

Federal Court



Cour fédérale

**Date: 20230622**

**Docket: IMM-8464-21**

**Citation: 2023 FC 883**

**Ottawa, Ontario, June 22, 2023**

**PRESENT: Madam Justice McDonald**

**BETWEEN:**

**IGOR BENEDETTO ASCIUTTO**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] The Applicant seeks judicial review of the November 10, 2021 decision [Decision] of a Visa Officer [Officer], denying his application for a Labour Market Impact Assessment [LMIA] exempt work permit or a Temporary Resident Permit [TRP]. For the reasons that follow, this judicial review is granted.

I. Background

[2] The Applicant originally came to Canada in 2019 to establish an Italian restaurant. The restaurant opened in February 2020, but shut down in March 2020 due to the COVID-19 pandemic. During the pandemic, the restaurant started providing meals to charity and volunteer organizations. The Applicant stayed in Canada until the end of 2020 and left before his visa expired in January 2021.

[3] In January 2021, the Applicant applied for an LMIA-exempt work permit under subsection 205(a) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [IRPR]. The first visa officer who reviewed the application raised concerns that the Applicant had been working without authorization while he was in Canada in 2020, as the manager or owner/operator of the restaurant. The Applicant was sent a procedural fairness letter [PFL] on March 4, 2021, notifying him of the first officer's concerns.

[4] The Applicant responded to the PFL on March 23, 2021, stating that he was around when the restaurant opened and was observing operations, which he argued was not the same as entering the Canadian workforce.

[5] The Applicant returned to Canada on March 27, 2021, on an electronic travel authorization [eTA] and was interviewed by Canada Border Services Agency [CBSA] at Pearson Airport. When asked if he had worked in Canada in 2020, the Applicant explained that he had done marketing and oversaw sales and operations for the restaurant. CBSA concluded the

Applicant had been working in Canada, and that he intended to work in Canada on this trip as well, as cooking equipment and food samples were found in his luggage. The Applicant's eTA was cancelled on March 29, 2021, and he left Canada.

[6] The Applicant made further submissions in response to the PFL on March 31, 2021, addressing his attempt to enter Canada on March 27, 2021.

[7] On April 7, 2021, the Applicant's work permit application was refused, on the basis he had worked in Canada without authorization in 2020. When the Applicant sought judicial review of this decision, the parties agreed to have the decision reconsidered by a different officer and the Applicant filed further submissions on September 22, 2021.

[8] A second PFL was sent to the Applicant on October 1, 2021, asking the Applicant to provide additional information on the economic benefit of his proposed work in Canada, as well as his qualifications and experience. The Applicant responded to the second PFL on October 28, 2021.

A. *Decision Under Review*

[9] The Decision states the Officer was not satisfied the Applicant met the requirements for an LMIA-exempt work permit.

II. Issue

[10] Although the Applicant raised a number of issues with the Decision, the Officer's failure to address the TRP request is dispositive of this judicial review. Therefore, I decline to address the other issues raised by the Applicant.

III. Analysis

A. *Did the Officer err in not addressing the TRP request?*

[11] The Applicant argues the Officer erred in failing to consider his TRP request. The TRP request is not referenced in the Decision itself or in the relevant Global Case Management System notes.

[12] The Applicant requested that he be considered for a TRP in his submissions of March 23, March 31, and October 28, 2021. The March 23 submissions are approximately four pages in length and address the factors to be considered for a TRP application.

[13] The issuance of a TRP is a highly discretionary decision (*Martin v Canada (Minister of Citizenship and Immigration)*, 2015 FC 422 at para 25). There is a low threshold to request a TRP. A letter is sufficient to trigger a request (*Dhandal v Canada (Citizenship and Immigration)*, 2009 FC 865 at para 15).

[14] Based upon the evidence on the record, I am satisfied the Applicant requested a TRP. That brings me to the issue of whether the Officer considered the request, given the Decision itself makes no reference to the TRP.

[15] In its submissions, the Respondent ties the Applicant's request for a TRP to the prohibition under subparagraph 200(3)(e)(i) of the *IRPR*. That subparagraph states a work permit shall not be issued to a foreign national who engaged in unauthorized work in Canada unless six months have passed since the cessation of the unauthorized work. The Respondent argues that since the Officer did not find the Applicant had been working in Canada without authorization, the Officer was not obligated to consider the TRP.

[16] The Respondent does not offer any case authority to support this interpretation, nor does the Officer make this connection. Further, the *IRPR* do not state that the refusal of a work permit under subsection 205(a) would disentitle an applicant to a TRP. On the contrary, subsection 24(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 specifically contemplates a TRP request when someone otherwise does not meet the requirements of the *Act* when it states:

A foreign national who, in the opinion of an officer, is inadmissible or does not meet the requirements of this Act becomes a temporary resident if an officer is of the opinion that it is justified in the circumstances and issues a temporary resident permit, which may be cancelled at any time.

[17] In my view, the failure of the Officer to address the request for a TRP is a reviewable error (*Do v Canada (Citizenship and Immigration)*, 2017 FC 1065).

IV. Conclusion

[18] This judicial review is granted. There is no question for certification.

**JUDGMENT IN IMM-8464-21**

**THIS COURT'S JUDGMENT is that:**

1. This judicial review is granted and the matter is referred back for redetermination by a different decision-maker; and
2. There is no question for certification.

"Ann Marie McDonald"

Judge

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

**DOCKET:** IMM-8464-21

**STYLE OF CAUSE:** IGOR BENEDETTO ASCIUTTO v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** HELD BY VIDEOCONFERENCE

**DATE OF HEARING:** JUNE 19, 2023

**JUDGMENT AND REASONS:** MCDONALD J.

**DATED:** JUNE 22, 2023

**APPEARANCES:**

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