship and Immigration)*, 2021 FC 552 at para 13; *Yuzer v Canada (Citizenship and Immigration)*, 2019 FC 781 at paras 9, 16 [*Yuzer*]; *Wang v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1298 at paras 19-20. Nonetheless, the reasons given by the Officer must, when read in the context of the record, adequately explain and justify why the application was refused: *Yuzer* at paras 9, 20; *Hashemi v Canada (Citizenship and Immigration)*, 2022 FC 1562 at para 35 [*Hashemi*]; *Vavilov* at paras 86, 93–98.

[9] The issue of procedural fairness is to be reviewed 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 [*Canadian Pacific Railway Company*] at paras 37-56; *Canadian Association of Refugee Lawyers v Canada (Immigration, Refugees and Citizenship)*, 2020 FCA 196 at para 35)). The central question for issues of procedural fairness is whether the procedure was fair having regard to all of the circumstances, including the factors

enumerated in *Baker v Canada (Minister of Citizenship and Immigration)*, 1999 CanLII 699 (SCC), [1999] 2 SCR 817 at paras 21-28 (*Canadian Pacific Railway Company* at para 54).

[10] Regarding questions of procedural fairness, as Mr. Justice Régimbald recently wrote in (*Nguyen v Canada (Citizenship and Immigration)*, 2023 FC 1617 at para 11:

the reviewing court must be satisfied of the fairness of the procedure with regard to the circumstances (*Singh v Canada (Citizenship and Immigration)*, 2023 FC 215 at para 6; *Do v Canada (Citizenship and Immigration)*, 2022 FC 927 at para 4; *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54 [*Canadian Pacific Railway*]). In *Canadian Pacific Railway*, the Federal Court of Appeal noted that trying to “shoehorn the question of procedural fairness into a standard of review analysis is... an unprofitable exercise” (at para 55). Instead, the Court must ask itself whether the party was given a right to be heard and the opportunity to know the case against them, and that “[p]rocedural fairness is not sacrificed on the altar of deference” (*Canadian Pacific Railway* at para 56).

IV. Analysis

A. *Legal Framework: the applicable provisions of the IRPA*

[11] A foreign national wishing to reside in Canada on a permanent basis must, before entering the country, file an application for permanent residence. This visa will be issued if, after an examination, the visa officer is convinced that the foreign national complies with the requirements of the *IRPA* (subsection 11(a) of the *IRPA*). A visa may only be issued if the officer is satisfied the foreign national is not inadmissible pursuant to section 11 of the *IRPA*. Here are the applicable legislation to this case:

Immigration and Refugee Protection Act, SC 2001, c 27 [IRPA]

Application before entering Canada

11 (1) A foreign national must, before entering Canada, apply to an officer for a visa or for any other document required by the regulations. The visa or document may be issued if, following an examination, the officer is satisfied that the foreign national is not inadmissible and meets the requirements of this Act.

[...]

Visa et documents

11 (1) L'étranger doit, préalablement à son entrée au Canada, demander à l'agent les visa et autres documents requis par règlement. L'agent peut les délivrer sur preuve, à la suite d'un contrôle, que l'étranger n'est pas interdit de territoire et se conforme à la présente loi.

[...]

Obligation — answer truthfully

16 (1) A person who makes an application must answer truthfully all questions put to them for the purpose of the examination and must produce a visa and all relevant evidence and documents that the officer reasonably requires.

[...]

Obligation du demandeur

16 (1) L'auteur d'une demande au titre de la présente loi doit répondre véridiquement aux questions qui lui sont posées lors du contrôle, donner les renseignements et tous éléments de preuve pertinents et présenter les visa et documents requis.

[...]

[12] Under section 40(1)(a) of the IPRA, a person is inadmissible to Canada if he or she “withholds material facts relating to a relevant matter that induces or could induce an error in the administration” of the Act:

Misrepresentation

40 (1) A permanent resident or a foreign national is inadmissible for misrepresentation (a) for directly or indirectly misrepresenting or withholding material facts relating to a relevant matter that induces or could induce an error in the administration of this Act; [...]

Faussees déclarations

40 (1) Emportent interdiction de territoire pour fausses déclarations les faits suivants : a) directement ou indirectement, faire une présentation erronée sur un fait important quant à un objet pertinent, ou une réticence sur ce fait, ce qui entraîne ou risque d'entraîner une erreur dans l'application de la présente loi; [...]

[13] A foreign national seeking to enter Canada has a “duty of candour”, which requires disclosure of material facts (*He v Canada (Minister of Citizenship and Immigration)*, 2012 FC 33 at para 17). The Courts have recognized the importance of full disclosure by applicants to the proper and fair administration of the immigration scheme.

B. Issue 1: Was the Officer’s decision unreasonable?

[14] The Applicant does not take issue with the fact that his work experience is material to the determination of his permanent residence application. However, he objects to the Officer not finding the explanations he provided in answer to the fairness letter to be persuasive. I find the Applicant’s argument to amount to a request for this Court to reweigh the evidence differently. This is certainly not the role of this Court on judicial review.

[15] I agree with the Respondent that the Applicant’s response to the fairness letter also provided information contrary to his own explanation. For example, the Applicant alleges that

his last name contains a second part, Brar, and that this may have resulted in the Employer's record not capturing his employment history. However, his own supporting documents, including affidavits of support on his employment, refer to him without "Brar", and that a further Affidavit states that he is known to present himself with and without "Brar".

[16] I find that the exchange between the Officer and Employer were clear. It was reasonable for the Officer to write to an email address provided on the Employer's website and to give the response substantial weight. The Officer then provided the Applicant with an opportunity to respond. Unlike a case the Applicant relies on, *Lin v Canada (Citizenship and Immigration)*, 2019 FC 1284, the Applicant here did not provide sufficient reliable evidence to rebut the Employer's letter, such as paystubs or tax documents, but contradictory evidence and explanation. As the Officer's notes show, they did not ignore the Applicant's response to the fairness letter, but they were simply not persuaded by it. Even the Applicant's own submission admits that the Officer's ultimate finding of preferring the original letter over the subsequent explanations fall under an acceptable range of possible outcomes:

72. With due respect, it could be unusual for a personal secretary of the owner to reply to the verification email without verifying facts about the employee, but we cannot exclude the possibility of such an event neither (Applicant's Record).

[17] It is not for this Court to reweigh the evidence that was diligently considered by the Officer (*Vavilov* at para 125). I find that the Officer considered all of the information provided by the Applicant and provided justified, intelligible and transparent reasons where the chain of reasoning is clear.

C. *Issue 2: Did the Officer reach their decision in a procedurally unfair manner?*

[18] Once the Officer received a letter from the Employer denying the Applicant's work experience, they diligently wrote them a fairness letter, waited for the further evidence to arrive and considered those evidence, as demonstrated in their GCMS notes.

[19] I therefore do not agree with the Applicant's assertion that there was nothing in the Officer's notes to indicate that they had considered the evidence. This is simply not a factually accurate statement. I find that the Officer reached their decision in a procedurally fair manner.

V. Conclusion

[20] The Application for Judicial Review is dismissed.

[21] There is no question to be certified.

JUDGMENT IN IMM-1159-23

THIS COURT'S JUDGMENT is that

1. The application for Judicial Review is dismissed.
2. There is no question for certification.

"Negar Azmudeh"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-1159-23

STYLE OF CAUSE: RAMANDEEP SING BRAR v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: MONTRÉAL, QUEBEC

DATE OF HEARING: JANUARY 30, 2024

**REASONS FOR JUDGMENT
AND JUDGMENT:** AZMUDEH J.

DATED: JANUARY 31, 2024

APPEARANCES:

Igor Dogaru FOR THE APPLICANT

Boris Haganji FOR THE RESPONDENT

SOLICITORS OF RECORD:

IDLEX LEGAL SERVICES INC. FOR THE APPLICANT
Montréal, QC

Department of Justice Canada FOR THE RESPONDENT
Montréal, QC