Federal Court Cour fédérale

Date: 20240607

Docket: IMM-13521-22

Citation: 2024 FC 867

Ottawa, Ontario, June 7, 2024

PRESENT: The Honourable Madam Justice Ngo

BETWEEN:

ESMAEIL TALEBALI

Applicant

and

THE MINISTER OF CITIZENHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] This application for judicial review relates to a refusal by an immigration officer [Officer] of the Applicant's work permit application as an entrepreneur/self-employed under the International Mobility Program [IMP] (Canadian interests – Significant benefit – Entrepreneurs/self-employed candidates seeking to operate a business)[Decision]. The Officer's decision was made pursuant to section 205(a) of the *Immigration and Refugee Protection*

Regulations, SOR/2002-227 [*IRPR*] and the *Immigration and Refugee Protection Act*, SC 2001, c 27.

[2] For the reasons set out below, this application for judicial review is granted. The Applicant has demonstrated that the Decision is unreasonable as it does not meet the hallmarks of justification, transparency and intelligibility. Namely, the Officer's reasons do not address contradictory evidence that was submitted in the work permit application.

II. Applicable Background

[3] Esmaeil Talebali [Applicant] is a 44-year-old Iranian citizen, who has been the managing director, member of the board of directors, and shareholder with an Iranian company doing business in the poultry production and processing industry. The Applicant intended to come to Canada under a work permit to operate a poultry production and processing business in Cobourg, Ontario.

[4] On April 16, 2022, the Applicant submitted his work permit application and included a business plan.

[5] In a letter dated November 18, 2022, the Applicant's work permit application was refused by the Officer on the following grounds: "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] As described by the Respondent, usually, Canadian business owners must obtain a Labour Market Impact Assessment [LMIA] before hiring a foreign worker to fulfill a position. However, the IMP allows a Canadian employer to hire temporary foreign workers without a LMIA when some conditions are met. When entrepreneurs or self-employed individuals from abroad wish to come to Canada to establish a business, they are potential Canadian business owners usually "hiring themselves" or managing their own business. They are considered under the IMP.

[7] Sections 200(1)(b) and 205(b) of the *IRPR* apply to the Applicant's case as follows:

> **200 (1)** Subject to subsections (2) and (3) — and, in respect of a foreign national who makes an application for a work permit before entering Canada, subject to section 87.3 of the Act — an officer shall issue a work permit to a foreign national if, following an examination, it is established that
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> **(b)** the foreign national will leave Canada by the end of the period authorized for their stay under Division 2 of Part 9;
>
> **205** A work permit may be issued under section 200 to a foreign national who intends to perform work that
>
> **(a)** would create or maintain significant social, cultural or economic benefits or opportunities for Canadian citizens or permanent residents;

III. Standard of Review

[8] The parties agree that the applicable standard of review is reasonableness. I also agree that the standard of review in respect of the merits of the Officer's Decision is reasonableness.

[9] The reasonableness standard "requires that a reviewing court defer" to a decision that is based on "an internally coherent and rational chain of analysis" and be "justified in relation to the facts and law that constrain the decision maker" (see *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 85 and 99 [*Vavilov*]). In assessing whether a decision is reasonable, the Court will examine the reasons given by the administrative decision maker and will assess whether the decision is appropriately justified, transparent and intelligible. Both the outcome of the decision and its reasoning process must be considered in assessing whether these hallmarks are met (*Vavilov* at paras 15, 95, 136).

[10] A Court applying the reasonableness standard does not ask what decision it would have made in place of the administrative decision maker. It is "an approach meant to ensure that courts intervene in administrative matters only where it is truly necessary to do so in order to safeguard the legality, rationality and fairness of the administrative process. It finds its starting point in the principle of judicial restraint and demonstrates a respect for the distinct role of administrative decision makers" (*Vavilov* at para 13).

[11] The onus is on the party challenging the decision to prove that it is unreasonable. Flaws must be more than superficial for the reviewing court to overturn an administrative decision. The court must be satisfied that there are “sufficiently serious shortcomings” (*Vavilov* at para 100).

IV. Analysis

[12] Both parties agreed that, in the context of decisions made by visa officers, it is not necessary to have exhaustive reasons for the decision to be reasonable given the enormous

pressures they face to produce a large volume of decisions every day. Considerable deference should also be afforded to them, given the level of expertise they bring to these matters (*Patel v Minister (Citizenship and Immigration)*, 2020 FC 672 at para 10).

[13] While the Applicant recognizes that reasons need not be overly detailed or lengthy, the issue is that it is not possible to understand the Officer's rationale from reading their Global Case Management System [GCMS] Notes or follow them from the evidence to the Officer's conclusions in light of the documents before them.

[14] The Respondent's position is that most of the Applicant's business plan was too general in nature and did not demonstrate true need or economic benefit. They submit the Officer's reasons, though short, are sufficient to demonstrate that they turned their minds to the regulatory requirements of a work permit and that the Applicant did not meet the burden by providing adequate supporting documentation for the application. The Respondent states that, reading the GCMS Notes, it is clear that the Officer reviewed the entire business plan and was not required to list all documents submitted.

[15] Indeed, Officers are presumed to have consulted all of the submitted evidence (*Rahman v Canada (Citizenship and Immigration)*, 2016 FC 793 at para 10). However, if there is evidence that contradicts the decision-maker's reasoning, they should explain why they preferred their conclusion over the evidence (*Oliinyk v Canada (Citizenship and Immigration)*, 2016 FC 756, para 15; *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, 1998 CanLII 8667 (FC) at paras 14-17).

[16] The GCMS Notes attempt to describe why the Officer was not satisfied that the application met the program requirement to demonstrate significant benefit. It appears that the Officer was not satisfied that the business plan (based on the financials) was reasonable. The Officer found that the proposed salaries were low, and that the projections were overly optimistic and speculative in the Canadian context. The Officer stated that the Applicant's business of chicken processing is very competitive in Ontario. The Officer was not satisfied that the proposed employment would generate significant economic, social or cultural benefits or opportunities for Canadian citizens or permanent residents. Similarly, at the beginning of the GCMS Notes, the Officer outlined that "a large part of the information submitted in the business plan is general and appears to have been copied from open source websites."

[17] The Applicant challenges the Officer's comment that the business plan was general and a large part of the information submitted appears to have been copied from open source websites and giving his business plan a negative inference as a result.

[18] At the hearing, the Applicant took the Court through the open source information found in the business plan and how it was used. It is the Applicant's submission that there is nothing improper with the use of publicly available data from Statistics Canada and Investment Ontario, as well as Ontario and Canadian industry websites, among other things, to assess competitive trends, and market analysis in support of the commercial viability of the proposed business. The Applicant also provided information like manufacturer websites to identify the cost (and justification) for various equipment the Applicant sought to acquire. The Applicant is unable to

understand which part of his business plan was undermined by the Officer's criticism on the use of open source information or that it was too general.

[19] The Officer also stated that the Applicant's business of chicken processing is very competitive in Ontario. The Applicant argues that the Officer failed to justify this conclusion when the market research submitted in the business plan showed that the sector in Cobourg and surrounding has minimal competition. The Applicant provided data in his business plan that reflected research in that market, communications with locals, as well as nearby competitors' websites to identify gaps in the products and services provided. The Applicant submits that he provided substantiation to the commercial viability where the Applicant sought to establish the business. The Officer was not required to provide extensively detailed reasons, but in the face of contrary evidence, their statement lacks transparency and intelligibility.

[20] I agree with the Applicant on these points. While I heard the Respondent's arguments on the general nature of the business plan, I cannot agree based on the record that was before the Officer. I am also unable to ascertain what issue the Officer had with open source information or why they found that the industry was competitive despite the market research identifying gaps in the market that the Applicant sought to fill.

[21] I am unable to understand the Officer's reasoning on these critical points that form the basis of the refusal of the work permit application. The Decision is unresponsive to contradictory probative evidence (*Patel v Canada (Citizenship and Immigration)*, 2020 FC 77 at para 15). As a

result, that there is insufficient information to find that the Decision is inherently coherent and displays a rational chain of analysis.

V. Conclusion

[22] Given the above, I find that the Decision is unreasonable and will be remitted for redetermination.

[23] The parties confirmed that there were no questions of general importance for certification, and I agree that none arise in this case.

JUDGMENT in IMM-13521-22

THIS COURT'S JUDGMENT is that

1. This application for judicial review is granted and the Decision will be remitted;

2. No question of general importance is certified.

"Phuong T.V. Ngo"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-13521-22
STYLE OF CAUSE:	ESMAEIL TALEBALI v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	MONTRÉAL (QUÉBEC)
DATE OF HEARING:	MARCH 27, 2024
JUDGMENT AND RESONS:	NGO J.
DATED:	JUNE 7, 2024

APPEARANCES:

Eiman Sadegh	FOR THE APPLICANT
Patricia Nobl	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Canadian Future Barristers and Solicitors Montréal (Québec)	FOR THE APPLICANT
Attorney General of Canada Montréal (Québec)	FOR THE RESPONDENT