

Federal Court



Cour fédérale

Date: 20201030

Docket: IMM-3753-19

Citation: 2020 FC 1021

Ottawa, Ontario, October 30, 2020

PRESENT: Mr. Justice Pentney

BETWEEN:

AMANDEEP SINGH SANDHU

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The Applicant, Amandeep Singh Sandhu, seeks to overturn the decision of a visa officer (Officer) in New Delhi, India, who refused his application for a permanent resident visa under the self-employed category.

[2] The Officer found that the Applicant had failed to demonstrate that he had the intention and capacity to purchase and manage a farm in Canada. The Applicant claims that this decision is unreasonable because the Officer failed to take into account the information he provided about

his background and experience, and demanded a higher level of knowledge and planning than the law requires.

[3] The Applicant is a 36-year-old citizen of India who is married with two children. He says he has successfully managed a farm in India since 2006. This 14.5-acre operation comprises three different properties, one of which is owned by the Applicant and the others by his mother. He states that he is responsible for all aspects of running the farm, and that he has successfully grown the operation. The Applicant's net worth at the time of his application was over \$880,000 CAD.

[4] The Applicant applied for permanent residence under the self-employed person's class, and proposed to purchase and run a farm in Canada. He attended an interview with the Officer in New Delhi on November 5, 2018. The following day his application was refused, because the Officer was not satisfied that the Applicant had the knowledge, capacity, and intention to manage a farm in Canada, and therefore he did not fall within the definition of "self-employed person" set out in subsection 88(1) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [*Regulations*]. The crux of the Officer's reasoning is set out in the following passage from the Global Case Management Information System Notes [GCMS Notes]:

I am not satisfied that the applicant has the intention and ability to purchase and manage a farm in Canada and to make a significant contribution to specified economic activities in Canada. The applicant did not have a good geographical knowledge of the location where he intends on buying a farm, as he stated he did not know where exactly he will buy his farm and only said in the Waterloo/Kitchener area. The applicant also stated that he intended on purchasing a small plot of 5-10 acres, even though according to the applicant the average size of a farm in the region for the crop he intends on growing is 2,350 acres. The applicant showed very limited knowledge about the crops he intends on growing. He

stated he will grow wheat and corn, however he could not explain how he would be able to make a profit from a plot of 5-10 acres growing wheat and corn... I am also not satisfied that the applicant has sufficient funds for her [*sic*] endeavor in Canada. I note that the applicant has 120 000 CAD in personal assets for his farming venture, however I am not satisfied he has enough funds to buy farmland in his area of destination and maintain himself and his family members in Canada. Overall, the applicant was unable to clearly explain his project, how he would manage to make it successful, and why he had decided to go establish himself at his proposed location, and provided information that remained superficial.

[5] The issue in this case is whether the Officer's decision is reasonable, within the framework set out by the Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*]. Although the Applicant raised concerns about the adequacy of the Officer's reasons as a question of procedural fairness, it was agreed at the hearing that the *Vavilov* framework confirms that the adequacy of reasons is to be assessed as part of the reasonableness analysis, rather than as a matter of procedural fairness.

[6] When reviewing for reasonableness, the Court asks "whether the decision bears the hallmarks of reasonableness – justification, transparency and intelligibility – and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision" (*Vavilov* at para 99). The analysis in the decision must be internally coherent, and display a rational chain of analysis (*Vavilov* at para 85).

[7] Based on this framework, a decision will likely be found to be unreasonable if the reasons read in conjunction with the record do not enable the Court to understand the decision-maker's reasoning on a critical point (*Vavilov* at para 103). The burden is on the applicant to show that

the decision is unreasonable, and a reviewing court must be satisfied that the shortcomings or flaws relied on by the party challenging the decision are sufficiently central or significant to render the decision unreasonable (*Vavilov* at para 100).

[8] The *Vavilov* framework affirms that reasonableness review must take the context for decision-making into account (*Vavilov* at paras 88-90). This is consistent with the earlier jurisprudence of this Court that found that the review of a decision of a visa officer must take into account the operational realities of the decision-maker (see, for example: *Trivedi v Canada (Citizenship and Immigration)*, 2010 FC 422 at para 39; *Canada (Minister of Citizenship and Immigration) v Khan*, 2001 FCA 345 at para 32). One aspect of this is that visa officers are not required to provide extensive reasons for their decisions, but the reasons must explain the basis for the result (*Omijie v Canada (Citizenship and Immigration)*, 2018 FC 878 at para 10; *Yuzer v Canada (Citizenship and Immigration)*, 2019 FC 781 at para 9).

[9] The Applicant submits that the Officer's decision is unreasonable because: (i) it failed to take account of the totality of the information he provided, including his educational and farming background, and his answers to the questions posed by the Officer during the interview, and (ii) the reasons are inadequate because they do not explain the reasoning and analysis that supports the Officer's conclusion.

[10] The Applicant argues that he had demonstrated that he had the two years experience in managing a farm as required by subsection 88(1) of the *Regulations* and that the Officer misinterpreted the information he provided regarding his financial situation. He had provided financial information indicating his net worth, and answered questions during the interview

about his plans. He states that his total assets were more than sufficient to enable him to purchase a small plot of land, and to lease other property, in order to start farming in Canada. He further stated that he intended to expand his farming operation after he gained experience in the Canadian market.

[11] The Applicant submits that the Officer's analysis of his plan was microscopic and misguided, because the Officer misinterpreted his answers to some of the questions. For example, during the interview, the Officer asked what kind of machinery the Applicant intended to buy, and he replied that he would buy or lease a tractor. He argues that the Officer misinterpreted his answer when he stated: "I will buy it after 6 months because my mother promised to send me some money, at which time I will buy it. I will rent a tractor for the first 6 months." The Applicant argues that this was not evidence that he did not have sufficient funds to purchase a tractor, but rather an indication of his plan for acquiring equipment for launching his farm in Canada. The Officer did not probe further, or indicate any concerns during the interview.

[12] Furthermore, the Applicant says he provided sufficient information in response to the Officer's questions to show that he had done research on farming in Canada and the law does not require an encyclopedic knowledge of farming. He knew the crops grown in the area he wanted to settle, the average price for various crops, as well as the average size of a farm in that area. He stated that he anticipated buying and leasing property, and that he would be able to grow and market his crops in order to make a living. The Applicant contends that his plan to start small, to seek out the advice of experts once he arrived in Canada, and to expand once he was settled was both practical and feasible.

[13] The Applicant submits that the Officer's decision is unreasonable because it reflects a microscopic analysis of small details, and does not take into account his education (a degree in Mechanical Engineering), or his experience running a successful farm in India. He states that he has demonstrated that he was successful in the past, and that he could make a valuable contribution to Canada.

[14] In addition, the Applicant submits that the Officer's reasons are vague, confusing and do not provide justification or analysis that support the decision.

[15] I am not persuaded that the Officer's decision is unreasonable, in light of the evidence provided by the Applicant, and in view of the deference that is owed to a visa officer's discretionary application of the law to the facts. I am also not persuaded that the reasons are deficient. The Officer's reasons are clear and focus on the relevant considerations in light of the law and the facts. I recognize that another Officer could have reached a different conclusion, but that does not make the decision unreasonable.

[16] The Officer's notes and the decision letter do not raise any question about the Applicant's farming experience in India. Rather, as the Respondent submitted, the thread that runs through the interview questions is how the Applicant intended to make his plan work, in the sense of demonstrating that he had the "intention and ability to be self-employed in Canada and to make a significant contribution to specified economic activities in Canada" as required by the *Regulations*.

[17] A key concern for the Officer was the Applicant's plan to purchase such a small operation in the area he intended to settle, given the crops he intended to grow. During the interview, the Officer stated that he had calculated that the Applicant would earn only a gross income of \$13,000 CAD by growing wheat and corn on a 10-acre farm; in reply, the Applicant indicated that he intended to lease other property and estimated that his annual net income would be approximately \$50,000 CAD.

[18] In a case involving somewhat similar facts to the case at bar, Justice Michael Manson found that an officer is entitled to consider the nature of the plans submitted by an applicant, and “[i]f an applicant's plans are excessively vague or unrealistic, it is unlikely that he can meet the eligibility requirements. Similarly, a lack of research with respect to a proposed venture could justify a finding that the plan was not viable” (*Singh v Canada (Immigration, Refugees and Citizenship)*, 2018 FC 84 at para 36 [*Singh 2018*] citing *Shehada v Canada (Minister of Citizenship and Immigration)*, 2004 FC 11 at para 7). Justice Manson also noted that the Officer's Operation Manual emphasized that applicants who sought admission for the purchase and management of a farm faced a “rigorous threshold” because farming in Canada is such a “highly skilled and capital-intensive industry” (*Singh 2018* at para 39).

[19] In the case at bar, the Applicant did have some knowledge of matters relevant to his proposed farming endeavour, including the price per acre of farmland, the type of corn he intended to plant, and certain farm-related expenses. However, his answers to many of the Officer's questions during the interview also reveal a degree of uncertainty and confusion.

[20] When asked about his destination in Canada, he initially indicated Guelph and the Waterloo/Kitchener area. He then said he would buy a farm near Waterloo, and then mentioned a town called Ivy. He said he had searched on the internet and found that there was a lot of land available, but from the foregoing, it is clear that he did not have a specific location in mind. He knew that smaller farms in that region of the country grew fruit and vegetables, and that corn and wheat were usually grown on much larger farms. However, he did not present a specific idea of how much land he could afford to rent in addition to the five to ten-acre plot he intended to buy, nor did he have a realistic sense of how much money he could expect to earn through such an operation.

[21] The Applicant complains that the Officer did not take into account his total net worth in assessing his ability to establish a successful farming operation in Canada, noting that he had assets valued at over \$880,000 CAD. However, I find that the evidence presented to the Officer is not so clear-cut. For example, the evidence shows that much of the Applicant's worth was associated with immovable assets, and he did not indicate an intention to sell these before he moved to Canada. In his written submissions on this application, the Applicant stated that his "net worth is more than what he hoped to invest in Canada." This is consistent with the answers he provided during the interview.

[22] For example, in regard to his ability to purchase a tractor for use on his farm, the information provided by the Applicant is telling. He indicated during the interview that he had budgeted \$10,000 CAD for expenses such as farm machinery, seeds, harvesting labour and insurance. He said he knew the price of a used tractor is approximately \$75,000 CAD. When the Officer asked how he would purchase a tractor, the Applicant stated: "I will buy it after 6 months

because my mother promised to send me some money, at which time I will buy it. I will rent a tractor for the first 6 months.”

[23] Based on the gaps and incongruities in the financial information provided by the Applicant, it was not unreasonable for the Officer to express doubt about whether the Applicant would be able to establish himself on a farm and support his family. The Applicant argues that he has more than sufficient assets, but the Officer based the decision on the information he had presented, and I can find no error in this analysis.

[24] This case is similar to *Singh 2018*, in that the Applicant has demonstrated some knowledge of some aspects of Canadian farming. In that regard, the case can be distinguished from *Singh v Canada (Citizenship and Immigration)*, 2016 FC 904, where the Officer found that the applicant knew virtually nothing about Canadian farming practices and did not understand the business plan he had presented with his application. That is not the situation here. As noted earlier, the Applicant in this case did have some relevant knowledge of Canadian farming practices, but the plan he presented stood in stark contrast to the actual practices on farms in the area he intended to settle insofar as he planned to grow wheat and corn. The Officer was not convinced that the Applicant had demonstrated that his plan would work, or that he could successfully establish his operation in order to support his family.

[25] Having reviewed the record, and considered the submissions of the parties, I find that the Officer’s decision is reasonable when assessed under the *Vavilov* framework. The Officer assessed the evidence provided by the Applicant against the applicable legal framework as set out in subsection 88(1) of the *Regulations* and amplified by the Operations Manual (OP8 8). The

Officer's reasons explain the essential elements of the reasoning in support of the conclusion. That is what reasonableness review requires, and it is not the role of the Court to step into the shoes of the Officer and to re-weigh the evidence.

[26] For these reasons, the application for judicial review is dismissed.

[27] The parties did not propose a question of general importance for certification, and I find none arises in this case.

JUDGMENT in IMM-3753-19

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.
2. There is no question of general importance for certification.

“William F. Pentney”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3753-19

STYLE OF CAUSE: AMANDEEP SINGH SANDHU v MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: VANCOUVER, BRITISH COLUMBIA

DATE OF HEARING: JANUARY 30, 2020

**JUDGMENT AND
REASONS:** PENTNEY J.

DATED: OCTOBER 30, 2020

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