

Federal Court



Cour fédérale

Date: 20230529

Docket: IMM-4460-22

Citation: 2023 FC 742

Ottawa, Ontario, May 29, 2023

PRESENT: The Honourable Mr. Justice Zinn

BETWEEN:

GURMUKH SINGH

Applicant

and

**MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] Under review is a decision of an officer of the Minister of Immigration, Refugees and Citizenship Canada [the Officer] refusing the Applicant's application for permanent residence in Canada pursuant to the Health-care Workers Pathway to Permanent Residence (COVID-19 pandemic) program [the Pathway Program]. It was established as a temporary public policy for eligible refugee claimants to apply for permanent residence if they provided direct patient health-care during the COVID-19 pandemic.

[2] For the reasons that follow, I have concluded that Mr. Singh has not demonstrated that the decision was unreasonable. The Officer provided justification for the decision and reasonably found, based on the record, that they were unable to conclude that he met the criteria to qualify for permanent residence under the Pathway Program.

[3] Mr. Singh, a citizen of India, had a pending claim for refugee protection when he made an application under the Pathway Program. In his application he indicated that he was employed part-time as a Home Support Worker at Langar Seva Meal & Support Services [Langar Seva] where he worked 174 hours from May 4, 2020 to July 20, 2020 and his main duties included providing care and companionship, administering bedside and personal care, routine health-related duties and housekeeping services. He also indicated that he was a full-time Home Support Worker at Nurses and Caregivers Canada [Nurses & Caregivers] since November 2, 2020, and that his main duties were similar to those he performed at Langar Seva.

[4] On March 28, 2022, the Officer called Langar Seva to confirm Mr. Singh's employment. During that call, it was stated that employees were not providing direct care to patients during the pandemic; rather, meal delivery drivers would call the clients for contactless pick-up outside. It was confirmed that these restrictions were in place since March 2020.

[5] On March 28, 2022, a procedural fairness letter [PFL] was sent to Mr. Singh. In that letter, the Officer indicated that it was determined that Langar Seva is not a health-care organization, and as such the Officer was concerned that Mr. Singh did not work in a designated

occupation as is required under the Pathway Program and that he may have misrepresented the facts.

[6] On April 12, 2022, the Director of Langar Seva wrote a letter to the Officer noting that Mr. Singh was offered part-time paid employment as a Health Support Worker to provide direct health care and support to Onkar Singh, who is physically disabled and legally blind. It was further clarified that although their office administrator responded, “we are delivering free meals, but home care services are not available presently,” Langar Seva was not taking new clients for home support and caregiving services during the pandemic but it was catering to existing clients.

[7] On April 15, 2022, Mr. Singh’s representative replied to the PFL reiterating that although Langar Seva was not taking new clients for home support and caregiving services during the pandemic, it was serving its existing clients.

[8] Notwithstanding these replies, the Officer refused the application, as the Officer was not satisfied that Mr. Singh was performing paid work in a designated occupation eligible under the policy for 120 hours between March 13, 2020 and August 14, 2020 at Langar Seva for the following reasons:

- In the March 28, 2022 phone call to Langar Seva, the Officer was told that employees were not providing direct care to patients during the pandemic and it was confirmed that these restrictions had been in place since March 2020.
- As of May 3, 2022, Langar Seva’s website stated that its services include delivering meals to doors and friendly visits.

- Mr. Singh's job duties, as listed in the employment letter dated February 10, 2021, would require specific training and experience, and the evidence does not indicate that he has such training or education as a Home Support Worker.
- The letters of reference from clients to whom Mr. Singh states to have provided direct care in their personal homes are similar in nature and include tasks that are outside of the range of services that the business offers, according to its website. Accordingly, the Officer held that he was unable to verify the credibility of these letters.
- There were discrepancies between the letter from the Director of Langar Seva dated February 10, 2021, and its letter dated April 26, 2022, and little explanation provided to explain the change in duties. The later letter speaks to him working for a single client, whereas the earlier letter stated that Mr. Singh started working as a Home Support Worker (NOC 4412) with their organization from May 4, 2020 to July 20, 2020, and his job duties are described as:
 - Directly assisting the patients in the activities of daily living such as bathing, oral care, dressing, grooming, emptying bed pans, setting up food trays and feeding or assisting with feeding the patients.
 - Lifting, turning and positioning the patients, helping in their movement, and assisting the patients with their exercise routines, such as walking, active range of motion exercise and accompanying them in social activities.
 - Maintaining a clean, safe environments [*sic*] for patients, performing basic housekeeping functions such as changing bed linens, keeping patient's room tidy, etc. as well as maintaining supplies.
 - Providing care and companionship, maintaining the provision of warm disposition towards elderly, having no support from their families and occasional recreational activities to relieve their loneliness and isolation. [emphasis added]

The Court notes that that there is another letter from Langar Seva dated February 10, 2021, with the heading “Volunteer Certificate of Gurmukh Singh” which describes his role as a volunteer assisting in meal preparation and “Providing Care and Companionship to clients.”

- Although Langar Seva stated that it provided support services to existing clients, the Officer found it reasonable that safety restrictions would apply to everyone regardless of whether clients were new or not and that their description of services does not align with what is stated on its website.
- The Letter of Appreciation from MP Sonia Sidhu dated March 16, 2021 states that Mr. Singh “has worked tirelessly as a health support volunteer” [emphasis added].
- The various pay stubs from Langar Seva were missing cheque numbers and little corroborative evidence, such as bank statements, were submitted to demonstrate that Mr. Singh was actually paid for his time, and not just acting as a volunteer.

[9] With respect to Nurses & Caregivers, the Officer was unable to conclude that Mr. Singh was employed there for the following reasons:

- The paystubs from Nurses & Caregivers is in the same format as those from Langar Seva and were missing cheque numbers.
- The first pay stub from Nurses & Caregivers states that the first period of pay began on October 26, 2020, while the employment letter states that Mr. Singh was hired on November 2, 2020.
- Mr. Singh submitted two copies of his T4s for his employment with Nurses & Caregivers (1294550 Ontario Inc) which were in different fonts and colours. For

one of the T4s, there is no address listed under the employer section. The second T4 lists Mr. Singh's residential address as its address.

- An online search revealed that "1294550 Ontario Inc" appears to be registered to Clarkridge Career Institute. The address on the Nurses & Caregivers employment letter also leads to Clarkridge Career Institute.
- Nurses & Caregivers has a limited online presence. Limited evidence was provided to specify whether the business is a care home or whether they contract employees out to private homes. There was no further information provided to specify where Mr. Singh completed his job duties.

[10] The single issue raised in the application is whether the Officer's decision is reasonable. As an aside, it is noted that concerns are raised that appear to go to procedural fairness but there is no specific allegation of any such breach. Mr. Singh asserts that the Officer did not provide him an opportunity to address concerns with his employment at Nurses & Caregivers, and rather relied on an open-source search instead of evidence he provided.

[11] Although not specifically raised in the memorandum, and thus not responded to by the Respondent, I have also considered this issue in the following discussion.

[12] I will only address only those allegations of unreasonableness that appear to be the most critical; however, I have also considered the others raised and find nothing therein affects the decision I have reached.

[13] It is submitted that the Officer does not explain why and how they preferred the information from a phone call with an “unidentified” individual to information provided by the Director of the organization who had provided their direct cell phone number in the letters. Mr. Singh notes that this is contrary to *Rong v Canada (Citizenship and Immigration)*, 2013 FC 364 [Rong] wherein the Court found that a visa officer erred by failing to explain why a telephone verification process was preferred over the applicant’s submitted documentation in support of their work experience. It is submitted that the circumstances in *Rong* are analogous to the facts here, as the Officer clearly preferred information obtained from a phone call with an “unidentified” individual and information from a website that could be outdated, over information provided directly by the Director of Langar Seva.

[14] Issue is also taken with the Officer’s concerns with the paystubs submitted in support of Mr. Singh’s employment at Langar Seva. He says that it is unclear how “missing cheque numbers” would completely deem these paystubs illegitimate and therefore not worth consideration. He argues that it is not universally known that paystubs must bear cheque numbers. Further, bank statements are not required documents as proof of employment. Accordingly, he says, the Officer erred by applying their own knowledge to how employees are paid rather than providing a reasonable justification as to why these paystubs were deemed insufficient.

[15] He submits that the Officer failed to reasonably assess the evidence of his employment at Nurses & Caregivers. Specifically, he says that the Officer’s assessment of the paystubs from Nurses & Caregivers is problematic in two ways. First, although the Officer notes that they are

in the same format as the paystubs from Langar Seva, the Officer failed to consider, pursuant to common knowledge, that paystubs can be generated through computer software that issues paystubs based on a template. Accordingly, he says, it was unreasonable for the Officer to conclude that all employers must have paystubs that are different from one another. Second, although the Officer notes that the first paystub shows a pay period beginning on October 26, 2020, when the Applicant's employment began on November 2, 2020, the Officer failed to consider that paystubs are issued with the employer's regular pay period and these periods are not customized to each employee based on their start date.

[16] Finally, the Applicant asserts that the Officer's reasons did not engage with evidence that was contradictory to their findings: citing *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, [1999] 1 FC 53, at para 7 [*Cepeda-Gutierrez*].

[17] The submission that the Officer provides no reasons for preferring the evidence of the former is without merit. The Officer notes that there were discrepancies between the letter from the Director of Langar Seva dated April 12, 2022, and the letter dated February 10, 2021, with little to explain the change in duties. Moreover, it is noted that the services listed on the employment letters do not match those listed on Langar Seva's website or what was confirmed through a phone call to the business. Additionally, it is observed that the information on the website supports what was confirmed through the verification phone call. The Officer reasonably preferred the evidence of the verification phone call and the organization's website for these reasons.

[18] I agree with the Respondent that the facts of *Rong* are distinguishable from those currently before the Court. In *Rong*, the officer sent the applicant a PFL detailing discrepancies between a conversation with the applicant's employer and the applicant. In response to the PFL, the applicant provided a personal statement responding to the officer's concerns about the discrepancies, a notarized letter signed by the company's legal representative corroborating the information in that personal statement indicating that the individual with whom the officer spoke did not know most of the company's administrative staff, the company's business licence, and its payroll records which listed the applicant's name. The Court found that the officer erred by failing to explain why they preferred a telephone conversation with the employer's receptionist over the information provided by the applicant and her employer in response to the procedural fairness letter and focussing on minor inconsistencies which were reasonably and consistently explained in the documents provided.

[19] Here, the letter from the Director of Langar Seva dated April 12, 2022, indicates that the Officer spoke with the office administrator during the verification phone call. I agree that an administrator, unlike a receptionist as in *Rong*, would presumably have knowledge of what services were being provided and how such services were being provided. Moreover, the Officer here did not appear to have a closed mind like the officer in *Rong*, as they reviewed the website of the organization on May 3, 2022. This was after receiving Mr. Singh's response to the PFL on April 26, 2022. The Officer found that the website contained information consistent with that obtained during the verification phone call. That is, by consulting an independent source upon receipt of the response to the PFL, the Officer demonstrated that they did not have a closed mind. Rather, they merely preferred the evidence that was corroborated by two independent sources to

that of the Director's, whose evidence in their letter dated April 12, 2022 was inconsistent with that of their letter dated February 10, 2021. The Officer's preference in assigning weight is not a reviewable error.

[20] I also find there to be nothing unreasonable in the Officer making note of the missing cheque numbers from the paystubs from Langar Seva. This concern must be examined in light of the evidence indicating that Mr. Singh was a volunteer at Langar Seva and not a paid employee. In noting the missing cheque numbers and the lack of bank statements, the Officer was assessing the sufficiency of the evidence and found that they were not satisfied that Mr. Singh was performing paid work in a designated occupation eligible under the policy. Bank statements or pay stubs with cheque numbers are not necessary in every instance; however, the onus is on the applicant to demonstrate that the requirements of the Pathway Program have been met. Given the concerns in the evidence before the Officer pertaining to whether the Applicant was a paid employee, it was reasonable for the Officer to consider these.

[21] Mr. Singh asserts that the Officer's assessment of the paystubs from Nurses & Caregivers is problematic. First, the Officer raised concerns with the formatting of the paystubs, as they were the same format as those from Langar Seva, but failed to consider that paystubs can be generated through a computer software. Second, the Officer notes a discrepancy between the pay period on the first paystub and when the Applicant commenced his employment, but failed to consider that paystubs are issued with employers' regular pay periods.

[22] Although the Officer certainly could have considered the factors suggested by Mr. Singh in this application, it is not the role of the Court to reweigh evidence considered by the decision-maker absent exceptional circumstances: see *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 125 [*Vavilov*]. As the Respondent points out, the concerns with the paystubs were considered alongside evidence that one of the T4 slips from Nurses & Caregivers listed his home address as the employer's address, and there were concerns that the numbered company on the T4 slips submitted is tied to a different company called Clarkridge Career Institute. Considering that the standard of review is reasonableness, and that warrants deference to factual findings absent exceptional circumstances, none of which have been raised, I cannot find that the Officer committed a reviewable error in this regard.

[23] I disagree with the submission that the Officer failed to justify their conclusion that they were unable to conclude that the Applicant was employed by Nurses & Caregivers and performed the duties listed in their employment letter. The Officer was concerned with the sufficiency of evidence put forward to support the allegation that Mr. Singh meets the requirements of the Pathway Program. The Officer specifically refers to a lack of evidence: "I find a lack of evidence to support the applicant's employment with the company, why the company is listed as a career institute and where or when the applicant performed the duties listed on the employment letter" and "I am also unable to verify if the applicant was performing paid work during the specified time." This finding was made after the Officer highlighted concerns with the paystubs from Nurses & Caregivers and T4 slips as outlined above, as well as concerns of whether Nurses & Caregivers is a care home, or whether they contract employees out to private homes, and where the Applicant performed the duties outlined in his employment

letter. Again, I cannot agree that the Officer's conclusion lacks justification or is otherwise unreasonable.

[24] Finally, in my view, the Applicant has not demonstrated that the Officer erred by not assessing evidence that was contrary to their finding, contrary to *Cepeda-Gutierrez*. Importantly, Mr. Singh has not highlighted what evidence in the record the Officer has overlooked, and as such, has failed to meet their burden of demonstrating the decision is unreasonable: see *Vavilov* at para 100.

[25] Although Mr. Singh has not explicitly raised an issue of procedural fairness, he does assert that the Officer did not provide him with an opportunity to address their concerns with his employment at Nurses & Caregivers as they had done so with their concerns of his employment at Langar Seva. It is implied that the Officer was of the view that Mr. Singh misrepresented his relationship at Nurses & Caregivers. That is not the case. The Officer's concerns related specifically to the sufficiency of the evidence of his employment. The Officer writes:

According to an online search, the company "1294550 Ontario Inc." appears to be registered to Clarkridge Career Institute, Brampton. The address listed on the Nurses & Caregivers Canada employment letter also leads to Clarkridge Career Institute on Google Search. With the evidence before me, I am unable to establish the link between Nurses & Caregivers Canada and Clarkridge Career Institute. I find that Nurses & Caregivers Canada has limited online presence. Little evidence has been provided to specify whether the business is a care home or if they contract employees out to private homes. No further information has been provided regarding where the applicant completed the job duties listed above, as an employee of Nurses & Caregivers Canada. As such, I am unable to conclude that the applicant was employed by Nurses & Caregivers Canada and performed the duties listed above for Nurses & Caregivers Canada. [emphasis added.]

[26] In brief, Mr. Singh was provided with a fair consideration of his application. He has failed to establish that the decision was unreasonable.

[27] No question was offered by either party to be certified, and there is none on these facts.

JUDGMENT in IMM-4460-22

THIS COURT'S JUDGMENT is that the application is dismissed and no question is certified.

"Russel W. Zinn"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4460-22

STYLE OF CAUSE: GURMUKH SINGH v MINISTER OF CITIZENSHIP
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APPEARANCES:

Gina You FOR THE APPLICANT

Prathima Prashad FOR THE RESPONDENT

SOLICITORS OF RECORD:

Matkowsky Immigration Law FOR THE APPLICANT
Barristers and Solicitors
Toronto, Ontario

Attorney General of Canada FOR THE RESPONDENT
Toronto, Ontario