

Federal Court



Cour fédérale

Date: 20240827

**Dockets: IMM-5840-23
IMM-5841-23**

Citation: 2024 FC 1329

Ottawa, Ontario, August 27, 2024

PRESENT: The Honourable Mr. Justice Pamel

Docket: IMM-5840-23

BETWEEN:

THI THUY TRANG NGUYEN

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

Docket: IMM-5841-23

AND BETWEEN:

NGUYEN LINH VU LE

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Background

[1] Both Nguyen Linh Vu Le, the applicant in IMM-5841-23, and his spouse Thi Thuy Trang Nguyen, the applicant in IMM-5840-23, are citizens of Vietnam. In August 2022, Mr. Le applied for a work permit under the Temporary Foreign Worker Program to pursue a job as a food service supervisor in Edmonton, Alberta. Ms. Nguyen applied for an accompanying work permit.

[2] As evidence of his relevant work experience, Mr. Le claimed that he worked as a manager at the White House Hotel in Ho Chi Minh City from May 2009 to October 2011; mention of this was not made directly within the Employment section of the work permit application form itself [IMM 1295], but rather on an additional page entitled “Vu (Mathew) Employment History Continuation” [additional employment page]. In fact, the IMM 1295 states clearly at the very outset that if an applicant requires more space for any section of the application form, additional pages may be submitted. In the Employment section itself, Mr. Le made mention of three other jobs, which he held between December 2012 and the date of the application in 2022, all within the design space, being the area of his university studies.

[3] In addition, Mr. Le included with his application an undated letter of recommendation printed on “The White House Hotel” letterhead [letter of recommendation] and signed by the Director of the hotel, Mr. Thanh Xuan Le [Director]. The letter of recommendation included the address of the hotel as well as a telephone number. In signing off, the Director stated: “Whenever you need more information, don’t hesitate to get in touch with us.” What the letter of

recommendation did not include was a date on which the letter was prepared and the period during which Mr. Le purportedly worked there as a manager of the hotel.

[4] Mr. Le also included, in support of his application, amongst other things, the Statement of Academic Completion from RMIT University [transcript] showing that he attended the university between 2006 and 2011, completed his academic studies and obtained a Bachelor of Design (Multimedia Systems).

[5] The Global Case Management System [GCMS] notes relating to Mr. Le's application include the following extracts:

[Nov 28, 2022: 13hrs32 – Ho Chi Minh] Employment confirmation to be verified: The White House Hotel. Applicant's purported employment does not fit within their own declared work experience timeline. Absence of any specific time detail in the letter itself.

[Nov 30, 2022: 09hrs25 – Ho Chi Minh] Verification of employment with White House Hotel in D7. Note: This employment was not mentioned in imm1295 and no employment duration on ltr. Only one land line # associated to this hotel, from both what provided by PA and open source. Number is not active anymore. Program assistant searched the company biz code of the hotel on gov. portal but no hit; on other biz yellow book portals, hits suggesting company has stop working and not yet paid tax. Result: Review required

[Text as per the GCMS notes; emphasis added.]

[6] The parties confirmed before me that the reference to “imm 1295” in the GCMS notes was to the work permit application form that Mr. Le completed, and that the reference to “ltr” was to the letter of recommendation. In addition, the portions of the GCMS notes cited above were not disclosed to Mr. Le until he obtained a copy of the certified tribunal record as part of

the present application for judicial review; the cited excerpts from the GCMS notes were marked: “DO NOT DISCLOSE [...] contents [...] exempt under section 16(1)(c) of the *Access to Information Act* as disclosure could reasonably be expected to be injurious to the enforcement of any law of Canada [...] or the conduct of lawful investigation.” Although simply highlighted by Mr. Le, no issue was made of this in support of his present application for judicial review.

[7] On December 22, 2022, Mr. Le received a procedural fairness letter [PFL], which stated as follows:

Specifically, I have concerns that you have misrepresented your work experience provided a false employment history. The information you provided about your hotel experience cannot be verified and contradicts information you have provided on your application.

[Text as per the GCMS notes; emphasis added.]

[8] Mr. Le responded to the PFL on December 29, 2022 with written submissions as well as accompanying affidavits from his aunt and his uncle, the Director. Both affidavits attached their respective letters detailing their family relationship with Mr. Le, that Mr. Le worked at the White House Hotel from 2009 to 2011, the nature of his work experience managing the hotel, restaurant and coffee shop, and the fact that the hotel was owned by Mr. Le’s aunt who sold it in 2017. Although no corroborating documentation was provided confirming the sale of the hotel, the response to the PFL included the corporate charter documents confirming ownership of the hotel at the time by Mr. Le’s aunt. In his accompanying letter, Mr. Le explained that while he was a student at RMIT University in 2009, his aunt and uncle began operating the hotel as a family business, and hired him to manage the hotel and restaurant. Mr. Le explained that he worked full-time at the hotel while also being a full-time student for the last two years of his studies, and

that after graduation in 2011, he stopped working at the hotel to pursue his career; he obtained employment as a consultant and Web Design Project supervisor.

[9] The GCMS notes following Mr. Le's response to the PFL included the following extract:

[Mar 13, 2023: 11hrs07 – Ho Chi Minh] I have reviewed the file and supporting documents. Applicant was sent a PFL as claimed work experience in hotel industry could not be verified. Response states hotel where applicant gained required experience was owned by family members who have since sold the business. I note the affidavits provided by said family members. However, I give these little weight as they are family members and the timelines provided by the applicant regarding working experience and education are not consistent. On balance, I am not satisfied that the applicant has actually performed the work and am not satisfied that they have sufficient experience as required by the LMIA. Application is refused.

[Text as per the GCMS notes; emphasis added.]

[10] On March 13, 2023, Mr. Le's application for a work permit was refused [Decision]; the following grounds were stated as the reason thereof:

You were not able to demonstrate that you will be able to adequately perform the work you seek.

[11] On May 5, 2023, Mr. Le filed the present application for judicial review of the Decision; Ms. Nguyen's application was also refused, solely because the application of Mr. Le, being the primary work permit application, was refused. The material in both records are practically identical, as are the submissions of the parties. Consequently, both matters were heard by me together, and my decision will apply to both applications.

II. Issues and standard of review

[12] Mr. Le asserts that procedural fairness was not respected, as the PFL did not identify the issues of the visa officer's concerns with sufficient clarity to provide Mr. Le with a meaningful opportunity to respond. Questions of procedural fairness warrant a standard of review akin to that of correctness; the reviewing court must conduct its own analysis and determine whether the process the visa officer followed satisfied the level of fairness required in all of the circumstances. No deference is owed to the visa officer in making such an assessment, and in the end, the Court must simply determine whether the process was fair; did the applicant know the case to meet and did he or she have a full and fair chance to respond? (*Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at paras 33–56; *Onyemelukwe v Canada (Immigration, Refugees and Citizenship)*, 2021 FC 1009 at para 20; *Likhi v Canada (Citizenship and Immigration)*, 2020 FC 171 at para 19).

[13] Mr. Le also claims that the Decision was not reasonable, as it was neither transparent, intelligible nor justified; the standard of review applicable to this issue is one of reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 (CanLII), [2019] 4 SCR 653).

III. Assessment by the Court

[14] I need not address in much detail Mr. Le's argument regarding the reasonableness of the Decision, as I agree with him that there has been a breach of procedural fairness in the manner in which the concerns of the visa officer were expressed in the PFL.

[15] *In Kaur v Canada (Citizenship and Immigration)*, 2020 FC 809 [Kaur], Justice Norris stated at paragraph 42:

[42] It follows from the principles cited above that, when a procedural fairness letter has been sent, a functional approach should be taken to assessing its adequacy. The purpose of a procedural fairness letter “is to provide enough information to an applicant that a meaningful answer can be supplied” (*Ntasi* at para 6). Thus, the question is: Does the letter inform the affected party of the decision maker’s concerns? To serve this purpose, the letter must state more than general concerns. It must state the decision maker’s concerns with sufficient clarity and particularity so that the affected party has a meaningful opportunity to address them. See *AB v Canada (Citizenship and Immigration)*, 2013 FC 134 at paras 53-54, and *Toki* at para 25.

[16] Here, the PFL expressed concerns regarding the possibility of misrepresentation in reference to Mr. Le’s employment history; the reasons were two-fold: (1) the information provided by Mr. Le about his hotel experience could not be verified and (2) it contradicts information he had provided on his application. The problem, as I see it, is less about the first reason and more about the second.

[17] The first reason regarding the inability of the visa officer to verify Mr. Le’s employment history is understandable: the recommendation letter was neither dated nor made reference to the period of employment of Mr. Le. It was prepared on The White House letterhead, included an address and telephone number, specifically invited the visa officer to contact the hotel for further information, and was signed by the Director. On its face, the letter, intentionally or not, gave the impression that the hotel was operating as a going concern, and that Mr. Le’s employment was either current or recent. Thus, I certainly understand the visa officer’s concern when he or she discovered the telephone number to be disconnected and no mention of the hotel in any on-line

search. The hotel had been sold in 2017, as was discovered only with Mr. Le's response to the PFL, which may very well explain why Mr. Le's claim of employment at the hotel "could not be verified".

[18] Rather, the problem with the PFL relates more to the second reason for the visa officer's expressed concern, being the alleged contradiction in Mr. Le's application. No details are given as to the nature of the contradiction, and Mr. Le argues that the purported "issue" was not expressed with sufficient clarity and particularity for him to have a meaningful opportunity to address it (*Kaur* at para 42; *Pham v Canada (Citizenship and Immigration)*, 2022 FC 793 at para 32); although the "what" was known – being the concern regarding a possible contradiction – the "why" was not, and as such, Mr. Le had to guess at what that contradiction could be (*Singh v Canada (Citizenship and Immigration)*, 2023 FC 904 at para 25). I agree with Mr. Le. I too was left scratching my head trying to understand where the contradiction resided. With the assistance of both counsel, we were able to identify two potential contradictions in Mr. Le's application material.

[19] First, the possible contradiction between the impression that the recommendation letter gave as to the timing of Mr. Le's employment at the hotel and the fact that no mention of it was made in the IMM 1295. Keep in mind that the visa officer stated in the GCMS notes that Mr. Le's purported employment at the hotel was not mentioned on the IMM 1295. Consequently, a perceived inconsistency may have arisen when contrasting the Employment section of IMM 1295 with the recommendation letter. Why the visa officer seemingly missed the additional employment page, which clearly set out that Mr. Le's employment history with the hotel was

between 2009 to 2011, is unclear; however, in his response to the PFL, Mr. Le did note that the Employment section of IMM 1295 only asked for his employment history going back 10 years, which in his case was to 2012. In any event, his response to the PFL also, again, made clear that his employment at the hotel was between 2009 and 2011; this should have corrected the concern over any possible perceived contradiction between the recommendation letter and the Employment section of IMM 1295, assuming that was the contradiction the visa officer was making reference to.

[20] Second, Mr. Le's transcript states that he attended classes at RMIT University from 2006 through to 2011, although it would seem that he took a lighter course load from 2009 to 2011. To the extent the transcript reflected full-time studies during 2009 and 2011, I could reasonably see how the visa officer could consider that the transcript may contradict Mr. Le's claim to employment at the hotel between 2009 and 2011. As stated earlier, in his response to the PFL, Mr. Le explained that while he was a full-time student at RMIT University in 2009, his aunt and uncle began operating the hotel as a family business, and hired him to manage the hotel and restaurant. Mr. Le explained that he worked full-time at the hotel while also tending to his studies. This would not be the first time university students take on employment during their studies, with the degree to which they focused on both their employment and their studies having much to do with their financial needs at the time.

[21] What is clear is that Mr. Le seemed to address in his response to the PFL what, he thought, may have been the contradictions to which the visa officer was referring. The fact that

he may have guessed right does not save an otherwise unclear PFL. No other seeming contradiction could be identified by the parties before me, nor could I.

[22] However, and setting aside the issue of giving the affidavits from Mr. Le's aunt and uncle little weight simply because they are from family members, the visa officer again asserted that "the timelines provided by the applicant regarding working experience and education are not consistent." If the inconsistency that was of concern to the visa officer related to one of the issues raised above, then the visa officer's failure to engage – even minimally – with Mr. Le's submission renders the Decision unreasonable. If the inconsistency did not relate to one of the two issues raised above, and addressed by Mr. Le, then the PFL letter is clearly deficient in allowing Mr. Le reasonably to address the issue of concern. If the inconsistency to which GCMS notes refer following Mr. Le's response to the PFL is something different than the inconsistency referred to prior to the PFL being issued, then the visa officer has identified a new inconsistency without providing Mr. Le the opportunity to address it (*Pham* at para 32)

[23] Whichever way you slice it, the Decision cannot stand. I find that the PFL did not provide Mr. Le with the necessary clarity to understand the case he had to meet; he was, therefore, not afforded procedural fairness in the circumstances. Given that the PFL played a significant role in the ultimate determination by the visa officer, the Decision must be set aside.

JUDGMENT in IMM-5840-23 and IMM-5841-23

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is granted.
2. The decision dated March 13, 2023, is set aside and both matters are returned for redetermination by a different visa officer.
3. There is no question for certification.

"Peter G. Pamel"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-5840-21

STYLE OF CAUSE: THI THUY TRANG NGUYEN v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

DOCKET: IMM-5841-23

STYLE OF CAUSE NGUYEN LINH VU LE v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: OTTAWA, ONTARIO

DATE OF HEARING: AUGUST 21, 2024

JUDGMENT AND REASONS: PAMEL J.

DATED: AUGUST 27, 2024

APPEARANCES:

Samuel Plett FOR THE APPLICANTS

Andrew Newman FOR THE RESPONDENT

SOLICITORS OF RECORD:

Desloges Law Group FOR THE APPLICANTS
Professional Corporation
Toronto, Ontario

Attorney General of Canada FOR THE RESPONDENT
Ottawa, Ontario