Federal Court  Cour fédérale

Date: 20240207

Docket: IMM-13353-22

Citation: 2024 FC 203

Ottawa, Ontario, February 7, 2024

PRESENT: The Honourable Mr. Justice Manson

BETWEEN:

PEPITO JR DE LARA

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] This is an application for judicial review of a decision (the "Decision") by a delegate of the Minister of Citizenship and Immigration (the "Minister's Delegate") rejecting the Applicant's application for permanent residency.

II. Background

[2] Pepito Jr. de Lara (the "Applicant") is a citizen of the Philippines. He is 44 years old.

[3] The Applicant was invited to apply for permanent residency under the Canadian Experience Class, which is part of the Express Entry system under section 87.1(2) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227. The Express Entry system invites prospective applicants to apply based on (1) the eligibility criteria of the class in question and (2) a points system that prioritizes specific personal characteristics. The determination is made by reference to the information that prospective applicants provide in their Express Entry system profile. If invited, the information is then verified as part of the application process.

[4] The invitation to apply for the Canadian Experience Class was extended to the Applicant in part because he claimed the following:

1. He worked for two years as a Retail Assistant Manager with 1885131 Alberta Ltd, operating as "24/7 Esso" (the "First Employer"), from December 2015 to December 2017; and

2. He had a job offer to work as a Retail Store Supervisor at 1926679 Alberta Ltd, operating as "Mac's Convenience Store" (the "Second Employer").

[5] Both claims had to be true for the Applicant to be eligible for the Canadian Experience Class and to secure the points necessary for an invitation. At issue is the Applicant's claim that he

worked with the First Employer from December 2015 to December 2017. The relevant documents submitted by the Applicant to support this claim were as follows:

1. a signed letter of offer from the First Employer, dated December 2015;

2. T4 statements for 2016 and 2017 showing that the Applicant made around $31,000.00 in employment income in each year; and

3. a series of pay stubs covering (with some gaps) the period between February 2016 and November 2017.

[6] The Applicant did not submit a letter of employment from the First Employer confirming his employment, its duration, or his role.

[7] On December 13, 2018, the Minister's Delegate requested that the Applicant provide a letter of employment "from [his] employer 1885131 Alberta Ltd o/a Mac's Convenience Store". The Minister's Delegate's communication identified the correct numbered company, but referred to it by the wrong operating name. That name in fact belonged to the Second Employer.

[8] The communication indicated that the Applicant must provide the requested documentation by December 20, 2018. The Applicant complied with the request as he understood it and provided a letter of employment from the Second Employer, dated December 14, 2018.

[9] In November 2022, the Minister's Delegate rejected the Applicant's application for permanent residency, citing the absence of a letter of employment from the First Employer.

[10] The Applicant says that the Minister's Delegate misled him, and that the Decision was procedurally unfair as a result. He also argues that the application processing time was 54 months, which is inordinately long and therefore procedurally unfair.

[11] The Applicant submits that the Decision was also substantively unreasonable because, in the confusion arising out of the December 2018 miscommunication, the Minister's Delegate failed to consider the relevant facts and evidence. The essence of this submission is based on a lack of procedural fairness, not the substantive reasonableness of the Decision.

III. Issue

[12] Did the Minister's Delegate breach their duty of procedural fairness?

IV. Analysis

[13] The standard of review with respect to procedural fairness is correctness or a standard with the same import (*Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at paras 34-35 and 54-55, citing *Mission Institution v Khela*, 2014 SCC 24 at para 79).

[14] While the Applicant did indeed experience a delay of 54 months on his application for permanent residency, the Applicant provided no evidence or submissions regarding the effects of this delay on his life. Evidence of prejudice is necessary to establish that the length of delay was undue and contrary to procedural fairness (*Blencoe v British Columbia (Human Rights*

Commission), 2000 SCC 44 at para 101). In the absence of such evidence, I find no procedural unfairness arising out of the delay.

[15] The Applicant says that the December 2018 communication misled him into delivering the wrong document, in breach of procedural fairness. The Respondent argues that the Applicant should have been aware of the application's requirements and that the Minister's Delegate was not obligated to notify the Applicant that his application was defective. The Minister's Delegate's error is therefore immaterial.

[16] The Respondent's submission disregards the well-established view that an administrative decision-maker's representations to a party may give rise to certain expectations as to the process. Those expectations can alter or elevate the degree of procedural fairness that must be met by that decision-maker. In *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 at paragraph 26, the Supreme Court of Canada discussed this in relation to an immigration officer's duty of procedural fairness:

> Fourth, the legitimate expectations of the person challenging the decision may also determine what procedures the duty of fairness requires in given circumstances. Our Court has held that, in Canada, this doctrine is part of the doctrine of fairness or natural justice, and that it does not create substantive rights. As applied in Canada, if a legitimate expectation is found to exist, this will affect the content of the duty of fairness owed to the individual or individuals affected by the decision. If the claimant has a legitimate expectation that a certain procedure will be followed, this procedure will be required by the duty of fairness.
>
> [Citations omitted]

[17] Here, the Minister's Delegate informed the Applicant that he needed to provide a letter of employment from "1885131 Alberta Ltd o/a Mac's Convenience Store". While it is true that the Minister's Delegate's communication correctly identified the First Employer as a numbered company, the Minister's Delegate mistakenly referred to that company by the operating name of the Second Employer. The Minister's Delegate's use of the operating name was at the very least misleading. It was reasonable of the Applicant to have relied on the operating name provided by the Minister's Delegate, even if in error, without having to cross-reference the numbered company's identifier independently. The Applicant expected the operating name cited by the Minister's Delegate to be accurate, and this expectation was reasonable and legitimate.

[18] The facts of this case are very similar to those in *Paul v Canada (Citizenship and Immigration)*, 2010 FC 1075. There, the applicant applied for permanent residence overseas. He was provided with a list of documents. The list informed the applicant that he must only provide some, but not all, of the documents on the list. The required documents were noted with a checkmark. The applicant complied, but his application for permanent residency was denied, partly because he did not provide a document that was unmarked on the list given to him. The Court found this to be a breach of procedural fairness.

[19] Similarly, I find that the Minister's Delegate breached their duty of procedural fairness in this case. There is no reasonable basis for the Minister's Delegate not to have afforded the Applicant an opportunity to provide the requisite evidence necessary to support his application under the Express Entry system based on the particular facts of this case.

V. Conclusion

[20] The application is granted and the Decision is remitted for redetermination by a different delegate of the Minister.

JUDGMENT in IMM-13353-22

THIS COURT'S JUDGMENT is that:

1. The application is granted and the Decision is remitted for redetermination by a different delegate of the Minister.

2. There is no question for certification.

"Michael D. Manson"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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