

Federal Court



Cour fédérale

Date: 20221214

Docket: IMM-731-22

Citation: 2022 FC 1731

Ottawa, Ontario, December 14, 2022

PRESENT: The Honourable Mr. Justice Gleeson

BETWEEN:

HARWINDER SINGH

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Mr. Harwinder Singh, applies under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 for judicial review of a visa officer's [the Officer] January 6, 2022 decision to deny his Temporary Foreign Worker Permit as a long haul truck driver.

[2] Mr. Singh submits that in denying his application the Officer erred by:

- A. unfairly relying on extrinsic evidence to conclude his qualifications were deficient because his United Arab Emirates [UAE] visa described his profession as “truck driver and not as heavy truck driver as it is normally annotated;”
- B. unreasonably concluding his application failed to demonstrate he had experience working as a “heavy” truck driver; and
- C. unreasonably finding that he was not sufficiently established in India.

[3] The Respondent submits that there was no breach of fairness and the denial decision was reasonable. The Respondent argues the Applicant’s submissions merely reflect disagreement with the Officer’s assessment of the evidence.

[4] I am not convinced there was a breach of fairness. However, having considered the submissions of the parties and the evidence, including documentation detailing the Applicant’s work history, experience and connections to his country of nationality, I am of the opinion the decision fails to demonstrate the required elements of justification, transparency and intelligibility (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 81 [*Vavilov*]). For the reasons that follow, I have concluded the decision is unreasonable and the Application is therefore granted.

II. Analysis

A. *Standard of Review*

[5] In considering issues of fairness, a reviewing court is to be guided by the question of “whether the procedure was fair having regard to all of the circumstances” (*Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54 [*CPR*]). Although no standard of review is actually being applied, this review is “best reflected in the correctness standard” (*CPR* at para 54). Procedural fairness is “inherently flexible and context-specific.” The requirements imposed by the duty are determined with regard to all of the circumstances in any given matter (*Vavilov* at paras 77 and 127).

[6] The parties agree that the refusal decision is to be reviewed against the standard of reasonableness (*Patel v Canada (Citizenship and Immigration)*, 2020 FC 672 at paras 8 and 9 [*Patel*]). A reasonable decision is “transparent, intelligible and justified” and is “based on an internally coherent and rational chain of analysis” (*Vavilov* at paras 15 and 85).

[7] Because of the volume of applications, visa officers will not normally be expected to generate exhaustive reasons. The jurisprudence recognizes that visa officers will generally be afforded considerable deference (*Patel* at para 10).

B. *No breach of procedural fairness*

[8] The Applicant argues that in dismissing his declaration that he was a “heavy duty truck driver” on the basis that “his UAE visa clearly indicates that his profession is a truck driver and not as a heavy duty truck [driver] as it is normally annotated” the Officer effectively found him not to be credible. The Applicant submits the negative credibility finding was based on extrinsic evidence that he was not provided an opportunity to address. This amounts to a breach of fairness.

[9] This Court has recognized, in light of the volume and nature of visa applications, that it must guard against imposing a level of procedural formality in the visa context that would unduly encumber the administrative efficiency and hinder expeditious decision making (*Ponican v Canada (Citizenship and Immigration)*, 2020 FC 232 at para 23). However, where the evidence otherwise establishes the requirements for a visa are met and an officer denies a visa on the basis that the officer doubts the credibility, accuracy or genuine nature of the information provided, fairness requires notice and an opportunity to respond (*Ponican* at paras 25-27).

[10] In this instance, the Officer unquestionably took issue with the description of the Applicant’s profession in the UAE visa documentation. However, I am not persuaded the Officer made a credibility finding. It was open to the Officer to identify and consider the inconsistency based on the Officer’s experience reviewing work permit applications. While there was no breach of procedural fairness, the Officer was required to consider all of the evidence, including the documents detailing the Applicant’s professional duties and experience. I am satisfied that

the Officer's conclusions relating to the Applicant's demonstrated skills and experience were unreasonable. I address this issue below.

C. *The decision is unreasonable*

[11] In refusing the application, the Officer reached the following separate and distinct conclusions:

- A. The Applicant failed to demonstrate that he was a heavy truck driver;
- B. The Applicant failed to adequately demonstrate that he meets all or any of the requirements pertaining to licence and endorsement/certification to successfully carry out the duties of a long haul truck driver in Canada; and
- C. The Applicant failed to demonstrate that he is sufficiently well established in his country of nationality that he will leave Canada at the end of his stay.

[12] The Officer also wrote that the Applicant had failed to respond to a request to provide specific documentation.

[13] The Applicant's unchallenged evidence is that each of the Respondent's requests for additional documentation and submissions were answered. Specifically the Applicant's record discloses that on December 20, 2021 an answer was provided to the Respondent's November 24, 2021 letter seeking additional documentation (Exhibit F to the Affidavit of Aastha sworn on April 19, 2022).

[14] Relying on the Aastha affidavit, I am satisfied that a response was provided to the requests for additional information. This documentation is not referenced by the Officer. It appears it was either overlooked or never provided to the Officer. This fact alone undermines the reasonableness of the decision.

[15] I am also of the view that each of the Officer's conclusions set out above (paragraph 11) are unreasonable.

[16] In concluding that the Applicant had failed to demonstrate experience as a "heavy truck driver," the Officer relies exclusively upon the professional description label "truck driver" contained in the UAE visa and the Officer's past experience. The Officer fails to grapple with the directly contradictory evidence contained in the Applicant's CV (Certified Tribunal Record [CTR] page 39) and the information provided by the Applicant's UAE employer (CTR pages 59 and 60). The failure to address this directly contradictory information allows a reviewing court to conclude the findings have been reached without regard to the evidence, thereby undermining the reasonableness of the decision (*Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, [1998] FCJ No 1425 (FC) at para 17).

[17] In finding that the Applicant had failed to adequately demonstrate that he meets all or any of the requirements pertaining to licence and endorsement/certification to fill the position of a long haul truck driver in Canada, the Officer fails to recognize that these requirements can only be satisfied upon undertaking and completing required training in Canada. The Applicant did

provide evidence detailing the training regime he would be required to undertake in Canada (Applicant's Record at pages 542-545).

[18] Finally, on the issue of establishment, the Officer refuses the application based on personal assets and financial status but again fails to address the evidence of savings, property and family in India, including that the Applicant's wife and child remain in India.

III. Conclusion

[19] Recognizing that reasons need not be perfect nor address every issue and argument raised, I am nonetheless satisfied the Applicant has demonstrated serious shortcomings in the Officer's decision based on the deficiencies outlined above. Those shortcomings undermine my confidence in the reasonableness of the decision. The Application is therefore granted.

[20] The parties have not identified a question of general importance for certification, and I am satisfied none arises.

JUDGMENT IN IMM-731-22

THIS COURT'S JUDGMENT is that:

1. The Application is granted.
2. The matter is returned for redetermination by a different decision maker.
3. No question is certified.

“Patrick Gleeson”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-731-22

STYLE OF CAUSE: HARWINDER SINGH v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: HELD BY VIDEOCONFERENCE

DATE OF HEARING: DECEMBER 12, 2022

JUDGMENT AND REASONS: GLEESON J.

DATED: DECEMBER 14, 2022

APPEARANCES:

Sarah Shibley FOR THE APPLICANT

Meenu Ahluwalia FOR THE RESPONDENT

SOLICITORS OF RECORD:

Steward Sharma Harsanyi FOR THE APPLICANT
Barristers and Solicitors
Calgary, Alberta

Attorney General of Canada FOR THE RESPONDENT
Edmonton, Alberta