Federal Court  Cour fédérale

Date: 20240411

Docket: IMM-12672-22

Citation: 2024 FC 574

Ottawa, Ontario, April 11, 2024

PRESENT: The Honourable Mr. Justice Southcott

BETWEEN:

SEYED MOHAMMAD SAGHAEI MOGHADDAM FOUMANI

Applicant

and

THE MINISTER OF IMMIGRATION AND CITIZENSHIP

Respondent

JUDGMENT AND REASONS

I. Overview

[1] This is an application for judicial review of the decision of an officer [Officer] of Immigration, Refugees and Citizenship Canada [IRCC] dated November 18, 2022 [Decision]. 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 Act*, SC 2001, c 27 and the *Immigration and Refugee Protection Regulations*, SOR/2022-227 [IRPR].

[2] As explained in greater detail below, this application is dismissed, because the Decision is reasonable and was made without any breach of the requirements of procedural fairness.

II. Background

[3] The Applicant is a citizen of Iran. Since 2004, the Applicant has been employed by Doornegah Sarzamin Company [the Parent Company], an engineering services consultation company incorporated in Iran.

[4] The Applicant is the Manager of Agricultural Engineering Affairs and Green Space Design of the Parent Company. In November 2020, the Parent Company incorporated Doornegah Sarzamin Consulting Incorporated [the Subsidiary Company] in British Columbia as a provincial corporation.

[5] On July 12, 2021, the Applicant filed an application for a work permit under IRPR paragraph 205(a), using published guidance from IRCC applicable to intra-company transfers and start-ups (exemption C12) [IRCC Policy]. The application was based on the Applicant's transfer to the Subsidiary Company, having received a full-time offer of employment to serve as the Executive Director of the Subsidiary Company.

[6] In support of his application, the Applicant filed a letter dated July 8, 2021, from his Canadian legal counsel and a Business Plan, which indicates that the Applicant plans to return to

Iran after being in Canada for three years, at which time he will be replaced by a supervisor whom he will have trained in the interim.

III. Decision

[7] The Officer's November 18, 2022 letter, which conveyed the Decision refusing the work permit application, stated that the Applicant had not demonstrated that he meets the eligibility requirements as an intra-company transferee in the C12 Specialized Knowledge category under IRPR paragraph 205(a) [Decision Letter].

[8] The Certified Tribunal Record [CTR] in this matter includes Global Case Management System [GCMS] notes, which include the following excerpt dated November 18, 2022:

> Application under C12 – Intra-Company transferees –
>
> Spouse not accompanying -
>
> Education: Bachelor Agricultural engineering 2005 – Executive one year MBA program (no transcripts) – Dubai - 2019
>
> Work experience: DOORNEGAH SARZAMIN co – 2016 to now – Company was created by father of the applicant.
>
> Canadian Host Company : DOORNEGAH SARZAMIN CONSULTING (DSC) inc., BC business licence issued in November 2020 – Directors are Applicant and his wife -
>
> I am not satisfied the relation between mother company in Iran and Canadian company is established.
>
> Not documented the mother Company in Iran is an international multinational company.

> Web site of mother company is basic – few rural project shown – very little information – some are 10 years old –
>
> I have carefully reviewed the business plan submitted. I have found that a large part of the information submitted is general and appears to have been copied from open source websites.
>
> Applicant's business line of Engineering services is very competitive Canada. I am not satisfied that the proposed employment would generate significant economic benefits or opportunities for Canadian citizens or permanent residents.
>
> I am not satisfied Applicant meets requirements for requirements of the exemption under C12 – Intra-company transferees within the meaning described in section 205(a) of the Regulations.
>
> Case refused

IV. Issues

[9] The Applicant's arguments raise the following issues for consideration by the Court:

A. Is the Decision reasonable?

B. Was the Applicant deprived of procedural fairness?

[10] The merits of the Decision are reviewable on the reasonableness standard (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 23 [*Vavilov*]). The procedural fairness issue is subject to judicial scrutiny to ensure that a fair and just process was followed, an exercise best reflected in the correctness standard even though, strictly speaking, no standard of review is being applied (*Canadian Pacific Railway Company v Canada (Transportation Agency)*, 2021 FCA 69 at paras 46-47).

V. Relevant Provisions

[11] Relevant provisions of the IRPR include:

Work Permits

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

[…]

(c) the foreign national

(i) is described in section 206 or 208,

(ii) intends to perform work described in section 204 or 205 but does not have an offer of employment to perform that work or is described in section 207 or 207.1 but does not have an offer of employment,

(ii.1) intends to perform work described in section 204 or 205 and has an offer of employment to perform that work or is described in section 207 and has an offer of employment, and an officer has determined, on the basis of any information provided on the officer's request by the employer making the offer and any other relevant information, that the offer is genuine under subsection (5), or

Permis de travail - demande préalable à l'entrée au Canada

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 :

[…]

c) il se trouve dans l'une des situations suivantes :

(i) il est visé aux articles 206 ou 208,

(ii) il entend exercer un travail visé aux articles 204 ou 205 pour lequel aucune offre d'emploi ne lui a été présentée ou il est visé aux articles 207 ou 207.1 et aucune offre d'emploi ne lui a été présentée,

(ii.1) il entend exercer un travail visé aux articles 204 ou 205 pour lequel une offre d'emploi lui a été présentée ou il est visé à l'article 207 et une offre d'emploi lui a été présentée, et l'agent a conclu, en se fondant sur tout renseignement fourni, à la demande de l'agent, par l'employeur qui présente l'offre d'emploi et tout autre renseignement pertinent, que l'offre était authentique conformément au paragraphe (5),

[…]	[…]
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 economic benefits or opportunities for Canadian citizens or permanent residents;	**a)** il permet de créer ou de conserver des débouchés ou des avantages sociaux, culturels ou économiques pour les citoyens canadiens ou les résidents permanents;

VI. Analysis

A. *Is the Decision reasonable?*

[12] The Applicant argues that each of the Officer's conclusions, as expressed in the GCMS notes, is unreasonable, including arguing that the GCMS notes fail to explain the Officer's analysis as required by *Vavilov* and that the conclusions therein ignore the evidence before the Officer.

[13] I agree with the Respondent's submission that several of the conclusions expressed in the GCMS notes are individually determinative of the outcome of the Applicant's work permit application. In particular, the Officer was not satisfied that the Applicant's proposed employment would generate significant economic benefits or opportunities for Canadian citizens or permanent residents. This conclusion relates to the requirements of IRPR paragraph 205(a), which are a prerequisite to issuance of the requested permit.

[14] The GCMS notes indicate that the Officer was concerned that the Applicant's proposed employment would not generate the required economic benefits or opportunities, because the Applicant's business line of engineering services is very competitive in Canada. In support of his position that this aspect of the Decision is unreasonable, the Applicant points to elements of his Business Plan, identifying features of, and anticipated developments in, the engineering services industry in Canada. The Applicant argues that he has taken relevant competition into account and that his Business Plan explains how the Subsidiary Company will contribute economic benefits or opportunities for Canadian citizens and permanent residents.

[15] The Officer's analysis of the paragraph 205(a) requirement is admittedly brief. However, as the Respondent submits, the obligation of visa officers to provide reasons for their decisions is circumscribed by the operational realities of their work, which involve the need to process a high volume of applications (*Sharafeddin v Canada (Citizenship and Immigration)*, 2022 FC 1269 at para 26). A reviewing Court should not interfere with an administrative decision if it can discern from the record why the decision was made and the decision is otherwise reasonable (*Zeifmans LLP v Canada*, 2022 FCA 160 at para 10). In my view, the Officer has explained the paragraph 205(a) conclusion as based on the competitive nature of the engineering services market in Canada, and the Applicant's submissions seek to have the Court reweigh the evidence, which is not its role in judicial review (*Vavilov* at para 125).

[16] In challenging the reasonableness of the Decision, the Applicant also advanced arguments focused on the IRCC Policy surrounding the availability of work permits for intra-company transferees employed by multinational companies. However, as the Officer's

conclusion under IRPR paragraph 105(a) was determinative of the work permit application, and as I have found that conclusion reasonable, it is not necessary for the Court to address these additional arguments.

[17] At the hearing of this application, the Applicant also noted that the Decision Letter expresses the conclusion that the Applicant had not demonstrated that he met the eligibility requirements as an intracompany transferee in the "C12 Specialized Knowledge category under R205(a)." The Applicant observes that, under the IRCC Policy, intra-company transferees may apply for work permits if they are being transferred to a position in an executive, senior managerial, or specialized knowledge capacity. He explains that his transfer relies on the executive capacity, not the specialized knowledge capacity, and argues that the Decision is unreasonable, because the Officer analysed his application under the wrong capacity.

[18] I agree with the Respondent's position on this argument, that the reference to the specialized knowledge in the Decision Letter does not undermine the reasonableness of the Decision, as the GCMS notes do not demonstrate any analytical error based on that reference.

[19] In conclusion, I am satisfied that the Decision withstands reasonableness review. I will therefore turn to the Applicant's procedural fairness arguments.

B. *Was the Applicant deprived of procedural fairness?*

[20] The Applicant's written submissions focused significantly on the factors identified in *Baker v. Canada (Minister of Citizenship and Immigration)*, 1999 CanLII 699 (SCC), [1999] 2

SCR 817 [*Baker*], which inform determination of the content of the duty of procedural fairness in a particular situation. However, this Court has consistently held that, in the context of work permit applications, the level of procedural fairness is low (see, e.g., *Koshteh v. Canada (Citizenship and Immigration)*, 2023 FC 1518, at para 7; *Zargar v. Canada (Citizenship and Immigration)*, 2023 FC 905, at para 11). I find no basis in the Applicant's submissions to depart from this jurisprudence.

[21] The Applicant also argues in his written submissions that the Officer breached the duty of procedural fairness by failing to provide reasons for the refusal of his work permit, because the Officer's reasons were provided only through the CTR's disclosure of the GCMS notes following the Applicant's commencement of this application for judicial review. However, as the Respondent submits, this Court's jurisprudence is clear that a letter communicating the decision of a visa officer need not include all of the reasons for the decision. Rather, the relevant GCMS notes form an integral part of, and can be examined to explain, the reasons (*Wijayansinghe v Canada (Citizenship and Immigration)*, 2015 FC 811 at para 46).

[22] The Applicant further submits that he was deprived of procedural fairness, because the Officer's errors on the merits of the Decision support a conclusion that the Officer was biased, or a reasonable apprehension of bias, against the Applicant. I have found above that the Officer did not err on the merits of the Decision. Moreover, to demonstrate a reasonable apprehension of bias, an applicant must establish that a reasonable and informed person, with knowledge of all the relevant circumstances, viewing the matter realistic and practically, would think that it is more likely than not that the decision-maker, whether consciously or not, would not decide the

matter fairly (see, e.g., *Gulia v. Canada (Attorney General)*, 2021 FCA 106, at para 17). The Applicant's argument does not discharge that onus.

[23] In his oral submissions, the Applicant also referenced the principle that the duty of procedural fairness can be engaged when an administrative decision-maker has concerns about the credibility or genuineness of evidence submitted. The decision-maker may then be obliged to provide notice of such concerns and an opportunity to respond. However, the Applicant has advanced no compelling argument to the effect that the Decision was based on concerns of this nature.

[24] Finally, in oral argument, the Applicant's counsel also advanced a submission to the effect that the Decision's reliance on the specialized knowledge category under *IRPR* paragraph 205(a) is, if not unreasonable, then incorrect on the less deferential standard of review. Counsel argued that, as the standard of review applicable to procedural fairness is correctness, the Decision suffered from a procedural fairness defect. Again, there is no merit to the Applicant's argument. In order for an applicant to benefit from the correctness standard of review based on a procedural fairness submission, the applicant must identify a procedural fairness defect. A decision does not suffer from a want of procedural fairness just because an applicant wishes to invoke the correctness standard.

VII. Conclusion

[25] Having considered the Applicant's arguments and finding no reviewable error on the part of the Officer, this application for judicial review must be dismissed. Neither party proposed any question for certification for appeal, and none is stated.

JUDGMENT IN IMM-12672-22

THIS COURT'S JUDGMENT is that this application for judicial review is dismissed.

No question is certified for appeal.

"Richard F. Southcott"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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