

Federal Court



Cour fédérale

Date: 20220608

Docket: IMM-7712-21

Citation: 2022 FC 847

Ottawa, Ontario, June 8, 2022

PRESENT: The Honourable Mr. Justice Manson

BETWEEN:

CHARANJEET SINGH BRAR

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] This is an application for judicial review of a decision by the Case Processing Centre (CPC) in Edmonton, Alberta dated October 4, 2021, refusing the Applicant's application for a work permit extension because the CPC was not satisfied that the Applicant met the requirements of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (the "Act") and the

Immigration and Refugee Protection Regulations, SOR/2002-227 (the “*Regulations*”), (the “*Decision*”).

II. Background

[2] The Applicant, Charanjeet Singh Brar, is a 61-year-old male citizen of India and a foreign national in Canada. The Applicant initially came to Canada as a visitor on November 22, 2018 valid until September 24, 2019. The Applicant obtained a work permit with Khun Khun Orchards in Kelowna, British Columbia as a General Farm Worker from September 2019 to January 2020. In February 2020, the Applicant obtained a work permit with Moga Truck Repair Ltd., Surrey, British Columbia, based on a positive Labour Market Impact Assessment (LMIA) as a Mechanic’s Helper, valid until February 10, 2021.

[3] On February 5, 2021, the Applicant received an extended job offer from Moga Truck Repair Ltd. to continue his employment as a Mechanic’s Helper. On the same day, the Applicant submitted an application to Immigration, Refugees and citizenship Canada (IRCC) to extend his work permit. Moga Truck Repair Ltd. also obtained a second positive LMIA for the Applicant’s position on March 17, 2021 valid until September 17, 2021.

[4] On August 24, 2021, the IRCC requested additional documents with respect to the work permit extension application and the Applicant submitted his paystubs, T4, Notice of Assessment, and bank statements of payroll deposits, all for the 2020 calendar year.

[5] On September 9, 2021, the IRCC requested further submissions explaining the difference between the income amounts on the Applicant's Notice of Assessment and T4, which the Applicant provided showing worker's compensation benefits to explain the inconsistent amount.

[6] On October 4, 2021, the CPC refused the Applicant's application for a work permit extension in the Decision on the grounds that they were not satisfied that the Applicant was able to "perform the duties and manage the hours required for the position" and that they were "of the opinion the [Applicant] is not a bona fide worker that will leave Canada at the end of their authorized stay if granted an extension."

[7] On October 21, 2021, the Applicant filed an application for leave and judicial review of the Decision seeking an Order setting aside the Decision and referring the matter back to a different officer for redetermination.

III. Decision Under Review

[8] In their Global Case Management System notes, the CPC outlined the Applicant's immigration history. The CPC noted that the second LMIA for the Mechanic's Helper position at Moga Truck Repair Ltd. had the same parameters of employment as the first LMIA for the same position – that is, a full-time position at 40 hours per week.

[9] Upon review of the pay stubs provided by the Applicant for the 2020 calendar year, the CPC noted that the Applicant had failed to work 40 hours per week throughout his employment

with Moga Truck Repair Ltd. from March 1, 2020 to December 15, 2020. Accordingly, the CPC found that the Applicant was “unable to abide by the conditions of the LMIA.”

[10] Therefore, the CPC was not satisfied that the Applicant was able to “perform the duties and manage the hours required for the position” and they were “of the opinion the [Applicant] is not a bona fide worker that will leave Canada at the end of their authorized stay if granted an extension.” The CPC refused the Applicant’s application for a work permit extension.

IV. Issues

[11] The issues to be decided on this judicial review are:

(1) Was the Decision reasonable?

(2) Was the Decision procedurally fair?

V. Standard of Review

[12] Where a Court reviews the merits of an administrative decision the standard of review is reasonableness (*Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 at paragraph 23).

[13] Issues that relate to a breach of procedural fairness are reviewed on the standard of correctness or a standard with the same import (*Canadian Pacific Railway Company v Canada*

(*Attorney General*), 2018 FCA 69 at paragraphs 34-35 and 54-55, citing *Mission Institution v. Khela*, 2014 SCC 24 at paragraph 79).

VI. Analysis

[14] A foreign national may be authorized to work in Canada if they meet the conditions set out in the *Regulations* (subsections 30(1) and 30(1.1) of the *Act*).

[15] Pursuant to subsection 201(1) of the *Regulations*, a foreign national may apply for the renewal of their work permit if (a) the application is made before their work permit expires; and (b) they have complied with all conditions imposed on their entry into Canada. Furthermore, an officer shall renew the foreign national's work permit if, following an examination, it is established that the foreign national continues to meet the requirements of section 200 (subsection 201(2) of the *Regulations*).

[16] A foreign national shall not be issued a work permit if, *inter alia*, there are reasonable grounds to believe that the foreign national is unable to perform the work sought; the foreign national has failed to comply with a condition of a previous permit; or if it is established that the foreign national will not leave Canada by the end of the period authorized for their stay (paragraphs 200(1)(b), 200(3)(a), and 200(3)(e) of the *Regulations*).

A. *Was the Decision reasonable?*

[17] The Applicant argues that the Decision is unreasonable because the CPC erred in assessing the conditions of the employment and the reasons were insufficient and inadequate. The Respondent argues that the Decision is reasonable and there was no breach of procedural fairness.

[18] The CPC determined that the Applicant was “unable to abide by the conditions of the LMIA” and concluded that the Applicant would not be able to perform the duties and manage the hours required for the position based on the Applicant’s 2020 pay stubs, which demonstrated that he did not work 8 hours per day, 40 hours per week throughout the duration of his previous work permit with the same employer, for the same position.

[19] Neither the work permit nor the LMIA for the Mechanic’s Helper position from February 2020 to February 2021 set a condition of minimum hours worked. The additional documents submitted by the Applicant at the request of the IRCC demonstrate that the Applicant was continuously employed as a Mechanic’s Helper with Moga Truck Repair Ltd.

[20] In addition, the Applicant submitted his application for a work permit extension before the expiry of his first work permit.

[21] Furthermore, there was no rational chain of analysis for the CPC’s conclusion that the Applicant is not a bona fide worker who will leave Canada at the end of his authorized period of stay if granted an extension.

[22] Based on the foregoing, the Decision is unreasonable.

B. *Was the Decision procedurally fair?*

[23] Procedural fairness dictates that a visa officer must ensure that an applicant has the opportunity to meaningfully participate in the application process. This includes being informed of and provided an opportunity to respond to perceived material inconsistencies, credibility concerns, accuracy or authenticity concerns, or the reliance of a visa officer on extrinsic evidence (*Bui v. Canada (Minister of Citizenship and Immigration)*, 2019 FC 440 at paragraph 27).

[24] While the decision to issue a temporary visa typically attracts a low or minimal level of procedural fairness, in situations where an officer doubts the credibility, accuracy, or genuine nature of the information submitted, the Applicant must be provided an opportunity to address these concerns (*Sangha* at paragraphs 21 to 22, citing *Hassani v. Canada (Citizenship and Immigration)*, 2006 FC 1283 at paragraph 24 and *Madadi v. Canada (Citizenship and Immigration)*, 2013 FC 716 at paragraph 6).

[25] In the Decision, the CPC did not appear to doubt the Applicant's credibility, accuracy, or genuine nature of the information submitted. In addition, the Applicant was provided an opportunity to submit additional documents, as well as provide an explanation for inconsistencies in his reported 2020 income amounts. There was no breach of procedural fairness.

[26] Nevertheless, for the reasons above related to reasonableness, this application is allowed.

JUDGMENT in IMM-7712-21

THIS COURT'S JUDGMENT is that:

1. The application is allowed and the matter is referred to a different officer for reconsideration.
2. There is no question for certification.

"Michael D. Manson"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-7712-21

STYLE OF CAUSE: CHARANJEET SINGH BRAR v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: HELD BY VIDEOCONFERENCE

DATE OF HEARING: JUNE 6, 2022

JUDGMENT AND REASONS: MANSON J.

DATED: JUNE 8, 2022

APPEARANCES:

HARRY VIRK FOR THE APPLICANT

BRETT NASH FOR THE RESPONDENT

SOLICITORS OF RECORD:

LIBERTY LAW CORPORATION
ABBOTSFORD, BRITISH COLUMBIA FOR THE APPLICANT

DEPARTMENT OF JUSTICE
VANCOUVER, BRITISH COLUMBIA FOR THE RESPONDENT