

Federal Court



Cour fédérale

**Date: 20230621**

**Docket: IMM-8775-22**

**Citation: 2023 FC 873**

**Ottawa, Ontario, June 21, 2023**

**PRESENT: The Honourable Madam Justice Aylen**

**BETWEEN:**

**PAOLA CAMILLE VERGEL**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] This is an application for judicial review of a decision of an Immigration Officer of Immigration, Refugees and Citizenship Canada [Officer] dated August 31, 2022 refusing the Applicant's work permit application on the basis that the application did not meet the requirements of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] and the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [Regulations].

[2] For the reasons that follow, I am not satisfied that the Applicant has demonstrated that the Officer's decision was unreasonable or that she was denied procedural fairness. Accordingly, the application for judicial review shall be dismissed.

**I. Background**

[3] The Applicant is a 34-year-old citizen of the Philippines. CVH (No. 3) LP, operating as Maple View & Southbridge Owen Sound [Southbridge], sought to employ the Applicant as a Personal Care Provider in one of their long-term care homes. On May 16, 2022, Southbridge successfully obtained a positive Labour Market Impact Assessment for the Applicant's employment.

[4] On June 28, 2022, the Applicant submitted her application for an LMIA-based work permit from outside of Canada, as well as an application for an open work permit for her accompanying spouse and a visa for her dependent child. At that time, the Applicant was residing (and had resided for 10 years) in Saudi Arabia, where she was employed as a Registered Nurse at the Pediatric Medical Ward of the Maternity and Children's Hospital in Saudi Arabia.

[5] By letter dated August 31, 2023, the Applicant was advised that a determination had been made that her application did not meet the requirements of the *IRPA* and the *Regulations*. Specifically, she was advised that her work permit application and the related applications of her spouse and child had been refused on the following grounds:

- Your immigration status outside your country of nationality or habitual residence.

- You have significant family ties in Canada.
- The compensation (monetary or other) indicated in your job offer and your assets and financial situation are insufficient to support the stated purpose of travel for yourself (and any accompanying family member(s), if applicable).

[6] The Officer's GCMS notes, which form part of the reasons for decision, provide:

Female, PHL, 33, married. Spouse OWP and 1 minor child acc. POV: LMIA for Personal Care Provider Hourly wage CAD\$18.43. Previous education noted – Bachelor of Science in Nursing from PHL LOE provided – PA employed as a Nursing specialist since 2019. LOE on file. Previous experience noted. CV on file. Employment contract in Cda on file – valid for 2 years and signed by PA. Skill level C (NOC 3413) – main duties stated in employment contract. PC from KSA and PHL on file. Funds SAR 2K (approx. CAD \$666) Meds passed. The applicant shows minimal ties to her CoR/CoN. Considering the evidence, the applicant has not demonstrated [that] they possess sufficient assets to be able to settle in Cda as a family, making this an unreasonable expense, nor have they established sufficient ties exist to compel their departure at the end of the authorized period. Refused.

## **II. Issues and Standard of Review**

[7] This application raises the following two issues: (i) whether the Officer's decision to refuse the Applicant's work permit was reasonable; and (ii) whether the Applicant was denied procedural fairness.

[8] In relation to the first issue, the applicable standard of review is that of reasonableness. When reviewing for reasonableness, the Court must determine whether the decision under review,

including both its rationale and outcome, is transparent, intelligible and justified. A reasonable decision is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision-maker [see *Canada (Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 15, 85]. The Court will intervene only if it is satisfied there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency [see *Adenijj-Adele v Canada (Minister of Citizenship and Immigration)*, 2020 FC 418 at para 11].

[9] In relation to the second issue, breaches of procedural fairness in administrative contexts have been considered reviewable on a correctness standard or subject to a "reviewing exercise ... 'best reflected in the correctness standard' even though, strictly speaking, no standard of review is being applied" [see *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54]. The duty of procedural fairness is "eminently variable", inherently flexible and context-specific. It must be determined with reference to all the circumstances, including the *Baker* factors [see *Vavilov, supra* at para 77]. A court assessing a procedural fairness question is required to ask whether the procedure was fair, having regard to all of the circumstances [see *Canadian Pacific Railway Company v Canada (Attorney General)*, *supra* at para 54].

### **III. Analysis**

#### **A. *The Officer's decision was reasonable***

[10] The Applicant asserts that the Officer made three errors which render their decision unreasonable.

[11] First, the Applicant asserts that the Officer's decision is inconsistent with the GCMS notes as the decision letter states that one basis upon which her work permit was refused was the Applicant's significant family ties in Canada, yet the GCMS do not include any reasoning related to the family ties. In the absence of any reasons and given that the Applicant has no family members in Canada, the Applicant asserts that this determination made by the Officer is unintelligible and incoherent and must have been in error. I reject this argument. The Applicant's husband and child intend to accompany her to Canada and as a result, she also sought an open work permit for her spouse and a temporary resident permit for her child. The Officer expressly noted in the GCMS notes that the Applicant is married and that her spouse and child intend to accompany her to Canada. As such, I am satisfied that the Officer's GCMS notes do provide a rationale for their finding that she has strong family ties to Canada. Moreover, this Court has acknowledged that it is reasonably open to an officer to consider the presence of an applicant's immediate family members with them in Canada as one of the many factors to consider [see *Sayyar v Canad (Minister of Citizenship)*, 2023 FC 494 at paragraph 15].

[12] Second, the Applicant asserts that the Officer failed to consider the totality of the evidence regarding insufficient compensation and financial assets. The Applicant asserts that the evidence before the Officer was that: (a) her low wage was permissibly below the median wage on the job bank for NOC 3413; (b) her employer committed to finding her affordable accommodation; (c) her employer was paying the expenses related to her travel to/from Canada; and (d) she was

financially able to support herself and her family in Canada both in the short and long term. As such, the Applicant asserts that the Officer's determination that she had insufficient compensation and financial assets was unreasonable.

[13] I reject this argument. Evidence of personal assets and financial status are appropriate factors to consider when assessing whether an applicant will leave Canada at the end of their stay [see *Singh v Canada (Minister of Citizenship and Immigration)*, 2021 FC 1107 at para 17]. In the GCMS notes, the Officer noted the Applicant's hourly wage and that she had funds totalling only \$666 CDN before concluding that the Applicant did not demonstrate that she possesses sufficient assets to settle as a family in Canada. I see nothing unreasonable about this conclusion, particularly in the absence of any evidence that the cost of the accommodation itself and the travel costs for the Applicant's spouse and child would be covered by her employer.

[14] Third, the Applicant asserts that the Officer unreasonably concluded that the Applicant would not leave Canada at the end of her stay, notwithstanding evidence that: (a) she has complied with all immigration requirements as a temporary resident of Saudi Arabia for 10 years; (b) she has strong ties to both Saudi Arabia and the Philippines; and (c) she expressly stated that she would leave Canada at the end of her authorized period of stay. I also reject this argument. Given that the Applicant had been living outside of the Philippines for the last 10 years, the Officer's finding of "minimal ties to her CoR/CoN" is not unreasonable, which was a factor (amongst the others noted above) in the Officer's determination that they were not satisfied that she would depart Canada at the end of her authorized period of stay. Moreover, the Applicant has not pointed to any evidence of her ties to Saudi Arabia (her country of residence) that the Officer failed to address and the Applicant does not appear to have any family or other ties in Saudi Arabia (beyond her past and

potential future employment). As such, I find that it was reasonably open to the Officer to determine that she also had minimal ties to Saudi Arabia.

**B. *The Applicant was not denied procedural fairness***

[15] The Applicant asserts that the discrepancy between the GCMS notes and the decision letter and the Officer's failure to consider the totality of the evidence related to her ties to her country of residence/nationality and her compensation and assets amounts to a breach of the Applicant's procedural fairness rights. This allegation ties into the arguments advanced by the Applicant regarding the reasonableness of the Officer's decision.

[16] I am not satisfied that the Applicant has demonstrated that the Officer failed to consider any of the evidence presented in the Applicant's work permit application, nor am I satisfied (for the reasons stated above) that there was any discrepancy between the GCMS notes and the decision letter. The duty of procedural fairness owed to the Applicant was on the low end of the spectrum [see *Yuzer v Canada (Minister of Citizenship and Immigration)*, 2019 FC 781 at para 16] and I am not satisfied that the Applicant has demonstrated any breach of that duty.

**IV. Conclusion**

[17] As the Applicant has failed to demonstrate that the Officer's decision was unreasonable or that she was denied procedural fairness, the application for judicial review shall be dismissed.

[18] Neither party proposed a question for certification and I agree that none arises.



**JUDGMENT in IMM-8775-22**

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

1. The application for judicial review is dismissed.
2. There is no question for certification.

"Mandy Ayleen"

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Judge

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

**DOCKET:** IMM-8775-22

**STYLE OF CAUSE:** PAOLA CAMILLE VERGEL v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** HELD BY VIDEOCONFERENCE

**DATE OF HEARING:** JUNE 20, 2023

**JUDGMENT AND REASONS:** AYLEN J.

**DATED:** JUNE 21, 2023

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