

Federal Court



Cour fédérale

Date: 20230210

Docket: IMM-228-22

Citation: 2023 FC 197

Ottawa, Ontario, February 10, 2023

PRESENT: The Honourable Mr. Justice Favel

BETWEEN:

PARMINDER SINGH HUNDAL

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Nature of the Matter

[1] Parminder Singh Hundal [Applicant] seeks judicial review of an immigration officer's [Officer] November 17, 2021 decision refusing his work permit application [Decision]. The Officer was not satisfied that the Applicant would leave Canada at the end of his stay pursuant to subsection 200(1) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227.

[2] The application for judicial review is allowed.

II. Background

[3] The Applicant is a 54-year-old citizen of India with a Bachelor of Arts degree. He has worked on his father's agriculture land since January 2008 and for the government since 2009. The Applicant's family, including his wife, two sons, father, and two siblings, all reside in India. The Applicant owns approximately \$597,632 CAD in assets together with his father.

[4] In August 2021, the Applicant received an offer to work as a Farm Labourer at Island Gold in Prince Edward Island for a duration of 24 months. The Applicant would work 40 hours per week at \$13.00 per hour. On August 10, 2021, the Applicant submitted a work permit application.

III. The Decision

[5] The Officer rejected the Applicant's application, having not been satisfied that the Applicant would leave Canada at the end of his stay. The Officer's reasons are contained in the Global Case Management System [GCMS] notes, reproduced in their entirety below:

Application and submissions reviewed. Applicant is a 52 years, married male with two dependents. Appears to be residing with father, widowed. Has been offered one of the 27 position of General Farm Worker NOC 8431 for Island Gold, PE for 2 years. Applicant states to have been working as a Government worker "Block Extension Educator" since 2011 and to have been working on fathers land since 2008. Bachelors of Arts from Punjab University noted. Salary certificates and ITRs, CA report and J-forms noted. I note that CA report mentions ITR but I was unable to find one on the application. Based on an overall review. I do not

find it reasonable that the applicant would leave his stable job with benefits to go and work as a farm labourer/bee labourer for the minimum taxable wage of 13%\$ an hour. The career path is not a logical progression considering the applicants studies and past employment. I am not satisfied that the applicant is a genuine temporary worker with legitimate work intent. I am not satisfied he will be motivated to leave Canada should a temporary stay be authorized.

IV. Issues and Standard of Review

[6] Having reviewed the parties' submissions, the determinative issue is whether the Decision is reasonable.

[7] I agree with the parties that the appropriate standard of review for the merits of the Decision is reasonableness. The presumption is not rebutted by the rule of law or through clear legislative intent (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16-17 [*Vavilov*]).

[8] A reasonableness review requires the Court to examine the decision for intelligibility, transparency, and justification. In conducting a reasonableness review, the reviewing court must look to both the outcome of the decision and the justification of the result (*Vavilov* at para 87). A reasonable decision must be "justified in relation to the relevant factual and legal constraints that bear on the decision" (*Vavilov* at para 99). However, a reviewing court must refrain from reweighing and reassessing the evidence considered by the decision-maker (*Vavilov* at para 125, citing *Canada (Canadian Human Rights Commission) v Canada (AG)*, 2018 SCC 31 at para 55). If the reasons of the decision maker allow a reviewing Court to understand why the decision was

made and determine whether the decision falls within the range of acceptable outcomes, the decision will be reasonable (*Vavilov* at paras 85-86).

V. Analysis

A. *Is the Decision reasonable?*

(1) Applicant's Position

[9] The Officer limited their consideration to the Applicant's employment conditions in India and failed to assess relevant evidence contradicting their findings of fact (*Ul Zaman v Canada (Citizenship and Immigration)*, 2020 FC 268 at paras 30, 40, 51 [*Ul Zaman*]; *Ekpenyong v Canada (Immigration, Refugees and Citizenship)*, 2019 FC 1245 at para 23 [*Ekpenyong*]). For instance, the Officer did not consider the Applicant's strong family, financial, and economic ties to India and his work experience as a farmer in India.

[10] Further, the Decision lacks logic and reasoning. The Officer's reasons stand on a presumptuous foundation and are inadequate.

(2) Respondent's Position

[11] The Decision is reasonable. The onus was on the Applicant to put his best foot forward in support of his application and he failed to do so. The Applicant's evidence was insufficient to rebut the presumption that the Applicant intends to immigrate to Canada. Namely, the Applicant's application failed to meaningfully explain the clear dichotomy between his

comfortable and established life in India and his expressed desire to uproot that life to temporarily work as a minimum-wage farm labourer.

(3) Conclusion

[12] Officers are entitled to considerable deference in their assessment of the facts and criteria in temporary work visa decisions (*Chhetri v Canada (Citizenship and Immigration)*, 2011 FC 872 at para 9). Although an officer's assessment of a temporary work permit application requires weighing many factors, they must still provide adequate reasons for the decision and consider evidence that contradicts important findings of fact (*Ekpenyong* at paras 12-13, 23). In this case, I find that the Officer did not sufficiently engage with the evidence of the Applicant's family ties, farming experience, and finances in India. This renders the Decision unintelligible and, therefore, unreasonable.

[13] In *Ul Zaman*, Justice Pamel held that the officer failed to weigh the evidence concerning the strength of the applicant's ties to his country of origin against the other evidence. Instead, the officer placed overwhelming weight on the applicant's strong economic incentives to remain in Canada and his stated plans to eventually apply for permanent residence (at para 51).

[14] Similarly, Justice Strickland held that an officer erred in focusing on economic incentives to the exclusion of other evidence (*Safdar v Canada (Citizenship and Immigration)*, 2022 FC 189 at para 26 [*Safdar*]). In *Safdar*, the officer did not appear to have considered the applicant's lack of family in Canada and history of complying with visa requirements during his studies abroad.

[15] In the present matter, the record indicates that the Applicant has strong ties in India, including (1) his spouse, children, father, and siblings who all live in India, (2) he has no relatives in Canada, (3) he has farming experience in India, and (3) he has considerable assets in India. The GCMS notes do not appear to attempt to balance these factors against the factors that militate in favor of denying the work permit application (*Ul Zaman* at paras 49, 51, 54). Accordingly, the Officer failed to conduct a complete assessment of the Applicant's evidence and adequately consider the countervailing factors.

VI. Conclusion

[16] The application for judicial review is allowed.

[17] The parties do not propose a question for certification and I agree that none arises.

JUDGMENT in IMM-228-22

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is allowed. The matter is remitted to a different officer for redetermination.
2. There is no question for certification and no order as to costs.

"Paul Favel"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-228-22

STYLE OF CAUSE: PARMINDER SINGH HUNDAL v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: VANCOUVER, BRITISH COLUMBIA

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JUDGMENT AND REASONS: FAVEL J.

DATED: FEBRUARY 10, 2023

APPEARANCES:

Parveer Singh Ghuman FOR THE APPLICANT

Keith McCullough FOR THE RESPONDENT

SOLICITORS OF RECORD:

Barrister and Solicitor FOR THE APPLICANT
CityLaw Group LLP
Surrey, British Columbia

Attorney General of Canada FOR THE RESPONDENT
Vancouver, BC