Federal Court  Cour fédérale

Date: 20240409

Docket: IMM-482-23

Citation: 2024 FC 546

Ottawa, Ontario, April 9, 2024

PRESENT: The Honourable Mr. Justice Zinn

BETWEEN:

ALI NAZARI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] This is an application for judicial review of a decision by an officer of Immigration, Refugees and Citizenship Canada [IRCC] at the Embassy of Canada in Ankara, Turkey, dated November 21, 2022, denying the Applicant's [the Principal Applicant] work permit application pursuant to paragraph 205(a) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [*Regulations*].

[2] The Principal Applicant's spouse [the Secondary Applicant] applied for a temporary resident visa for Canada, to accompany the Principal Applicant. Her application was also refused on November 23, 2022, on the basis that the Principal Applicant was refused a work permit and so the purpose of her visit was no longer valid. This is the subject of IMM-483-23. The parties agree that the outcome of IMM-483-23 should follow IMM-482-23. Therefore, these matters were heard one after the other.

[3] For the reasons that follow, this application is dismissed as I am not persuaded that the decision to refuse the Principal Applicant's work permit was unreasonable.

I. Background

[4] The Applicants are married citizens of Iran. The Principal Applicant holds a doctor of medicine degree. He currently acts as the Corporate and Regulatory Affairs Director of Danone Nutricia Co., an Iranian manufacturer of infant formula. He previously worked for nine years in the Nutrition Department of Nestlé Iran.

[5] On July 20, 2022, the Principal Applicant applied for a Labour Market Impact Assessment [LMIA] exempt work permit under the C-11 category of the International Mobility Program [a C-11 work permit]. This category targets entrepreneurs and self-employed candidates seeking to operate a business in Canada that would create or maintain significant social, cultural, or economic benefits or opportunities for Canadian citizens or permanent residents pursuant to paragraph 205(a) of the *Regulations*. As part of his application, the Principal Applicant submitted a 68-page business and financial plan, with accompanying

financial statements, outlining his plans to establish a specialized health store in Vancouver under the name Borna Venture Inc. He had already incorporated it on January 5, 2022.

[6] By letter dated November 21, 2022, the officer refused the Principal Applicant's work permit as the officer was not satisfied that he would leave Canada at the end of his stay:

> • I am not satisfied that you will leave Canada at the end of your stay as required by paragraph 200(1)(b) of the IRPR (https://laws.justice.gc.ca/eng/regulations/SOR-2002-227/ section-200.html). I am refusing your application because you have not established that you will leave Canada, based on the following factors:
>
> • I am not satisfied there is documentary evidence to establish that you meet the exemption requirements of C11 Significant benefit - Entrepreneurs/self-employed under R205(a).

[7] The notes contained in the Global Case Management System [GCMS], which form part of the reasons, state:

> PA seeks WP under C11 (Self-Employed / Entrepreneur). I am not satisfied the proposed business plan is sound for a company that "will focus on Baby Food, Sports Nutrition & Health Food products" in Vancouver. The area is well-serviced and there are already well established major actors, there was [*sic*] limited documents submitted to explain how a new business would remain competitive. I am not satisfied there is documentary evidence to establish that the exemption requirements of C11 Significant benefit -Entrepreneurs/self-employed under R205(a) is met. Application refused.

II. Issue

[8] The sole issue for determination is whether the officer's decision was reasonable.

III. Reasonableness Standard of Review

[9] The parties agree that the decision is subject to review on the standard of reasonableness.

[10] Reasonableness is a deferential, but robust, standard of review: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at paras 12–13. Absent exceptional circumstances, reviewing courts must not interfere with the decision-maker's factual findings and cannot reweigh and reassess evidence considered by the decision-maker: *Vavilov* at para 125. Instead, it is the reviewing court's task to assess whether the decision as a whole is reasonable; that is, it is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision-maker: *Vavilov* at para 85.

[11] *Vavilov* recognizes that "what is reasonable in a given situation will always depend on the constraints imposed by the legal and factual context of the particular decision under review:" *Vavilov* at para 90. Accordingly, the decision must be "evaluated by reviewing courts in relation to its own particular context:" *Vavilov* at para 90

[12] For decisions on temporary resident visas, including work permits, the reasons need not be extensive for the decision to be reasonable: *Vavilov* at paras 91, 128; *Wardak v Canada (Citizenship and Immigration)*, 2020 FC 582 at para 71. This is in light of the "enormous pressures [visa officers] face to produce a large volume of decisions every day:" *Patel v Canada (Citizenship and Immigration)*, 2020 FC 672 at para 10. Further, visa officers are afforded considerable deference, given the level of expertise they bring to these matters: *Vavilov* at

para 93. The onus is on an applicant who seeks a work permit to satisfy a visa officer that they meet the criteria outlined in the *Regulations*.

IV. Legal Framework

[13] Subsection 200(1) of the *Regulations* governs the issuance of work permits:

Work permits	**Permis de travail — demande préalable à l'entrée au Canada**
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	**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 :
…	[…]
(b) the foreign national will leave Canada by the end of the period authorized for their stay under Division 2 of Part 9;	**b)** il quittera le Canada à la fin de la période de séjour qui lui est applicable au titre de la section 2 de la partie 9;

[14] Sections 204 to 208 of the *Regulations* authorize the issuance of work permits for workers who have not first obtained an LMIA from Employment and Social Development Canada. In this case, the relevant provision is paragraph 205(a) of the *Regulations*:

Canadian interests	**Intérêts canadiens**
205 A work permit may be issued under section 200 to a	**205** Un permis de travail peut être délivré à l'étranger en vertu de l'article 200 si le

foreign national who intends to perform work that	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;

[15] In *Wang v Canada (Citizenship and Immigration)*, 2021 FC 1002 [*Wang*] at paragraph 21, this Court confirmed that an officer may consider the sufficiency of an applicant's proposed business plan when considering whether the proposed business will provide a significant benefit to Canada, as required under the *Regulations*.

V. Analysis

[16] The Applicants submit that the decision is unreasonable as the reasons fail to provide any analysis and do not demonstrate that the officer considered the totality of the Principal Applicant's submissions, namely his business plan. They point to the guidelines published on the IRCC website which indicate that an officer assessing significant benefit within the context of a C-11 work permit application should consider an applicant's relevant background or skills and if there is a business plan that shows that an applicant has taken steps to initiate their business. The Principal Applicant argues that his application demonstrated that he had the background, resources, and intent to establish his business in Canada. He further submits that the officer did not consider the facts of his case, and instead erroneously based the decision on generalities.

[17] Specifically, the Principal Applicant points to the officer's statement that, "there was [*sic*] limited documents submitted to explain how a new business would remain competitive." He submits that this shows that the officer failed to consider key contradictory evidence in his business plan detailing how his proposed business would be competitive. He says that the situation is akin to that in *Singh v Canada (Citizenship and Immigration)*, 2022 FC 1718 [*Singh*], wherein at paragraph 16, the Court found that the officer's decision was unreasonable as the officer ignored or failed to address evidence that was contrary to the finding made:

> While an officer is presumed to have weighed and considered all of the evidence on file, if they ignore relevant evidence pointing to an opposite conclusion and contradicting the officer's findings, it can be inferred that the officer did not review the evidence or arbitrarily disregarded it: *Shakeri v Canada (Citizenship and Immigration)*, 2016 FC 1327 at para 22. In the absence of any analysis of the Applicant's ties to India, I conclude that the Decision to refuse the work permit application on the first ground is not justified based on the record before the Officer.

[18] With respect, the decision at hand bears no resemblance to the facts in *Singh*. There, the Court observed that there was no explanation as to why the officer discounted evidence of the applicant's ties to his home country. In particular, the Court was concerned that the officer overlooked the applicant's close family ties with his spouse and child in India, and his previous travel history and compliance with immigration rules of other countries, in concluding that he was not satisfied that the applicant would leave Canada at the end of the permitted period.

[19] *Singh* represents a clear situation where there was contradictory evidence on a material point that the officer overlooked. That is not the case here. Here, the Applicants disagree as to the conclusion the officer reached based on the evidence. It is not clearly contradictory.

[20] I agree completely with the following summary of the law from *Singh* at paragraph 12:

> Courts should not overturn a decision based on a "minor misstep" (*Vavilov* at para 100). Rather, any deficiencies in a decision must be "sufficiently central or significant to render the decision unreasonable" (*Vavilov* at para 100). Reasons should be considered as a whole and within the context of the institutional setting and the record, including the issues raised by the parties: *Canada (MCI) v Mason*, 2021 FCA 156 at paras 31-34, 36, 40; *Vavilov* at paras 85, 91, 96-97, 100.

[21] While the reasons are short, I find they are sufficiently reasonable under *Vavilov*; there is no deficiency in those reasons that are central or significant to the matter. It was open to the officer to determine that the Applicant failed to demonstrate how he would provide a significant benefit to Canada through his proposed business, as required under the *Regulations*. Although the Applicants disagree with the officer's assessment of the business plan, I find that the officer reasonably considered all the evidence, including the business plan, in denying the Principal Applicant's work permit application. The officer makes specific reference to the Principal Applicant's proposed business that focuses on "Baby Food, Sports Nutrition & Health Food," and notes that there are already well-established major actors in the area, as referenced in the Principal Applicant's business plan at pages 36–37.

[22] This is not like *Sadeghinia v Canada (Citizenship and Immigration)*, 2023 FC 107 [*Sadeghinia*] or *Zamani v Canada (Citizenship and Immigration)*, 2023 FC 19 [*Zamani*], which the Applicant cites as support for the proposition that an officer's reasons must disclose that the officer considered all the evidence. Those cases relate to a denied study permit application and permanent resident visa, respectively. Here, the Applicant's application for a C-11 work permit was denied pursuant to paragraph 205(a) of the *Regulations*, which imposes different

requirements than applications for study permits and permanent resident visas. In any event, those cases focus on the completeness of a visa officer's analysis and stand for the proposition that a decision is unreasonable where an officer fails to consider all the key factors prescribed by the legislation and any "critical contradictory evidence:" *Sadeghinia* at para 18; *Zamani* at para 30. As I discussed above, the officer's reasons in the case at bar demonstrate consideration for all the evidence, including the Principal Applicant's business plan that even highlights the competitive landscape he wishes to enter.

[23] To the Applicants' contention that inquiring into the evidence not explicitly mentioned by the officer amounts to improperly bolstering the officer's reasons, I agree with this Court's reasoning in *Zendehdel v Canada (Citizenship and Immigration)*, 2024 FC 207 at paragraph 19, as relied on by the Respondent:

> The Officer's reasons do not reference the financial projections in the Applicant's business plan, and I am conscious that the Court's review of the reasonableness of the Decision must focus upon the justification provided by the Officer. However, in applying the *Cepeda-Gutierrez* principles, it is necessary for the Court to assess the extent to which the evidence that the Applicant argues was overlooked contradicts the Officer's conclusion, in this case the conclusion that the Applicant failed to demonstrate that she was establishing a financially viable business. In that respect, the financial analysis contained in the Respondent's submission represents an appropriate response to the Applicant's argument, as it demonstrates that the $40,000 bank account figure would not support a conclusion different from that reached by the Officer. As such, I do not find that the bank account evidence was overlooked.

[24] In other words, it is open for this Court to examine the evidence before the officer to determine whether that evidence was so critical and contradictory that not mentioning it renders the decision unreasonable. I find that the evidence the Applicants point to in the Principal

Applicant's business plan does not meet that bar; it was open and reasonable for the officer to evaluate it and find that it was insufficient in establishing the competitiveness, and therefore the viability, of the Principal Applicant's proposed business to meet the requirements under the *Regulations*.

VI. Conclusion

[25] For the foregoing reasons, this application for judicial review will be dismissed, as will the application in Federal Court File No. IMM-483-22.

[26] The parties raised no question for certification and I agree none arise.

JUDGMENT in IMM-482-23

THIS COURT'S JUDGMENT is that this application is dismissed and no question is certified.

"Russel W. Zinn"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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