

Federal Court



Cour fédérale

Date: 20220225

Docket: IMM-51-20

Citation: 2022 FC 266

Ottawa, Ontario, February 25, 2022

PRESENT: The Honourable Madam Justice Kane

BETWEEN:

DAVINDER SINGH

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The Applicant, Mr. Singh, seeks judicial review of the decision of a visa officer [the Officer], dated November 4, 2019, refusing his application for a work permit under the Temporary Foreign Worker Program, pursuant to section 200 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [the Regulations].

[2] For the reasons that follow, the application is dismissed. The Officer's decision is reasonable and supported by the evidence and is owed deference. The Officer did not breach the duty of procedural fairness by not providing an opportunity to Mr. Singh to respond to the Officer's concerns, all of which arose from Mr. Singh's own evidence and the requirements of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the Act] and Regulations.

I. Background

[3] Mr. Singh, a citizen of India, applied for a work permit, through the Temporary Foreign Worker Program, to work as a long haul truck driver in Canada.

[4] Mr. Singh had an offer and contract of employment from SMS Logistics Inc. [SMS], located in Caledon, Ontario, to work as a long haul truck driver for a period of 24 months. SMS had obtained a positive Labour Market Impact Assessment [LMIA], which sets out the job information, including the duration, wage, and requirements of a secondary school education and verbal and written English.

II. The Decision under Review

[5] By letter dated November 4, 2019, the Officer refused Mr. Singh's work permit application on two grounds. First, the Officer was not satisfied that Mr. Singh would leave Canada at the end of his stay, as required by subsection 200(1) of the Regulations. Second, the Officer considered that Mr. Singh had not demonstrated that he was able to adequately perform the work for which he had been hired.

[6] The Officer's notes in the Global Case Management System [GCMS], along with the letter, constitute the reasons, and state:

Applicant is a 25 year old Indian male from Kapurthala Punjab who, intends to work as NOC-7511 - Truck Driver for 24 months contract with SMS logistics in Caledon, ON. Application and submission reviewed. PA provided a resume, letters of reference and IELTS results with overall score of 5.5. While PA appears to have some experience as a truck driver, I have concerns regarding the applicant's English language skills (Verbal and Written) which are also listed as a requirement for the position on the LMIA. While the applicant has an overall band score of 5.5 on the IELTS, with a score of 5.5 in speaking and a 5.0 in writing. Although the LMIA does not explicitly state a minimum required IELTS score for this position, I note that the British Council classifies students at this band level as being a "Modest User – Indicating only partial command of the language". I am not satisfied that [the] applicant can read and speak English sufficiently to converse with the general public, to understand highway traffic signs and signals in the English language, to respond to official inquiries, to interact effectively with law enforcement and emergency personnel, and to make entries on reports and records. Overall, I am not satisfied that the applicant has sufficient ability to perform the duties of the position offered in Canada. I am also concerned that given the great disparity in the applicant's earning power in Canada versus his country of residence or in India, as well as the better working condition available in Canada, the applicant would have little financial incentive to return to India if admitted to Canada. Applicant is presently unemployed and appears to be highly mobile single male with no dependents and does not appear sufficiently well established economically in home country to be motivated to return at the end of the authorized period [of] stay in Canada. Therefore I am not satisfied that PA is a bona fide temporary foreign worker to Canada who would exit the country at the end of the authorized stay. Application is refused on R200(3)(a) and R200(1)(b).

III. The Applicant's Submissions

[7] As elaborated further below, Mr. Singh argues that the Officer's refusal of his work permit on the basis that he would not leave Canada at the end of his stay is irrational and illogical.

[8] Mr. Singh also argues that the Officer's refusal based on finding that his English language ability was not sufficient for the truck driver position is unreasonable and arbitrary. He notes that the position with SMS does not specify a particular International English Language Testing System [IELTS] score; he achieved a level of 5.5 on the IELTS which indicates a moderate command of English, his secondary education was in English, and he worked in the United Arab Emirates [UAE], where he relied on the English language.

[9] Mr. Singh further argues that the Officer breached the duty of procedural fairness by not providing him with an opportunity to respond to the Officer's concerns about his English language proficiency or to address other credibility findings.

[10] In addition, Mr. Singh submits that the Certified Tribunal Record [CTR] does not include all the documents that he submitted with his work permit application. He argues that the assumption that the Officer considered all the evidence cannot stand because the evidence he provided that is not in the CTR contradicts the Officer's findings.

IV. The Respondent's Submissions

[11] At the outset, the Respondent acknowledges that the CTR does not include all the documentary evidence submitted by Mr. Singh to support his application. The Respondent explains that efforts were made to obtain the full CTR without success. The Respondent acknowledges that the evidence submitted by Mr. Singh was provided to the Officer and that it is clear from the GCMS notes, which specifically refer to this evidence, that it was considered by the Officer, although not included in the CTR.

[12] The Respondent submits that the onus was on Mr. Singh to support his application with sufficient evidence and the Officer reasonably concluded that he had not done so. The Respondent submits that the Officer reasonably found that Mr. Singh had few personal assets and limited financial ability to support his travel to and from Canada. In addition, the Officer considered that Mr. Singh had no dependents and had been unemployed in India for four months, and that the working conditions and income would be better in Canada, all of which support the finding that he would have little incentive to leave.

[13] The Respondent further submits that the Officer reasonably found that Mr. Singh's English language proficiency was insufficient, noting that a truck driver must be able to read and interpret road signs and other documents to ensure public safety. The Respondent adds that, contrary to Mr. Singh's submission, the evidence before the Officer did not demonstrate that Mr. Singh had been educated in English.

[14] The Respondent submits that the duty of procedural fairness owed in this context is at the low end of the spectrum. The Respondent adds that none of the circumstances that would elevate the level of procedural fairness apply; the Officer did not doubt Mr. Singh's credibility or the veracity of his documents.

V. Issues and Standard of Review

[15] This application raises two issues:

- Whether the decision is reasonable; and
- Whether the Officer breached the duty of procedural fairness owed in the circumstances by failing to provide Mr. Singh with an opportunity to respond to concerns about his application.

[16] An officer's decision on an application for a temporary work permit is reviewed on the reasonableness standard: *Singh Grewal v Canada (Citizenship and Immigration)*, 2013 FC 627 at para 5 [*Singh Grewal*]; *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 16 [*Vavilov*].

[17] A reasonable decision is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision-maker (*Vavilov* at paras 85, 102, 105–07). The court does not assess the reasons against a standard of perfection (*Vavilov* at para 91). A decision should not be set aside unless it contains “sufficiently serious shortcomings ... such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency” (*Vavilov* at para 100). The decision is owed deference, and it is

not the role of the Court to reweigh the evidence, even if the Court may have made other findings.

[18] Where an issue of procedural fairness arises, the Court considers whether the procedure followed by the decision-maker was fair having regard to all of the circumstances (*Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54). Where a breach of procedural fairness is found, no deference is owed to the decision-maker.

VI. The Officer's Decision Is Reasonable

[19] Mr. Singh points to a number of alleged errors in the Officer's decision that he submits render the decision unreasonable.

[20] Mr. Singh also cites several cases regarding temporary visa and temporary work permit applications, all of which were decided on the basis of their particular facts. No two cases are identical. The Court's role is not to adopt a particular case and to follow it, but to determine whether the Officer's decision was reasonable, based on the evidence before the Officer and the principles established in the jurisprudence, and whether the Officer breached the duty of procedural fairness owed to Mr. Singh in the particular circumstances.

[21] Mr. Singh submits that the Officer unreasonably relied on the disparity in his earning power and working conditions in Canada compared to India to conclude that he had not established that he would be likely to leave at the end of his authorized stay. He submits that this

is irrational because the prospect of better employment opportunities is the very reason people seek work permits and should not be a factor against granting the permit.

[22] Mr. Singh also argues that the Officer failed to consider the evidence of his family ties to India, his employment and travel history, which demonstrates that he always returned to India after the completion of his work in the UAE, and the documents that show he will inherit his family's property in India. He adds that he provided evidence that his family would financially support his travel and living expenses in Canada. Mr. Singh submits that the Officer turned the positive factors of his youth, mobility and independence into negative factors.

[23] This Court has found that economic opportunities in Canada should not be considered a negative factor in determining whether an applicant will overstay (see, for example, *Dhanoa v Canada (Citizenship and Immigration)*, 2009 FC 729). Canada relies on temporary foreign workers and the economic opportunities here do provide some incentive.

[24] Previous immigration history has also been found to be an indicator of future compliance with the obligation to leave at the end of the authorized stay: *Momi v Canada (Citizenship and Immigration)*, 2013 FC 162 at para 20; *Murai v Canada (Minister of Citizenship and Immigration)*, 2006 FC 186 at para 12.

[25] However, the Officer is presumed to have considered all of the evidence absent an indication to the contrary, and the Officer was not required to refer to each piece of evidence.

[26] The Officer's finding was based on several factors—not only the economic incentive to work in Canada or Mr. Singh's past employment in the UAE—including that Mr. Singh is single with no dependents, has little financial establishment in India and was unemployed at the time of his work permit application.

[27] As the Respondent notes, Mr. Singh's explanation for his period of unemployment was not provided to the Officer.

[28] The Officer reasonably found that Mr. Singh's own financial situation was not sufficient to finance his trip to and from Canada. Although Mr. Singh submits that his family vouched for his expenses, the Officer's assessment properly focussed on Mr. Singh. The Officer reasonably concluded that he did not appear sufficiently well established economically in India to motivate him to return. The only evidence of his financial status was his bank account, which was modest. The cost-benefit of relying on financial support from his family to travel to and live in Canada in order to earn money for a relatively short period of time also supports the Officer's conclusion.

[29] The Officer's finding that Mr. Singh had not demonstrated that he was able to adequately perform the position for which he was hired due to his insufficient English language proficiency is owed deference. No error has been identified in the Officer's assessment based on the evidence provided to the Officer.

[30] I do not agree that the Officer overlooked corroborating evidence of Mr. Singh's abilities in English. Mr. Singh's school certificates from Grades 11 and 12 indicate that one of his subjects was "core English," but do not indicate that his secondary education was conducted in

English. Contrary to Mr. Singh's submission, the Officer was not required to conduct further research regarding the school that Mr. Singh attended. In addition, if, as submitted, all schools in the particular district are either English or Hindi, it was incumbent on Mr. Singh to provide that evidence. Mr. Singh's submission that his training to be a truck driver was conducted in English and that he worked as a truck driver in the UAE, which required him to communicate in English, does not contradict the Officer's assessment that his English language abilities for the purpose of a job in Canada were not at a sufficient level.

[31] Mr. Singh also argues that since there is no specific language requirement in the LMIA, the Officer arbitrarily determined that his language abilities were lacking. He adds that SMS interviewed him and did not raise any concerns about his ability to perform the work or his language ability.

[32] Visa officers are entitled to independently assess and exercise their discretion in determining whether an applicant is capable of performing the work duties; they are not bound by either the LMIA or the view of the prospective employer: *Singh Grewal* at para 17; *Sulce v Canada (Citizenship and Immigration)*, 2015 FC 1132 at para 28 [*Sulce*].

[33] More recently, in *Singh v Canada (Citizenship and Immigration)*, 2022 FC 80, Justice Pamel noted at paras 9–10:

[9] I accept that, following the decision in *Vavilov*, departure from past policy must be justified, however, Mr. Singh has not demonstrated that a policy existed to the effect that once an applicant meets the language requirement set out in either the NOC or the LMIA, the applicant must be admitted. To the contrary, the current policy – being the policy applied to Mr. Singh – is to give

the visa officer the discretion to decide whether or not an applicant meets the language requirements using the IELTS results as well as the NOC and the LMIA as guidelines, not binding instruments. In any event, NOC 7511 sets out a number of duties expected of long-haul truck drivers – such as obtaining permits and other transport documents, and communicating via on-board computers – that would necessarily involve a certain level of reading skills. The fact that the Officer assessed the reading skills of an applicant independently of what the language tests would indicate does not seem unreasonable to me given the nature of the proposed position.

[Emphasis added]

[34] The Officer did not misstate the IELTS score obtained by Mr. Singh, which overall was 5.5, with a score of 5 in writing. According to the IELTS website, a band score of 5 indicates that “[t]he test taker has a partial command of the language and copes with overall meaning in most situations, although they are likely to make many mistakes. They should be able to handle basic communication in their own field.” The Officer’s finding that this level was not sufficient for a long haul truck driver, who is required, among other things, to read and interpret road signs is a reasonable finding and does not support Mr. Singh’s argument that the Officer ignored the evidence or imposed an arbitrary level in assessing his language abilities.

VII. The Officer Did Not Breach the Duty of Procedural Fairness

[35] Mr. Singh argues that the Officer should have convoked an interview to provide him with an opportunity to respond to the concerns about his English abilities (*Li v Canada (Citizenship and Immigration)*, 2012 FC 484 [*Li*]). Mr. Singh also submits that the Officer’s statement that he may not be a “bona fide temporary foreign worker” shows that the Officer doubted his credibility.

[36] I disagree.

[37] The duty of procedural fairness owed to an applicant for a temporary work permit is at the low end of the spectrum (*Singh Grewal* at para 19; *Sulce* at para 10; *Kaur v Canada (Citizenship and Immigration)*, 2017 FC 782 at para 19; *Li* at para 31). The Officer had no obligation to raise concerns that arise from the requirements of the Act or the Regulations or from the applicant's own evidence. The Officer did not have any concerns about Mr. Singh's credibility or the veracity of the documents he submitted in support of his application. The Officer was not satisfied that the evidence established that Mr. Singh could perform the work or that he would leave Canada at the end of the 24-month period.

[38] Officers are not required to request clarification or to give applicants the chance to strengthen their application, except where the concerns are about the authenticity or veracity of the evidence—for example, if the officer questions the credibility, accuracy or genuine nature of the information provided: *Kong v Canada (Citizenship and Immigration)*, 2017 FC 1183 at para 24; *Perez Enriquez v Canada (Citizenship and Immigration)*, 2012 FC 1091 at para 26; *Hassani v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1283 at para 24.

[39] As noted by this Court in several decisions, officers need not provide a “running score” to applicants. In *Patel v Canada (Citizenship and Immigration)*, 2021 FC 573, another decision regarding the refusal of a work permit for a long haul truck driver, Justice Brown noted at para 20:

Visa Officers are under no duty to give such applicants a “running score” of the weaknesses in their application (*Kong v Canada (Citizenship and Immigration)*, 2017 FC 1183 [*Kong*] [Kane J] at

para 29). The duty is on the Applicant to file a reasonably complete application in the first place. In addition, it is reasonably clear, and I did not hear the Applicant disagree generally, that the duty to notify only arises when there are concerns about the credibility, accuracy or genuineness of the information submitted (Kong at para 29). In my respectful view, the Officer was not concerned with the credibility, accuracy or genuineness of the information, but was assessing the sufficiency of the application, which was found lacking.

[40] In the present case, the Officer accepted that Mr. Singh's IELTS scores were accurate but concluded that the scores were not at a sufficient level to meet the job requirements. The Officer's reference to Mr. Singh's perhaps not being a "bona fide temporary foreign worker" is not a comment about his credibility, but rather signals that the Officer was not satisfied, on the basis of the evidence, that Mr. Singh would leave Canada at the end of his stay. The Officer did not breach the duty of procedural fairness by not advising Mr. Singh of the concerns with his application.

JUDGMENT in IMM-51-20

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.
2. No question is proposed for certification.

"Catherine M. Kane"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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