Federal Court Cour fédérale

Date: 20220929

Docket: IMM-1979-20

Citation: 2022 FC 1362

Ottawa, Ontario, September 29, 2022

PRESENT: Mr. Justice Norris

BETWEEN:

RAHUL BHARADWAJ

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] In December 2018, the applicant applied for permanent residence in Canada as a member of the Canadian Experience Class ("CEC"). Under the *Immigration and Refugee Protection Regulations*, SOR/2002-227 ("*IRPR*"), a foreign national such as the applicant is a member of the CEC if they have acquired in Canada, within three years of the date they make their application, at least one year of full-time work experience in a qualifying occupation and, during that period of employment, they performed the actions described in the lead statement and a

substantial number of the main duties of the occupation as set out in the *National Occupational Classification* ("NOC") matrix: see *IRPR* subsection 87.1(2).

[2] The applicant based his application as a member of the CEC on his employment with Rogers between January 2016 and September 2017. He identified the applicable occupational classification as NOC 6221: Technical sales specialists – wholesale trade.

[3] The application was refused by a Senior Analyst with Immigration, Refugees and Citizenship Canada ("IRCC") in a decision dated March 6, 2020, because the decision maker was not satisfied that the applicant's work experience met the requirements of subsection 87.1(2) of the *IRPR*.

[4] The applicant now applies for judicial review of this decision under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 ("*IRPA*"). He contends that the decision was not made in accordance with the requirements of procedural fairness and that it is unreasonable. For the reasons that follow, I do not agree.

[5] There is no dispute as to the applicable standards of review.

[6] The substance of the decision is to be reviewed on a reasonableness standard: see *Saatchi v Canada (Citizenship and Immigration)*, 2018 FC 1037 at para 14. That this is the appropriate standard of review has been reinforced by *Canada (Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 10.

[7] A reasonable decision "is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker" (*Vavilov* at para 85). A decision that displays these qualities is entitled to deference from the reviewing court (*ibid*.). The onus is on the applicant to demonstrate that the decision is unreasonable. To set aside a decision on this basis, the reviewing court must be satisfied 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" (*Vavilov* at para 100).

[8] With regard to whether the requirements of procedural fairness were met, the reviewing court must conduct its own analysis of the process followed by the decision maker and determine for itself whether the 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 21-28: see *Canadian Pacific Railway Co v Canada (Attorney General)*, 2018 FCA 69 at para 54, and *Lipskaia v Canada (Attorney General)*, 2019 FCA 267 at para 14. This is functionally the same as applying the correctness standard of review: see *Canadian Pacific Railway Co* at paras 49-56 and *Canadian Association of Refugee Lawyers v Canada (Immigration, Refugees and Citizenship)*, 2020 FCA 196 at para 35. The burden is on the applicant to demonstrate that the requirements of procedural fairness were not met.

[9] To establish that he satisfied the requirements of subsection 87.1(2) of the *IRPR*, the applicant provided two employment letters from Rogers. One letter, dated September 11, 2017, stated that the applicant "is a regular full-time employee of Rogers Communications Inc. and has been an employee of the Rogers Group of Companies since January 25, 2016." The letter also

stated that the applicant "currently" holds the position of Consumer Inside Sales Consultant. However, the letter did not say how long the applicant had held this position, nor did it provide a description of the applicant's duties and responsibilities in that position.

[10] The second letter from Rogers, which is undated, stated the following:

> This is to confirm that Mr. Rahul Bharadwaj had the following duties and responsibilities:
>
> 1) Promote products to new and existing clients
>
> 2) Ask probing questions to identify clients' needs
>
> 3) Analyze clients' needs and offer customized solutions
>
> 4) Identify opportunities for cross-sell and/or up-sell
>
> 5) Process the sale transaction electronically and add necessary information to process the order
>
> 6) Provide the price of equipment and installation to the customer
>
> 7) Provide after sales support and help the customers on existing issues

[11] Notably, the second letter did not say how long the applicant had had these particular duties and responsibilities, nor did it link them to the position of Consumer Inside Sales Consultant mentioned in the first letter.

[12] The Senior Analyst was not satisfied that these documents established that the applicant met the requirements of subsection 87.1(2) of the *IRPR*. The letter dated September 11, 2017, identified the applicant's current position but it did not list his duties and responsibilities. While the undated letter listed the applicant's duties and responsibilities, it did not link them to the position of Consumer Inside Sales Consultant. And in any event, neither letter stated how long

the applicant held that position, a key consideration given that a minimum of one year's qualifying work experience in the three years preceding the application was required.

[13] The applicant contends that the decision is unreasonable because the decision maker failed to read the two letters in conjunction with one another. I cannot agree. It is clear from the decision letter and the decision maker's Global Case Management System notes that the letters were considered individually and in conjunction with one another. The Senior Analyst reasonably determined that, even when read together, the two letters left key gaps relating to the applicant's work experience and, as a result, failed to establish that the applicant met the requirements for membership in the CEC. The applicant had the burden of demonstrating that he was a member of the CEC by virtue of his employment experience: see *Saatchi* at para 30. The decision maker reasonably determined that the documents he submitted in support of his application were insufficient to do so.

[14] The applicant also contends that, by not alerting him to the potential deficiencies of his employment letters, the decision maker breached the requirements of procedural fairness. I disagree. The Senior Analyst's concerns plainly related to the sufficiency of the employment letters to demonstrate that the applicant met the requirements of the *IRPR*. There is no basis to think that the Senior Analyst had any doubts about the authenticity of the documents or the credibility or accuracy of the information they contained. Rather, it was the incompleteness of the information that led to the application being refused. In such circumstances, there was no duty on the decision maker to alert the applicant to the deficiencies in his application before

rendering a negative decision: see *Lazar v Canada (Citizenship and Immigration)*, 2017 FC 16 at paras 20-21.

[15] Finally, the applicant submits that the requirements of procedural fairness were breached because IRCC took longer than it should have to render a decision. There is no question that the 15 months it took to render a decision exceeds the six month guideline mentioned on IRCC's website. However, even assuming for the sake of argument that it should not have taken this long for a decision to be made, the applicant has cited no authority – and I am aware of none – to support his claim that this now entitles him to have the matter reconsidered. While the applicant does rely on *Conille v Canada (Minister of Citizenship and Immigration)*, [1999] 2 FC 33, the test set out there (in the context of an application for *mandamus*) concerns whether there has been unreasonable delay by a decision maker when no decision has been made. That test is inapplicable here, where a decision has been made. There is no merit to the applicant's contention that the decision should now be set aside because IRCC took too long to make it.

[16] For these reasons, the application for judicial review will be dismissed.

[17] The parties have not suggested any serious questions of general importance for certification under paragraph 74(d) of the *IRPA*. I agree that none arise.

[18] The original style of cause names the respondent as the Minister of Immigration, Refugees and Citizenship. Although that is how the respondent is now commonly known, its name under statute remains the Minister of Citizenship and Immigration: *Federal Courts*

Citizenship, Immigration and Refugee Protection Rules, SOR/93-22, s 5(2) and *IRPA*, s 4(1). Accordingly, as part of this judgment, the style of cause is amended to name the respondent as the Minister of Citizenship and Immigration.

JUDGMENT IN IMM-1979-20

THIS COURT'S JUDGMENT is that

1. The style of cause is amended to reflect the Minister of Citizenship and Immigration as the correct respondent.

2. The application for judicial review is dismissed.

"John Norris"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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