

Federal Court



Cour fédérale

Date: 20220809

Docket: IMM-9057-21

Citation: 2022 FC 1184

Ottawa, Ontario, August 9, 2022

PRESENT: Madam Justice Pallotta

BETWEEN:

PARVEEN KAUR GREWAL

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The applicant, Parveen Kaur Grewal, applies for judicial review of a decision that refused her application for permanent residence under the Home Support Worker program. A case processing officer (Officer) with Immigration, Refugees and Citizenship Canada (IRCC) determined that Ms. Grewal did not meet the eligibility requirements under the program. Since Ms. Grewal did not have 24 months of eligible Canadian work experience at the time of her application, she was required to demonstrate she had obtained a job offer meeting the program

requirements. Specifically, the Officer was not satisfied that she had received an offer for full-time work that was “genuine and likely to be valid when the applicant is issued their initial home support work permit”.

[2] The job offer was made by a member of Ms. Grewal’s extended family, to care for his 72 year-old mother. The Officer had sent a letter by email to the prospective employer seeking information about his offer, but he did not respond. Ms. Grewal states the employer did not receive the Officer’s letter because her former immigration consultant had provided an incorrect email address. Notwithstanding the error, Ms. Grewal argues that the Officer’s failure to copy her on the email or inform her that the employer did not respond amounts to a breach of procedural fairness.

[3] Furthermore, Ms. Grewal submits the Officer’s decision is unreasonable because the Officer did not elaborate on the initial concerns about the job offer that led to issuing the letter, and provided no reasons to explain why the job offer is not genuine apart from the employer’s lack of response. As such, the decision was not based on an internally coherent and rational chain of analysis, and it was not justified in view of the facts of her case and the applicable law.

[4] I find Ms. Grewal has not established that the Officer breached procedural fairness, or that the decision is unreasonable. Accordingly, this application for judicial review is dismissed.

II. Issues and Standard of Review

[5] Ms. Grewal's allegation that the Officer breached procedural unfairness is reviewed on a standard that is akin to correctness: *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54 [*Canadian Pacific Railway*]. The duty of procedural fairness is "eminently variable", inherently flexible, and context-specific: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 77 [*Vavilov*], citing *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817, at paras 22-23 [*Baker*], among other cases. An applicant must have had a meaningful opportunity to present their case and have it fully and fairly considered: *Baker* at para 32. The central question is whether the procedure was fair, having regard to all of the circumstances: *Canadian Pacific Railway* at para 54.

[6] With respect to the allegation that the decision was not based on an internally coherent and rational chain of analysis, and was not justified, the standard of review is reasonableness: *Vavilov* at paras 16–17, 23–25. Reasonableness is a deferential but robust form of review: *Vavilov* at paras 12-13, 75 and 85. A reasonable decision is based on an internally coherent and rational chain of analysis and it is justified in relation to the facts and law that constrain the decision maker: *Vavilov* at para 85. The party challenging the decision bears the onus of demonstrating that it is unreasonable: *Vavilov* at para 100.

III. **Analysis**

A. *Did the Officer breach the duty of procedural fairness?*

(1) Parties' Submissions

[7] Ms. Grewal submits the Officer was required to issue a procedural fairness letter because the question of whether a job offer is genuine is a concern that relates to the “credibility, accuracy, or genuineness of information an applicant has submitted”: *El Sherbiny v Canada (Minister of Citizenship and Immigration)*, 2013 FC 69 at para 6; *Akinbile v Canada (Minister of Citizenship and Immigration)*, 2017 FC 255 at para 24 [*Akinbile*], citing *Obeta v Canada (Minister of Citizenship and Immigration)*, 2012 FC 1542 at paras 20-26 [*Obeta*]. Ms. Grewal states the Officer ought to have issued a procedural fairness letter seeking documents from her directly, given the significant interests at stake when a permanent resident visa application is refused.

[8] Furthermore, Ms. Grewal submits she did not have a meaningful opportunity to participate because she was excluded from vital correspondence. Sending a letter to a third party without an applicant's knowledge does not satisfy the requirement for meaningful participation.

[9] Ms. Grewal relies on the IRCC's operational manual on procedural fairness, which states:

To ensure that the applicant has a meaningful opportunity to participate, decision-makers must give sufficient notice about any process or interview that could result in a decision on their application and must give the applicant a reasonable opportunity to bring evidence or make arguments supporting their application. Decision-makers should tell applicants which documents may be required in order to address concerns. Sufficient information should be included on interview invitation letters to allow applicants to prepare. If any additional concerns arise from an interview, decision-makers should provide

the applicant with an opportunity to address those concerns either at the interview or subsequent to the interview, through a procedural fairness letter.

[10] Finally, the Officer did not follow up with the employer or inform Ms. Grewal that no response was received. At a minimum, Ms. Grewal contends that she ought to have been made aware of these developments so that the employer would not jeopardize her status in Canada or expose her to a finding a misrepresentation. Excluding applicants from employer correspondence could leave them open to abuse by unscrupulous employers.

[11] The respondent contends that the Officer was under no duty to send a procedural fairness letter to Ms. Grewal because the Officer's concerns related to the sufficiency of the evidence, and not its credibility: *Lv v Canada (Citizenship and Immigration)*, 2018 FC 935 at paras 40–43 [Lv]. Furthermore, an officer does not have a duty to raise concerns that arise from legislative requirements or from material known to the applicant: *Lv* at para 30. The respondent relies on the Officer's affidavit, which attaches the “program delivery instructions” for the Home Support Worker program—that is, the procedure and guidance used by officers to assess the program criteria, as published on the IRCC website. The respondent submits that a valid and genuine job offer is a program requirement and Ms. Grewal simply failed provide sufficient information to allow the Officer to make the assessment. An officer is not required to seek additional documents or provide an opportunity to respond when an applicant's materials are unclear, incomplete, or insufficient: *Kumar v Canada (Minister of Citizenship and Immigration)*, 2020 FC 935 at paras 18-19; *Akinbile* at para 24; *Hamza v Canada (Minister of Citizenship and Immigration)*, 2013 FC 264 at paras 22-24 [*Hamza*].

[12] The respondent argues that the facts of this case are analogous to *Patel v Canada (Minister of Citizenship and Immigration)*, 2021 FC 573, where the Court held that an applicant should anticipate a basic level of inquiry into their application, such as a basic internet check into the employer. In this case, Ms. Grewal should have expected the Officer to contact the employer for documents about the employer's finances and the person requiring care, as only the employer could have provided this information. The Officer was under no duty to inform Ms. Grewal when no response was received.

[13] Furthermore, the respondent submits there was clear and explicit notice in the offer of employment form (which Ms. Grewal and the employer signed) and in the publicly-available program delivery instructions that the IRCC may contact the employer directly to request additional information. Ms. Grewal counters that the notice does not state that only the employer would be contacted.

[14] The respondent submits Ms. Grewal has provided no jurisprudential support for her position that an officer is required to copy an applicant on employer correspondence, and there is no evidence that the Officer's failure to do so in this case rendered her vulnerable to abuse. Ms. Grewal and the employer simply provided an incorrect email address on their forms. Where there is no indication that a communication failed, the risk of non-delivery rests with the applicant: *Trivedi v Canada (Minister of Citizenship and Immigration)*, 2014 FC 766 at para 40, citing *Alavi v Canada (Minister of Citizenship and Immigration)*, 2010 FC 969 at para 5; *Khan v Canada (Minister of Citizenship and Immigration)*, 2015 FC 503 at para 13 [*Khan*].

[15] The respondent submits the Court should decline to consider arguments blaming the former immigration consultant. First, Ms. Grewal did not comply with this Court’s protocol for allegations against former counsel or authorized representatives: *Singh v Canada (Citizenship and Immigration)*, 2019 FC 91 at paras 17–18. Second, there is insufficient evidence of the alleged incompetence: *Chhetry v Canada (Minister of Citizenship and Immigration)*, 2016 FC 513 at para 17 [*Chhetry*]. Third, it was ultimately Ms. Grewal’s responsibility to provide accurate information to the IRCC. She and the employer signed the form containing the incorrect email address, and they had an opportunity to correct any mistakes before declaring that its contents were true, complete, and accurate.

(2) Analysis

[16] Ms. Grewal has not established that the Officer breached procedural fairness.

[17] The duty of procedural fairness owed to visa applicants is limited, and at the lower end of the spectrum—even for permanent residence applications: *Hamza* para 23; *Gur v Canada (Minister of Citizenship and Immigration)*, 2019 FC 1275 at para 16.

[18] Ms. Grewal contends she fulfilled her obligations by providing all of the required documentation according to the document checklist, which included the completed offer of employment form. However, an applicant’s onus to provide sufficient information supporting their application is not necessarily satisfied by providing a “complete” application: *Obeta* at para 25.

[19] In this case, the Officer acted in accordance with the procedure and guidance for assessing an application against the Home Support Worker program criteria published on the IRCC website. Offers of employment must undergo a “genuineness assessment”. Proof that a job offer is valid and genuine may include, but is not limited to, proof of a genuine need for a caregiver (for example, a person with medical needs in the home) and proof of the employer’s ability to pay the caregiver’s salary. The website states that officers can request information from the employer and use information provided in the job offer in order to assess whether there is a genuine need for a caregiver, and whether the employer is financially able to pay the caregiver salary that has been offered.

[20] In addition, the IRCC provides a prescribed form for the offer of employment, and it requires the employer to acknowledge that IRCC “may contact me to request additional information about the job offer”. The applicant is required sign the same form and confirm they have read and understood its contents.

[21] Ms. Grewal’s position that the Officer was required to inform her of the genuineness concerns is based on a premise that the Officer did not believe the information that she submitted in the form of a job offer. As noted by this Court in *Lv*, it cannot be assumed, in cases where an immigration officer finds that the evidence does not establish the applicant’s claim, that the officer has not believed the applicant: *Lv* at para 40. Credible or reliable evidence is not necessarily sufficient to establish that the facts set out therein meet the standard of proof: *Lv* at paras 41-43.

[22] I agree with the respondent that the Officer's concerns in this case related to the sufficiency of the information in Ms. Grewal's application, rather than its credibility. The Officer did not disbelieve Ms. Grewal or doubt the authenticity of the documentation that she submitted. The refusal letter and the Officer's notes recorded in the Global Case Management System (GCMS) are clear that the Officer refused Ms. Grewal's application because there was insufficient information to satisfy the Officer that she met the program eligibility requirement of a genuine job offer. Ms. Grewal's application did not provide information that would have allowed the Officer to assess the genuineness of the job offer in accordance with the published guidelines.

[23] Ms. Grewal states that the Officer should have asked her for the information directly; however, the IRCC website and applicable forms that Ms. Grewal signed are clear that obtaining information directly from the employer is part of the process for assessing the genuineness of a job offer. I am not persuaded that the Officer was required to send Ms. Grewal a procedural fairness letter in respect of "a legitimate and reasonably expected inquiry": *Patel* at para 19. Ms. Grewal's arguments about a possible misrepresentation finding and employee vulnerability do not arise on the facts this case.

[24] Finally, the respondent correctly points out that Ms. Grewal did not follow the procedure for allegations against an authorized representative, and there is insufficient information before me to attribute blame for the error on the immigration consultant. In any event, even accepting that the error was introduced by the immigration consultant, this would not change the result. An applicant has an obligation to ensure that information provided to the IRCC is accurate: *Chhetry*

at para 17. Ms. Grewal and the employer signed the original employment offer and an updated offer, both with the same employer email address. The Officer's affidavit states that the request for information was sent to the exact email address provided to the IRCC, and attaches a copy of the email. Where an applicant provides an email address, the risk of non-delivery rests with the applicant provided there is no indication that the communication may have failed: *Khan* at para 13, citing *Kaur v Canada (Minister of Citizenship and Immigration)*, 2009 FC 935 at para 12; see also *Zare v Canada (Minister of Citizenship and Immigration)*, 2010 FC 1024 at para 36.

[25] In summary, the Officer was not required to apprise Ms. Grewal of concerns that arose from the sufficiency of her application, in view of the program requirements. The email address error was unfortunate, but it did not give rise to a broader duty of procedural fairness on the part of the Officer.

B. *Was the Officer's decision unreasonable?*

[26] As noted above, Ms. Grewal submits the Officer's decision is unreasonable because she had provided all documents required according to the document checklist, and it is not clear what led the Officer to have concerns about the documents submitted. Reasons are the means by which a decision maker communicates the rationale of a decision: *Vavilov* at paragraph 84. Apart from the employer's lack of response, Ms. Grewal argues the Officer failed to give reasons for finding that the job offer was not genuine.

[27] I agree with the respondent that the Officer explained why Ms. Grewal's application was refused. The refusal letter states that Ms. Grewal provided insufficient information to satisfy the

Officer that the job offer she received was “genuine and likely to be valid when the applicant is issued their initial home support work permit”, and the GCMS notes explain that the Officer asked the prospective employer for further information to support the job offer but did not receive it. The letter sent to Ms. Grewal’s prospective employer asked for documents to show his ability to pay the caregiver salary and that his mother requires care. This request sought the kind of proof specifically contemplated by the publicly-available guidelines for assessing the genuineness of a job offer.

[28] The Officer’s reasons justify the decision and do so in a transparent and intelligible manner. The decision is also justified in light of the record.

IV. **Conclusion**

[29] As Ms. Grewal has not established that the Officer breached the duty of procedural fairness or unreasonably refused her application, this application must be dismissed.

[30] Neither party proposed a question for certification. In my view, there is no serious question of general importance to certify.

JUDGMENT in IMM-9057-21

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is dismissed.
2. There is no question to certify.

"Christine M. Pallotta"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-9057-21

STYLE OF CAUSE: PARVEEN KAUR GREWAL v MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: HELD BY WAY OF VIDEOCONFERENCE

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