Federal Court Cour fédérale

Date: 20240409

Docket: IMM-12714-22

Citation: 2024 FC 548

Ottawa, Ontario, April 9, 2024

PRESENT: The Honourable Mr. Justice Zinn

BETWEEN:

MOHAMMAD TEHRANIMOTAMED

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] Regardless of the directional shift in the Applicant's submissions at the hearing, this application for judicial review of the Applicant's rejected work permit application will be dismissed.

I. Background

[2] The Applicant is a 40-year-old citizen of Iran. He holds a bachelor degree in industrial engineering.

[3] On February 8, 2022, he applied for a Labour Market Impact Assessment exempt work permit under the C-11 category of the International Mobility Program [a C-11 work permit]. This category targets entrepreneurs and self-employed candidates seeking to operate a business in Canada that would create or maintain significant social, cultural, or economic benefits or opportunities for Canadian citizens or permanent residents pursuant to paragraph 205(a) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [*Regulations*].

[4] In his application, the Applicant expressed his intent to establish a design and decoration company in Vancouver. He submitted an 82-page business plan in which he described his plans for such a company, which he incorporated in British Columbia on June 14, 2021.

[5] By letter dated November 24, 2022, a Citizenship and Immigration Canada officer at the Embassy of Canada in Ankara, Turkey, refused the Applicant's work permit application as the officer was not satisfied that the Applicant would leave Canada at the end of his stay:

> • I am not satisfied that you will leave Canada at the end of your stay as required by paragraph 200(1)(b) of the IRPR (https://laws.justice.gc.ca/eng/regulations/SOR-2002-227/ section-200.html). I am refusing your application because you have not established that you will leave Canada, based on the following factors:

> • The purpose of your visit to Canada is not consistent with a temporary stay given the details you have provided in your application.
>
> • I am not satisfied there is documentary evidence to establish that you meet the exemption requirements of C11 Significant benefit - Entrepreneurs/self-employed under R205(a).

[6] The notes contained in the Global Case Management System [GCMS], which form part of the reasons, state:

> PA seeks WP under C11 (Self-Employed / Entrepreneur). I am not satisfied the proposed business plan is sound.
>
> Client plans to start a company that "will provide interior design services specializing in lights and electricals" in the Greater Vancouver Area. This is a highly competitive market in a well served area. The expected sales of over 300K in the first year and over 460K the second year are based on average for the industry and seems rather high. Not clear how business can be competitive.
>
> I am not satisfied there is documentary evidence to establish that the exemption requirements of C11 Significant benefit - Entrepreneurs/self-employed under R205(a) is met. Application refused.

II. Issues and Analysis

[7] In his memorandum of fact and law, the Applicant raises two issues on this application for judicial review: whether he was denied procedural fairness, and whether the officer's decision was reasonable.

[8] The bulk of the Applicant's written submissions relate to an alleged breach of his right to procedural fairness. He submits that he is owed a relatively high level of procedural fairness

because the decision is final and has an impact on his life and business. He argues his right to procedural fairness was breached in the following ways:

- The refusal of 83 applications for C-11 and C-12 work permits prepared by the Applicant's counsel of record, Mr. Afshin Yazdani, in under a month indicates specific bias against applicants assisted by Applicant's counsel and that the officer did not conduct an individualized assessment of the Applicant's case.
- The changes to the eligibility requirements under the C-11 work permit category, which occurred after the Applicant submitted his application, did not allow the Applicant to know the case to be met, nor a full and fair chance to respond.
- Flowing from above, the decision breaches the doctrine of legitimate expectations, as articulated by the Supreme Court of Canada in *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 at para 26 and reiterated in *Agraira v Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36.
- The Applicant did not receive reasons for his refusal in the refusal letter.

[9] At the hearing, counsel for the Applicant indicated that he was no longer advancing the procedural fairness arguments set out in his memorandum of fact and law. In light of the recent decisions of Justice Go in *Shidfar v Canada (Citizenship and Immigration)*, 2023 FC 1241, and Justice Aylen in *Shahbazian v Canada (Citizenship and Immigration)*, 2023 FC 1556, both rejecting similar procedural fairness allegations in near-identical circumstances, this concession was appropriate.

[10] However, counsel advised that the Applicant was instead advancing the submission that the officer breached his right to procedural fairness in challenging his credibility without notifying him through a procedural fairness letter and giving him an opportunity to respond. Specifically, the Applicant considers the officer's finding that "[the Applicant has] not established that [he] will leave Canada," as a challenge to his credibility, given that he asserted in his business plan his intent to leave Canada within two years of establishing his business.

[11] At the hearing, the Court asked Applicant's counsel if this submission was advanced in his memorandum of fact and law. Applicant's counsel was unable to provide a quick response and counsel for the Respondent rose to observe that it could be found at paragraph 20. On that basis, the Court heard submissions on this issue. The Court erred in doing so. The passage the Respondent was pointing to is not in the Applicant's memorandum; rather, it is only found in his Application for Leave and for Judicial Review:

> 20. The decision-makers [*sic*] determination that the Applicant will not leave Canada on the basis of purpose of visit is a veiled credibility finding as set out in *Al Aridi v Canada* [2019 FC 381] which require the officer to provide the Applicant an opportunity to address the credibility concern, especially since the Applicant has demonstrated his eligibility and the work permit issued to him would be a closed work permit which would not allow the Applicant to conduct any other activity than his own business and has significant ties in Iran in terms of his profession, fiscal assets, family, friends and relatives.

[12] Neither that allegation nor the cited authority were in the Applicant's memorandum of fact and law nor his reply memorandum. Only arguments included in a party's memorandum can be advanced in oral argument: *Kilback v Canada,* 2023 FCA 96 at para 41, citing *Sandhu v Canada (Citizenship and Immigration),* [2000] FCJ No 902 at para 4 (CA). Justice Roy

explained the rationale behind this basic rule of pleadings in *Bedeir v Canada (Citizenship and Immigration)*, 2016 FC 594 at paragraph 16:

> The applicants bring to the Court arguments on their judicial review application. It must be that only two arguments can be considered by this Court in view of the fact that these judicial review applications are authorized by a judge of this Court on the basis of the argument put forward in the initial memorandum of fact and law. The jurisdiction of the Court is derived from the leave application which was granted (*Mahabir v Canada (Minister of Employment and Immigration)* (1991), [1992] 1 FC 133 (CA)). Indeed, rule 70 of the *Federal Courts Rules* [SOR/98-106] requires that the memorandum of fact and law contain a statement of the points in issue and a concise statement of submissions. As found again recently by the Federal Court of Appeal in *Bridgen v Correctional Service of Canada*, 2014 FCA 237, 465 NR 73, only what is in a party's memorandum can be advanced in oral argument. That is especially so in matters where leave is granted.

[13] Accordingly, on this application where leave was granted, the Court ought not to have entertained this new submission from the Applicant. In any event, I agree with the submission of the Respondent that the officer's finding was not directed to the Applicant's credibility but rather to the sufficiency of evidence, or lack thereof, to support his assertion that he would leave Canada after two years. In *Haghshenas v Canada (Citizenship and Immigration)*, 2023 FC 464, which similarly involved the denial of an applicant's C-11 work permit on the basis that the officer was not satisfied that the applicant would leave Canada at the end of his stay, Justice Brown held at paragraph 21 that the applicant was not entitled to a procedural fairness letter. The onus remains on applicants to provide all the necessary information at the outset to support their applications for work permits, including sufficient evidence supporting that they will leave Canada by the end of the period authorized for their stay, pursuant to paragraph 200(1)(b) of the *Regulations*.

[14] This leaves only the submission that the decision is unreasonable.

[15] Reasonableness is a deferential, but robust, standard of review, as articulated by the Supreme Court in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*]. Absent exceptional circumstances, reviewing courts must not interfere with the decision-maker's factual findings and cannot reweigh and reassess evidence considered by the decision-maker: *Vavilov* at para 125.

[16] The Applicant's argument appears to be that the officer failed to provide comprehensive reasons as to why aspects of his business plan were insufficient to persuade the officer that his proposed business would generate a significant benefit for Canadian citizens or permanent residents as required by paragraph 205(a) of the *Regulations*. Throughout the hearing, counsel for the Applicant pointed to specific passages of the Applicant's business plan and asked, "Why was this not sufficient?"

[17] It would be inappropriate for the Court on judicial review to evaluate the sufficiency of the Applicant's business plan; the legislature intended that this task be performed exclusively by the officer. The question instead is whether the officer's assessment of the evidence, including the business plan, was reasonable. I find that it was. In particular, I agree with the Respondent's characterization of the officer's reasons at paragraph 40 of its further memorandum of argument:

> [I]n the GCMS notes the Officer explained why the Applicant failed to establish that his business would generate a significant benefit to Canada, as required by s. 205(a) of the *IRPR*. The Officer considered that his business plan was not sound, the expected sales high and based on the industry average and not his new business entering a highly competitive market that is already

> well served; and, with a lack of information to explain why his business would be competitive in that market of the Greater Vancouver Area. These reasons are more than sufficient to explain why the application was refused.

[18] In the circumstances of decisions on applications for temporary resident visas, including work permits, it is not required of an officer that detailed reasons be provided: *Vavilov* at paras 91, 128; *Wardak v Canada (Citizenship and Immigration)*, 2020 FC 582 at para 71; *Patel v Canada (Citizenship and Immigration)*, 2020 FC 672 at para 10. The officer engaged with all of the evidence and provided an adequate explanation as to why the Applicant failed to satisfy the statutory requirements for a C-11 work permit. The analysis was sufficient and reasonable within the applicable legislative and regulatory requirements. The Applicant's arguments on these points amount to a request for the Court to overstep its jurisdiction by reweighing the evidence in his work permit application.

[19] No question was proposed for certification and there is none that arises on these facts.

JUDGMENT in IMM-12714-22

THIS COURT'S JUDGMENT is that the application is dismissed and no question is certified.

"Russel W. Zinn"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-12714-22
STYLE OF CAUSE:	MOHAMMAD TEHRANIMOTAMED v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	MARCH 26, 2024
JUDGMENT AND REASONS:	ZINN J.
DATED:	APRIL 9, 2024

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