Federal Court  Cour fédérale

Date: 20220427

Docket: IMM-462-21

Citation: 2022 FC 619

Ottawa, Ontario, April 27, 2022

PRESENT: Madam Justice Sadrehashemi

BETWEEN:

SUKHCHAIN SINGH

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Mr. Singh, is challenging the decision of a visa officer ("Officer") to refuse his application for a work permit under the Temporary Foreign Worker Program. Mr. Singh had accepted a position as a long-haul truck driver in Canada. His work permit was refused because the Officer was not satisfied that: i) he met the requirements of the job he was seeking to do in Canada; and ii) he would leave Canada when required.

[2] On both issues, I agree with Mr. Singh that the reasons of the Officer fail to account for significant and relevant evidence in the record. The decision is not justified in light of the facts constraining the Officer. Accordingly, I find the decision to be unreasonable.

[3] For the reasons below, I grant this judicial review.

II. Background Facts

[4] Mr. Singh is a citizen of India. He was working and living in the United Arab Emirates ("UAE") from 2013 to 2020. He worked as a "heavy truck driver" in the UAE from 2016 to 2020 after obtaining a heavy vehicle license in 2015. In 2020, Mr. Singh returned to India where he lives with his wife, child and mother.

[5] In 2020, Mr. Singh was hired by Ancor Transport Ltd for a two-year position as a long-haul truck driver.

[6] On December 7, 2020, Employment and Social Development Canada/Service Canada approved the Labour Market Impact Assessment ("LMIA") application for Ancor Transport Ltd to hire 15 truck drivers, including Mr. Singh, under the National Occupation Classification ("NOC") 7511, transport truck drivers.

[7] On December 18, 2020, Mr. Singh applied for a work permit for the long-haul truck driver position. This application was refused on January 14, 2021.

III. Issues and Standard of Review

[8] The only issues on this application for judicial review relate to the Officer's determinations that i) Mr. Singh had not demonstrated he could do the job he was seeking; and that ii) Mr. Singh was an overstay risk in Canada.

[9] In reviewing the decision of the Officer, I will apply a reasonableness standard of review. The Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] confirmed that reasonableness is the presumptive standard of review when reviewing administrative decisions on their merits. This case raises no issue that would justify a departure from that presumption.

IV. Analysis

[10] Sections 179 and 200(1) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [*Regulations*] are the principal legislative provisions governing the authority of a visa officer to issue a Temporary Resident Visa and a work permit requested by a foreign national prior to entering Canada. An officer can refuse an application because they believe the applicant will not leave Canada by the end of the period authorized for their stay (ss 179(b), 200((1)(b) of the *Regulations*). An officer is required to refuse an application for a work permit where "there are reasonable grounds to believe that the foreign national is unable to perform the work sought" (s 200(3) of the *Regulations*).

[11] The refusal in this case is based on both these grounds — suitability for the work sought and overstay risk.

A. *Suitability for work sought*

[12] The Officer's reasons on the issue of Mr. Singh's suitability as a long-haul truck driver was limited to the following:

> Applicant submitted an appreciation letter issued in January 2017 by Emirates Flight Catering. No pay slips or supporting documentation of the claimed experience is submitted. In the absence of sufficient documents, I am not satisfied that the applicant has experience in the intended occupation. […] Based on the documentation submitted, I am not satisfied that the applicant has demonstrated that he has the experience required to be able to work as a truck driver in Canada.

[13] This is not a case where the Officer evaluated the claimed experience and determined the nature of the experience was not sufficient to be satisfied that the Applicant could perform the work sought. The Officer's determination on this point is solely based on their view that Mr. Singh had not met his onus of providing sufficient documentation to establish that he did have experience working as a truck driver in the UAE.

[14] The Supreme Court of Canada in *Vavilov* explained that "the reasonableness of a decision may be jeopardized where the decision maker has […] failed to account for the evidence before it" (at para 126). I find it unreasonable that the Officer reached this conclusion about the sufficiency of the Applicant's documentation, without addressing a number of relevant documents in the record.

[15] These documents included the following: UAE class 4 heavy vehicle license, UAE visas identifying his occupation as a heavy duty driver at Emirates Flight Catering Co; an affidavit from his Canadian employer, attesting that Mr. Singh had been hired because of his "experience, qualifications and integrity" and that he had "over 4 years of international experience driving heavy vehicles in the Middle East"; and Mr. Singh's own affidavit where he attests that he has "over 4 years of experience in UAE" and that his "job as a driver in the UAE is done in the English language." None of the above documents were assessed in conjunction with the certificate of appreciation letter from the Applicant's former employer in the UAE, which the Officer found to be insufficient to establish his work as a truck driver.

[16] The Respondent argued that the Officer need not have explicitly referred to this evidence because none of it is sufficient to establish that Mr. Singh had the work experience he claimed. For example, the Respondent argued that the visas and licenses indicate that he could have worked in this position, but do not establish that he actually worked there. The Respondent also argued that the employer's affidavit did not indicate that Mr. Singh had been interviewed for the position. The overarching problem with these sorts of arguments is that the Respondent is supplementing the Officer's limited reasons. The Officer did not do this analysis, despite their decision being solely based on the insufficiency of Mr. Singh's evidence.

[17] The Respondent relied on this Court's decision in *Singh v Canada (Minister of Citizenship and Immigration)*, 2022 FC 80 [*Singh*], where Justice Pamel found that the employer's affidavit setting out the company's experience and history with drivers from the UAE would not have assisted the Officer in assessing whether the applicant could perform the

work for which he applied (at para 14). This case is distinguishable in two respects. First, while the affidavit from the employer filed in this case made general statements about the company's hiring practices, the employer also attested that Mr. Singh was hired based on his experience and specifically that he had "4 years of experience in the UAE." Further, in this case, the only issue was whether the Applicant provided sufficient documentation to establish he had any work experience not as was the case in *Singh*, where one of the issues was whether the 2.5 years of work experience was sufficient experience to be able to perform the job (at para 16).

B. *Overstay risk*

[18] The Officer's reasons with respect to Mr. Singh not leaving at the end of his authorized stay was limited to the following: "Applicant has also not submitted any documents to demonstrate any income, savings or assets. […] I am also not satisfied that applicant's economic establishment in the home country will motivate his departure from Canada after the end of authorized period of stay."

[19] The Officer did not make reference to Mr. Singh's strong family ties in India. Nor did the Officer mention that Mr. Singh lived for a number of years in the UAE on work permits and had no history of non-compliance or overstaying the validity of his status. The Officer also did not address Mr. Singh's statements in an affidavit about this very issue. Mr. Singh asserted that he would never remain unlawfully in Canada, as he had "never violated the laws or policies of any country." He further stated that he was aware that if his employer in Canada supported his application, and if he liked the work and Canada, he may eventually apply for permanent

residence through the British Columbia Provincial Nominee Program, and lawfully renew his work permit at that time.

[20] The Respondent argued that the Officer need not have addressed these other issues because the lack of economic establishment in India was the determinative issue for the Officer with respect to whether Mr. Singh would return at the end of the authorized period. Similarly, as I noted above, the problem with this argument is that it is asking the Court to supplement the Officer's reasons. It is asking this Court to declare that the Officer found the lack of economic establishment to be determinative in the face of other factors that would tend to weigh in Mr. Singh's favour. This is not, however, what the Officer's reasons stated; these other factors were simply not mentioned at all.

V. Costs

[21] Mr. Singh has argued that an award of costs should be issued against the Respondent. I do not agree that there are "special reasons" to award costs (Rule 22 of *Federal Court Rules*, SOR/98-106). Mr. Singh has argued that the Officer's reasons demonstrate that they were acting in "bad faith" in refusing the application. I do not agree that this can be made out from the reasons.

VI. Conclusion

[22] The application for judicial review is granted and sent back to be redetermined by a different visa officer. No costs are awarded. No question for certification was raised by either party and none arises.

JUDGMENT IN IMM-462-21

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is granted and sent back to be redetermined by a different visa officer;

2. No costs are awarded;

2. No question for certification was raised by either party and none arises.

"Lobat Sadrehashemi"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-462-21
STYLE OF CAUSE:	SUKHCHAIN SINGH v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	HELD BY VIDEOCONFERENCE
DATE OF HEARING:	APRIL 12, 2022
JUDGMENT AND REASONS:	SADREHASHEMI J.
DATED:	APRIL 27, 2022

APPEARANCES:

Gabriel Chand	FOR THE APPLICANT
Jessica Ko	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Chand & Company Law Corporation Vancouver, British Columbia	FOR THE APPLICANT
Attorney General of Canada Vancouver, British Columbia	FOR THE RESPONDENT