Federal Court  Cour fédérale

Date: 20211026

Docket: IMM-967-20

Citation: 2021 FC 1144

Ottawa, Ontario, October 26, 2021

PRESENT: The Associate Chief Justice Gagné

BETWEEN:

FADI SOUBEH
(AND LEEN DARWISH, NAWAR SOUBEH)

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Mr. Fadi Soudeh seeks judicial review of a decision by an immigration officer who refused his application for permanent residence in the category of Self-employed Persons, pursuant to subsection 100(2) of the *Immigration and Refugee Protection Regulations*, SOR 2002-227 [the *Regulations*].

[2] The Applicant, along with his wife and child who are listed on his application as dependents, are from Syria.

[3] The Applicant is an actor who intends to be self-employed as an actor in Canada. According to his application, he studied acting at the Higher Institute of Dramatic Arts in Damascus, Syria, and he has worked as an actor in Syria since 2005. He has also been a member of the Artist Union in Syria since 2005. He has performed in Syrian television shows, plays and movies, and has done some acting work abroad in countries such as Turkey and Egypt.

[4] In addition to providing the above information, the application mentioned his language proficiency. The Applicant reported a basic proficiency in English (reading, writing, listening and speaking) and no proficiency in French.

II. Decision under Review

[5] In the letter of response, the officer states that he is not satisfied that the Applicant meets the requirements of the *Immigration and Refugee Protection Act*, SC 2001, c 27 or the *Regulations*. Specifically, the officer found that the Applicant did not meet the definition found in section 88 of the *Regulations*, in that he had not demonstrated 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."

[6] The officer recorded further reasons in the Global Case Management System [GCMS]. The GCMS notes reveal that the officer was satisfied that the Applicant had two years of relevant

experience of self-employment in cultural activities: acting, including on radio, as well as voiceover and dubbing work. The officer was also satisfied that the Applicant had sufficient funds to support himself and his family during settlement.

[7] However, the officer noted from the application that the Applicant intended to work in either Ontario or British Columbia depending on work opportunities, but he had not provided further information or evidence to reflect research into employment opportunities for actors in Canada. Moreover, his self-assessed language proficiency in English was basic and he stated he had no language proficiency in French. The officer stated it was unclear whether there was sufficient Arabic acting work in Canada to allow the Applicant to support himself and his family. On that basis, there was insufficient evidence that the Applicant had the intent or ability to be self-employed in Canada.

III. Issues and Standard of Review

[8] This Application for judicial review raises the following issues:

A. *Did the officer breach procedural fairness?*

B. *Based on the evidence before him, did the officer err in rejecting the Applicant's Application for Permanent Residence?*

[9] The standard of review for issues of procedural fairness is correctness, or at least it is best reflected by the correctness standard (*Canadian Pacific Railway Company v Canada (Attorney General*), 2018 FCA 69 at paras 36, 54. The question used to determine whether the correctness

standard has been met is “whether the procedure was fair having regard to all of the circumstances” (*Pacific Railway* at para 54).

[10] As to the officer’s assessment of the evidence and finding, there is no reason to rebut the presumptive standard of reasonableness as described by the Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16-17.

IV. Analysis

A. *Did the officer breach procedural fairness?*

[11] The Applicant submits the officer’s reasons reveal that his language proficiency was a key factor underlying his decision. He argues that it is only one factor to be considered in a permanent residency application, one that is not, in itself, determinative. Moreover, the Applicant submits that the officer did not give him an opportunity to address his concerns. This, according to the Applicant, amounts to a breach of procedural fairness.

[12] The Applicant further submits that the lack of reasons provided by the officer also amounts to a breach of procedural fairness. The Applicant asserts that this is true even considering the GCMS notes, which he received after launching his application for judicial review.

[13] It is well known that the procedural fairness owed to visa applicants falls at the lower end of the spectrum (*Hamza v Canada (Citizenship and Immigration)*, 2013 FC 264 at para 23;

Tollerene v Canada (Citizenship and Immigration), 2015 FC 538 at para 15; *Gur v Canada (Citizenship and Immigration)*, 2019 FC 1275 at para 16). An applicant is only entitled to an opportunity to respond to a visa officer's concerns about considerations that were unknown to the applicant, when the officer doubts the credibility of the applicant, or when the officer doubts the authenticity of documents (*Momeni v Canada (Citizenship and Immigration)*, 2017 FC 304 at para 24). A visa officer is not required to seek clarifications on a deficient application (*Lv v Canada (Citizenship and Immigration)*, 2018 FC 935 at para 23).

[14] Considering these principles, I am of the view that the officer did not breach the Applicant's right to procedural fairness. The Applicant has not made any argument to show that the officer based the decision on considerations that were unknown to him or on credibility concerns. Nor has the Applicant pointed to evidence that supports his assertion that he was entitled to an opportunity to respond to the officer's concerns.

[15] The officer's decision does not reflect a credibility concern. His concern was that the Applicant only had a basic knowledge of English. This concern was based on the Applicant's own declaration on Schedule 6A: the form for business immigrants in the Self-employed Persons class. The officer therefore did not doubt the credibility of the Applicant or the veracity of documentary evidence.

[16] The officer's concern was with the sufficiency of the Applicant's evidence. Taking into consideration the Applicant's basic English proficiency, it was not clear whether there was sufficient acting work in Canada in the Arabic language, and the Applicant did not provide

evidence regarding work opportunities. In other words, the Applicant's permanent residency application was deficient, and the officer was not required to advise the Applicant accordingly (*Lv* at para 23).

[17] In his reply, the Applicant argues that when the officer commented on whether there was sufficient Arabic language work for the Applicant, he relied upon information that was unknown to the Applicant. I disagree. Again, the burden was that of the Applicant and the officer's comments were directed at the sufficiency of the Applicant's evidence. The Applicant failed to provide evidence of job opportunities and he only has a basic proficiency in English by his own declaration. As a result, the officer ignored whether there were work opportunities for the Applicant in his mother tongue. This does not lead to a breach of procedural fairness but rather highlights a hole in the Applicant's evidence.

[18] The Applicant's argument that the decision was not transparent is an argument about the reasonableness of the underlying decision, because transparency, intelligibility, and justification are the hallmarks of reasonableness (*Vavilov* at para 99). I will address the Applicant's argument in more detail in the next section.

B. *Based on the evidence before him, did the officer err in rejecting the Applicant's Application for Permanent Residence?*

[19] According to the Applicant, there is nothing in the evidence to support the conclusion that he is unwilling or unable to be self-employed in Canada. That there is not sufficient Arabic language work in Canada to support the Applicant's plans was the officer's subjective opinion.

The Applicant also submits that the officer had a subjective and unfounded opinion that the Applicant was not sufficiently fluent in English to pursue his intended occupation: acting or otherwise working within the acting field. In his view, the officer relied on an irrelevant consideration – the Applicant's language proficiency – and overlooked the Applicant's extensive work experience, financial situation and ability to become self-employed. The *Regulations* do not impose the burden of an advanced language proficiency.

[20] The definition of a "self-employed person" is found in subsection 88(1) of the *Regulations*: "a foreign national who has relevant experience and has the intention and ability to be self-employed in Canada and to make a significant contribution to specified economic activities in Canada."

[21] The officer was satisfied that the Applicant had relevant experience. He was not concerned about the Applicant's finances: he considered the Applicant had sufficient funds. However, he was not satisfied that the Applicant had the intention or ability to be self-employed in Canada.

[22] Case law of this Court confirms that language may be one component of an applicant's ability to become self-employed in Canada (*Sun v Canada (Citizenship and Immigration)*, 2019 FC 1069 at para 4; *Wei v Canada (Citizenship and Immigration)*, 2019 FC 982 at para 45). Specifically, an inability to express oneself in an official language may undermine an applicant's ability to become self-employed. Contrary to the Applicant's argument, it is not an irrelevant or peripheral consideration.

[23] In my view, the Applicant's basic language proficiency, combined with the Applicant's failure to provide evidence of Arabic language job opportunities, justified the officer's finding that the Applicant did not have the ability to be self-employed in Canada. There was a dearth of evidence to support it. The officer's concerns about the Applicant's language skills and available job opportunities were explicitly stated in the GCMS notes and founded upon the record: the officer's decision was transparent and self-explanatory. The decision was also intelligible, as the officer's reasoning is clear: without proficiency in an official language, it is not clear what acting opportunities are available to the Applicant in Canada, as he has not provided any evidence regarding job opportunities.

[24] Finally, the Applicant takes issue with the minimal reasoning found in the letter sent to the Applicant on December 11, 2019. However, as noted in *Tollerene* at para 24, "[i]t is well established that a letter that communicates the decision of a visa officer need not include all of the reasons for the decision, and the CAIPS [Computer Assisted Immigration Processing System] Notes are understood to form an integral part of the reasons." In this matter, the GCMS notes are an integral part of the reasons (*Ebrahimshani v Canada (Citizenship and Immigration)*, 2020 FC 89 at para 5; *Sun* at para 3). The officer did not err in that regard either.

[25] As a result, I find no reason to interfere with his decision.

V. Conclusion

[26] For the above reasons, I find that the officer did not breach the Applicant's right to procedural fairness and that the decision under review is reasonable. I therefore dismiss this

application for judicial review. The parties have suggested no question of general importance for certification and I agree that none emanated from this case.

JUDGMENT in IMM-967-20

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed;

2. No question of general importance is certified.

"Jocelyne Gagné"
Associate Chief Justice

FEDERAL COURT

SOLICITORS OF RECORD

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