Federal Court  Cour fédérale

Date: 20230621

Docket: IMM-3161-22

Citation: 2023 FC 874

Ottawa, Ontario, June 21, 2023

PRESENT: The Honourable Madam Justice Aylen

BETWEEN:

MAHDI ARDESTANI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] This is an application for judicial review of the decision of a Citizenship and Immigration Canada Officer [Officer] at the Embassy of Canada in Ankara, Turkey, dated March 24, 2022 wherein the Officer concluded that the Applicant had failed to meet the criteria for the issuance of a work permit pursuant to the *Immigration and Refugee Protection Regulations*, SOR/2022-227 [*Regulations*] and the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*].

[2] The Applicant asserts that the Officer's decision was unreasonable and that the Officer breached his procedural fairness rights.

[3] For the reasons that follow, I am not satisfied that the Applicant has demonstrated any basis for the Court's intervention and accordingly, the application for judicial review shall be dismissed.

I. Background

[4] The Applicant is a citizen of Iran who applied for a LMIA-exempt work permit under the C11 category under the International Mobility Program. This category is targeted towards entrepreneurs and self-employed candidates seeking to operate a business in Canada that would create or maintain significant social, cultural or economic benefits or opportunities for Canadian citizens or permanent residents pursuant to subsection 205(a) of the *Regulations*.

[5] The Applicant submitted his application for a work permit on August 4, 2021. The Applicant stated his intent to open a livestock consulting service in the metro Vancouver area and hire full-time employees.

[6] By letter dated March 24, 2022, the Applicant was advised that his work permit was denied, with the Officer stating that they were "not satisfied that [the Applicant] would leave Canada at the end of [his] stay, as stipulated by subsection 200(1)(b) of the IRPR, based on the purpose of [his] visit".

[7] Following the commencement of this application for judicial review, the Officer's notes as contained in the Global Case Management System [GCMS] were produced to the Applicant. The GCMS notes, which form part of the reasons for decision, provide as follows:

> The applicant's intended employment in Canada does not appear reasonable given:
>
> The applicant has applied as an entrepreneur proposing to establish a livestock consulting firm offering consulting services specializing in efficient food rationing, sustainable livestock breeding, effective farm designing, customer service and handling in the greater Vancouver area.
>
> The business plan projects the hiring of two employees in the first year, a livestock consultant and an animal health technician. Projected salaries and related expenditures are low.
>
> The business plan sales projections are significant with over $260,000 in the first year; however, these projections are based on the applicant's indication of the industry's average obtainable market share. There are no details on how the business would realize a full market share in the first year or how these revenues would be achieved.
>
> The business plan only projects $8,160 per year in rent for office space which is low for metro Vancouver. No lease agreement has been provided.
>
> Current employment details do not demonstrate that the applicant has the work experience to establish a consulting firm offering services such as livestock breeding. No information on language proficiency has been provided.
>
> It is not clear that the applicant has proposed a business endeavor that would address a market need. Based on the aforementioned I am not satisfied that the requirements for LMIA exemption have been met nor that applicant has presented a viable business plan that would represent a significant benefit to Canada.
>
> Weighing the factors in this application. I am not satisfied that the applicant will depart Canada at the end of the period authorized for their stay.
>
> For the reasons above, I have refused this application.

II. Preliminary Issue

[8] At the commencement of the hearing, counsel for the Applicant advised that he was relying on his written representations but requested that counsel for the Respondent answer five questions related to this matter. As I advised counsel for the Applicant, a hearing of an application for judicial review is not an examination for discovery. Counsel for the Respondent was under no obligation to answer his questions. Moreover, it was not open to the Applicant to raise new issues at the hearing of the application.

[9] I also raised with counsel for the Applicant the fact that two decision of this Court have recently been issued - *Raja v Canada (Minister of Citizenship and Immigration)*, 2023 FC 719 and *Haghshenas v Canada (Minister of Citizenship and Immigration)*, 2023 FC 464 – in which counsel for the Applicant made a number of the same arguments as raised in this application and which were all dismissed by this Court, twice. I asked counsel for the Applicant if he was continuing to pursue these issues notwithstanding the earlier findings of this Court and he indicated that he was.

[10] I find that counsel for the Applicant's attempt to re-litigate such issues and to transform the hearing of this application into an examination for discovery constitutes an abuse of this Court's processes.

[11] Notwithstanding, I will proceed to consider the merits of the application as framed by the Applicant in his application record.

III. Issues and Standard of Review

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

[13] In relation to the first 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 *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 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].

[14] However, this Court has recognized that as work permit applications do not raise substantive rights since applicants do not have an unqualified right to enter Canada, the level of procedural fairness is low [see *Baran v Canada (Citizenship and Immigration)*, 2019 FC 463 at para 16].

[15] As the Federal Court of Appeal explained in *Canada (Minister of Citizenship and Immigration) v Khan*, 2001 FCA 345 at paragraph 31, several factors account for this limited duty of fairness, including: (i) the absence of a legal right to a visa; (ii) the imposition on the Applicant of the burden of establishing eligibility for a visa; and (iii) the less serious impact on the individual that the refusal of a visa typically has, compared with the removal of a benefit. The Federal Court of Appeal went on to caution against "imposing a level of procedural formality that, given the volume of applications that visa officers are required to process, would unduly encumber efficient administration".

[16] In relation to the second 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 *Vavilov*, *supra* 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 *Adenjij-Adele v Canada (Minister of Citizenship and Immigration)*, 2020 FC 418 at para 11].

[17] A visa officer's assessment for a temporary work permit requires a balancing of many factors. Thus, discretionary decisions of this type are entitled to a high degree of deference since they usually involve questions of fact and relate to a visa officer's recognized expertise [see *Singh v Canada (Citizenship and Immigration)*, 2017 FC 894 at paras 15-16; *Portillo v Canada*

(Citizenship and Immigration), 2014 FC 866 at para 17; *Ngalamulume v Canada (Citizenship and Immigration)*, 2009 FC 1268 at para 16; *Talpur v Canada (Citizenship and Immigration)*, 2012 FC 25 at para 19].

[18] Although a visa officer's duty to provide reasons when evaluating a temporary resident visa application is minimal, the visa officer must nonetheless provide adequate reasons that justify his or her decision [see *Singh v Canada (Minister of Citizenship and Immigration)*, 2009 FC 621 at para 9].

IV. Analysis

[19] Paragraph 200(1)(b) of the *Regulations* addresses the issuance of work permits and provides:

Work permits	**Permis de travail — demande préalable à l'entrée au Canada**
200 (1) Subject to subsections (2) and (3) — and, in respect of a foreign national who makes an application for a work permit before entering Canada, subject to section 87.3 of the Act — an officer shall issue a work permit to a foreign national if, following an examination, it is established that	200 (1) Sous réserve des paragraphes (2) et (3), et de l'article 87.3 de la Loi dans le cas de l'étranger qui fait la demande préalablement à son entrée au Canada, l'agent délivre un permis de travail à l'étranger si, à l'issue d'un contrôle, les éléments ci-après sont établis :

[…]	[…]
(b) the foreign national will leave Canada by the end of the period authorized for their stay under Division 2 of Part 9;	b) il quittera le Canada à la fin de la période de séjour qui lui est applicable au titre de la section 2 de la partie 9;

[20] Sections 204 to 208 of the *Regulations* authorize the issuance of work permits for workers who have not first obtained a labour market impact assessment [LMIA] from Employment and Social Development Canada. In this case, the relevant provision is subsection 205(a) of the *Regulations*, which provides:

Canadian interests	**Intérêts canadiens**
205 A work permit may be issued under section 200 to a foreign national who intends to perform work that	205 Un permis de travail peut être délivré à l'étranger en vertu de l'article 200 si le travail pour lequel le permis est demandé satisfait à l'une ou l'autre des conditions suivantes :
(a) would create or maintain significant social, cultural or economic benefits or opportunities for Canadian citizens or permanent residents;	a) il permet de créer ou de conserver des débouchés ou des avantages sociaux, culturels ou économiques pour les citoyens canadiens ou les résidents permanents;
[…]	[…]

[21] In considering an application for a work permit under the significant benefit – entrepreneurs/self-employed category (such as was the case here), officers are instructed to consider the following questions in determining whether subsection 205(a) is met:

- Is the work likely to create a viable business that will benefit Canadian or permanent resident workers or provide economic stimulus to the area?

- Does the applicant have the language abilities needed to operate the business?

- Does the applicant have a particular background or skills that will improve the viability of the business?

- Is there a business plan that clearly shows that the applicant has taken steps to initiate their business?

- Has the applicant taken some measure to put the business plan into action (evidence of having the financial ability to begin the business and pay expenditures, renting space, having a staffing plan, obtaining a business number, showing ownership documents or agreements, etc.)?

- Is the business of a temporary nature (for example, seasonal businesses)?

- Is the foreign national establishing a long-term business that will require their presence indeterminately (for example, an auto mechanic shop)?

[22] It is well-settled that it is up to a temporary work permit applicant to provide all relevant supporting documentation and sufficient credible evidence to satisfy a visa officer that he can fulfill the job requirements. In other words, it is for the applicant to put his best case forward [see *Pacheco Silva v Canada (Minister of Citizenship and Immigration)*, 2007 FC 733 at para 20].

A. The Applicant's procedural fairness rights were not breached

[23] The Applicant submits that he was owed a high degree of procedural fairness as the decision on his work permit is final and a negative decision has an impact on his life and business. This assertion has no merit as it runs contrary to the jurisprudence of this Court and the Federal Court of Appeal, as cited above. Moreover, it remains open to the Applicant to submit a further work permit application under this same category.

[24] Further, this case is not one where the Officer expressed doubts as to the credibility of the Applicant's evidence, relied on extrinsic evidence that is outside the Officer's general expertise or relied on overly broad generalizations or stereotypes, so as to trigger an exception to the low procedural fairness threshold [see *Salman v Canada (Citizenship and Immigration)*, 2007 FC 877 at para 12; *Hassani v Canada (Citizenship and Immigration)*, 2006 FC 1283 at para 24].

[25] The Applicant asserts that he was denied procedural fairness as the processing of his application took over seven months, whereas other applications processed during the same period of time took much less time. There is no merit to this argument. A delay, in and of itself, does not entitle the Applicant to a remedy on an application for judicial review. Moreover, the Applicant

has not demonstrated that the delay was unreasonable and in any way prejudicial to the Applicant [see *Singh v Canada (Minister of Citizenship and Immigration)*, 2014 FC 867 at para 23; *Raja*, *supra* at para 36-38].

[26] The Applicant asserts that his work permit application was processed using Chinook, which in and of itself is a breach of procedural fairness. Moreover, he asserts that the use of Chinook was improper given the importance of the decision at issue and the degree of complexity of the decision at issue (which involved business immigration). There is also no merit to these assertions. I am not satisfied that the use of Chinook, on its own, constitutes a breach of procedural fairness or that the nature of the application itself has any bearing on the use of Chinook. The evidence before the Court is that the decision was made by an Officer, with the assistance of Chinook. Whether or not there has been a breach of procedural fairness will turn on the particular facts of the case, with reference to the procedure that was followed and the reasons for decision [see *Haghshenas*, *supra*].

[27] The Applicant further asserts that there was a denial of procedural fairness as he was not provided with "the true" reasons for decision until he received the GCMS notes. I reject this assertion. It is well-established that the Respondent bears no obligation to provide the Applicant with the GCMS notes at the time that the decision letter is provided and that if the Applicant is not satisfied with the reasons given in the decision letter, it is incumbent on the Applicant to seek further elaboration under Rule 9 [see *Cao v Canada (Citizenship and Immigration)*, 2022 FC 1696 at para 45].

[28] The Applicant further asserts that the Applicant had a reasonable expectation of having the concerns raised by the Officer put to him for a response before a decision was made refusing his work permit application. This assertion is clearly contradicted by numerous decisions of this Court, which provide that an officer is under no obligation to seek out explanations or more complete information to assuage any concerns that an officer may have regarding a work permit application [see *Penez v Canada (Citizenship and Immigration)*, 2017 FC 1001 at para 37].

[29] The Applicant asserts that the Officer's determination that they were not satisfied that the Applicant would leave Canada at the end of his stay constitutes an improper veiled credibility finding and that the Officer was obligated to provide the Applicant with an opportunity to address that credibility concern. I reject this assertion. It must be recalled that, on any work permit application, the burden rests on the applicant to rebut the presumption that they are an immigrant seeking to remain in Canada, and to convince the Officer that they will leave Canada at the end of their stay [see *Danioko v Canada (Minister of Citizenship and Immigration)*, 2006 FC 479 at para 15; *Li v Canada (Minister of Citizenship and Immigration)*, 2001 FCT 791, [2001] FCJ No 1144 at para 35; *Fakhri Adhari v Canada (Citizenship and Immigration)*, 2017 FC 854 at para 29]. A finding by an Officer that the presumption has not been rebutted does not necessarily engage a negative credibility finding and there is nothing in the reasons of the Officer to suggest that they made a credibility finding in this matter, veiled or otherwise. In such circumstances, no heightened procedural fairness obligation was triggered.

[30] The Applicant relies on *Madadi v Canada (Minister of Citizenship and Immigration)*, 2013 FC 716, where Justice Zinn stated:

> The jurisprudence of this Court on procedural fairness in this area is clear: Where an applicant provides evidence sufficient to establish that they meet the requirements of the Act or regulations, as the case may be, and the officer doubts the "credibility, accuracy or genuine nature of the information provided" and wishes to deny the application based on those concerns, the duty of fairness is invoked…

[31] However, unlike in *Madadi*, the Applicant in this case did not provide the Officer with evidence sufficient to establish that he met the requirements for the requested work permit and the Officer expressed no doubts regarding the credibility, accuracy or genuine nature of any of the information or documentation provided.

[32] The Applicant also makes an assertion that the Officer demonstrated "a perception of bias" in refusing his work permit. However, this allegation is entirely unsupported.

B. The Officer's decision was reasonable

[33] The Applicant asserts that the reasons for decision do not have a nexus with the evidence, are arbitrary and improperly made based on irrelevant and extraneous criteria. Specifically, the Applicant asserts that the evidence before the Officer does not support a finding that the Applicant's purpose of visiting Canada differs from the purpose noted in his application. The Applicant points to his two trips to Turkey and his subsequent return to Iran to suggest that there is no reason to find that he would not return to Iran at the end of his work permit. I reject this assertion. The Officer is deemed to have considered all of the evidence before them, including his travel history. Having determined that the Applicant did not meet the eligibility requirements for

the requested work permit, it was reasonably open to the Officer to conclude that they were not satisfied that the Applicant would leave Canada at the end of his work permit.

[34] The Applicant further asserts that the use of Chinook is "concerning", suggesting essentially that any decision rendered in which Chinook was used cannot be reasonable. I see no merit to this suggestion. The burden rests on the Applicant to demonstrate that the decision itself lacks transparency, intelligibility and/or justification, and baseless musings about how Chinook was developed and operates does not, on its own, meet that threshold.

[35] With respect to the Officer's specific findings in relation to the Applicant's proposed business plan, the Applicant asserts that the Officer erred: (a) in finding that the projected salaries and expenditures for his company's first year of business were too low; (b) in failing to acknowledge that his business plan disclosed the company's revenue generating market strategies; (c) in failing to consider that the Applicant has no reason to sign a lease prior to entering Canada and that he has secured a virtual office and is waiting for permission to enter Canada before signing a lease; and (d) in failing to provide an opportunity for the Applicant to respond to concerns regarding the Applicant's other company, such as providing him an opportunity to submit supporting documentation.

[36] I reject the Applicant's assertions. The alleged errors described in (a) through (c) are simply disagreements with the Officer's findings and amount to requests that the Court reweigh the evidence to reach a different outcome, which is not the role of the Court on an application for judicial review. The alleged error described in (d) is actually an allegation of a denial of procedural

fairness and as noted above, the Officer was under no obligation to provide the Applicant with an opportunity submit further supporting documentation regarding his other company. I find that the Officer's determinations regarding the Applicant's business plan were reasonable based on the evidence provided by the Applicant.

V. Conclusion

[37] As the Applicant has failed to demonstrate that his procedural fairness rights were breached or that the Officer's decision was unreasonable, the application for judicial review shall be dismissed.

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

JUDGMENT in IMM-3161-22

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. There is no question for certification.

"Mandy Aylen"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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