Federal Court Cour fédérale

Date: 20220210

Docket: IMM-1978-20

Citation: 2022 FC 174

Toronto, Ontario, February 10, 2022

PRESENT: Justice Andrew D. Little

BETWEEN:

CARLOS EDUARDO DA COSTA SERRANO JUNIOR

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] This is an application for judicial review of a decision by an immigration officer dated February 11, 2020, refusing the applicant's request for permanent residence in Canada. The officer decided that the applicant was ineligible under subsections 16(1) and 11(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (the *"IRPA"*).

[2] The applicant challenges that decision, arguing that he was deprived of procedural fairness and that the officer's decision was unreasonable.

[3] For the reasons detailed below, I conclude that the applicant has not shown that the process used by the officer was procedurally unfair. In addition, I conclude that the applicant has not demonstrated that the officer made a reviewable error as described in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65.

[4] Accordingly, the application will be dismissed.

I. Facts and Events Leading to this Application

[5] The applicant is a citizen of Brazil. On April 15, 2018, he applied for permanent residence in Canada under the Express Entry – Federal Skilled Workers category. He proposed eligibility based on six years of employment in the oil and gas industry.

[6] As part of his application, the applicant submitted a verification letter from his employer, Wood Group, dated January 22, 2018. The employer's letter was executed by Gary Lejeune, Offshore Installations Manager, whom the applicant identified as his direct supervisor.

[7] In May 2018 and October 2019, the applicant provided additional documents in response to Immigration, Refugees and Citizenship Canada ("IRCC") requests. He also made status requests on March 18, 2019 and August 26, 2019. On September 16, 2019, IRCC advised that the assessment period would be outside of its posted processing time of six months, due to

additional verifications. At that time, the application was transferred to the visa office in Mexico City.

[8] According to the officer's Global Case Management System ("GCMS") notes, on December 23, 2019, the officer attempted to verify the applicant's employment with Wood Group. The officer spoke to an engineering manager. After checking with human resources, the engineering manager confirmed the applicant's employment at Wood Group, and the employment of Mr. Lejeune, but that Mr. Lejeune had left employment before the first half of 2017 (i.e. before his letter dated January 22, 2018).

[9] The officer sent the applicant a so-called "procedural fairness" letter dated January 10, 2020. The procedural fairness letter advised that the officer had concluded that the applicant may not meet the requirements for permanent residency in Canada. The letter identified the following:

- You provided a letter of employment, signed by Gary Lejeune and dated 2018 – 01 – 22, on Wood Group PSN letterhead, indicating your employment status with the company.
- We contacted Wood Group PSN for confirmation and verification. They indicated that they had no records of the letter ever being issued. They also indicated that the signatory of the letter on file left that position prior to the date on the letter.

[10] The procedural fairness letter then advised that for these reasons, the officer was:

> not satisfied that the Letter of Employment you provided is genuine, as it was not issued by the proper issuing authority. I also have concerns as the letter was signed by an individual at a time when he was no longer working at the company. Further, I have concerns that you engaged in misrepresentation.

[11] The letter advised that applicants "are required to be truthful and honest in their application and throughout the whole process" and set out the contents of section 40 of the *IRPA*.

[12] The applicant responded by letter dated January 22, 2020. With respect to misrepresentation concerns, the applicant advised that he believed that an error has been made somewhere in the verification process and reaffirmed that he was employed by Wood Group during the periods specified in his application for permanent residence until early 2019. Although he could not speak to the specifics of the individual who was contacted to verify his employment history, "they were misinformed". The applicant sought to provide information that would "clear up any doubts regarding my employment history as well as the authenticity of the letter I provided with my application".

[13] With respect to the claim that Wood Group PSN has no records of issuing the letter of employment, the applicant advised that the letter was issued by his direct superior aboard an oil platform in the Campos basin off the Brazilian coast. Company policy dictated whether supervisors were required to obtain authorization or formally file such letters with human resources, and the applicant was unsure of what procedures were taken between his request and the issuing of the letter. The applicant noted that IRCC specified that reference letters "must be signed either by an immediate supervisor or personnel officer at the company" [original emphasis]. The applicant also provided information that Mr. Lejeune was employed in Brazil as an expatriate for Wood Group/PetroRio until at least 2019. He advised that the companies were distinct but worked together as one in the management structure of the offshore vessel where the applicant was employed. Mr. Lejeune "switched companies" after one year but retained the same position and role as the applicant's direct supervisor throughout the time he was employed there.

[14] In an addendum to the letter, the applicant provided references to Mr. Lejeune's name and passport in published Brazilian government records for work permits. He advised that PetroRio O&G owned the offshore platform and Wood Group was its operator.[1] He explained that the Offshore Installations Manager was responsible for all the employees on the platform, which was occupied almost exclusively by employees of the operating company. The applicant explained that Mr. Lejeune's signature on the letter clearly stated Wood Group/PetroRio, as there was little practical distinction between those two aboard the offshore installation. However, the applicant contended there was "no implication" that Mr. Lejeune was necessarily employed formally by Wood Group, "only that he was responsible for the Wood Group/PetroRio employees aboard the Polvo platform, including myself".

[15] The applicant's letter dated January 22, 2020, confirmed that Mr. Lejeune was no longer employed at Wood Group/PetroRio, but provided contact information for the onshore contract manager who was senior to both the applicant and Mr. Lejeune, who could confirm their respective employment. In addition, the applicant filed another employment letter from the contract manager.

[16] The applicant's response expressly addressed his lack of motive for misrepresentation. He advised that any doubts regarding his employment history are a misunderstanding resulting from his working in a field where employees of more than one company work together in the

[1] A link to a Wood Group news release in the applicant's materials clarified that in January 2016, PetroRio had awarded a two year-contract to Wood Group PSN to provide "integrated operations and maintenance services" to a platform known as the Polvo A platform for the Polvo field, located approximately 100km off the coast of Rio de Janeiro. The news release also stated: "Owned and operated by PetroRio, the field comprises a fixed production and drilling platform connected to a floating production, storage and offloading vessel (FPSO)".

same hierarchy, and perhaps from ignorance of that fact on the part of the individual contacted for verification within Wood Group.

[17] The letter dated January 22, 2020, included seven attachments. The first was a letter dated January 14, 2020, executed by the Contract Manager for Wood PLC. It confirmed the applicant's employment as an Offshore Control Room Operator at Wood Group Engineering and Production Facilities Brazil and provided details about his employment (including dates, compensation and responsibilities).

[18] The contents of the Contract Manager's letter did not mention Mr. Lejeune or attempt to address the authenticity concerns raised in the officer's procedural fairness letter dated January 10, 2020.

[19] By letter dated February 11, 2020, the visa office of the Embassy of Canada in Mexico City advised the applicant of the officer's decision that the applicant did not meet the requirements for residence in Canada (the "Decision").

[20] The letter set out subsection 16(1) of the *IRPA*:

> 16(1) A person who makes an application must answer truthfully all questions put to them for the purpose of the examination and must produce a visa and all relevant evidence and documents that the officer reasonably requires.

[21] The letter stated:

> On 2018-04-15 you submitted an application under the category mentioned above. In support of that application, you presented a letter of employment on Wood Group PSN letterhead, signed by Gary Lajeune [sic] and dated 2018-01-22. Verification activities indicated that the individual was not employed at Wood Group at the time that the letter was signed. While I have reviewed your response to the Procedural Letter, I continue to note that Mr. [Lejeune] was not an employee of Wood Group at the time that the letter was issued. For that reason, I am not satisfied that this individual has the authority to present a letter to you on Wood Group letterhead; I am therefore not satisfied that the letter you provided in support of your application is an authentic document, and therefore you did not provide the relevant evidence required to assess your application at the time of submission.

[22] Referring to subsection 11(1) of the *IRPA*, the letter stated that the officer was not satisfied that the applicant met all of the eligibility requirements to be issued a visa. The application was refused.

[23] The officer's GCMS notes stated:

> [The applicant] was sent a PF letter on 2021-01-10 and was given 30 days to address the concerns. I note response to PF letter, as well as MP [Member of Parliament] submission. In reply to our procedural fairness letter PA indicates that the letter was issued by his direct supervisor, Gary, aboard an oil platform. I note that LOEs written from direct supervisors are acceptable as per IRCC standards. However, verification results indicated that Mr. [Lejeune] left employment in 2017. PA indicates that Mr. [Lejeune] switched jobs, working for Petro Rio, a distinct company from Wood Group but which "work together as one in the management structure of the offshore vessel where I was employed… but retained the same position and role as my direct supervisor throughout the time I was employed there."
>
> I note that the signature body of the LOE indicates "Wood Group – Petro Rio". Nonetheless, as an employee of a different company, I am not satisfied that Mr. [Lejeune] was the direct supervisor of PA, even if he had some daily supervisory roles over PA. I also weigh the verification results more strongly than the explanation to

> the LOE as a response to PF letter. I also have concerns that the LOE was written on Wood Group letterhead when Mr. [Lejeune] was employed for Petro Rio. Thus, I am not satisfied that this LOE on file is authentic.
>
> I note another LOE from BW offshore. This LOA was not verified; appears that PA meets the NOC 9232.
>
> Nonetheless, based on the information on file, I am not satisfied that PA has submitted authentic documents, given the discrepancies listed above, and therefore was not truthful in or original application as obliged. A16 eligibility failed.
>
> Misrep is not being pursued.

[24] On March 6, 2020, the applicant requested a reconsideration of his application. He emphasized that Mr. Lejeune was in fact his direct supervisor and the Offshore Installations Manager of the vessel where he worked. The applicant suggested that the confusion may be related to a contractual/technical particularity of his former workplace. He noted that the Offshore Installations Manager of an oil platform, similar to a captain of the ship, was technically employed by the oilfield owner (PetroRio) and the subordinate workers were technically employed by the Wood Group (as operator).

[25] On March 7, 2020, the officer denied the reconsideration request.

II. Analysis

[26] In this Court, the applicant challenged the Decision on the basis that the officer breached the applicant's right to procedural fairness, because:

a) the officer should have conducted another verification process after receiving the applicant's response to the procedural fairness letter;

b) the officer's initial verification process was inadequate; and

c) there was undue delay in processing the application.

[27] The applicant also submitted that the Decision was unreasonable in substance because it ignored the "totality of the evidence".

A. ***Procedural Fairness***

[28] The Court's review of procedural fairness issues involves no deference to the decision maker. The question is whether the procedure was fair having regard to all of the circumstances, focusing on the nature of the substantive rights involved and the consequences for the individual(s) affected: *Canadian Pacific Railway Company v Canada (Transportation Agency)*, 2021 FCA 69, at paras 46-47; *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69, [2019] 1 FCR 121, esp. at paras 49 and 54; *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817.

[29] Each of the applicant's submissions will be addressed in turn.

(1) Should the officer have conducted another verification process?

[30] The applicant submitted that the officer failed to assess the new information provided with his response to the procedural fairness letter. Specifically, the applicant submitted that because he had filed a new employment letter and other additional information relating to Mr. Lejeune's employment with Wood Group (and therefore his signing authority on the original employment letter), the officer should have contacted Mr. Lejeune or the employer (the Contract

Manager, Mr. Melville) to verify the information he submitted (citing *Rong v Canada (Citizenship and Immigration)*, 2013 FC 364, at para 31).

[31] The respondent's position was that the officer had no obligation to conduct another verification process. The respondent argued that the procedural fairness letter gave the applicant an opportunity to submit additional information explaining why Mr. Lejeune had the authority to issue a letter of employment on behalf of Wood Group. The applicant's response did not alleviate the officer's concerns because it was deficient – it did not address Mr. Lejeune's authority to issue the letter. In addition, the respondent contended that the officer had no obligation in law to make further inquiries after a deficient response (citing *He v Canada (Citizenship and Immigration)*, 2012 FC 33, at paras 29-30; *Mehreen v Canada (Citizenship and Immigration)*, 2016 FC 533, at paras 24-25; *Pan v Canada (Citizenship and Immigration)*, 2010 FC 838, at para 28; *Tofangchi v Canada (Citizenship and Immigration)*, 2012 FC 427; and *Heer v Canada (Minister of Citizenship and Immigration)*, 2001 FCT 1357, at para 19). The respondent further argued that the duty of fairness on a visa officer is at the very low end of the spectrum on permanent resident applications (citing *Khan v Canada (Minister of Citizenship and Immigration)*, 2001 FCA 345, [2002] 2 FC 413, at paras 31-32).

[32] The procedural fairness letter raised two concerns related to whether the Wood Group letter of employment signed by Mr. Lejeune was genuine. They were that (a) it was not issued by the proper issuing authority, and (b) it was signed by Mr. Lejeune at a time when he was no longer working for the company.

[33] The materials provided by the applicant in response to the procedural fairness letter did not squarely address these issues. The applicant's letter effectively acknowledged that Mr. Lejeune was employed by PetroRio at the time and explained that he had technically changed employers but remained the applicant's immediate supervisor on the offshore vessel. Wood Group's letter dated January 14, 2020 (executed by Mr. Melville) was silent on Mr. Lejeune, including about whether he had any authority to sign the original letter on Wood Group letterhead, whether Wood Group employed him at the time, or whether he was the applicant's immediate supervisor in practice when Mr. Lejeune's letter was signed. The Brazilian government website information revealed that Mr. Lejeune was an employee of PetroRio when he wrote the letter dated January 22, 2018, on Wood Group letterhead.

[34] The Decision letter stated that the officer "continued to note" that Mr Lejeune was not an employee of Wood Group at the time the letter was issued and therefore the officer was not satisfied that the letter provided in support of the original application was authentic.

[35] In sum, on the evidence, the officer gave the applicant an opportunity to address specific concerns. The applicant submitted additional information that did not satisfy the officer about those specified concerns and did not in fact address them. In these circumstances, the officer did not have a further obligation in law to advise the applicant of the continuing deficiencies in his application: *He*, at paras 29-30; *Bhatti v Canada (Citizenship and Immigration)*, 2017 FC 186, at paras 41-46.

[36] In that legal and factual context, I do not believe the officer had a further obligation to ask the employer for additional clarification or information, particularly considering what the applicant had already filed in response to the procedural fairness letter. Finding such an obligation in this case would imply that the officer would have to ask the employer for information that would supplement the employer's letter dated January 14, 2020 (which was silent on Mr. Lejeune) and that might contradict the additional information supplied by the applicant (i.e., the Brazilian government website information confirming that Mr. Lejeune was not employed by Wood Group at the time he wrote the letter dated January 22, 2018), in order to assuage the officer's continued specific concerns raised in the procedural fairness letter. The officer's procedural fairness obligations did not go so far.

[37] The Court's decision in *Rong* is distinguishable from the present circumstances. In *Rong*, the issue was not procedural fairness but a substantive review of the officer's decision. Justice Tremblay-Lamer's reasons concluded that third-party evidence provided by the applicant corroborated her personal information statement and the information she had provided to the Embassy by telephone. In this case, the second letter of employment from Wood Group did not corroborate or even address the critical issue raised by the officer: whether the original letter had been sent by a person with authority from Wood Group to do so.

[38] I acknowledge that the applicant explained Mr. Lejeune's role on the offshore vessel and his employment situations with the two companies. However, the officer was aware of this evidence. GCMS notes stated that the officer (a) was aware of the applicant's explanation but still was not satisfied that Mr. Lejeune was his direct supervisor, (b) weighed the initial

verification results more than the applicant's explanation, and (c) still had concerns that the original letter of employment was written on Wood Group letterhead while Mr. Lejeune was employed by PetroRio.

[39] For these reasons, I conclude that, in the circumstances, the officer did not have an obligation to make additional inquiries or steps to verify the information he submitted in response to the procedural fairness letter.

(2) Was officer's initial verification process inadequate?

[40] The applicant challenged the process used by the officer to verify his employment information in the first place. The applicant argued that the officer never confirmed whether the engineering manager had the authority to provide the information requested, and yet believed that information over the applicant's explanation in response to the procedural fairness letter, without providing any reasoning for doing so. The applicant noted that the officer did not contact Mr. Melville directly (despite the applicant's invitation to do so) and that the officer never attempted to communicate with Mr. Lejeune. He also observed that IRCC's instructions required the applicant to provide employment information either from a direct superior or from a personnel officer at the company, but the officer did not follow that same standard (citing IRCC's website publication entitled "Applications for permanent residence programs subject to Express Entry completeness check"). The applicant further submitted that the officer should not have relied on the information provided by the engineering manager, but instead should have spoken directly to the company's human resources department.

[41] I do not agree. As the respondent observed, it is trite law that the officer was entitled to weigh the evidence and to prefer one source of evidence to another. To do so does not (in itself) offend the principles of procedural fairness. The initial process used by the officer did not interfere with the applicant's right to be heard. The concerns arising from the information received from the engineering manager as obtained from the human resources department were the subject of the procedural fairness letter. The applicant did not challenge the officer's right to raise authenticity issues in relation to the letter of employment, nor did he argue that the contents of the procedural fairness letter did not properly disclose the concerns later relied upon. It is possible that the chain of communications was not ideal; but the applicant has not identified any substantive difference that more direct communications might have made. In addition, there is insufficient factual parallel to the *Rong* case, in which the officer relied upon the information provided by a receptionist answering the phone at the employer company despite the applicant addressing the receptionist's statements.

[42] In sum, I see no error that that gives rise to a concern that the applicant was deprived of an opportunity to be heard or unfairly deprived of information that he needed to know to respond to the officer's concerns in the procedural fairness letter.

(3) Did the applicant experience undue delay in the processing of his application?

[43] The applicant did not raise an undue delay issue at the hearing, but relied on his written submissions. The applicant argued that a 22-month delay in processing his application, from the filing of his application on April 15, 2018 to the Decision on February 11, 2020, was unreasonable and amounted to a denial of procedural fairness. The applicant submitted 11 case-

specific inquiries requesting an update on this application after the 6-month processing time had elapsed, including some from the office of a Member of Parliament. He received only generic updates notifying him that the application was being processed.

[44] The applicant also noted that after his initial eligibility review passed on May 16, 2018, IRCC requested additional information. He responded with the information requested, and then there was an "inexplicable gap" of 13 months from August 2018 to September 2019 when no processing activity occurred. Then an officer in Ottawa touched the file, noting without explanation that it was "complex", and the application was referred to Mexico City. There, in November 2018, some 17 months after the application was filed, an officer requested additional information – which the applicant provided within a few days. Then, in less than three months between November 25, 2019 and February 11, 2020, an officer conducted three verification processes, issued the procedural fairness letter, assessed the applicant's response, and made the Decision.

[45] The applicant submitted that on the IRCC's own standard, the delays on this file were unnecessary and that a "delay that cannot be justified is a denial of procedural fairness": IRCC, Operational Instructions and Guidelines on Service Delivery: Procedural fairness (last modified 22 August 2018), online: IRCC <canada.ca/en/immigration-refugees-citizenship/corporate/publications-manuals/operational-bulletins-manuals/service-delivery/procedural-fairness.html>.

[46] The respondent submitted that there was no undue delay in processing the applicant's application. The respondent emphasized that the applicant did not seek an order for *mandamus*. Accordingly, in assessing whether the delay in processing amounted to a breach of procedural fairness, the respondent submitted that the question was not whether the decision was made in a timely manner but instead, whether there was specific unfairness in the process that impaired the applicant's ability to answer the case against him or whether the delay caused him prejudice that would bring the administration of justice into disrepute. The respondent relied on *Kandiah v Canada (Citizenship and Immigration)*, 2014 FC 509, at paras 28-30 and *Blencoe v British Columbia (Human Rights Commission)*, 2000 SCC 44, [2000] 2 SCR 307, at paras 102 and 115.

[47] The respondent did not file evidence to explain the delays. The respondent did argue, using the existing record, that much of the delay was explained by the additional verifications and procedures required to process the applicant's application, including the delay in receiving the applicant's divorce certificate, concerns with his *bona fides*, waiting to receive the IRB decision, verification of his letters of employment, waiting to receive his procedural fairness response and the overall complexity of the file.

[48] In reply and in response to the respondent's submissions, the applicant noted that he was unable to reapply for permanent residence during the nearly two years while he waited for an answer to his application. The applicant did not seek a specific remedy or make any other specific submissions in relation to delay in reply, or at the hearing.

[49] I do not agree with the respondent that most of the delays in this case land at the feet of the applicant. There were lengthy administrative delays in the processing of this application (all of which preceded the onset of the COVID-19 pandemic) that were not explained in the record and appear not to be attributable to the applicant. However, I do agree with the respondent that there is no immediate parallel here to the circumstances described in *Blencoe*, at para 102. There is also no evidence that the delay in this case rises to the kind of impact contemplated by the Supreme Court in *Blencoe*, at para 115.

[50] When she was a member of this Court, Justice Mactavish stated in *Kandiah*:

> [29] … the delays in processing Mr. Kandiah's application for permanent residence are regrettable, and are not readily explained by reference to the record. That said, this is not an application for mandamus. The question is not whether the decision was made in a timely manner, but whether there was a specific unfairness in the process.
>
> [30] For the reasons given, Mr. Kandiah has not persuaded me that he was treated unfairly in the processing of his application for permanent residence.

[51] Despite the different factual circumstances in *Kandiah*, I adopt this reasoning and conclusion in the present case.

B. ***The Substantive Merits of the Decision***

[52] The applicant submitted that the officer failed to consider the totality of the evidence, citing the requirements set out by Justice Evans in *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)* (1998), [1999] 1 FC 53. The applicant pointed to evidence in his application that the officer did not mention in reaching the Decision, either in the letter dated

February 11, 2020 or in the GCMS notes, including the new Wood Group employment letter executed by Mr. Melville and the applicant's pension and income tax statements.

[53] To support an argument that Mr. Lejeune had authority to sign the letter, the applicant repeated his submissions about the points he made to the officer about the roles of PetroRio and Wood Group respectively for the offshore vessel, and the information on the Brazilian government website about Mr. Lejeune's employment. He emphasized his submission about his lack of motive to misrepresent his employment experience.

[54] The standard of review for the substantive aspects of the Decision is reasonableness, as described in *Vavilov*. Reasonableness review is a deferential and disciplined evaluation of whether an administrative decision is transparent, intelligible and justified: *Vavilov*, at paras 12-13 and 15. The reviewing court must read the reasons provided by the decision maker holistically and contextually, and in conjunction with the record: *Vavilov*, at paras 91-96, 97, and 103; *Canada Post Corp v Canadian Union of Postal Workers*, 2019 SCC 67, at paras 28-33.

[55] Considering both the reasoning process and the outcome, a reasonable decision is one that is based on an internally coherent and a rational chain of analysis and is justified in relation to the facts and law that constrain the decision maker: *Vavilov*, esp. at paras 83-86, 99, 101, 105-106 and 194. For factual constraints in the record, the question is whether the officer fundamentally misapprehended the evidence, reached an untenable result, or ignored or failed to account for critical evidence in the record that runs counter to the conclusion: *Vavilov*, at paras 101 and 125-126; *Canada (Attorney General) v Best Buy Canada Ltd.*, 2021 FCA 161, at paras

122-123 (quoting *Cepeda-Gutierrez*, at paras 14-17); *Federal Courts Act*, RSC 1985, c F-7, paragraph 18.1(4)(*d*).

[56] Applying these principles to this case, the applicant has not persuaded me that the officer committed an error that permits this Court to intervene. It is possible that another officer might have reached a different conclusion on Mr. Lejeune's signing authority, particularly if the applicant had filed additional evidence about that issue from his employer. However, having reviewed the record, I find that the principles in *Cepeda-Gutierrez*, as described and as quoted in *Best Buy*, were not engaged by the evidence cited by the applicant. In addition, the overall conclusion was open to the officer on the evidence that was filed.

III. Conclusion

[57] The application is therefore dismissed. Neither party proposed a question to certify for appeal and none is stated.

JUDGMENT in IMM-1978-20

THIS COURT'S JUDGMENT is that:

1. The application is dismissed.
2. No question is certified under paragraph 74(*d*) of the *Immigration and Refugee Protection Act*.

"Andrew D. Little"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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