

Federal Court



Cour fédérale

Date: 20220527

Docket: IMM-340-21

Citation: 2022 FC 777

Ottawa, Ontario, May 27, 2022

PRESENT: The Honourable Madam Justice Strickland

BETWEEN:

VIKAS SEN

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The Applicant is a citizen of India. He submitted an Application for Work Permit Made Outside of Canada, dated May 5, 2020, to work as a Cook (NOC-6322) pursuant to a positive Labour Market Impact Assessment [LMIA]. The documentation provided in support of this application included his IELTS testing results dated October 11, 2018, indicating scores of: listening 4.5; reading 3.5; writing 5.5; speaking 5.5; with an overall band score of 5.0.

[2] An officer at the Visa Section of the High Commission of Canada in New Delhi [Officer] denied the application by a letter dated December 3, 2020, on the basis that the Applicant did not demonstrate that he would be able to adequately perform the work that he sought.

[3] The Officer's notes entered in the Global Case Management System [GCMS] comprise part of their reasons and state as follows:

Applicant is seeking an LMIA based work permit to work as cook at Nor-Lab Ltd. I have concerns regarding the applicant's English language skills which are also listed as a requirement for the position on the LMIA. Applicant has submitted an Ielts which has an overall band score of 5.0, however, I note that he only received a score of 3.5 in reading. As per the Ielts website, a score between 3 and 4 indicates extremely limited user. Someone who conveys and understands only general meaning in very familiar situations. There are frequent breakdowns in communication. As a cook, it is reasonable to assume that the applicant will require reading skills to follow recipes, read notes from serving staff regarding patron requests and dietary restrictions, read food safety instructions, etc. Based on the foregoing, I am not satisfied that the applicant will be able to perform the work sought in Canada. Application refused pursuant to R200(3)(a).

[4] This is an application for judicial review of the Officer's decision.

Relevant Legislation

Immigration and Refugee Protection Regulations, SOR/2002-227 [IRP Regulations]

200 (1) Subject to subsections (2) and (3) — and, in respect of a foreign national who makes an application for a work permit before entering Canada, subject to section 87.3 of the Act — an officer shall issue a work permit to a foreign national if, following an examination, it is established that

...

(b) the foreign national will leave Canada by the end of the period authorized for their stay under Division 2 of Part 9;

...

200 (3) An officer shall not issue a work permit to a foreign national if

(a) there are reasonable grounds to believe that the foreign national is unable to perform the work sought;

[5] The sole issue in this matter is whether the Officer's decision was reasonable.

[6] The parties submit, and I agree, that the standard of review is reasonableness (*Canada (Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at paras 10, 23, 25). On judicial review, the reviewing court asks whether the decision bears the hallmarks of reasonableness – justification, transparency and intelligibility – and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision (*Vavilov* at para 99).

Analysis

[7] The Applicant submits that the Officer erred in assessing his IELTS results. The Applicant alleges the Officer confused the Applicant's reading score of 3.5 for their overall score of 5.0, and that if the Officer read the IELTS results correctly, they would have found the Applicant's English ability to be sufficient. The Applicant further submits that the Officer ignored his education, work experience and supporting documents, all of which were written in English and that the Officer should have considered that he had transferable skills from a similar occupation. The Applicant submits that the Officer elevated the NOC requirements so as to require the Applicant to demonstrate reading skills to a higher level than needed for the position.

[8] As a starting point I note that, pursuant to s. 200(3)(a) of the IRP Regulations, an officer may not issue a work permit if there are reasonable grounds to believe that the applicant would be unable to perform the work sought. The onus is on the applicant to provide sufficient supporting documentation to establish that they meet the requirements of the IRP Regulations (*Patel v Canada (Citizenship and Immigration)*, 2021 FC 483 at para 30), including that they have the requisite language skills to perform the work offered where there are reasonable grounds to believe that such language skills are necessary to perform the work sought (*Sun v Canada (Citizenship and Immigration)*, 2019 FC 1548 at para 34). The assessment of a visa applicant's language ability is "both factual and discretionary" (*Brar v Canada (Citizenship and Immigration)*, 2020 FC 70 at para 13; *Sulce v Canada (Citizenship and Immigration)*, 2015 FC 1132 at para 8).

[9] However, "a visa officer must explain, in light of the available evidence, how an applicant fails to meet the language standard" (*Bano v Canada (Citizenship and Immigration)*, 2020 FC 568 at para 24). Put otherwise, while it is the Applicant's onus to provide the sufficient evidence to meet the eligibility requirements, it remains the Officer's task to evaluate the evidence before them and explain how it does not fulfill the eligibility requirement for which they are refusing the application (*Lakhanpal v Canada (Citizenship and Immigration)*, 2021 FC 694).

i. Assessment of IELTS results

[10] Although the Applicant did not address this when appearing before me, his assertion in his written submissions that the Officer did not refer to the overall IELTS score and erred by

confusing the overall band score with this reading score, is of no merit. The Applicant misquotes the Officer's reasons in his written submissions, omitting the following underlined wording:

“Applicant has submitted an Ielts which has an overall band score of 5.0, however, I note that he only received a score of 3.5 in reading.”

[11] Further, the Officer's concern was not with the overall level of the Applicant's English language abilities. The Officer was concerned that a score of 3.5 in reading, which the Officer noted the IELTS website describes as an “extremely limited user” with “frequent breakdowns in communications”, would hamper the Applicant's performance as a cook because these limited skills would not allow them to adequately “follow recipes, read notes from serving staff regarding patron requests and dietary restrictions, read food safety instructions, etc.”.

[12] In other words, the Officer expressed a specific concern arising from the Applicant's IELTS results in the context of the tasks the Applicant would be asked to perform as a cook. Indeed, as the Applicant states in his written submissions, “to avoid any allergic reaction or avoid any specific ingredients in the guest orders, the applicant would have to read the labels to confirm the ingredients' contents and perform the task correctly”. The record demonstrates that the LMIA requires verbal and written English but does not specify any level of proficiency. Accordingly, the Officer had wide discretion (*Singh Grewal v Canada (Citizenship and Immigration)*, 2013 FC 627 at para 17; *Sulce v Canada (Citizenship and Immigration)*, 2015 FC 1132 at para 8) in assessing whether the Applicant's English language reading skills were sufficient to perform the work sought in Canada. The Officer found that the Applicant could not do so given his IELTS reading score.

[13] I see no error in the Officer's assessment.

ii. Other supporting documents

[14] The Applicant submits that the Officer erred in failing to mention and to consider that he had completed secondary education and a three-year bachelor's degree program and had provided the transcripts of his marks. He submits that he completed his bachelor's degree in English. Further, that the Officer failed to consider that the Applicant's education, work experience, declaration, proof of employment, income tax, bank statement and identification documents are all in English. He submits that this demonstrates that he must have understood the content of those documents. Further, that the Officer failed to afford his oral and written English language skills sufficient weight and that these could have compensated for his reading skills, if lacking.

[15] I would first note that the Officer did not question the Applicant's cooking skills; the concern was related only to his English language reading ability. It was because of that concern the Officer found the Applicant had failed to establish that he would be able to perform the work he sought in Canada.

[16] And while this Court may infer that a decision-maker has made an erroneous finding of fact without regard to the evidence from a failure to mention evidence in the reasons, this is so only with respect to evidence that is relevant to the finding and which points to a different conclusion (*Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, [1998] FCJ No 1425 at para 15; *Kaur v Canada (Citizenship and Immigration)*, 2020 FC 934 at para 40).

Further, the Officer is presumed to have considered all of the evidence before them (*Solopova v Canada (Citizenship and Immigration)*, 2016 FC 690 at para 28) and need not mention every individual piece of evidence (*Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para 16).

[17] In my view, the fact that the Applicant submitted his application in English, or that he provided income tax documents, correspondence from prior employers or bank statements in English does not speak to his ability to read English and does not establish that his English language skills were sufficient to perform the work he sought. For the most part, these documents are generated by others and are not probative of the Applicant's English language skills. There is also no evidence that the Applicant completed (rather than signed) the application forms or that he did so without the assistance of his immigration consultant who submitted his application.

[18] With respect to the Applicant's allegation that in his past employment he had performed his duties as a cook in English, this is not stated anywhere in his employment contracts or reference letters. And, although the letters from his prior employers in India are written in English, they make no reference to the Applicant's language of work. Nor do the Applicant's supplementary affidavits describing his work duties make reference to the language of work. Accordingly, and while the Applicant relies on *Singh v Canada (Minister of Citizenship and Immigration)*, 2006 FC 684 and *Liu v Canada (Citizenship and Immigration)*, 2018 FC 954, to support the submission that the Officer failed to consider "transferable skills" from another occupations, they do not assist him. Similarly, while the Applicant submits that is reasonable to

assume that he would be given some on the job orientation and that the Officer failed to consider this, there is no evidence that any training was contemplated by his employer. And, in any event, job orientation is not training in English language reading skills and the record contains no evidence that the latter would be provided.

[19] The Applicant provided grade reports showing courses in English at the secondary and post-secondary level from 2008-2013. At the secondary level, he received grades of 63 and 49 out of 100. At the post-secondary level, he received grades of 40, 54, and 39 out of 100, where the minimum passing grade was 35. It is not evident that these grades demonstrated a level of proficiency over and above what was captured in the more recent 2018 IELTS examination. The Officer was not under any obligation to afford these more weight than the IELTS results. And, even if these other documents were probative with respect to the Applicant's English language ability, it was not unreasonable for the Officer to prefer a more recent objective measure of the Applicant's language ability, such as the IELTS results (see *Chaykovskyy v Canada (Citizenship and Immigration)*, 2020 FC 96 at para 52).

[20] Finally, when appearing before me, the Applicant referred to *Sandhu v Canada (Citizenship and Immigration)*, 2022 FC 301 [*Sandhu*]. Again, however, I fail to see how this case assists him. That matter concerns a refused application for a work permit as a long-haul trucker. The applicant in *Sandu* argued that his IELTS results met or exceed the Canadian Language Benchmarks under the Skilled Trades Program for the same job, rendering the officer's decision unreasonable. In this matter, the Applicant's submissions to the Officer did not make this argument. There was no suggestion that a 3.5 band score in reading would have been

sufficient under the Skilled Trades Program and that it should be accepted as sufficient under the temporary foreign worker stream and the Applicant has provided no evidence as to the required Canadian Language Benchmarks for a cook under the Skilled Trades Program. His representative's submissions to the Officer highlighted only the Applicant's overall band score of 5.0. Further, and unlike *Sandhu*, the Officer's reasons explain why the level 3.5 reading score would not suffice to permit the Applicant to perform the duties of a cook. Nor did the Officer consider perceived challenges not relevant to the Applicant's job performance as the Applicant suggests.

[21] In sum, the Officer reasonably found that the Applicant had not established that his English language reading ability would permit him to perform the work of a cook. The Officer did not err by not referring to the other documents submitted by the Applicant as these were not probative of his English language reading ability and the Officer was entitled to prefer the more recent IELTS results. Nor did the Officer elevate the NOC requirements to require the Applicant to demonstrate readings skills to a higher level than was needed for the position. The employer required written and oral English language and the Officer assessed the Applicant's English language reading ability in the context of the duties required of the work he sought to perform.

Conclusion

[22] For the reasons above, I find that the Officer's reasons are justified, transparent and intelligible and the decision is reasonable.

JUDGMENT IN IMM-340-21

THIS COURT'S JUDGMENT is that

1. The application for judicial review is dismissed;
2. There shall be no order as to costs; and
3. No question of general importance for certification was proposed or arises.

"Cecily Y. Strickland"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-340-21

STYLE OF CAUSE: VIKAS SEN v THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: BY VIDEOCONFERENCE USING ZOOM

DATE OF HEARING: MAY 25, 2022

JUDGMENT AND REASONS: STRICKLAND J.

DATED: MAY 27, 2022

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