

Federal Court



Cour fédérale

Date: 20210617

Docket: IMM-339-20

Citation: 2021 FC 626

Vancouver, British Columbia, June 17, 2021

PRESENT: The Honourable Mr. Justice Bell

BETWEEN:

MANPREET KAUR

Applicant

and

**THE MINISTER OF IMMIGRATION,
REFUGEE AND CITIZENSHIP CANADA**

Respondent

JUDGMENT AND REASONS

(Delivered from the Bench at Vancouver, British Columbia, on June 9, 2021 and edited for syntax and grammar with added references to the relevant case law)

[1] Ms. Manpreet Kaur, a 27-year-old citizen of India, applied for a work permit under the temporary foreign worker program. A visa officer working at the High Commission of Canada to India refused her application on January 7, 2020. The visa officer concluded Ms. Kaur did not meet the language requirements required of the position, a child-care worker in a private home.

[2] Ms. Kaur brings an application for judicial review of the visa officer's refusal, pursuant to section 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.

[3] In her written submissions, Ms. Kaur raises issues of procedural fairness and challenges the reasonableness of the decision.

[4] With respect to procedural fairness, although not addressed specifically in oral argument, Ms. Kaur contends that the visa officer should have contacted her personally to address potential issues he or she had with the application. I am not satisfied such a requirement is imposed upon a visa officer in the circumstances of this case. I would reject the contention that the visa officer failed to respect the requirements of procedural fairness.

[5] When I consider the whole of the decision, I share Ms. Kaur's view that the decision fails to meet the test of reasonableness as outlined in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65. Ms. Kaur also relies upon *Chhetri v. Canada (Citizenship and Immigration)* 2011 FC 872.

[6] First, I note the visa officer, as he or she is entitled to do, considered another visa officer's notes. However, the previous visa officer who considered Ms. Kaur's application rejected it for reasons other than language competency. The second visa officer, in referring to the first visa officer's notes, considered answers to questions posed to Ms. Kaur during an earlier interview, to conclude she did not have sufficient competency in the English language. Counsel for the respondent candidly admitted during the hearing that the first visa officer's notes are just

that: notes. There is no verbatim transcript of the interview held between the first visa officer and Ms. Kaur. The second visa officer was in no position to know with any degree of certainty how well, or how poorly, Ms. Kaur responded to the questions. Importantly the responses must have been satisfactory to the first visa officer because he or she did not reject the application on the basis of language competency.

[7] Second, as I consider the issue of reasonableness, I have read carefully the notes and summaries of the questions. I must admit that I do not understand at least one of the questions. Ms. Kaur's response to the very question I had difficulty understanding, is one relied upon by the visa officer to reject her application. If I did not understand the question, then, how, I ask rhetorically, could Ms. Kaur understand the question and respond in an acceptable manner? Perhaps my failure to understand the question is because of the manner of notetaking by the first visa officer. Regardless, if that is the case, it speaks squarely to the unreasonableness of the second visa officer relying upon those notes to assess language ability.

[8] Third, as I consider this issue of reasonableness, I note that Ms. Kaur's cumulative score on her English language testing was 5.5. The minimum required for the position, in this case, was 5.0. I acknowledge that the ultimate decision rests with the visa officer as to whether someone is, or is not, competent in the English language. However, where, as here, an applicant meets or surpasses the minimum language requirement for the position, the reasons should very clearly reflect why the visa officer considers the candidate lacks the necessary competence in that language. These reasons fail to do so.

[9] For these reasons, I find the decision does not meet the test of reasonableness. I would allow the application for judicial review and remit the matter to another visa officer for re-determination.

[10] I inquired of the parties as to whether either wished to propose a question for certification. Neither did. In the circumstances, no question is certified for consideration by the Federal Court of Appeal.

JUDGMENT in IMM-339-20

THIS COURT'S JUDGMENT is that this application for judicial review is allowed. The matter is referred to another visa officer for re-determination. No question is certified for consideration by the Federal Court of Appeal.

"B. Richard Bell"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-339-20

STYLE OF CAUSE: MANPREET KAUR v THE MINISTER OF
IMMIGRATION, REFUGEE AND CITIZENSHIP
CANADA

PLACE OF HEARING: HELD BY VIDEOCONFERENCE

DATE OF HEARING: JUNE 9, 2021

JUDGMENT AND REASONS: BELL J.

DATED: JUNE 17, 2021

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