Federal Court Cour fédérale

Date: 20231123

Docket: IMM-11535-22

Citation: 2023 FC 1556

Ottawa, Ontario, November 23, 2023

PRESENT: The Honourable Madam Justice Aylen

BETWEEN:

ARMAN SHAHBAZIAN

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 November 17, 2022 wherein the Officer concluded that the Applicant, a citizen of Iran, 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 he was denied procedural fairness and that the decision was unreasonable.

[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 Labour Market Impact Assessment [LMIA] exempt work permit under the C11 category of 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 May 16, 2022. The Applicant expressed his intent to establish a design, architecture and pre-construction consultation business in the Toronto area. According to his business plan, the Applicant's company would provide consulting services to residential construction companies, architects and homebuilders.

[6] By letter dated November 17, 2022, the Applicant was advised that his work permit was denied, with the Officer stating that they were "not satisfied there is documentary evidence to establish that you meet the exemption requirements of C11 Significant benefit –Entrepreneurs/self-employed [sic] under R205(a)."

[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:

> [Applicant] seeks [work permit] under C11 (Self-Employed / Entrepreneur). Not satisfied the business will be of significant benefit to Canada and that the business plan is sound. The client wants to start a business of design, architecture and pre-construction consulting business [*sic*] in the Toronto area. The market is well-served in this area and the client gave limited reasons on how his business could remain competitive. The proposed salary for professionals to be hired (architect and civil engineer) are well below the average salary for the Toronto area.
>
> I am not satisfied that the applicant has demonstrated that he meets the eligibility criteria. Application refused.

II. Issues and Standard of Review

[8] This application raises the following issues:

A. Whether the Applicant was denied procedural fairness; and

B. Whether the Officer's decision was unreasonable.

[9] 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].

[10] 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].

[11] 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" [see *Khan*, *supra* at para 32].

[12] In relation to the second issue, the applicable standard of review is that of reasonableness. When reviewing for reasonableness, the Court must take a “reasons first” approach and determine whether the decision under review, including both its rationale and outcome, is transparent, intelligible and justified [see *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 at para 8]. 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].

[13] 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].

[14] 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].

III. Analysis

[15] 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;

[16] Sections 204 to 208 of the *Regulations* authorize the issuance of work permits for workers who have not first obtained an 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	a) il permet de créer ou de conserver des débouchés ou

economic benefits or opportunities for Canadian citizens or permanent residents;	des avantages sociaux, culturels ou économiques pour les citoyens canadiens ou les résidents permanents;
[…]	[…]

[17] In considering an application for a work permit under the significant benefit – entrepreneurs/self-employed category (as was the case here), officers are instructed to consider certain questions in determining whether an applicant has satisfied subsection 205(a). Those questions are outlined in the IRCC's Program Delivery Instructions [PDI] and they provide guidance to officers assessing work permit applications under the C11 administrative code. The PDI is not binding on officers and the considerations it contains are not exhaustive.

[18] On November 21, 2022, IRCC updated its PDI for the assessment of work permit applications under administrative code C11. The updated PDI was entitled "Entrepreneurs or self-employed individuals seeking only temporary residence – [R205(a) – C11] – International Mobility Program" [Updated PDI]. The Updated PDI replaced the previous PDI, which was entitled "International Mobility Program: Canadian interests – Significant benefit – Entrepreneurs/self-employed candidates seeking to operate a business [R205(a) – C11]" [Initial PDI]. The Updated PDI raises the same questions for consideration by officers as the Initial PDI, but includes three additional questions: (i) does the applicant have the language abilities needed to operate the business? (ii) is the business of a temporary nature (for example, seasonal businesses)? and (iii) is the foreign national establishing a long-term business that will require their presence indeterminately (for example, an auto mechanic shop)? The evidence of the Respondent is that

these additional questions were not “new”, in the sense that they reflected considerations that were already relevant and being assessed by officers.

[19] 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 right to procedural fairness was not breached

[20] 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.

[21] 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; *Patel v Canada (Citizenship and Immigration)*, 2023 FC 1394 at para 22; *Lin v Canada (Minister of Citizenship and Immigration)*, 2004 FC 96 at para 30].

[22] The Applicant asserts that the decision was procedurally unfair on several grounds, none of which have merit.

[23] The Applicant alleges that he submitted his work permit application under the eligibility criteria outlined under the Initial PDI, but that the Officer's rejection of his application appears to be a result of the new instructions given by the IRCC under the Updated PDI. The Applicant claims that the assessment of his application under the Updated PDI breached his right to procedural fairness, as he did not know the case to be met, nor did he have a full and fair chance to respond. The Applicant asserts that he should have been given notice that the PDIs had changed and the opportunity to comply with the new guidelines. Furthermore, the Applicant asserts that the change to the PDIs breached his legitimate expectations.

[24] However, the Applicant's application was rejected by letter dated November 17, 2022, which preceded the implementation of the Updated PDI on November 21, 2022. Given the timing, the Updated PDI could not have had an impact on the outcome of the Applicant's application. In any event, even if the Updated PDI had been used to assess the Applicant's application, the Applicant has failed to explain how the three additional considerations may have affected the Officer's consideration of his application. In that regard, the GCMS notes reveal that the basis for the Officer's rejection of his application had nothing to do with the three additional considerations. These finding on their own are dispositive of the Applicant's breach of procedural fairness arguments related to the Updated PDI and thus I will not go on to consider the balance of his assertions.

[25] The Applicant submits that the IRCC communicated 83 refusals within less than a month for the C11 and C12 visa categories prepared by the Applicant's counsel, Afshin Yazdani, which were submitted to IRCC over the course of one year. The Applicant asserts that this suggests the IRCC made a collective decision for all 83 applications without analyzing or evaluating the matters on an individualized basis. Further, the Applicant maintains the IRCC failed to inform these applicants of the specific grounds for their refusal, and simply provided a "generic check-marked response". Accordingly, the Applicant alleges that the IRCC's actions demonstrate "its bias and arbitrary attitude towards all of the applicants". There is no merit to these assertions. There is no evidence before the Court that the Applicant's application was rejected as part of any form of collective refusal. In that regard, there is no evidence at all about the other 82 refusals. Rather, it is clear from the reasons that the Officer conducted an individualized assessment of the Applicant's case, specifically referencing the Applicant's proposed business and the weaknesses in his business plan.

[26] The Applicant asserts that he was denied procedural fairness due to processing delays. There is also 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 v Canada (Citizenship and Immigration)*, 2023 FC 719 at paras 36-38].

[27] The Applicant further asserts that there was a denial of procedural fairness as he was not provided with the "detailed reasons" for the 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 of the *Federal Courts Citizenship, Immigration and Refugee Protection Rules*, SOR/93-22 [see *Cao v Canada (Citizenship and Immigration)*, 2022 FC 1696 at para 45].

[28] To the extent that the Applicant's submissions seek to assert that there was a reasonable apprehension of bias, such allegation is entirely unsupported by any evidence in the record.

B. The Officer's decision was reasonable

[29] The Applicant argues that the decision was unreasonable because: (a) he met all of the requirements of the C11 work permit category; (b) the Officer's notes failed to provide information as to why the Officer was not satisfied that the Applicant's work would not provide significant benefits to Canadians; and (c) the Officer failed to provide reasons for why the application was refused in the refusal letter.

[30] I reject each of the Applicant's assertions. The alleged error described in (a) is simply a disagreement with the Officer's findings and amounts to a request 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.

[31] The alleged error in (b) has no merit, as the Officer gave specific reasons as to why they were not satisfied the Applicant's business would be of "significant benefit" to Canada, or that the business plan was sound – namely, the Applicant: (i) failed to demonstrate that he could compete in the already well-serviced Toronto market, and (ii) proposed to pay his staff below market rates. Both of these conclusions are stated in the GCMS notes and reasonable given the evidence in the record.

[32] The alleged error in (c) is actually an allegation of a denial of procedural fairness and is addressed above.

[33] I find that the Applicant has failed to address the weaknesses the Officer identified in his business plan and failed to demonstrate that the Officer's findings were unreasonable. As a result, the Applicant has not raised a reviewable error that calls into question the reasonableness of the Officer's decision.

IV. Conclusion

[34] 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.

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

JUDGMENT in IMM-11535-22

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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