

Federal Court



Cour fédérale

**Date: 20240524**

**Docket: IMM-5446-23**

**Citation: 2024 FC 792**

**Vancouver, British Columbia, May 24, 2024**

**PRESENT: Madam Justice St-Louis**

**BETWEEN:**

**HARDAM SINGH**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. Introduction

[1] The Applicant, Mr. Hardam Singh, a citizen of India, seeks judicial review of the decision rendered by a visa officer [the Officer] refusing his application for a temporary work permit. Mr. Singh sought the permit in order to work in Canada as a general farm worker under the occupation number 8431 of the National Occupational Classification [NOC].

[2] As context, in February 2023, Mr. Singh, applied for a work permit and related visitor's visa. In support of his application, Mr. Singh filed the required form where he confirmed having been self employed in farming since 2011 (CTR at p 21), police and medical certificates as well as the following documents related to his prospective employment in Canada:

- i. An employment contract between him and a prospective Canadian employer, signed on January 20, 2023, describing the tasks of the proposed job as "Fertilize, Cultivate, Irrigate, Harvest and purne [sic] crops (berries), Operate and maintain farm machinery. Clean and pack berries, Pick out over ripe and other damaged berries, Follow all the Health and Safety regulations, Clean working area including farm machinery, Report to and follow directions of a farm supervisor." (CTR at p 38);
- ii. A recommendation letter from the prospective Canadian employer, which outlines that Mr. Hardam Singh is an experienced person who has been working at his own farms, and in farming since 2007 (CTR at p 42);
- iii. The Labour Market Impact Assessment dated January 19, 2023 obtained by the prospective Canadian employer for 4 positions of NOC 8431 General farm workers. Under the title pertaining to the job information, it states that there is no formal education and no language requirement (CTR at p 46);
- iv. Personal information in the form of (1) a family income certificate; (2) J-Forms confirming sales of crop at certain dates; (3) statutory declaration from a store called Bholia Kheti stating Mr. Singh worked as Farm Manager and that he bought equipment and merchandises from them and sold them crops; (4) bank balance certificate; (5) bank statements and fixed deposit account statements; and (6) income tax returns for the assessment years of 2022-23, 2019-20 and 2018-19 (CTR at pp 52-76).

[3] On or about April 14, 2023, the Officer refused Mr. Singh's application as he or she was not satisfied that Mr. Singh (1) would be able to adequately perform the work; and (2) would

leave Canada at the end of the period authorized for his stay. In the system, in the Global Case Management System Notes [GCMS notes], the Officer noted the following:

I have reviewed the application.

Based on the documentation submitted, I am not satisfied that the applicant will be able to adequately perform the proposed work given their:

Insufficient experience in the job and duties as per letter of offer and/or LMIA. Applicant claims they are currently doing farming, however no reference letter from their current employer was provided. I note that the applicant has also not provided documents showing whether they own farmland or whether their family owns farmland on which he works on. I have given less weight to sale vouchers in the absence of employer reference letters and farmland documents. I am therefore not satisfied with the information provided that the applicant has clearly demonstrated his experience to complete the duties of the job.

Weighing the factors in this application. I am not satisfied that the applicant will depart Canada at the end of the period authorized for their stay.

For the reasons above, I have refused this application

[4] Before the Court, Mr. Singh asserts that the decision is unreasonable as the Officer (a) made an erroneous finding of fact by completely ignoring the National Occupational Classification [NOC] requirements; (b) made an erroneous finding of fact by failing to consider the evidence; and (c) assessed the application on a higher standard by imposing additional requirements. Mr. Singh also asserts that the Officer breached the rules of procedural fairness by failing to provide him with an opportunity to respond to the concerns.

[5] Mr. Singh has not sworn an affidavit in support of his application for judicial review.

[6] The Respondent, the Attorney General of Canada [AGC] responds that the decision is reasonable and that the rules of procedural fairness have not been breached.

[7] For the reasons that follows, I will dismiss the application for judicial review.

## II. Discussion

### A. *Legislative framework*

[8] Subsection 30(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the Act] provides that “a foreign national may not work or study in Canada unless authorized to do so under this Act.” Subsection 30(1.1) of the Act states that an “officer may, on application, authorize a foreign national to work or study in Canada if the foreign national meets the conditions set out in the regulations.”

[9] Paragraph 200(1)(b) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [the Regulations] states that an applicant must establish that they will leave at the end of their authorized stay.

[10] Paramount to these proceedings, paragraph 200(3)(a) of the Regulations prohibits an officer from issuing a work permit to a foreign national if there are reasonable grounds to believe that the foreign national is unable to perform the work sought.

B. *Standard of review*

[11] The decision of the Officer must be reviewed against the reasonableness standard; none of the circumstances that rebut the reasonableness standard are present in this case (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov] at paras 23, 33, 53). The decision is reasonable if it is justified in light of the facts and law, intelligible, and transparent (*Vavilov* at para 99).

[12] The Applicant bears the onus of demonstrating that the Officer's decision is unreasonable (*Vavilov* at para 100). Reasonableness is a deferential, but robust, standard of review (*Vavilov* at paras 12-13). For the reviewing court to intervene, the challenging party must satisfy the court that "there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency", and that such alleged shortcomings or flaws "must be more than merely superficial or peripheral to the merits of the decision" (*Vavilov* at para 100).

[13] A high level of deference is given to the visa officers' decisions given their specialized expertise in the matter (*Nazari v Canada (Citizenship and Immigration)*, 2024 FC 546 at para 12).

[14] In regards to the breach of procedural fairness allegation, the Court must conduct its own analysis of the process followed by the decision maker and determine whether that process was fair having regard to all the relevant circumstances, including those identified in *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 at paras 21 to 28 (*Canadian*

*Pacific Railway Co v Canada (Attorney General)*, 2018 FCA 69 at para 54; *Elson v Canada (Attorney General)*, 2019 FCA 27 at para 31). The burden is on the applicants to demonstrate that the requirements of procedural fairness were not met.

[15] The Court has stated that visa officers are not required to provide an applicant with the opportunity to respond to concerns stemming from deficiencies in their application documents (*Penez v Canada (Citizenship and Immigration)*, 2017 FC 1001 at paras 35-37).

C. *The Decision has not been shown to be unreasonable*

[16] Mr. Singh raises three issues, which, he asserts, renders the decision unreasonable.

[17] Firstly, Mr. Singh submits that the visa officer has made an erroneous finding of fact by completely ignoring NOC requirements for the specific occupation, in determining what precise level of experience is necessary to perform the work sought. He adds that, to establish the experience for the work sought, the Officer was required to consider the LMIA requirements, working conditions as described in the job offer and NOC requirements. Mr. Singh asserts the Officer failed to consider that there are no specific NOC requirements in regards to the experience or training for the work sought. Also, the job offer and LMIA do not require any previous experience to perform the job duties.

[18] This argument cannot succeed. First, visa officers are required to independently assess and exercise their discretion in determining whether an applicant is able to perform the work sought; they are not bound by the requirements set out by employers, LMIAs, or NOCs (*Singh v*

*Canada (Citizenship and Immigration)*, 2022 FC 266 at para 32; *Gill v Canada (Citizenship and Immigration)*, 2021 FC 934 at para 33; *Dhaliwal v Canada (Citizenship and Immigration)*, 2022 FC 666 at paras 21-22). Second, in any event, there are no specific education or training requirements under NOC 8341. However, a college certificate or specialized courses related to farming, such as farm equipment mechanics, agricultural welding, tree pruning and pesticide application, are available, and basic farm knowledge, usually obtained from working on a family farm, may be required.

[19] Secondly, Mr. Singh submits that the visa officer has made an erroneous finding of fact by failing to consider evidence that he asserts strongly suggest he is actively involved in farming activities and has the farming knowledge and experience to perform the job duties.

[20] This argument cannot succeed. First, decision maker are presumed to have considered the evidence and need not refer to every piece of evidence (*Hassani v Canada (Citizenship and Immigration)*, 2023 FC 734 [*Hassani*] at para 26 citing *Florea v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 598 (FCA) (QL) at para 1 and *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, 1998 CanLII 8667 (FC), [1998] FCJ No 1425 (QL) at paras 16–17). It is not the role of the Court, on judicial review, to reweigh the evidence (*Hassani* at para 16; *Vavilov* at para 125); it was open for the Officer to give less weight to sale vouchers in the absence of employer reference letters and farmland documents showing whether they own farmland or whether their family owns farmland on which he works. This is particularly acute given that, as the Respondent established, the applicable Checklist requires the applicant to provide proof of work experience, such as letters from current and

previous employers outlining the duration and specific nature of the employment and exact duties on the job. If Mr. Singh is self employed, as stated in his application form, or works on his own farms, as stated in the prospective employer's letter, it is reasonable to expect documents confirming this fact.

[21] Thirdly, Mr. Singh submits that he has provided sufficient evidence to prove his farming experience to perform the job duties, but that the Officer assessed his application on a higher standard by imposing additional requirements. Mr. Singh submits this is clear from the Officer's comment that: "I have given less weight to sale vouchers in the absence of employer reference letters and farmland documents". Mr. Singh asserts this comment means that the job requirement standard against which the Officer assessed his application for a work permit does not originate from the LMIA, but from the Officer's opinion that Mr. Singh's ability can only be established from the farmland documents and employer reference letter.

[22] As stated above, Mr. Singh has not provided any evidence to establish his experience and knowledge, even basic, as a farm worker. Furthermore, again, the Officer is not bound by the LMIA, the NOC or the employer's assessment. The onus was on Mr. Singh, who sought a work permit, to satisfy the Officer that he met the applicable criteria. In this case, and as confirmed during the hearing of this application, none of the evidence adduced actually establishes Mr. Singh's abilities and experience as a farm worker, either as a farm owner or as an employee at a farm. It was thus open to the Officer to conclude Mr. Singh failed to discharge his duty to demonstrate that he could perform the work sought.



[23] The Officer understood the general factual matrix of the matter and provided short, but nonetheless adequate reasons that established a basis for understanding how they interpreted the evidence. Per paragraph 200(3)(a) of the Regulations, in light of the legislative framework, it was reasonable for the Officer to conclude there were reasonable grounds to believe that the foreign national was unable to perform the work sought.

D. *No breach of procedural fairness established*

[24] Officers have no obligation to share concerns with applicants when the concerns arise from an applicant's own evidence (*Asagba v Canada (Citizenship and Immigration)*, 2022 FC 1528 at para 30; *Hamid v Canada (Citizenship and Immigration)*, 2022 FC 886 at para 18 citing *Patel v Canada (Minister of Citizenship and Immigration)*, 2020 FC 517 at paras 11-14). Mr. Singh has not establish a breach of procedural fairness.

III. Conclusion

[25] The application for judicial review will be dismissed.

**JUDGMENT in IMM-5446-23**

**THIS COURT'S JUDGMENT is that:**

1. The Application for judicial review is dismissed.
2. No question is certified.
3. No costs are awarded.

**"Martine St-Louis"**

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-5446-23

**STYLE OF CAUSE:** HARDAM SINGH v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** VANCOUVER, BRITISH COLUMBIA

**DATE OF HEARING:** MAY 14, 2024

**JUDGMENT AND REASONS:** ST-LOUIS J.

**DATED:** MAY 24, 2024

**APPEARANCES:**

Mayank Khosla FOR THE APPLICANT

Andrew Scarth FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Khosla Law Corporation FOR THE APPLICANT  
Surrey, British Columbia

The Attorney General of Canada FOR THE RESPONDENT  
Vancouver, British Columbia