Federal Court Cour fédérale

Date: 20201019

Docket: IMM-2760-19

Citation: 2020 FC 980

Ottawa, Ontario, October 19, 2020

PRESENT: The Honourable Mr. Justice Favel

BETWEEN:

ZHONGLIANG ZHU

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Background

[1] Mr. Zhongliang Zhu [Applicant] is a Chinese citizen. He applied for permanent residence in Canada as a member of the self-employed class. A visa officer [Officer] refused his application on March 4, 2020 [Decision].

[2] The Applicant now applies for judicial review of the Decision pursuant to s 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*]. He requests that the Court quash the decision and remit it for re-determination, all with costs.

[3] For the reasons that follow, the application for judicial review is dismissed.

II. Context and Decision under Review

[4] The Applicant grew up on a farm in the Hunan province of China where he assisted his family in the day-to-day management of the farm until he finished high school. He then moved to Hengyang city to work as an apprentice in the Electricity Bureau.

[5] Later, the Applicant set up his own company in China in which he has the role of general manager. This company focuses on designing, producing, and installing farming machinery, tools, and equipment. The company also installs and repairs equipment for farms.

[6] In 2014, the Applicant and his wife purchased farmland in Ontario. They state that they eventually want to develop it for organic farming, but currently only need a small portion of the land. For this reason, they have rented out portions of the land to neighbouring farmers. The Applicant and his wife have visited several farms in Canada and have received training in Canada to support their endeavor.

[7] In 2018, the Applicant applied for permanent residence in Canada under the "self-employed" class, relying on his experiences as described above. He attended an interview in February 2019.

[8] The Officer concluded that the Applicant did not meet the statutory requirements under the "self-employed" class because he did not have two one-year periods of farm management experience in the last five years. The Officer rejected the Applicant's application in March 2019.

[9] The Decision is comprised of a decision letter and the accompanying GCMS notes. The GCMS notes supplement the general finding in the decision letter, providing some further detail on why the Officer concluded that the Applicant did not meet the relevant statutory requirements.

III. Issues and Standard of Review

[10] The Applicant alleges that the Officer unreasonably assessed the evidence and provided inadequate reasons.

[11] Both issues attract a reasonableness standard of review (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*]). The first issue deals with the Officer's assessment of the evidence, and the second issue deals with whether the Officer has provided adequate reasoning to support the decision. Neither of these issues involve cases that rebut the now-presumed standard of reasonableness as described in *Vavilov*.

[12] Despite the parties' submissions to the contrary, the adequacy of the Officer's reasoning goes to the substantive reasonableness of the Decision. A decision-maker's reasoning may affect both the substantive reasonableness and the procedural fairness of a decision (see *Vavilov* at para 81). However, the way that the Applicant has framed his "procedural fairness" argument, claiming that the Decision lacked "justification" and that it was "not possible to understand why the Officer rejected the Applicant's experience", indicates that it is an argument against the

substantive reasonableness of the Decision. This is the same type of language used in *Dunsmuir*, and now *Vavilov*, to describe an unreasonable decision (see *Vavilov* at para 81).

IV. Parties' Positions

A. *Was the Decision Reasonable?*

(1) The Officer's assessment of the evidence

[13] The Applicant takes issue with the Officer's assessment of the evidence with regard to his experiences running his experimental plot of land in Ontario. He claims that the Officer unduly discounted this despite it evidencing relevant farm management experience in Canada.

[14] The Applicant also takes issue with the Officer's treatment of the Applicant's experiences in China, which he says should count as farm management experience. He claims that this resulted in an unreasonable decision based on irrelevant considerations and without regard to the evidence before the Officer.

[15] The Respondent argues that the Decision was reasonable. The Applicant failed to show that he had the required farm management experience, so the Officer refused his application.

[16] The Respondent highlights that in his interview, the Applicant acknowledged that he last managed a farm in 1998, and then only part-time. This is contained within the GCMS notes. There was no misunderstanding of the evidence.

[17] The Respondent submits that the Applicant's arguments about his experiences "relevant to" farm management are insufficient. What is required are two one-year periods of full-time

farm management experience within the last five years. The Applicant's evidence of working on a farm in his childhood, running a farm equipment company, and renting out a plot of farmland in Canada was not sufficient to meet the statutory requirement. The Respondent submits that the Applicant merely disagrees with the Officer's assessment of the evidence.

(2) Adequacy of reasons

[18] The Applicant claims that the Officer erred by failing to provide adequate reasons. He argues that the Decision did not "meet the requirements of fairness" because the Officer did not provide any reasons for refusing the Applicant's business experience, or why the Officer found such experience irrelevant. Further, the Applicant claims that it is impossible to understand why the Officer rejected his experience and ability to make an economic contribution to Canada.

[19] The Applicant relies on *Canada (Citizenship and Immigration) v Jeizan*, 2010 FC 323 [*Jeizan*] and *Canada (Citizenship and Immigration) v Wong*, 2009 FC 1085 [*Wong*]. In *Jeizan* at para 17, Justice de Montigny stated that the "reasons for decisions are adequate when they are clear, precise and intelligible and when they state why the decision was reached. Adequate reasons show a grasp of the issues raised by the evidence, allow the individual to understand why the decision was made and allow the reviewing court to assess the validity of the decision".

[20] In *Wong*, Justice Tremblay-Lamer allowed a judicial review of a decision of a citizenship judge because the reasons were inadequate. The Court found that the reasons "failed to indicate which residency test he applied, and addressed neither the relevant legal factors nor the issues raised by the evidence" [see *Wong* at para 16].

[21] The Respondent takes the position that the Officer's reasons were adequate. It quotes a familiar passage from *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para 22, where the Court states that, where reasons exist, their adequacy is to be analyzed within the overall reasonableness of the decision.

[22] The Respondent goes on to say that the Decision is readily understandable and that there is no "mystery or unknown" reason as to why the application was denied. Both the decision letter and the GCMS notes explain that the application was denied because the Applicant did not meet the relevant statutory requirements.

V. Analysis

A. *Was the Decision reasonable?*

[23] The Decision was reasonable. The Applicant has not demonstrated an error either in the Officer's assessment of the evidence or in the adequacy of the Officer's reasons.

(1) Legislative Background

[24] The Applicant applied as part of the "self-employed persons" economic sub-class (see *Immigration and Refugee Protection Regulations* , SOR/2002-227, s. 100(2) [Regulations]) as reproduced below:

Self-employed Persons Class	**Travailleurs autonomes**
Members of the class	**Qualité**
100 (1) For the purposes of subsection 12(2) of the Act, the self-employed persons class is hereby prescribed as a	**100 (1)** Pour l'application du paragraphe 12(2) de la Loi, la catégorie des travailleurs autonomes est une catégorie

class of persons who may become permanent residents on the basis of their ability to become economically established in Canada and who are self-employed persons within the meaning of subsection 88(1).	réglementaire de personnes qui peuvent devenir résidents permanents du fait de leur capacité à réussir leur établissement économique au Canada et qui sont des travailleurs autonomes au sens du paragraphe 88(1).
Minimal requirements	**Exigences minimales**
(2) If a foreign national who applies as a member of the self-employed persons class is not a self-employed person within the meaning of subsection 88(1), the application shall be refused and no further assessment is required.	(2) Si le demandeur au titre de la catégorie des travailleurs autonomes n'est pas un travailleur autonome au sens du paragraphe 88(1), l'agent met fin à l'examen de la demande et la rejette.

[25] As referenced above, applicants under this category must have "relevant experience" and "the intention and ability to be self-employed in Canada and make a significant contribution to specified economic activities in Canada" as set out in s 88 of the Regulations:

88 (1) (a) a self-employed person, other than a self-employed person selected by a province, means a minimum of two years of experience, during the period beginning five years before the date of application for a permanent resident visa and ending on the day a determination is made in respect of the application, consisting of	**88(1)(a) a)** S'agissant d'un travailleur autonome autre qu'un travailleur autonome sélectionné par une province, s'entend de l'expérience d'une durée d'au moins deux ans au cours de la période commençant cinq ans avant la date où la demande de visa de résident permanent est faite et prenant fin à la date où il est statué sur celle-ci, composée :

[26] For the “management of a farm” category, two one-year periods of experience are required within five years of the application date (Regulations, s 88(1) “relevant experience” (a)(iii)).

[27] The Applicant submits that there is no clear definition of what constitutes “management” of a farm. The Respondent submits that the National Occupational Classification sets out what management consists of.

(2) The Officer’s assessment of the evidence

[28] The Court is only able to provide a remedy in circumstances where some aspect of the Decision is unreasonable. The Court is unable to reweigh evidence that was before the Officer (see *Vavilov* at paras 125-126).

[29] Regarding the Officer’s assessment of the evidence, I find the Officer’s analysis reasonable. The Applicant, without highlighting specifics, has claimed that the Officer reached the wrong conclusions based on the evidence before him. With respect, I find that this is a request for the Court to reweigh the evidence that was before the decision-maker, which this Court is unable to do.

[30] The Applicant further submits that the definition of “management of a farm” is unclear and that the evidence submitted provides evidence of management. While those words are not explicitly defined, I agree with the Respondent that there are sufficient examples of what types of activities fit within that concept within the National Occupational Classification.

[31] With respect to the Applicant's experience with his plot of farmland in Canada, I see no reason why the Officer erred when they found that it did not qualify as experience of the "management of a farm". As the Respondent has highlighted, the Officer canvassed this issue in the Applicant's interview. The GCMS notes contain the Applicant's statement, that he, "[hasn't] immigrated to Canada yet so there is no way for me to manage a farm". Further, the GCMS notes also indicate that when the Officer questioned the Applicant as to whether he was currently farming in China, the Applicant answered no.

[32] The Applicant's claim that the "Officer […] does not appear to accept or acknowledge his experience in China, managing his company […]", on its face, is true. However, the Officer was clearly aware of the Applicant's company, as indicated in the GCMS notes from the Applicant's interview. In the circumstances, it is apparent that this Officer did not accept this as farm management experience. This conclusion was not outside the bounds of reasonableness.

[33] Cumulatively, the answers to the questions did not satisfy the Officer that the Applicant was engaged in the management of a farm within the parameters of the Regulations and the National Occupational Classification.

[34] When reviewed as a whole, I find the Officer's treatment of the evidence to be reasonable.

(3) Adequacy of reasons

[35] The Supreme Court has recently provided guidance on the adequacy of reasons in an administrative decision, stating that the reasons must justify why a given set of circumstances

has led to a particular outcome. This is not a separate ground of analysis, but rather the reasons must be read in light of the full circumstances of a decision. Some outcomes are so divorced from the relevant circumstances that they can never be supported by even the most cogent reasons, while some outcomes, which may be reasonable in themselves, can be quashed if they are based on insufficient reasons (*Vavilov* at para 86).

[36] The Decision, consisting of the decision letter and GCMS notes, allows me to understand why the Officer refused the application based on the materials submitted by the Applicant and the Applicant's answers to the interview questions. As analyzed above, the Officer was of the view that the Applicant did not have the required two one-year periods of "farm management" experience within the last five years. The reasoning is straightforward and rationally connected to the Decision. I find that it justifies the Officer's Decision.

VI. Conclusion

[37] The parties correctly acknowledged that the Respondent was improperly referenced in the style of cause. The style of cause will be amended to reference the Respondent as "The Minister of Citizenship and Immigration".

[38] For the above reasons, the application for judicial review is dismissed.

[39] There is no order for costs.

[40] The parties have not raised a question of general importance for certification and none arises.

JUDGMENT in IMM-2760-19

THIS COURT'S JUDGMENT is that:

1. The style of cause is amended, with immediate effect, by removing "The Minister of Immigration, Refugees and Citizenship" and substituting "The Minister of Citizenship and Immigration" as the Respondent.
2. The application for judicial review is dismissed.
3. There is no order for costs.
4. There is no question for certification.

"Paul Favel"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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APPEARANCES:

Hadayt Nazami	FOR THE APPLICANT
David Joseph	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Nazami & Associates Toronto, Ontario	FOR THE APPLICANT
Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT