

Federal Court



Cour fédérale

Date: 20220222

Docket: IMM-2222-20

Citation: 2022 FC 240

Vancouver, British Columbia, February 22, 2022

PRESENT: The Honourable Mr. Justice Manson

BETWEEN:

RAJINDER SINGH

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] This is an application for judicial review brought pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] of a decision by a visa officer dated February 25, 2020. The officer refused the Applicant's application for a work permit under the Temporary Foreign Worker Program, finding the Applicant was unable to demonstrate he would be able to adequately perform the work he sought.

II. **Background**

[2] The Applicant, Mr. Rajinder Singh, is a 23-year-old citizen of India. In January 2020, he applied for a work permit as a hairstylist with a job offer from “Best Look Hair & Beauty Salon Ltd.”, located in Surrey, British Columbia.

[3] In support of his application, the Applicant submitted copies of the following documents:

Advance Diploma in Cosmetology from “New Image Institute” for the period from June 10, 2016 to June 9, 2017;

“Notice of Performance” for his Advance Diploma in Cosmetology;

letter of reference from his employer “New Image Institute (Academy and Salon)” for his employment from August 5, 2017 to November 1, 2019;

monthly salary slips from New Image Institute from June to October 2019;

bank statements highlighting payments he received from New Image Institute from October 2019 to January 2020 IELTS Report Form, with an Overall Band Score of 6.0 and CEFR Level of B2;

secondary school certificates;

permanent full-time job offer as a hairstylist with Best Look Hair & Beauty Salon in Surrey, British Columbia;

Labour Market Impact Assessment [“LMIA”] #8508396 issued to Best Look Hair & Beauty Salon with regard to the Applicant.

A. ***Decision under Review***

[4] In the refusal letter dated February 25, 2020, the visa officer stated the following ground for refusal: “You were not able to demonstrate that you will be able to adequately perform the work you seek”.

[5] The officer's Global Case Management System [GCMS] notes provide the following reasoning [Decision, GCMS Notes, p 7]:

Application reviewed. Applicant applying under NOC 6341 as a hairstylist. Noted previous WP refusal in Dec 2019. LMIA requires: Completion of a two- or three-year hairstyling apprenticeship program or completion of a college or other program in hairstyling combined with on-the-job training. / Several years of experience may replace formal education and training. PA states experience as a hairstylist from 2017 onwards with New Image Institute, Jalandhar, India. An experience certificate dated 24 Jan 2020; a few salary slips of 2019, copies of a few pay cheques issued by employer for 2019-20, bank statement for some period of 2019-20 have been provided. All these documents are quite recent and no older proof / evidence has been provided. Insufficient evidence in support of stated experience / employment provided. Based on a review, I am not satisfied that PA has sufficiently demonstrated that he is able to perform the work offered in Canada. Refused pursuant to R200(3)(a).

III. **Issues**

A. *Was the decision to refuse the Applicant's work permit application reasonable?*

IV. **Standard of Review**

[6] The parties agree the standard of review is reasonableness.

V. **Analysis**

Was the decision to refuse the Applicant's work permit application reasonable?

[7] The officer had a duty pursuant to rule 200 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [IRPR] to assess the Applicant's ability to perform the work he sought. The Applicant had the onus of satisfying the officer that he could fulfill the terms of his

job offer and failed to do so [*Cruz v Canada (Citizenship and Immigration)*, 2018 FC 1283 at paras 7-8; *Bautista v Canada (Citizenship and Immigration)*, 2018 FC 669 at para 15].

[8] Moreover, a visa officer has a wide discretion and their decision is entitled to a high degree of deference [*Sangha v Canada (Citizenship and Immigration)*, 2020 FC 95 at para 42; *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at paras 4, 46].

[9] The Applicant emphasizes the officer's statement in the GCMS notes that the LMIA requires "[c]ompletion of a two- or three-year hairstyling apprenticeship program or completion of a college or other program in hairstyling combined with on-the-job training".

[10] He notes that he provided copies of his Advance Diploma in Cosmetology, "Notice of Performance", and letter of reference from New Image Institute. These documents are evidence of his having completed a program in hairstyling and of his work experience. In particular, the letter of reference explicitly refers to his on-the-job training in managing and dealing with clients – a fact omitted in the officer's reasons. In the Applicant's view, it is unclear from the reasons what additional training the officer expected of a hairstylist employed since 2017.

[11] The Applicant submits the officer's failure to address and analyze his completed program in hairstyling and his training in managing clients renders the decision unreasonable, as the evidence squarely contradicts the officer's findings of fact.

[12] In response to the officer's finding that the documents submitted as proof of the Applicant's work experience "are quite recent and no older proof / evidence has been provided", the Applicant notes that the totality of his work experience was acquired during his employment from August 5, 2017 to November 1, 2019. As such, no older evidence of his work experience exists.

[13] The Applicant submits it is unclear from the officer's notes why the consecutive salary slips and bank records, and pay cheques dating from 2019 and 2020 were insufficient evidence in support of his application. He notes the officer made no findings related to the credibility or *bona fides* of his evidence and that he did not have an interview with the officer.

[14] The Applicant submits there was no requirement of 2-3 years' education in the LMIA. Rather, under "Educational Requirements", the LMIA only says, "Secondary school".

[15] Further, even though the Applicant had formal education and training and so did not need to show several years' work experience, he did so regardless.

[16] Finally, the Applicant argues there is no explanation or analysis regarding why it is material that his diploma was in "Cosmetology", rather than "hairdressing" as raised by the Respondent. Further, it is not clear why the Applicant needed to demonstrate the length of time attributable to the hairdressing portion of his Cosmetology diploma program. In his view, this is "an unreasonable and/or speculative expectation".

[17] According to the officer's GCMS notes, the LMIA required completion of a two- or three-year hairstyling apprenticeship program or of a college or other hairstyling program combined with on-the-job training, and that several years' experience could replace formal education and training. The Respondent also relies on the following statements in the officer's GCMS notes [Decision, p 7]:

PA states experience as a hairstylist from 2017 onwards with New Image Institute, Jalandhar, India. An experience certificate dated 24 Jan 2020; a few salary slips of 2019, copies of a few paycheques issued by employer for 2019-20, bank statement for some period of 2019-2020 have been provided. All these documents are quite recent and no older proof / evidence has been provided. Insufficient evidence in support of stated experience / employment provided.

[18] The Respondent submits the Applicant's Advance Diploma in Cosmetology from New Image Institute completed during the period from June 10, 2016 to June 9, 2017 "lacked the length of time appropriated to the "Hair" portion of the course, which is the educational component of the LMIA for the position sought". The Respondent also notes the Applicant's diploma is in Cosmetology, not specifically hairdressing. Thus the Applicant failed to provide sufficient persuasive evidence that he could meet his job requirements; credibility was not an issue [*Chaykovskyy v Canada (Citizenship and Immigration)*, 2020 FC 96 at para 43; *Zang v Canada (Citizenship and Immigration)*, 2020 FC 112 at para 57].

[19] The Respondent also argues the officer's focus on the pay cheques and bank statements was reasonable given the Applicant lacked 2-3 years' education and sought to establish his qualification through a hairstyling program and on-the-job training and experience. In the Respondent's view, the Applicant's minimal formal training increased the onus on him to

establish that he had several years of work experience or on-the-job training. His experience certificate and his recent pay cheques and bank statements were insufficient, without older evidence, to demonstrate he had the requisite experience.

[20] While the Applicant is correct that the LMIA issued to Best Look Hair and Beauty Salon does not state any educational or experiential requirement beyond “[s]econdary school”, under the same heading, “JOB INFORMATION”, the LMIA lists the “NOC Code and Title” as “6341 – Hairstylists and barbers”, and lists the “job title” as “hairstylist”.

[21] The Government of Canada Statistics Canada web page for NOC 6341 lists the employment requirements for hairstylists, which include:

Completion of a two- or three-year hairstyling apprenticeship program or completion of a college or other program in hairstyling combined with on-the-job training is usually required.

Several years of experience may replace formal education and training.

[22] While the Applicant asserts that he worked as a hairstylist with New Image Institute from August 5, 2017 to November 1, 2019, the only evidence supporting this is the letter of reference from New Image Institute. His bank statements date back to June 2019 and his earliest salary slip/pay cheque is also from June 2019. The reference letter, in-of-itself, without any further supporting evidence, is insufficient to find that the officer was unreasonable on this front [Ponican v Canada, 2020 FC 232, at para 18].

[23] Further, while the Applicant submits the officer disregarded his evidence of on-the-job training in managing and dealing with clients, the only evidence to this effect is a single sentence in his letter of reference from New Image Institute, stating “[h]e was trained in dealing [sic] and managing clients”.

[24] In my view, it was reasonably open to the officer to find the Applicant provided insufficient evidence to substantiate his work experience.

[25] The application for judicial review is dismissed.

[26] There is no question raised for certification.

JUDGMENT in IMM-2222-20

THIS COURT'S JUDGMENT is that:

1. The application is dismissed.
2. There is no question for certification.

"Michael D. Manson"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2222-20

STYLE OF CAUSE: RAJINDER SINGH v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

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DATE OF HEARING: FEBRUARY 21, 2022

JUDGMENT AND REASONS: MANSON J.

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