

Federal Court



Cour fédérale

Date: 20240909

Docket: IMM-12289-23

Citation: 2024 FC 1402

Ottawa, Ontario, September 9, 2024

PRESENT: The Honourable Mr. Justice Pamel

BETWEEN:

SASAN KHAYATI

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Background

[1] The applicant, Mr. Sasan Khayati, is a 36-year-old citizen of Iran and holds a Master's degree in Agricultural Engineering, which he earned in March 2014. About seven years later, in April 2021, Mr. Khayati applied for a temporary work permit to work as a painting supervisor for Metro Painting Ltd in Surrey, British Columbia; his application stated that he would be accompanied by his spouse, a legal consultant in Tehran.

[2] In support of his application, Mr. Khayati included a reference letter and an employment verification letter from Mr. Rahman Khani, the Director General of Khani Building Painting Company in Tehran. In addition to mentioning his good character and work ethic, Mr. Khani confirms, amongst other things, that Mr. Khayati worked full-time for the company as a painter's assistant from November 2016 to August 2017, and thereafter as a professional painter and "foreman" on company painting projects, current to the date of Mr. Khayati's application to come to Canada. The reference letter and employment verification letter included an address and website for the company, and ended with Mr. Khani inviting anyone interested to contact him at the telephone number provided.

[3] The matter came up for review. It is not clear whether the visa officer in Abu Dhabi actually took Mr. Khani up on his invitation to call him; however, what we do know is that the visa officer actually looked up the company and somehow came into contact with someone claiming to be the owner of that company. The extract from the Global Case Management System [GCMS] notes, entered on March 29, 2022, states as follows:

Verification for employment letter of PA from Khani Building Painting Company done; ADVERSE.

Open source research done in order to find the company's information and contact numbers.

The website of the company doesn't work. However, available contact numbers were found.

Phone call was made and talked to the owner of the company. He does not know the PA and did not confirmed [sic] the letter.

[Emphasis added.]

[4] What telephone number was used by the visa officer and to whom he or she spoke are not clear, however, on October 27, 2022, Mr. Khayati received a procedural fairness letter [PFL] from the visa officer indicating:

I have concerns that you have not fulfilled the requirement put upon you by subsection 16(1) of the IRPA. Specifically, I have concerns that the Employment Record(s) that you have provided in support of your application is/are fraudulent.

Putting aside for now the adequacy of the PFL, I note that the PFL advised Mr. Khayati of the serious consequences of being found to have engaged in misrepresentation, and provided him with an opportunity to respond.

[5] On November 24, 2022, Mr. Khayati responded to the PFL in the manner in which he thought addressed the concerns expressed by the visa officer, by providing a series of documents: a cover letter, a letter from Metro Painting Ltd supporting Mr. Khayati's application, further excerpts of his employment contract with Khani Building Painting Company in Tehran, an excerpt from the ledger of the Iranian Social Security Organization record identifying his employer as Khani Building Painting Company since at least 2018, two further letters from Mr. Khani, again confirming Mr. Khayati's employment as well as Mr. Khayati's responsibilities during his employment, confirmation of insurance premiums paid through the Social Security Insurance registry, further payslips confirming payment of Mr. Khayati's salary by Khani Building Paintings Company through to August 2022, separate confirmation of Mr. Khayati's Social Security Insurance number, and additional contracts obtained by Mr. Khayati for painting projects.

[6] The GCMS notes entered on March 15, 2023, following Mr. Khayati's response to the PFL, state:

The applicant has responded to the PFL by providing a statement and additional supporting documents related to their employment. Verification of the initial employment letter from **Khalid Building Painting Company** was done, and the document was confirmed fraudulent by the company. The applicant has responded, but my concerns are not alleviated.

I have reasonable grounds to believe that the letter of employment initially submitted in support of the application is fraudulent. The misrepresentation of this material fact could have induced errors in the administration of the Act because a visa/work permit could have been issued while the subject not having relevant employment, to be eligible for LMIA exempt work permit. As a result, I have sent this file for review to the TR unit manager against the applicant for misrepresentation pursuant to A40 as per IRPA.

[Emphasis added.]

[7] Indeed, the matter was sent for review, and the GCMS notes entered on August 2, 2023 state:

The applicant's PFL response indicates that the information of concern is genuine and true. This is contrary to information from a **reputable source** analyzing the information and who determined it to be fraudulent. I give more weight to the latter analysis because of the reliable verification and analysis this source has historically provided. As a result, I am not satisfied by the applicant's explanation.

After reviewing the information on file as well as all the applicant's submissions, I'm satisfied that in the course of this application the applicant has misrepresented or withheld [*sic*] material facts related to a relevant matter that could have induced an error in the administration of IRPA. As a result, I am satisfied they are inadmissible to Canada under A40.

I am not satisfied that the applicant meets the legislative requirements to be issued a work permit. Application refused.

[Emphasis added.]

[8] The reference to the “reputable source” is somewhat cryptic – possibly referring to the visa officer who undertook the verification telephone call; however, it is true that nowhere in his response to the PFL did Mr. Khayati specifically address the issue which led to the PFL, being why the supposed owner of Khani Building Painting Company – presumably Mr. Khani – had indicated to the visa officer that he did not know Mr. Khayati and that he, Mr. Khayati, had never worked for Khani Building Painting Company. Mr. Khayati argues that the visa officer simply made a mistake and called the wrong person who, understandably, did not know Mr. Khayati.

[9] On August 2, 2023, Mr. Khayati’s application was refused [refusal decision]; amongst other things, the refusal decision stated:

You have been found inadmissible to Canada in accordance with paragraph 40(1)(a) of the Immigration and Refugee Protection Act (IRPA) for directly or indirectly misrepresenting or withholding material facts relating to a relevant matter that induces or could induce an error in the administration of the IRPA, In accordance with paragraph A40(2)(a), you will remain inadmissible to Canada for a period of five years from the date of this letter or from the date a previous removal order was enforced.

[10] On September 29, 2023, Mr. Khayati filed the underlying application for judicial review, seeking to set aside the refusal decision. In addition, and in support of his application, Mr. Khayati is now seeking to introduce new evidence, *to wit*, a sworn statement from Mr. Khani dated November 20, 2023 [November 2023 statement] stating that he never received a telephone call from a visa officer regarding Mr. Khayati, reiterating the employment history and experience of Mr. Khayati, and confirming the issuance of his previous reference letter and employment

verification letter. The November 2023 statement is accompanied by Mr. Khani's Iranian national identification card as well as confirmation that the mobile telephone number that Mr. Khani had included on the reference letter does in fact belong to him.

[11] Mr. Khayati states that he had not seen the GCMS notes prior to filing his underlying application for judicial review, and could not have known, simply with the receipt of what he claimed was a vague PFL, that the source of the concern of the visa officer was that he or she had supposedly spoken with someone who the visa officer took to be the owner of Khani Building Painting Company, who denied any knowledge of Mr. Khayati. He claims that it was only upon seeing the GCMS notes that Mr. Khayati was able to properly understand the visa officer's concerns, thus allowing him to address them now with the introduction of the November 2023 statement made by Mr. Khani.

II. Issues and standard of review

[12] Mr. Khayati asserts a breach of procedural fairness, claiming that the PFL was not adequate in identifying the visa officer's concern with sufficient clarity to provide Mr. Khayati with a meaningful opportunity to respond. Mr. Khani also seeks leave to introduce the November 2023 statement, Mr. Khani's Iranian national identification card as well as confirmation that the mobile number that Mr. Khani had indicated on the reference letter filed as part of his initial application does in fact belong to him. Finally, Mr. Khayati argues that the refusal decision itself is not reasonable.

[13] Given my determination regarding the reasonableness of the refusal decision, I need not address the other two issues.

[14] The standard of review of a visa officer's decision to refuse the issuance of a work permit is one of reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16-17 [*Vavilov*]); this Court must determine whether the decision “bears the hallmarks of reasonableness — justification, transparency and intelligibility — and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision” (*Vavilov* at para 99). In addition, a visa officer's assessment for a work permit should be given a high degree of deference as it requires a balancing of many factors involving questions of fact relating to the visa officer's recognized expertise (*Ekpenyong v Canada (Immigration, Refugees and Citizenship)*, 2019 FC 1245 at para 12).

III. Assessment by the Court

[15] The Minister argues that the situation in this case is analogous, somewhat, to the one in *Bhamra v Canada (Citizenship and Immigration)*, 2014 FC 239 [*Bhamra*]. I agree; as is the case here, in *Bhamra*, a PFL was issued to the applicant because during a verification telephone call made by the visa officer to the applicant's employer, the employer denied that anyone having the applicant's name ever worked at the company. Unlike the present case, however, the PFL in *Bhamra* specifically mentioned the verification telephone call being the source of the visa officer's concern over the legitimacy of the applicant's employment records. Thus, the applicant in *Bhamra*, in response to the PFL, submitted a sworn statement from his employer – much like what Mr. Khayati is seeking to do here with the November 2023 statement – stating that he, the

employer, had never received a verification telephone call from a visa officer regarding the applicant's employment. In any event, the adequacy of the PFL was not in issue in *Bhamra*; Mr. Khayati argues that is because the applicant in *Bhamra* was not left guessing – as was Mr. Khayati in this case – as to the core issue leading to the concern over the legitimacy of his employment.

[16] In the end, and similarly to the situation before me, the visa officer in *Bhamra* weighed the evidence and nonetheless preferred the initial assessment that the employment records were fraudulent to the contradictory statement of the employer filed as part of the response to the PFL. The visa officer in *Bhamra* refused the visa, and this Court did not find such an assessment to be unreasonable.

[17] I should mention, however, that unlike the situation in this case, the GCMS notes in *Bhamra* allowed for such a balancing of the evidence to take place; those notes state several reasons for this preference:

- a) The verification phone call was made to the same phone number listed on the Company's letterhead;
- b) The person who conducted the verification phone call confirmed with the responding party at the beginning of that call that they were [the named employer];
- c) There was no reason or incentive for the responding party to identify himself as [the named employer], if he in fact was not;
- d) The responding party denied on several occasions during the call that he knew the Applicant, or that the Applicant had worked for him;

- e) The responding party confirmed twice that the company only makes doors and door frames [as opposed to the area of work identified by the applicant];
- f) The responding party named his three employees and the Applicant was not one of them. Two of those employees were also mentioned as employees in the written statement provided in response to the CIC's fairness letter; and
- g) The responding party was only told at the end of the call that he was talking to the Canadian High Commission.

(*Bhamra* at para 31)

None of those safeguards appear in the GCMS notes in this case, safeguards which could reasonably militate in favour of a decision by the visa officer to prefer the initial assessment to the subsequent contradictory statement from the employer.

[18] That is not to say that had Mr. Khayati been provided with a PFL similar in detail to the one in *Bhamra*, identifying the source of the visa officer's concern, thus presumably allowing him to include the November 2023 statement of Mr. Khani in his response, that the final decision of the visa officer in this case would have been any different. However, I think one can safely say that the November 2023 statement would have been in the record for the visa officer to consider, and therefore necessarily address, prior to issuing his or her decision; I also do not discount the possibility of a second PFL being issued at that juncture.

[19] I also note that in *Bhamra*, Justice Russell mentioned that in response to the PFL in that case, the applicant possibly should have submitted documentation to corroborate his position at the company, something he did not do. However, that is exactly what Mr. Khayati did do, save that Mr. Khayati was unaware that the cause of concern regarding the legitimacy of his employment was the verification telephone call that was made. That of course is an issue that

goes to the adequacy of the PFL, but I mention it only to say that the elements of the GCMS notes in *Bhamra* which militated in favour of determining that the visa officer's decision in that case was not unreasonable do not exist in the case of Mr. Khayati.

[20] There is little doubt that visa officers are often grappling with a high volume of visa applications and as such, it is not incumbent upon them to provide a detailed analysis as part of their decisions; the sufficiency of their reasons is circumscribed by their operational realities and their duty is only to provide minimal reasons that are sufficient to understand their reasoning (*Singh v Canada (Citizenship and Immigration)*, 2023 FC 497 at para 7; *Sharafeddin v Canada (Citizenship and Immigration)*, 2022 FC 1269 at para 26). I also appreciate that from the visa officer's perspective, Mr. Khayati, in his response to the PFL, simply failed to deal with the crux of his or her concern, being the fact that a person who the visa officer understood to be the owner of Khani Building Painting Company indicated that he did not know Mr. Khayati; again, the adequacy of the PFL may well explain why.

[21] In any event, what is troubling is that the response provided by Mr. Khayati to the PFL included two further letters from Mr. Khani, again confirming Mr. Khayati's employment as well as Mr. Khayati's responsibilities during his employment; should this not have raised a red flag with the visa officer, especially given that, from the visa officer's perspective, Mr. Khani had supposedly made clear during the verification telephone call that he did not know Mr. Khayati? If the initial recommendation letter from Mr. Khani was indeed a misrepresentation – something Mr. Khayati would likely have known as the presumed author of the fraud –, would he not have tried to explain away any discrepancy? However, Mr. Khayati did not. Rather, he doubled down

and provided yet another letter from Mr. Khani reiterating what was said in the initial reference letter. Now that's chutzpah!

[22] Putting aside for the moment this Kafkaesque reference in the GCMS notes to the "reputable source" whose investigation was preferred to Mr. Khayati's response to the PFL, I find that the failure of the visa officer under the circumstances to engage with the fact that the man, who supposedly confirmed to him or her that he did not know Mr. Khayati, was subsequently filing further letters in support of Mr. Khayati's application, compels me to find the refusal decision unreasonable. There is no engagement with the further employment records, in particular the government issued Social Security documentation that Mr. Khayati provided in response to the PFL. I am not saying that the visa officer had to accept them, but at least should have said why he or she was not. This is so because a finding of misrepresentation is a serious matter that is to be supported by clear and convincing evidence (*Ogunpaimo v Canada (Citizenship and Immigration)*, 2024 FC 1120 at para 7).

[23] I accept that the visa officer's decision-making process in this case is similar to that in *Bhamra*, where the visa officer weighed the evidence and preferred the initial assessment over the subsequent response to the PFL; I can certainly see how the detailed GCMS notes in *Bhamra* relating to the verification telephone call would support such a determination. Here, however, the details of the exchange with the "owner" of the "company" are simply not there. There is just a leap of faith made during the weighing process which culminated in the visa officer simply stating:

the initial review after the PFL stated Verification of the initial employment letter from Khalid Building Painting Company was

done, and the document was confirmed fraudulent by the company. The applicant has responded, but my concerns are not alleviated.

and the reviewing officer stating:

I give more weight to the latter analysis because of the reliable verification and analysis this source has historically provided.

[24] During the hearing before me, Mr. Khayati pointed to the fact that the GCMS notes identified the employer as “Khalid” rather than “Khani” Building Painting Company, and argued that this is clearly a sign that the visa officer was mistaken when he thought he was speaking with the supposed owner of Khani Building Painting Company. For my part, I read the reference to “Khalid” as a simple misprint, as the visa officer was clearly referring to the employment letter which properly identified the employer as “Khani” Building Painting Company. However, I can certainly see Mr. Khayati’s point; the issue of confusion would have been put to rest had there been any evidence of sufficient grappling with the evidence by the visa officer under the circumstances, rather than a laconic note stating simply that Mr. Khayati did not address the source of the concern of the visa officer.

[25] As such, and from my perspective, given the circumstances at play, the refusal decision is neither justified, transparent nor intelligible, and must be set aside.

JUDGMENT in IMM-12289-23

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is allowed.
2. The decision dated August 2, 2023, is set aside and this matter is returned for redetermination by a different visa officer.
3. There is no question for certification.

"Peter G. Pamel"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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