

Federal Court



Cour fédérale

Date: 20231227

Docket: IMM-2457-23

Citation: 2023 FC 1754

Ottawa, Ontario, December 27, 2023

PRESENT: The Honourable Mr. Justice Gleeson

BETWEEN:

PRABHJEET SINGH

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant is a citizen of India who resides in the United Arab Emirates [UAE] and has worked as a truck driver in that country since 2017. His application for an employer-specific work permit, supported by a job offer for a two-year full-time temporary position as a long haul truck driver, was accompanied by a positive Labour Market Impact Assessment [LMIA] and his International English Language Testing System [IELTS] report.

[2] In a decision dated February 9, 2023, his work permit application was refused. The Officer was not satisfied that the Applicant would leave Canada at the end of his stay, citing the Applicant's immigration status outside his country of nationality or habitual residence and his inability to demonstrate he will be able to adequately perform the work sought. The Officer's Global Case Management System notes set out the reasons for the decision as follows:

I have reviewed the application. I have considered the following factors in my decision. Based on the applicant's immigration status outside their country of nationality or habitual residence, I am not satisfied that they will leave Canada at the end of their stay as a temporary resident. Based on the documentation submitted, I am not satisfied that the applicant will be able to adequately perform the proposed work given their: -Insufficient ability in the language of the proposed employment IELTS Reading band at 4. [sic] I am not satisfied that PA has sufficient level of English language ability to perform the job adequately. Taking the applicant's current employment situation into consideration, the employment does not demonstrate that the applicant is sufficiently well established that the applicant would leave Canada at the end of the period of authorized stay. Weighing the factors in this application. [sic] 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.

[3] The Applicant applies under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 for judicial review of the Officer's refusal decision.

[4] The Application is granted. Judicial review does not only concern itself with the outcome – a reasonable decision is one that is supported by a coherent and rational chain of analysis. As the reasons that follow demonstrate, the Officer's assertion that the Applicant cannot perform the offered job adequately with an IELTS reading test score of 4.0 is unexplained. Similarly, the Officer's reliance on the Applicant's immigration status and current employment situation to

conclude the Applicant has failed to satisfy the Officer that he will leave Canada is unexplained and appears to be inconsistent with the evidence that was before the Officer.

II. Issues and Standard of Review

[5] The Application raises a single issue: was the Officer's decision unreasonable?

[6] The Officer's decision is to be reviewed against the presumptive standard of reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 23 and 25 [*Vavilov*], *Patel v Canada (Citizenship and Immigration)*, 2020 FC 672 at paras 8 and 10). Reasonableness review focuses on the decision actually made and requires consideration of both the decision maker's reasoning process and the outcome (*Vavilov* at paras 83 and 87). A reviewing court asks if the decision demonstrates the hallmarks of reasonableness — justification, transparency and intelligibility — and whether it is justified in relation to the relevant factual and legal constraints (*Vavilov* at para 99). Reasons need not be perfect nor must they address every issue or argument raised (*Vavilov* at para 91). Reasons are to be reviewed with sensitivity to the institutional setting and in light of the record before the decision maker, but it is not the Court's role to fashion reasons that might buttress an otherwise deficient decision (*Vavilov* at para 96).

III. Analysis

[7] The *Immigration and Refugee Protection Regulations*, SOR/2002-227 [IRPR] require that an officer issue a work permit where a foreign national establishes they will leave Canada by

the end of the authorized stay unless there are reasonable grounds to believe the foreign national is unable to perform the work sought (IRPR subsections 200(1) and (3)).

[8] The onus is on the applicant to submit sufficient evidence to establish that they meet the requirements of the IRPR. This includes evidence that the applicant possesses the requisite language abilities to perform the work sought where language skills are needed. An officer's assessment of language ability is factual and discretionary. Determining whether an applicant satisfies the job requirements as set out in a job offer, the National Occupational Classification [NOC] and the LMIA involves the exercise of a high degree of discretion on the part of the officer. However, the exercise of that discretion must be reasonable and reflect a rational chain of analysis as was noted in *Safdar v Canada (Citizenship and Immigration)*, 2022 FC 189:

[11] However, "a visa officer must explain, in light of the available evidence, how an applicant fails to meet the language standard" (*Bano v Canada (Citizenship and Immigration)*, 2020 FC 568 [*Bano*] at para 24). Put otherwise, while it is the Applicant's onus to provide the sufficient evidence to meet the eligibility requirements, it remains the Officer's task to evaluate the evidence before them and explain how it does not fulfill the eligibility requirement for which they are refusing the application (*Lakhanpal v Canada (Citizenship and Immigration)*, 2021 FC 694).

[9] The Applicant's IELTS scores were 5.5 in Listening and Writing, 4.0 in Reading and 6.0 in Speaking, with an Overall Band Score of 5.5. The Affidavit of Tanisha Effs, filed by the Respondent, includes IELTS scoring information at Exhibit "A." The following is a description of the relevant score bands:

Band Score 4
Skill level Limited user

Description The test taker's basic competence is limited to familiar situations. They frequently show problems in understanding and expression. They are not able to use complex language.

Band Score 5

Skill Level Modest user

Description The test taker has a partial command of the language and copes with overall meaning in most situations, although they are likely to make many mistakes. They should be able to handle basic communication in their own field.

Band Score 6

Skill Level Competent

Description The test taker has an effective command of the language despite some inaccuracies, inappropriate usage and misunderstandings. They can use and understand fairly complex language, particularly in familiar situations.

[10] The Respondent relies on a series of decisions from this Court holding that decision-makers reasonably found applicants with test scores similar to those in this matter could not adequately perform the proposed work (*Dhaliwal v Canada (Citizenship and Immigration)*, 2022 FC 666 [*Dhaliwal*], *Singh v Canada (Citizenship and Immigration)*, 2022 FC 80 [*Harjinder Singh*], *Singh v Canada (Citizenship and Immigration)*, 2022 FC 266, *Singh Grewal v Canada (Citizenship and Immigration)*, 2013 FC 627, *Patel v Canada (Citizenship and Immigration)*, 2021 FC 573 [*SR Patel*], *Singh v Canada (Citizenship and Immigration)*, 2023 FC 170). The Respondent invites the Court to rely on this jurisprudence and conclude the Officer's finding is both reasonable and determinative of the Application. I am not persuaded that the cases cited assist the Respondent.

[11] The above-cited cases are distinguishable in that decision makers in those cases have contextualised the finding that the applicant has failed to demonstrate sufficient language by linking the applicant's reported ability to the nature of the requirements of the job. In *SR Patel*, for example, the officer was of the view that the applicant's language score was not sufficient for reasons of safety (para 22). Further, in *Harjinder Singh*, the officer was concerned that the applicant's language skills were insufficient to allow the applicant to "study and learn the rules of driving in Canada, and thereby ensure he is aware of what is expected in order to drive safely by Canadian standards" (para 8). Finally, in *Dhaliwal*, the officer interviewed the applicant and then concluded the following: "I am not satisfied that he can speak English sufficiently to converse with the general public and to independently handle any emergency situation that he may encounter while performing his course of duties" (paras 7 and 8). In this case, the officer does not provide any explanation to support what is essentially a bald conclusion.

[12] The Respondent submits that the Officer's language ability finding must be considered in light of the duties set out in the employment offer and the NOC description of the long haul truck driver occupation. The identified duties included maintaining logbooks, obtaining documents, administering bills of lading, and communicating with dispatchers, drivers and customers. The LMIA also identified verbal and written English as language requirements for the position.

[13] I accept that the Officer's reasons in the visa context need not be lengthy, that they must be read in light of the evidence and information before the Officer, and that there may be instances where a bald finding will satisfy the *Vavilov* standard. However, in this case, no minimum test score was required by the employer, no minimum skill level was prescribed in

either the NOC or the LMIA, and the Applicant's IELTS scores fell within the limited to competent user band with an overall score falling within the modest to competent user band. In the face of this type of evidence, the Officer must engage with the evidence and provide some explanation to support the conclusion that the Applicant would be unable to perform the job (*Sandhu v Canada (Citizenship and Immigration)*, 2022 FC 301 at para 18).

[14] The Officer refused the application on a second ground: the Applicant's immigration status outside of India. This aspect of the decision is similarly unjustified. The Officer baldly states that "[b]ased on the [A]pplicant's immigration status outside their country of nationality or habitual residence, I am not satisfied that they will leave Canada at the end of their stay as a temporary resident." The evidence before the Officer reflected consistent compliance with immigration laws in the UAE since 2017, which raises the question as to what concern the Officer had in this regard.

[15] Similarly, the Officer concludes the Applicant's employment does not demonstrate a sufficient level of establishment. However, the evidence discloses that the Applicant has been steadily employed in the UAE since 2017; he owns property in India; and his spouse, daughter, and parents all reside in India. Absent some explanation, the Officer's establishment findings are neither transparent nor intelligible.

IV. Conclusion

[16] For the above reasons, the Application is granted. The parties have not identified a question of general importance and none arises.

JUDGMENT IN IMM-2457-23

THIS COURT'S JUDGMENT is that:

1. The Application is granted.
2. The matter is returned for redetermination by a different decision maker.
2. No question is certified.

“Patrick Gleeson”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2457-23

STYLE OF CAUSE: PRABHJEET SINGH v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: HELD BY VIDEOCONFERENCE

DATE OF HEARING: DECEMBER 19, 2023

JUDGMENT AND REASONS: GLEESON J.

DATED: DECEMBER 27, 2023

APPEARANCES:

Amirhossein Zarei FOR THE APPLICANT

Giancarlo Volpe FOR THE RESPONDENT

SOLICITORS OF RECORD:

Zarei Law Professional FOR THE APPLICANT
Corporation
Toronto, Ontario

Attorney General of Canada FOR THE RESPONDENT
Toronto, Ontario