

Federal Court



Cour fédérale

**Date: 20240829**

**Docket: IMM-11271-23**

**Citation: 2024 FC 1344**

**Toronto, Ontario, August 29, 2024**

**PRESENT: Mr. Justice Diner**

**BETWEEN:**

**XIAOMIN WU**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] Ms. Wu seeks judicial review of a decision made by an officer [Officer] refusing her work permit application under the International Mobility Program on the basis that the Officer was not satisfied that she met the English language requirements for the position sought, especially her reading skills [Decision]. For the reasons below, this application is granted.

[2] Ms. Wu is a citizen of China. She received a nomination from the Saskatchewan Immigrant Nominee Program [SINP] and a SINP Work Permit Support Letter based on an

employment offer from the Canadian employer, MMK Catering Ltd (operating as The Rooftop Bar and Grill) in Regina, as a food services supervisor.

[3] Ms. Wu applied for a work permit outside of Canada on two prior occasions, and both were denied, on the basis of different rationales. She applied a third time in 2023. This time, her application was refused because according to the Officer's Decision, she did not meet the English language requirements, and specifically, the reading skills required for the position.

[4] Ms. Wu brings now this judicial review in respect of that 2023 Decision, which she claims was unreasonable and unfair (see *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] and *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 respectively). The Global Case Management Systems [GCMS] notes, which form part of the Decision, state the following:

Noted previous refusals, The IELTS submitted: listening 5.5 reading 4.5 writing 5.5 speaking 6.0 overall 5.5 reading 4.5 Test takers at Band 4.0 typically have a limited ability to deal with straightforward factual and opinion-based texts. They are able to understand vocabulary, both within and across sentences, on a range of general topics. At times, they may use appropriate strategies, including reading at speed and reading carefully. They can generally locate key information and understand main ideas. They can often understand simply expressed opinions and straightforward arguments. Test takers at Band 4.5 demonstrate these reading skills more strongly. PA seeks to work as food service supervisor, English reading skill is essential to read through all safety requirements manual etc. I am not satisfied that the applicant has the English language proficiency required for the position sought.

[5] Ms. Wu claims that because (a) she provided extensive evidence to the Respondent to establish her English language skills; (b) the Canadian employer was satisfied with those skills;

(c) she met the minimum requirement to qualify for SINP; and in any event, (d) her position does not require an advanced level of English, the Decision was consequently unreasonable.

[6] In my view, it was unreasonable for the Officer to conclude, in light of the evidentiary record, that Ms. Wu's English reading skills were not up to the level required for her prospective employment in Canada. The facts here are simple: the SINP minimal requirement for a nomination in the International Skilled Worker program is a score of CLB 4, which is equivalent to a 4.0 overall band on the International English Language Testing System [IELTS]. Ms. Wu scored an overall band of 5.5 (5.5 in Listening, 4.5 in Reading, 5.5 in Writing, and 6.0 in Speaking), therefore exceeding the minimum requirement.

[7] I agree with Ms. Wu that the Officer's reasons are inadequate in light of the objective evidence of her language skills, and particularly the IELTS results she provided to the visa office. The minimum requirement is an overall band of 4.0, yet she had scored an overall band of 5.5. The Officer's reasons consist of an unclear and mistaken description of the English reading skills of a test taker at band 4.0 in the reading portion, since she did not score 4.0 in any component of her IELTS test. As noted above, the scores in each of the IELTS components exceeded 4.0, including her overall score (being 5.5).

[8] The Officer, towards the end of the Decision, adds that an overall band of 4.5 "demonstrate[s] these reading skills more strongly." The Officer then underlines the importance of English reading skills for a position as a food service supervisor due to safety concerns, and states that Ms. Wu's scores are not high enough to assume these responsibilities. Through a plain

reading of the Decision, it is unclear to this Court how the Officer reached a conclusion that Ms. Wu does not have the required English reading skills for the position she has been offered. A Decision that is not justified, transparent or intelligible fails the test of reasonability (*Vavilov* at para 99).

[9] Finally, Ms. Wu's application and employment offer had both already been assessed and approved by the SINP. While the SINP nomination is not determinative, it creates a presumption that the applicant meets both the employment and provincial requirements, and the Officer must adequately explain why they reach a different finding, and more specifically why they are raising the minimum language requirement (*Begum v Canada (Citizenship and Immigration)*, 2020 FC 162 at paras 26–27; *Bano v Canada (Citizenship and Immigration)*, 2020 FC 568 at paras 21–23). Such explanation is absent from the Decision.

[10] As the unreasonableness of the Decision is both clear and determinative there is no need to address the procedural fairness argument.

**JUDGMENT in file IMM-11271-23**

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

1. The judicial review is granted. The matter is remitted to a different officer for redetermination.
2. There is no question to certify.
3. No costs will issue.

"Alan S. Diner"  
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Judge

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

**DOCKET:** IMM-11271-23

**STYLE OF CAUSE:** XIAOMIN WU v MCI

**PLACE OF HEARING:** HELD BY WAY OF VIDEOCONFERENCE

**DATE OF HEARING:** AUGUST 19, 2024

**JUDGMENT AND REASONS:** DINER J.

**DATED:** AUGUST 29, 2024

**APPEARANCES:**

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