

Federal Court



Cour fédérale

**Date: 20221121**

**Docket: IMM-5950-21**

**Citation: 2022 FC 1588**

**St. John's, Newfoundland and Labrador, November 21, 2022**

**PRESENT: The Honourable Madam Justice Heneghan**

**BETWEEN:**

**JUNGWOO SHIN**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**REASONS AND JUDGMENT**

[1] Mr. Jungwoo Shin (the “Applicant”) seeks judicial review of the decision of an immigration officer (the “Officer”) who refused his application for a permanent resident visa as a member of the Canadian Experience Class (“CEC”), pursuant to subsection 87.1(2) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 (the “Regulations”).

[2] The Applicant is a citizen of South Korea. He arrived in Canada upon a study permit in 2006. He completed his secondary education in Canada between 2006 and 2009. After a two-year period in South Korea for compulsory military service, he returned to Canada upon another study permit and pursued studies at the University of Toronto. He earned an undergraduate degree and a Master's degree between 2016 and 2021.

[3] After completing the Master's degree, the Applicant was granted a Post Graduate Work Permit that was valid until October 2020.

[4] The Applicant obtained two part-time employments between September 2017 and April 2019. In April 2019, he began a full-time position as a Business Development Specialist with the Korea Trade Investment Promotion Agency, Toronto ("KOTRA"), the Commercial Section of the Consulate General of the Republic of Korea.

[5] Between 2018 and 2020, the Applicant submitted three applications for permanent residence as a member of the CEC. The first refusal was based upon his error in selecting the correct code in the National Occupational Classification (the "NOC"). The second refusal was based upon an officer's finding that he had not performed the duties consistent with one of his part-time jobs. The third refusal was based upon the failure to provide a letter of employment from KOTRA which was due to delays related to the COVID-19 pandemic.

[6] The Applicant applied for permanent residence in November 2020, upon the basis of his employment with KOTRA as a Business Development Specialist, matching to NOC 4163 – Business development officers and marketing researchers and consultants.

[7] The Officer refused the application on the grounds that the Applicant did not perform the duties set out in the NOC 4163. In particular, the Officer found that the Applicant did not meet the requirements set out in paragraphs 87.1(2)(b) and (c) of the Regulations, as follows:

<b>Member of the class</b>	<b>Qualité</b>
<p>(2) A foreign national is a member of the Canadian experience class if</p> <p>...</p>	<p>(2) Fait partie de la catégorie de l'expérience canadienne l'étranger qui satisfait aux exigences suivantes :</p> <p>[...]</p>
<p>(b) during that period of employment they performed the actions described in the lead statement for the occupation as set out in the occupational descriptions of the <i>National Occupational Classification</i>;</p>	<p>b) pendant cette période d'emploi, il a accompli l'ensemble des tâches figurant dans l'énoncé principal établi pour la profession dans les descriptions des professions de la <i>Classification nationale des professions</i>;</p>
<p>(c) during that period of employment they performed a substantial number of the main duties of the occupation as set out in the occupational descriptions of the <i>National Occupational Classification</i>, including all of the essential duties;</p> <p>...</p>	<p>c) pendant cette période d'emploi, il a exercé une partie appréciable des fonctions principales de la profession figurant dans les descriptions des professions de la <i>Classification nationale des professions</i>, notamment toutes les fonctions essentielles;</p> <p>[...]</p>

[8] The Applicant now argues that the Officer made a credibility finding without giving him the opportunity to respond to any concerns. He submits that this is a breach of procedural fairness.

[9] The Applicant also argues that the decision is unreasonable on the grounds that the Officer did not engage with the evidence provided.

[10] The Minister of Citizenship and Immigration (the “Respondent”) submits that there was no breach of procedural fairness and the decision is reasonable.

[11] Issues of procedural fairness are reviewable on the standard of correctness; see the decision in *Canada (Minister of Citizenship and Immigration) v. Khosa*, [2009] 1 S.C.R. 339 (S.C.C.).

[12] The merits of the decision are reviewable on the standard of reasonableness, following the decision of the Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, [2019] 4 S.C.R. 653.

[13] In considering reasonableness, the Court is to ask if the decision under review "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 that decision"; see *Vavilov, supra* at paragraph 99.

[14] It is not necessary for me to address the arguments about procedural fairness since I am not persuaded that the decision meets the applicable standard of reasonableness.

[15] The Applicant submitted evidence about his duties in his employment at KOTRA. The Officer made a general statement, expressing dissatisfaction that the Applicant had performed

[...] the actions described in the lead statement for the occupation as set out in the occupational descriptions of the NOC 4163, as well as a substantial number of the main duties, including all essential duties, as set out in the NOC 4163.

[16] In my opinion, this is a conclusion with no explanation, contrary to the teachings in *Vavilov, supra* at paragraph 102. The decision does not disclose a line of analysis. Without analysis, the decision cannot be reasonable.

[17] In the result, the application for judicial review will be allowed, the decision will be set aside and the matter remitted to a different officer for redetermination. There is no question for certification.

**JUDGMENT in IMM-5950-21**

**THIS COURT'S JUDGMENT is that** the application for judicial review is allowed, the decision is set aside and the matter is remitted to a different officer for redetermination. There is no question for certification.

"E. Heneghan"

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-5950-21

**STYLE OF CAUSE:** JUNGWOO SHIN v. THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** HELD BY WAY OF VIDEOCONFERENCE  
BETWEEN ST. JOHN'S, NEWFOUNDLAND AND  
LABRADOR AND TORONTO, ONTARIO

**DATE OF HEARING:** NOVEMBER 1, 2022

**REASONS AND JUDGMENT:** HENEGHAN J.

**DATED:** NOVEMBER 21, 2022

**APPEARANCES:**

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FOR THE APPLICANT  
(ON HIS OWN BEHALF)

Stephen Jarvis

FOR THE RESPONDENT

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FOR THE RESPONDENT