Federal Court Cour fédérale

Date: 20240118

Docket: IMM-8729-22

Citation: 2024 FC 70

Toronto, Ontario, January 18, 2024

PRESENT: Justice Andrew D. Little

BETWEEN:

SOLMAZ RAHIMI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] By letter dated September 6, 2022, an officer refused the applicant's work permit application under paragraph 205(a) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227.

[2] In this proceeding, the applicant asks the Court to set aside the officer's decision, arguing principally that the decision was unreasonable under the administrative law principles described

in *Canada (Minister of Citizenship and Immigration) v. Vavilov, 2019 SCC 65,* [2019] 4 SCR 653 and *Mason v. Canada (Citizenship and Immigration),* 2023 SCC 21.

[3] For the reasons that follow, I have concluded that the application must be dismissed.

I. Facts and Events leading to this Application

[4] The applicant is a citizen of Iran. She holds a degree in applied mathematics.

[5] Since 2010, the applicant has been employed by Turbine Sazan Nikan Industrial Turbine Engineering and Renovation Services Company (the "parent company"), which is a manufacturer and distributor of gas turbines, compressors and other equipment used in the energy industry. The parent company is incorporated in Iran.

[6] The applicant has been employed by the parent company since 2010. Since 2016, she has been the Financial Manager and Chair of the Board of Directors of the parent company.

[7] On May 13, 2022, the applicant filed an application for a work permit under *IRPR* paragraph 205(a), using published guidance from Immigration, Refugees and Citizenship Canada ("IRCC") as applied to intra-company transfers and start-ups (exemption C12). The application relied on her transfer to a new subsidiary incorporated by the parent company in Canada. The transfer was approved by the parent company's Board of Directors.

[8] The applicant filed a letter dated May 12, 2022, from her Canadian legal counsel and a Business Plan to support her application. The Business Plan advised that the new Canadian subsidiary company would hire four employees in its first year of operation in addition to the applicant, and additional employees each year up to the fifth year of operation.

II. The Decision under Review

[9] By letter dated September 6, 2022, an IRCC officer advised the applicant of the decision to refuse to issue a work permit to the applicant. The officer was not satisfied that the applicant met the requirements under *IRPR* paragraph 205(a) – "C12 Intra Company Transferee - Start-up" – as the officer was not satisfied that the establishment of the subsidiary company would provide a significant benefit to Canada. The letter confirmed that the applicant was welcome to re-apply if she could respond to the concerns and demonstrate that her situation meets the requirements.

[10] An entry in the Global Case Management System ("GCMS") reveals that the officer was satisfied that sufficient financial resources were in place to support the Canadian company. The key issue for the officer was whether job creation would occur.

[11] The GCMS notes confirm that the officer was aware that the staffing plan in the Business Plan indicated that the new Canadian subsidiary company would have five employees in its first year, including the applicant, and would increase to 15 employees by the end of year five.

[12] The officer noted that the Business Plan indicated that the Canadian company will provide significant benefits to Canada and significant economic stimulus contributions to Ontario through job creation. The officer referred to jobs to be created in the first year for a chemical engineer, two maintenance and installation technicians and an administrative manager.

[13] The officer compared the hourly wage stated in the Business Plan for those positions, with the hourly wages for comparable roles found in the Job Bank for the Toronto region. The officer found that for one job, the proposed salary was at the low end of the range in the Job Bank. For the two other positions in the new business, the proposed salary was below the low end of the range for comparable roles in the Job Bank.

[14] The officer was "not satisfied that job creation would occur with wages at or below the low end of the salary range" and therefore was not satisfied that the company would provide significant economic benefits to Canada.

[15] The applicant challenged the officer's decision in this judicial review proceeding.

III. Analysis

A. Was the officer's decision unreasonable?

[16] The parties both submitted, and I agree, that the standard of review is reasonableness as described in *Vavilov*: see e.g. *Koshteh v. Canada (Citizenship and Immigration)*, 2023 FC 1518, at para 3.

[17] *Vavilov* contemplates that a reviewing court may set aside an administrative decision if the applicant demonstrates that it was unreasonable because it was not transparent, intelligible and justified in relation to the facts and law that constrained the decision maker. Reasonableness review does not permit the Court to come to its own conclusion on the merits, or to reassess or reweigh the evidence. The focus is on the decision making process used by the decision maker. The Court may intervene if the decision maker failed to respect the legal constraints affecting its decision, or if the decision maker fundamentally misapprehended the evidence, failed to account for critical evidence in the record that runs counter to a material conclusion, or ignored material evidence. See *Vavilov*, esp. at paras 12-15, 83-85, 99-106, 125-128, 194. For the Court to intervene, any shortcomings in the decision must be sufficiently central or significant as to render the decision unreasonable as not displaying the necessarily transparency, intelligibility and justification: *Vavilov*, at para 100.

[18] At the hearing in this Court, the applicant's position was that the officer's decision was unreasonable because the officer added an additional criterion to the requirements in IRCC's guidance for a C12 exemption found in its online publication entitled *"International Mobility Program: Canadian interests – Significant benefit – Intra-company transferees – General requirements [R205(a)] (exemption code C12)"*.

[19] The applicant submitted that there was no requirement in the *IRPR* or IRCC's guidance for a high salary, or for any particular level of wages, for any of the positions to be created in the new Canadian subsidiary company. According to the applicant, the officer had no rule-making power to amend or add requirements and was constrained to follow the published guidance.

Applying an additional criterion of the officer's own making was a fundamental error that rendered the decision unreasonable.

[20] In my view, the officer's decision was reasonable. First, as the applicant recognized, the officer's decision and the reasoning in the GCMS notes addressed whether the proposed Canadian business would comply with the requirement in paragraph 205(a) of the *IRPR*. That provision provides that a work permit may be issued to a foreign national who intends to perform work that would create or maintain "significant … economic benefits or opportunities" for Canadian citizens or permanent residents. I agree with both parties that the officer had to apply that provision to the applicant's circumstances.

[21] Second, it was open to the officer to assess significant economic benefits in the work permit application through the lens of job creation. Doing so was responsive to the submissions made in the applicant's request for a work permit, because the letter filed by the applicant dated May 12, 2022, to support her application relied specifically on the creation of jobs in Canada. Under the headings "Significant Benefit", "Economic Benefits", the applicant submitted that the subsidiary company in Canada would hire employees as set out in the Business Plan, including the four employees in year one as assessed by the officer. The letter referred to the estimated payroll taxes, starting at $13,811 in year one and reaching $60,339 in its fifth year of operation.

[22] Third, the officer's assessment of whether there would be significant economic benefits due to job creation was reasonable, in that it was intelligible, transparent and respected the factual constraints in the information filed by the applicant, particularly in the Business Plan.

[23] The GCMS notes displayed a logical chain of reasoning tethered to the requirements of *IRPR* paragraph 205(a). The notes lucidly explained the officer's reasoning.

[24] With respect to proper justification, the officer accurately described the positions of the four employees to be hired in three positions during the first year of the new Canadian business, as set out in the Business Plan. The officer found that the wages for the employees were at or below the low end of the range for comparable positions in the Toronto region. The officer was not satisfied that job creation would occur at such low wages.

[25] The applicant did not point to any evidence before the officer that contradicted the wage data used by the officer and did not challenge the comparator positions used by the officer. Although the applicant submitted that she filed her application many months before the officer's decision and the officer may have used more up-to-date data than was available to the applicant, she did not attempt to file evidence in this Court with wage data current at the time of her application. The applicant did not argue that the officer was not permitted to use the wage data found through the Job Bank or that in order to do so, the officer should have asked her for additional submissions.

[26] In *Koshteh,* the applicant's business plan included proposed wages that were below the median wage (for similar positions in a similar location). The Court found that an officer's concerns about low wages were reasonable: *Koshteh*, at para 24. In my view, the officer's concerns about low wages in the present case are factually more pronounced than those in

Koshteh, as the wages identified by the officer here were at or below the low end of the range (not below the median) for comparable positions.

[27] It is true that the applicant's counsel's letter dated May 12, 2022, also stated that the applicant's presence in Canada would lead to the transfer of knowledge and expertise to Canada as set out in the Business Plan. After describing the jobs that would be created, the section of the Business Plan on economic benefits advised that the applicant "imparting her skills and knowledge to the Canadian workforce will create qualified professionals, therefore fulfilling Canadian industry needs and benefiting the Canadian economy." Consistent with the respondent's submissions, it is obvious such a transfer cannot occur if there are no employees to benefit from it. The absence of this point in the officer's GCMS notes was not fatal to the reasonableness of the decision.

[28] The applicant's written submissions made various other arguments concerning the alleged unreasonableness of the officer's decision. None of them have persuaded me that there is a basis for the Court to intervene, applying *Vavilov* principles.

[29] Accordingly, I conclude that the applicant has not demonstrated that the officer's decision refusing her work permit was unreasonable.

B. Was the applicant deprived of procedural fairness?

[30] The applicant's written submissions, filed at the leave stage, also made a number of arguments relating to procedural fairness. None of them was pursued at the hearing. In my view, that choice was sensible.

[31] The Court has held consistently that in the administrative context of a work permit application, the level of procedural fairness to be provided is generally low: see *Koshteh,* at para 7; *Zargar v. Canada (Citizenship and Immigration),* 2023 FC 905, at paras 11-16; and the cases cited in *Jamali v. Canada (Citizenship and Immigration),* 2023 FC 1328, at para 28.

[32] The applicant's submissions did not show that she was entitled to any different or enhanced level of procedural protection, or that she was deprived of procedural fairness in the specific circumstances: see similarly, *Koshteh,* at paras 9-10, 12-14, 17-18; *Jamali*, at paras 26-28.

IV. Conclusion

[33] The application will be dismissed.

[34] Neither party raised a question to certify for appeal and none arises.

JUDGMENT IN IMM-8729-22

1. The application is dismissed.

2. No question is certified under paragraph 74(*d*) of the *Immigration and Refugee Protection Act.*

"Andrew D. Little"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-8729-22
STYLE OF CAUSE:	SOLMAZ RAHIMI v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
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