

Federal Court



Cour fédérale

**Date: 20200504**

**Docket: IMM-5715-18**

**Citation: 2020 FC 582**

**Ottawa, Ontario, May 4, 2020**

**PRESENT: The Honourable Madam Justice Elliott**

**BETWEEN:**

**MOHAMMAD HUSSAIN WARDAK  
RAZIA WARDAK  
ZEKRIA WARDAK  
KHADIJA WARDAK &  
IBRAHIM WARDAK**

**Applicants**

**And**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

**I. Overview**

[1] This is an application for judicial review pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the *IRPA*]. The Principal Applicant, Mohammad Hussain Wardak, [Mr. Wardak] seeks to set aside a decision made on November 13, 2018

refusing Mr. Wardak's application for a work permit [Decision]. The Decision was made by a Visa Officer in the Visa Section of the Embassy of Canada in Abu Dhabi, United Arab Emirates.

[2] For the reasons that follow, this application is dismissed.

## II. **Background Facts**

[3] Mr. Wardak is a citizen of Afghanistan. He works as the Head Chef at Bukhara Restaurant in Kabul, Afghanistan.

### A. *The Labour Market Impact Assessment application*

[4] In April 2018, Mr. Wardak's prospective Canadian employer, Naan and Kabob Restaurant [Naan and Kabob], submitted a Labour Market Impact Assessment [LMIA] application seeking to hire Mr. Wardak as an Executive Chef in their chain of Afghan restaurants in the Greater Toronto Area [GTA]. His salary was to be \$55,000 per year and he would be eligible for bonuses and/or salary increases in accordance with company policy. Mr. Wardak would also be eligible for a pension.

[5] The LMIA application indicated that Mr. Wardak had 10 years of experience in cooking and preparing Afghan traditional dishes. As the Head Chef at Bukhara Restaurant he was responsible for preparing and cooking traditional Afghan food. He was also responsible for updating and improving existing menus and for the overall cleanliness and organization of the food preparation area. Mr. Wardak was expected to work at Naan and Kabob locations throughout the GTA as well as in Markham, Scarborough, and Mississauga, Ontario.

[6] The LMIA application indicated that in his previous roles, Mr. Wardak had experience in training and mentoring new hires, performing quality and quantity control for all menu items, and managing daily kitchen operations. Naan and Kabob said that Mr. Wardak's experience, specifically with traditional Afghan dishes and kabobs, would greatly assist their growth and success in Canada.

[7] In July 2018, Employment and Social Development Canada approved the LMIA application for a period of two years.

B. *The Work Permit application*

[8] On October 22, 2018, Mr. Wardak submitted his application for a work permit to the visa office in Abu Dhabi.

[9] The work permit application included, amongst other documents, a letter of support from Naan and Kabob, a reference letter from the management at Bukhara Restaurant, Mr. Wardak's résumé, and his translated bank statements.

[10] At the same time, Mr. Wardak's wife and children applied for an open-spousal work permit for Mr. Wardak's wife, study permits for two of the children, and a temporary resident visa for the youngest child.

III. **Decision Under Review**

[11] On November 13, 2018, the Visa Officer denied Mr. Wardak's application for a work permit. As the family applications were tied to Mr. Wardak's application they too were denied.

[12] The reasons for the Decision are found in both a four page “tick-box” list containing a variety of possible reasons, some of which have been “ticked”, and one page from the Global Case Management System [GCMS] notes.

[13] The following high-level boxes were ticked with an “x”:

You were not able to demonstrate that you adequately meet the job requirements of your prospective employment;

You have not satisfied me that you would leave Canada by the end of the period authorized for your stay. In reaching this decision, I considered several factors, including: family ties in Canada and in country of residence; employment prospects in country of residence; current employment situation; personal assets and financial status;

I am not satisfied that you have answered all questions truthfully, as required by subsection 16(1) of the Act. Specifically, I am not satisfied that the following information is truthful:

Question 2(b) of the Background Information.

[14] The Visa Officer recorded in the GCMS notes that Mr. Wardak had a LMIA to work as an Executive Chef, and that he provided a one-page reference letter issued July 2018 which stated that he worked at Bukhara Restaurant and Fast Food since November 2013.

[15] The Visa Officer noted that it was unclear who had signed the reference letter, as no name was indicated under the signature. In addition, the officer stated “Restaurant website [www.bukhara.af](http://www.bukhara.af) - appears it was founded in 2015.”

[16] The balance of the Visa Officer’s analysis is recorded in the GCMS notes:

One of the LMIA requirements are (*sic*) abilities in English, however, insufficient evidence to support.

Hof to be accompanied by his spouse and all children.

Personal account history irregular - balance was zero in Jul2018 and all funds deposited since then, insufficient evidence for assets.

I have taken into consideration subjects employment/financial status as well as the current political, economic and security situation in Afghanistan as well as fact that whole family is to travel and ties do not be (*sic*) appear strong enough to home country and there would be incentive to remain in Canada.

I am not satisfied the applicants would be genuine visitors and leave Canada at the end of authorized period of stay. Refused.

(Paragraph spacing added for readability)

#### IV. **The Relevant Legislation**

[17] The *IRPA* requires that a foreign national who is seeking to enter or remain in Canada must establish that they hold the appropriate visa for entry, as required by the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [the *IRPR*].

[18] If entry is sought in order to become a temporary resident, then the *IRPA* also requires that, in addition to holding the necessary visa or other document required by the *IRPR*, the person seeking entry must establish that they will leave Canada by the end of the period authorized for their stay: *IRPA*, at paragraph 20(1)(b).

[19] The issuance of work permits is regulated under Division 3 of the *IRPR*. The provisions relevant to this application are found in paragraphs 200(1)(b) and 200(3)(a) which set out the requirements to obtain a work permit:

**Issuance of Work Permits****Work permits**

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

[ . . . ]

(b) the foreign national will leave Canada by the end of the period authorized for their stay under Division 2 of Part 9;

[ . . . ]

**Exceptions**

(3) An officer shall not issue a work permit to a foreign national if

(a) there are reasonable grounds to believe that the foreign national is unable to perform the work sought;

**Délivrance du permis de travail****Permis de travail — demande préalable à l'entrée au Canada**

200 (1) Sous réserve des paragraphes (2) et (3), et de l'article 87.3 de la Loi dans le cas de l'étranger qui fait la demande préalablement à son entrée au Canada, l'agent délivre un permis de travail à l'étranger si, à l'issue d'un contrôle, les éléments ci-après sont établis :

[ . . . ]

b) il quittera le Canada à la fin de la période de séjour qui lui est applicable au titre de la section 2 de la partie 9;

[ . . . ]

**Exceptions**

(3) Le permis de travail ne peut être délivré à l'étranger dans les cas suivants :

a) l'agent a des motifs raisonnables de croire que l'étranger est incapable d'exercer l'emploi pour lequel le permis de travail est demandé;

**V. Issues**

[20] At the hearing of this application, the Applicants narrowed the issues to two: that the Visa Officer (1) unreasonably discounted the letter of reference from the employer and (2) incorrectly impugned the application on the basis of insufficient bank statements, breaching procedural fairness.

[21] The Applicants argued that the Visa Officer's reference to the Bukhara Restaurant website was one of the reasons that the Visa Officer's analysis of the employer letter was unreasonable and that it demonstrated procedural unfairness.

## VI. Standard of Review

[22] The applicable standard of review for assessing a visa officer's refusal of a work permit application abroad is reasonableness: *Singh v Canada (Citizenship and Immigration)*, 2017 FC 894 at paragraphs 15-16.

[23] In considering issues of procedural fairness, the reasonableness standard of review does not apply. Whether the duty of procedural fairness has been met does not require a standard of review analysis, although it is often referred to as a correctness review. The ultimate question to be answered by a reviewing Court is whether the Applicant knew the case to be met and had a full and fair chance to respond: *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 [CPR] at paragraph 56.

[24] Recently, the Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov] extensively reviewed the law of judicial review of administrative decisions. The Supreme Court confirmed that judicial review of an administrative decision is presumed to be on the standard of reasonableness subject to certain exceptions, none of which apply on these facts: *Vavilov* at paragraph 23.

[25] The presumption does not apply to an issue involving a breach of natural justice or the duty of procedural fairness: *Vavilov* at paragraph 23.

[26] A decision is reasonable if the decision-making process is justified, transparent and intelligible resulting in a determination that falls within the range of possible, acceptable outcomes which are defensible on the facts and law: *Dunsmuir v New Brunswick*, 2008 SCC 9 at paragraph 47 [*Dunsmuir*].

[27] In *Vavilov*, the requirements of a reasonable decision are re-stated as possessing “an internally coherent and rational chain of analysis [...] that is justified in relation to the facts and law”: *Vavilov* at paragraph 85.

[28] I find that further submissions from the parties are not required. The result in this matter would be the same under the pre-*Vavilov* framework established in *Dunsmuir*.

## VII. Analysis

[29] The parties fundamentally disagree as to the basis upon which the Visa Officer arrived at the Decision.

[30] Mr. Wardak says the Decision is based on procedurally unfair negative credibility findings or inferences. He says that he ought to have been given the opportunity to answer the concerns of the Visa Officer but, as he was not, his right to procedural fairness was breached. He also says that the Visa Officer made several unreasonable findings.

[31] The Respondent says that the Visa Officer simply found the evidence put forward by Mr. Wardak to be insufficient. There is no issue of procedural unfairness because Mr. Wardak’s concerns arise from his failure to satisfy the requirements of the legislation.



[32] The Respondent noted that the Visa Officer specifically identified three such failures by Mr. Wardak, any one of which is said to be determinative: 1) his failure to provide evidence of his facility in English, which was a job requirement; 2) his failure to show he and his family would leave Canada at the end of his authorized stay; 3) his failure to truthfully answer one of the questions on the application for his work permit.

A. *The Bukhara Restaurant employment letter, the website and Mr. Wardak's English*

[33] Mr. Wardak submits that the Bukhara Restaurant letter relates both to his ability to perform the job requirements of executive chef and whether he will leave Canada at the expiry of his work permit.

[34] The Visa Officer noted that it was unclear who had signed the Bukhara Restaurant letter because no name was indicated under the signature. Mr. Wardak submits that the letter met the stipulated requirements. He adds that a typed name does not add credibility to a letter but the contact information does because it makes the contents verifiable: *Downer v Canada (Immigration, Refugees and Citizenship)*, 2018 FC 45 [*Downer*] at paragraph 63.

[35] The Document Checklist for a Work Permit (Applied Outside Canada) is form IMM-5488. It is a two-page “tick-box” document to assist applicants with completing the necessary paperwork to submit with their application for a work permit. The last “tick-box” on the last page of the document lists “[a]ny additional documents required by the responsible visa office. **Note:** Refer to the visa specific instructions for your region.” Abu Dhabi is the region that covers applicants from Afghanistan. It has a separate work permit instruction document.

[36] The Abu Dhabi Visa Office Work Permit Instruction document contains a checklist for work permits. It specifically states that it is in addition to the checklist in IMM-5488 E and that certain documents must be provided if applicable. For employment reference letters it states they must be on official company letterhead paper, from past and present employers indicating:

- employment experience in an occupation related to your proposed occupation in Canada;
- the periods of your employment;
- the type of employment (permanent full-time, permanent part-time, temporary full-time, or temporary part-time);
- a list of your responsibilities with the complete name and contact details of the person who signed the employment reference letter.

[37] Mr. Wardak says that contact details are provided on the letterhead. The details include a physical address, three different telephone numbers, an email address and a Facebook URL. He submits that the lack of a name printed under the signature on the letter appears to have led the Visa Officer to discount the letter as being not credible.

[38] Mr. Wardak then refers to jurisprudence of this court indicating that if an officer has questions or concerns when processing an application they can or, in some cases, should use the contact information to verify or clear up those matters. Mr. Wardak acknowledged that the Visa Officer did not have an obligation to conduct any particular form of investigation but noted that they were required to provide a reasonable explanation for questioning the veracity of the Bukhara Restaurant reference letter.

[39] The Respondent says that the Visa Officer did not question whether Mr. Wardak had work experience. There was no credibility finding nor was there a doubt expressed by the Visa

Officer as to the veracity of the letter or it being fraudulent or not authentic. The Officer simply noted deficiencies or made observations.

[40] I agree with the Respondent that the Visa Officer made no credibility findings about the Bukhara Restaurant letter. The GCMS notes show that as evidence of his past experience Mr. Wardak submitted a one-page reference letter that stated he had been employed by Bukhara Restaurant and Fast Food since November 2013. The notes also record that the signatory to the letter is not indicated and that the letter was signed in July 2018.

[41] The Abu Dhabi Checklist required the complete name and contact details of the person who signed the employment letter. The Visa Officer accurately recorded in the GCMS notes that required information was absent from the letter. That was a reasonable observation by the Visa Officer.

[42] Although Mr. Wardak has suggested that the name of the author of the letter does not add credibility to the letter he did agree that the contact information enables verification of the facts set out in the letter. In this case, the Visa Officer had neither the name of the author of the letter nor the contact information for that person.

[43] Mr. Wardak's reliance on *Downer* and similar jurisprudence is misplaced. As explained below, the Visa Officer did not use the absence of a name to make any negative credibility findings.

[44] The GCMS notes do not show the Visa Officer drew any conclusions or made an adverse finding as a result of the lack of a contact name. They simply record that the information was

missing. Mr. Wardak suggests a more nuanced reading of the Decision is required. I find that to do so, the Court would have to speculate as to what else the Visa Officer might have meant.

[45] However, neither a nuanced reading nor speculation is required. The Visa Officer provided a specific reason for finding that Mr. Wardak was not able to demonstrate that he adequately met the job requirements of his prospective employment: the LMIA required both verbal and written English but insufficient evidence was provided to support that ability.

[46] Mr. Wardak submitted that the requirement to speak English is found in every LMIA but the document checklist contains no such requirement.

[47] The Respondent submits that a checklist is just a guide and it does not purport to be exhaustive. It is up to each individual applicant to determine what evidence may or may not be required to support their application for a work permit in light of the legislative requirements.

[48] In fact, there is no evidence, provided by Mr. Wardak or by Naan and Kabob, either to support that he had any ability in English or that none was required for the Executive Chef position. That does not mean Mr. Wardak has no such ability rather, without providing evidence of any ability in English or evidence that English was not actually a job requirement the Visa Officer had nothing to consider other than the LMIA. Without more, there was clearly insufficient evidence upon which to make a determination that Mr. Wardak possessed any ability in English.

[49] Finally, with respect to the Bukhara Restaurant letter, the Visa Officer recorded in the GCMS notes “Restaurant website [www.bukhara.af](http://www.bukhara.af) - appears it was founded in 2015.”

Mr. Wardak alleges that by consulting the restaurant website, the Visa Officer used extrinsic evidence without providing him with a right to respond and that was a breach of his right to procedural fairness.

[50] It does not appear that there was anything to which Mr. Wardak might have responded had he been given the opportunity. The Visa Officer did not come to any conclusion based on the website statement. The very next sentence refers to the LMIA requirement of ability in English. The website is not mentioned by the Officer again in the Decision.

[51] The Visa Officer gave very specific reasons for refusing Mr. Wardak's application, as itemized above. None of them refer to or flow from the Bukhara Restaurant letter or its website. All the reasons arise directly from either the legislation and the absence of sufficient evidence or, in one instance, from Mr. Wardak not answering a question on the work permit application truthfully.

[52] Based on the evidence before the Visa Officer and considering the GCMS notes as well as the statutory provisions, I find that Mr. Wardak did not meet his onus to show that the Visa Officer's treatment of the Bukhara Restaurant employment letter, the reference to the website or the finding that Mr. Wardak had provided insufficient evidence of his written or oral English ability, was either unreasonable or procedurally unfair.

B. *The Bank Statements*

[53] The Visa Officer considered the translated bank statements submitted by Mr. Wardak. They noted that the account history was irregular – the balance was zero in July 2018, and all

funds had been deposited since then. The Visa Officer found that there was insufficient evidence of Mr. Wardak's assets.

[54] Mr. Wardak says that bank statements are not even required; he simply provided them voluntarily and in good faith. He submits that because the Visa Officer noted the bank statements dated back to July 2018 it was "apparent the Officer is impugning the Applicant for not having provided his personal bank statements dating back even further than July 2018."

[55] With respect, I do not agree. It is more likely, given the wording and in the context of the other observations in the GCMS notes, that the Visa Officer was simply itemizing the evidence provided by Mr. Wardak when they recorded that:

Personal account history irregular-balance was zero in Jul2018 and all funds deposited since then, insufficient evidence for assets.

[56] That is a factual statement made by the Visa Officer.

[57] The conclusion of insufficient evidence arises from there being no other evidence submitted by Mr. Wardak showing that he possessed any other assets. On that basis, it was entirely reasonable for the Visa Officer to find that there was insufficient evidence of Mr. Wardak's assets.

C. *The Visa Officer's finding that the Applicants would not leave Canada*

[58] Paragraph 200(1)(b) of the *IRPR* is specific and mandatory: an officer shall issue a work permit if, following an examination, it is established that the foreign national will leave Canada by the end of the period authorized for their stay.

[59] The Visa Officer took into consideration Mr. Wardak's employment/financial status as well as the current political, economic and security situation in Afghanistan. In addition, they took into account the fact that the whole family was to travel to Canada and there did not appear to be strong enough ties to the home country.

[60] The Visa Officer found, from that combination of factors, that there would be an incentive for Mr. Wardak to remain in Canada. They concluded that they were "not satisfied the applicants would be genuine visitors and leave Canada at the end of authorized period of stay. Refused."

[61] The underlying record supports this conclusion by the Visa Officer. In addition to the current and prospective employment letters, Mr. Wardak submitted his résumé and the translated bank statements. Other submitted documents were the completed applications, the LMIA, photographs and passports, police clearance certificate, Mr. and Mrs. Wardak's marriage certificate and promotional materials for Naan and Kabob. There was no evidence of ongoing ties to Afghanistan.

D. *Mr. Wardak did not truthfully answer all questions on the application*

[62] As noted, the Visa Officer was not satisfied that the Applicants had answered all questions truthfully, as required by subsection 16(1) of the Act. In particular, the Visa Officer was not satisfied that the Applicants had answered Question 2(b) of the Background Information truthfully.

[63] Question 2(b) reads: “Have you ever been refused a visa or permit, denied entry or ordered to leave Canada or any other country or territory?” In answering this question, the Applicants checked “no” on their application form.

[64] The GCMS notes indicate that through information sharing the United States advised that a non-immigrant visa had previously been refused for both Mr. Wardak and his spouse.

[65] Mr. Wardak suggests that the Visa Officer did not weigh or balance the evidence, as he should have done given that it is discretionary. He repeats his submissions that nothing is dispositive and that his evidence met all the requirements of the three checklists.

[66] The Respondent submits that the lack of evidence and the failure to meet the requirements of the legislation were completely dispositive of this matter.

[67] I agree that in exercising their discretion, the Visa Officer could reasonably reject the work permit application on these grounds.

[68] When applying for entry into Canada an applicant has a duty of candour to provide complete, honest and truthful information. Under section 40 of the *IRPA*, a foreign national who directly or indirectly misrepresents or withholds material facts relating to a relevant matter is inadmissible as it could induce an error in the administration of the *IRPA*: *Wang v Canada (Citizenship and Immigration)*, 2018 FC 368 at paragraphs 13 and 16.

[69] The Visa Officer reasonably noted Mr. Wardak’s failure to answer truthfully. As the Respondent points out, the Visa Officer did not find that Mr. Wardak made a misrepresentation



or withheld a material fact either of which would have rendered him inadmissible to Canada. Instead, the Visa Officer found that Mr. Wardak had not answered all questions truthfully. That falls under subsection 16(1) of the *IRPA*. As a result, if Mr. Wardak wishes to apply for a work permit again, there appears to be, up to the date of the Decision, no impediment to doing so.

#### VIII. Conclusion

[70] Decisions of visa officers are entitled to considerable deference in their assessment of the evidence and the weight they accord to the evidence: *Chhetri v Canada (Citizenship and Immigration)*, 2011 FC 872 at paragraph 9. Mr. Justice Rennie, who was then a member of this court, stated at paragraph 10:

Foreign nationals are entitled to the minimum degree of procedural fairness. There is no obligation on the visa officer to advise the applicant of concerns about, or deficiencies in, their application or to offer an interview. Nor, as Rothstein J.A. (*ex officio*) said in *Qin v Canada (Minister of Citizenship and Immigration)*, 2002 FCT 815, does the onus shift to the visa officer to take any additional steps to address or satisfy outstanding concerns. The foreign national has no right or interest at play. It is for these reasons that it is often difficult to set aside, on judicial review, a visa officer's decision.

[71] In this matter, the Visa Officer reviewed the evidence that was provided then made brief mention and observations about that evidence in the GCMS notes. That is sufficient. In the context of a work permit application, a visa officer does not need to provide extensive reasons: *Singh v Canada (Citizenship and Immigration)*, 2015 FC 115 at paragraph 24.

[72] Mr. Wardak would have been aware that two of the relevant requirements in the legislation were that he provide satisfactory evidence of his ability to perform the work and that

he would leave Canada at the end of his authorized period of stay. It was up to him to decide, with the guidance of the checklists, what evidence to submit.

[73] It was up to the Visa Officer to determine whether the evidence that Mr. Wardak did submit was sufficient. The determination was unfavourable to Mr. Wardak but not unreasonable.

[74] Having received and dissected the Decision, Mr. Wardak cannot now ask this Court to reweigh the evidence or to second-guess the exercise by the Visa Officer of their discretion.

[75] The Supreme Court has stated very clearly that when conducting judicial review, a Court is to refrain from deciding the issue afresh. I am to consider only whether the Decision, including the rationale for it and the outcome to which it led, is unreasonable: *Vavilov* at paragraph 83.

[76] Given the evidence and considering the significant difference owed to the Visa Officer I am not persuaded that there is any basis upon which to find the Decision is unreasonable or that it was made in a manner that was procedurally unfair to Mr. Wardak.

[77] For all the foregoing reasons this application is dismissed, without costs.

[78] There is no serious question of general importance for certification on these facts.

**JUDGMENT in IMM-5715-18**

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

1. The application is dismissed.
2. There is no serious question of general importance for certification.
3. No costs.

**"E. Susan Elliott"**

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-5715-18

**STYLE OF CAUSE:** MOHAMMAD HUSSAIN WARDAK, RAZIA  
WARDAK, ZEKRIA WARDAK, KHADIJA WARDAK  
& IBRAHIM WARDAK v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** JULY 25, 2019

**JUDGMENT AND REASONS:** ELLIOTT J.

**DATED:** MAY 4, 2020

**APPEARANCES:**

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