Federal Court  Cour fédérale

Date: 20240430

Docket: IMM-2956-23

Citation: 2024 FC 660

Toronto, Ontario, April 30, 2024

PRESENT: Madam Justice Whyte Nowak

BETWEEN:

DEEP NAVINBHAI MARSONIYA

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The applicant, Deep Navinbhai Marsoniya [the Applicant], is a citizen of India who applied for a work permit under the Temporary Foreign Agricultural Worker Program [the Work Permit]. The Officer processing the application refused it as the Officer was not satisfied that the Applicant would leave Canada at the end of the two-year period [the First Decision]. The First Decision was the subject of a judicial review application, which was resolved between the parties.

[2] The Applicant's Work Permit was refused a second time on March 3, 2023 [the Second Decision], again by reason that the Officer was not satisfied that the Applicant would leave Canada at the end of his authorized stay. This is a judicial review of the Second Decision.

[3] I find no reviewable error in the manner in which the Officer appears to have assessed the Applicant's Work Permit application. The Officer analyzed the record and reasonably found the Applicant's supporting documentation to be insufficient thus leading to the conclusion that the Applicant was not a *bona fide* temporary worker. This conclusion was open to the Officer and it is not the role of this Court to reweigh the evidence.

[4] Accordingly, I am dismissing this application for judicial review.

I. The Facts

[5] The Applicant is a 26-year-old citizen of India who has applied for a two-year job as a mushroom picker at Shron Mushroom Farms Ltd. in Sharon, Ontario.

[6] The Applicant submitted the Work Permit under the Temporary Foreign Agricultural Worker Program pursuant to a Labour Market Impact Assessment [LMIA] which was approved on November 3, 2021.

[7] According to the Global Case Management System notes [GCMS] that form part of the reasons for the Second Decision, the LMIA does not list any specific education or training requirements. While it lists "English" under languages, it does not require any degree, certificate

or diploma by way of educational background nor does it require any specific or previous work experience.

[8] However, the LMIA does provide details regarding: (i) the work site environment which is stated to be wet, damp, and odorous; and (ii) the work conditions which are stated to be physically demanding, fast-paced, and involving not only repetitive tasks requiring the need for manual dexterity and hand-eye coordination, but also standing for long periods of time, bending and crouching.

II. The Second Decision

[9] The Officer concluded that he was not satisfied that the Applicant had shown that he would be able to perform the duties and functions of the position. This was based on two elements of the Applicant's Work Permit application: his unknown English language proficiency; and his previous work experience which was in an unrelated field and which failed to list the duties the Applicant had performed.

[10] The Officer stated in the GCMS notes as follows:

> "Based on the documentation submitted, I am not satisfied that the applicant will be able to adequately perform the proposed work given the Insufficient ability in the language of the proposed employment and their evidence of stated experience is insufficient and not satisfactory."

III. Legislative Framework

[11] Pursuant to subsections 11(1) and 20(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*] and paragraph 216(1)(b) of the *Immigration and Refugee Protection Regulations* SOR/2002-227 [*IRPR*], an officer issuing a work permit to a foreign national must be satisfied that a person applying to work in Canada will not overstay the period authorized for their stay.

[12] An officer cannot issue a work permit if there are reasonable grounds to believe that the applicant is unable to perform the work for which the permit is sought (s. 200(3)(a) of *IRPR*).

IV. Issues and Standard of Review

[13] The Applicant raised the following errors which he says warrant this Court's intervention:

1. The Officer erred in the assessment of the English language requirements of the job rendering the Second Decision unreasonable;

2. The Officer erred in finding that the Applicant had provided insufficient documentation in connection with his work history since it was irrelevant to the job of a mushroom picker rendering the Second Decision unreasonable; and

3. The Officer made a veiled credibility finding in assessing the Applicant's work history amounting to a breach of procedural fairness since the Applicant was not given an opportunity to respond.

[14] Issues going to the merits of a decision are reviewable on a standard of reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 23 [*Vavilov*]). In conducting such a review, the Court must assess the reasonableness of the decision based on a consideration of the relevant administrative setting, the record before the decision-maker, and the impact of the decision on those affected by it (*Vavilov* at paras 88-90, 94, 133-135). While this Court's review is deferential, it is nevertheless a robust review (*Vavilov* at paras 12-13).

[15] Issues raising a breach of procedural fairness, are reviewable on a standard of correctness (*Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 43).

[16] Absent the identification of a reviewable error, the Officer is entitled to a high degree of deference (*Vavilov* at para 93).

V. Analysis

Issue 1: The Officer Did Not Misapprehend the English Language Requirements

[17] In support of his Application, the Applicant submitted a certificate showing that he had obtained a mark of 84% in Grade 10 English in March 2012. Contrary to the Applicant's submission that the Officer improperly ignored this evidence, the Officer considered the evidence but reasonably found it to be insufficient as "the scores do not satisfactorily establish the level at which they equate with the CLB [Canadian Language Benchmarks]".

[18] I find that the Officer's conclusion was open to him on the record and there is no reasoned basis in the evidence for the Applicant's suggestion that the information provided "should have been considered sufficient for his job." The job requires English and the Applicant failed to submit sufficient evidence for the Officer to assess what, *if any*, level of proficiency the Applicant's Grade 10 English mark demonstrates.

[19] The Applicant suggested that if the Officer had any doubts about the Applicant's language proficiency, the Officer could have conducted an interview. I am not persuaded by this argument for two reasons. First, it fails to acknowledge the onus on the Applicant to submit both a complete and persuasive application (*Pacheco Silva v Canada (Citizenship and Immigration)*, 2007 FC 733 at para 20 [*Pacheco*]). Second, it fails to account for the high volume, high pressure administrative setting in which the Second Decision was made.

Issue 2: The Officer Did Not Commit a Breach of Procedural Fairness

[20] In support of his Work Permit application, the Applicant submitted two employment letters: one from Metro Auto electronic (for employment between April 2012 and December 2018) and another from Brixton Technical Ceramics (for employment from January 2019 to the present). The Officer noted that both letters failed to list the duties that the Applicant carried out in his roles.

(1) *The Applicant's previous work was not irrelevant*

[21] The Applicant argues that his previous duties were irrelevant as they were in an unrelated field and the LMIA did not state any prior work experience was required.

[22] The Officer was aware that the LMIA did not list the need for any previous work experience, however, he stated he was not satisfied that the Applicant had sufficiently demonstrated his ability to perform the duties and functions required of the job given the demanding conditions listed in the LMIA. The Officer provided the following rationale:

> "While I note that the LMIA requires no specific education or training or experience requirements, however, when a Canadian employer is turning his attention overseas to hire a foreign worker as they have been unable to find a suitable candidate within Canada, it becomes even more pronounced that the prospective employee is able to perform the duties of the position effortlessly and efficiently."

[23] The Officer's note reveals a rational chain of analysis that is justified on the facts and the applicable regulatory scheme by a decision-maker with specialized expertise.

(2) *No duty to provide an opportunity to respond*

[24] The Applicant argues that the Officer made a veiled credibility finding when he stated, "I am not satisfied that the applicant has provided sufficient evidence to establish that he is or was gainfully employed in a full-time job." However, even if I were to characterize the Officer's statement as a credibility finding, I do not consider this to amount to a reviewable error for two reasons.

[25] First, it is not a case where the credibility or genuine nature of information submitted by the Applicant in support of their application constitutes the basis for the officer's concern (*Hassani v Canada (Citizenship and Immigration*), 2006 FC 1283 at para 24). In this case, the Officer's concern was with the sufficiency of the information showing the Applicant's ability to perform the job.

[26] Second, where a credibility concern stems from a failure to meet the requirements for the application as the Officer found here, the officer has no duty to afford the applicant with an opportunity to provide additional information (*Pacheco* at para 20).

VI. Conclusion

[27] Based on the foregoing, the application for judicial review is dismissed. The Officer reasonably and fairly considered that the Applicant failed to provide sufficient information to satisfy him that the Applicant was a genuine applicant for a temporary work visa and would return to India upon completion of a two-year work permit.

[28] The parties did not raise a question for certification and I agree that none arises in this case.

JUDGMENT in IMM-2956-23

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is dismissed.

2. There is no question to certify.

"Allyson Whyte Nowak"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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