Federal Court Cour fédérale

Date: 20240327

Docket: IMM-483-22

Citation: 2024 FC 489

Vancouver, British Columbia, March 27, 2024

PRESENT: The Honourable Madam Justice Heneghan

BETWEEN:

IDAYAT OLUSHOLA OBAFEMI-BABATUNDE

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS AND JUDGMENT

[1] Ms. Idayat Olushola Obafemi-Babatunde (the "Applicant") seeks judicial review of the decision of an officer (the "Officer") denying her application for permanent residence under the "temporary public policy to facilitate the granting of permanent residence for certain claimants working in the health care sector during the COVID-19 pandemic". The policy had been enacted

pursuant to section 25.2 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the "Act").

[2] The Officer denied the Applicant's application on the grounds that she had failed to provide sufficient evidence to show that she had worked in a "designated occupation" for a minimum of 120 hours between March 13, 2020 and August 14, 2020.

[3] The Applicant provided pay stubs for the following periods:

A. June 28, 2020 to July 4, 2020;

B. July 26, 2020 to August 1, 2020;

C. August 9, 2020 to August 15, 2020;

D. August 23, 2020 to August 29, 2020; and

E. August 30, 2020 to September 5, 2020.

[4] The Applicant also provided a copy of a pay cheque for the period from July 19, 2020 to July 25, 2020, but without a pay stub showing the number of hours worked.

[5] The Applicant now argues that the Officer breached her right to procedural fairness by failing to notify her of shortcomings in the evidence she provided. Also, she contends that the Officer failed to consider the evidence that she did submit.

[6] The Minister of Citizenship and Immigration (the "Respondent") submits that there was no breach of procedural fairness. He also argues that the Applicant is attempting to shift the

burden of proof when she submits that the Officer should have determined the number of hours she worked, from the amount on the pay cheque that was submitted.

[7] The Respondent further submits that the pay cheque does not show that the Applicant worked the minimum number of hours, she may have taken vacation time.

[8] Any issue of procedural fairness is reviewable on the standard of correctness; see the decision in *Canada (Citizenship and Immigration) v. Khosa*, [2009] 1 S.C.R. 339 (S.C.C.).

[9] Following the decision in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, [2019] 4 S.C.R. 653 (S.C.C.), the merits of the decision are reviewable on the standard of reasonableness.

[10] In considering reasonableness, the Court is to ask if the decision under review “bears the hallmarks of reasonableness — justification, transparency and intelligibility — and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision”; see *Vavilov*, *supra* at paragraph 99.

[11] The Officer calculated that the Applicant had worked 100.75 hours. Apparently, this conclusion was based upon the pay stubs that she provided. The Officer noted a lack of evidence demonstrating that she had worked 120 hours between March 13, 2020 and August 14, 2020.

[12] The Officer was not obliged to point out shortcomings in the evidence, to the Applicant. The lack of such advice did not lead to a breach of procedural fairness.

[13] However, I agree with the Applicant that the Officer did not reasonably consider the evidence that was provided. The pay stubs show no payment for vacation time. This suggests that even without the missing pay stub, the Applicant was continuously employed. This evidence should have alerted the Officer. There is no comment about it and this suggests that this evidence was overlooked.

[14] Had the Officer considered this evidence, the outcome may have been different.

[15] The apparent failure to consider the evidence submitted makes the decision unreasonable and the application for judicial review will be allowed, the decision will be set aside and the matter remitted to another officer for redetermination. There is no question for certification.

JUDGMENT IN IMM-483-22

THIS COURT'S JUDGMENT is that the application for judicial review is allowed, the decision is set aside and the matter is remitted to another officer for redetermination. There is no question for certification.

"E. Heneghan"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-483-22
STYLE OF CAUSE:	IDAYAT OLUSHOLA OBAFEMI-BABATUNDE v. THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	TORONTO, ONTARIO
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