

Federal Court



Cour fédérale

**Date: 20221129**

**Docket: IMM-1094-22**

**Citation: 2022 FC 1645**

**Ottawa, Ontario, November 29, 2022**

**PRESENT: The Honourable Mr. Justice Ahmed**

**BETWEEN:**

**SATNAM SINGH**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

**I. Overview**

[1] The Applicant, Satnam Singh, seeks judicial review of a decision of a visa officer (the “Officer”) of Immigration, Refugees and Citizenship Canada dated January 1, 2022, denying the Applicant’s work permit application under the Temporary Foreign Worker Program (“TFWP”).

[2] The Officer was not satisfied that the Applicant would leave Canada at the end of his stay, as per subsection 200(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (“*IRPA*”), due to his family ties in India, the purpose of his visit, and his employment situation.

[3] The Applicant submits that the Officer made erroneous findings of fact without regard to the evidence, regarding the Applicant’s ability to adequately perform the work sought and his plans to return to his home country after his stay.

[4] For the reasons that follow, I find the Officer’s decision is unreasonable. I therefore grant this application for judicial review.

## **II. Facts**

### **A. *The Applicant***

[5] The Applicant is a 35-year-old citizen of India. He is married and has one child. His wife, child, parents and sister all reside permanently in India. The Applicant does not have any family members in Canada.

[6] The Applicant has worked as a truck driver in the United Arab Emirates (“UAE”) since March 2010. He was a truck driver for two separate companies in Abu Dhabi from March 2010 to July 2018. From August 2018 to the present, the Applicant has worked as a truck driver for a third company in Dubai.

[7] The Applicant was offered employment as a long-haul truck driver with Super Bee Transport Ltd. in British Columbia, which was based on a positive Labour Market Impact Assessment given to the employer. The Applicant accepted the position.

[8] The Applicant applied for a work permit under the TFWP. This application was refused on January 1, 2022.

B. *Decision Under Review*

[9] The Officer's decision is largely contained in their Global Case Management System ("GCMS") notes, which form part of the reasons for the decision.

[10] Regarding the Applicant's family ties, the Officer's GCMS notes state:

PA is married with 1 child. Spouse & child reside in India and are non-accompanying to CDA. I am not satisfied that the applicant would leave Canada at the end of their stay as a temporary resident, I note that the client is married, has dependents, but is not sufficiently established.

[11] With respect to the Applicant's work experience, the Officer indicates the Applicant's work history in the UAE and the related documentary evidence. The Officer states:

I note that the applicant's work experience as a Truck Driver is entirely limited to the UAE, the terrain and weather conditions of which are significantly different compared to those in Canada. I am not satisfied that PA has demonstrated that he is able to perform the work sought in a way that does not put the safety of Canadians at risk. Taking the applicant's current employment situation into consideration, the employment does not demonstrate

that the applicant would leave Canada at the end of the period of authorized stay. Weighing the factors in this application, I am not satisfied that the applicant will depart Canada at the end of the period authorized for their stay.

### **III. Issue and Standard of Review**

[12] The application for judicial review raises the sole issue of whether the Officer's decision is reasonable.

[13] The standard of review is not disputed. The parties agree that the applicable standard of review is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16–17, 23–25) (“*Vavilov*”). I agree. This is also consistent with the Federal Court's review of decisions on work permits: *Choi v Canada (Minister of Citizenship and Immigration)*, 2008 FC 577 at para 12; *Toor v Canada (Citizenship and Immigration)*, 2019 FC 1143 at para 6; *Baran v Canada (Citizenship and Immigration)*, 2019 FC 463 at paras 15-16.

[14] Reasonableness is a deferential, but robust, standard of review (*Vavilov* at paras 12-13). The reviewing court must determine whether the decision under review, including both its rationale and outcome, is transparent, intelligible and justified (*Vavilov* at para 15). 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). Whether a decision is reasonable depends on the relevant administrative setting, the record before the decision-maker, and the impact of the decision on those affected by its consequences (*Vavilov* at paras 88-90, 94, 133-135).

#### IV. Analysis

[15] The Applicant submits that the Officer's decision is unreasonable because it makes two erroneous findings: (1) that the Applicant's evidence on his establishment in India does not satisfy that he would leave Canada after his stay, and (2) that the evidence does not demonstrate that he could adequately perform the work sought.

[16] I agree with the Applicant that the Officer's findings on both points are unreasonable, on the basis of the evidentiary and legal constraints bearing on the decision.

##### A. *Family Ties*

[17] The Applicant submits that the letter sent to him on January 1, 2022, notifying him of the refusal of his application, exhibits an unreasonable line of reasoning. While the documentary evidence clearly shows that the Applicant does not have any family ties in Canada, the letter states that the Applicant had not satisfied that he would leave at the end of his stay, "based on [his] family ties in Canada and in your country of residence." The Applicant relies on *Singh v Canada (Citizenship and Immigration)*, 2021 FC 691 ("Singh #1") to submit that the Officer's conclusion on "family ties in Canada" is unsupported by the evidence and is unreasonable. On the Officer's conclusion that family ties in Canada do not satisfy that the Applicant is sufficiently established, the Applicant relies on *Chhetri v Canada (Citizenship and Immigration)*, 2011 FC 872 to submit that the possibility of financial betterment or work experience in Canada cannot itself be a reason for rejecting a temporary work permit application.

[18] The Respondent submits that it is well established that visa officers' decisions are owed a high degree of deference. The Respondent submits that the Applicant had a positive obligation to provide sufficient evidence to show that he would leave Canada and failed to do so.

Specifically, the Respondent submits that the strength of the Applicant's family ties in India is undermined by his history of work experience and residence in the UAE, away from his family in India. The Applicant did not provide evidence of personal assets or financial ties that may motivate him to return to India, and the lack of this evidence reasonably leads to the conclusion that the Applicant may not leave Canada.

[19] I agree with the Applicant. The decision letter sent to the Applicant bases the decision on "[his] family ties in Canada," but the Applicant submitted evidence clearly indicating that he does not have any family ties in Canada and, rather, his entire immediate family are permanently residing in India. There is an obvious gap in the Officer's line of reasoning on this point, and exhibits a decision made without regard for the contrary evidence.

[20] This Court's decision in *Singh #1* is highly instructive in the Applicant's case, as it deals with a nearly identical set of facts and the same grounds for refusal by the visa officer. In *Singh #1*, an Indian citizen sought a temporary work permit to work as a truck driver in Canada after working for several years as a truck driver in the UAE. His application was denied because the visa officer was not satisfied that he would leave Canada or that he could adequately perform the work. The visa officer used the same language of "family ties in Canada" regardless of the applicant's lack of ties in Canada. My colleague Justice Fuhrer found:

[5] Regarding the first ground of refusal, I find that the absence of any articulated reasons for the Officer's determination that Mr. Singh would not leave Canada at the end of his stay because of family ties in Canada renders the decision unreasonable for lack of justification: *Vavilov*, above at para 86. In my view, it is clear on the face of the record, and the Respondent admitted in both written and oral submissions to the Court, that there is no evidence Mr. Singh has any family ties in Canada. To the contrary, Mr. Singh's evidence is that his spouse, child and parents live in India. I add that it is not evident which country the Officer meant by "your country of residence," whether the UAE, India, or another country.

[6] Nor is there any discussion at all in the brief Global Case Management System [GCMS] notes, which form part of the Officer's reasons for refusing Mr. Singh's work permit application, about his family. To be clear, my concern with the GCMS notes is not their length. Rather, the outcome of Mr. Singh's application on this basis is at odds with the factual context, and is not supported by any reasons, let alone intelligible and rational reasoning: paraphrasing *Vavilov*, above at para 86.

[Emphasis added]

[21] The Court made a similar finding in *Singh v Canada (Citizenship and Immigration)*, 2021 FC 1107 ("*Singh #2*"), which was also based on a similar factual scenario. Reviewing a visa officer's conclusion that the applicant would not leave due to family ties in Canada, regardless of evidence showing he had no such ties, Justice McDonald cited *Singh #1* and stated at paragraphs 10 and 12:

[10] Although the evidentiary onus is on the Applicant, the Officer is obligated to consider the evidence submitted. Here it is not clear on what basis the Officer concluded that the Applicant would not leave Canada because of family ties, when his evidence was that he does not have any family in Canada.

[...]

[12] A similar situation emerges in this case, where the bald conclusion reached by the Officer on “family ties in Canada” is not supported by the evidence provided by the Applicant. In the circumstances, I agree with the Applicant that this aspect of the decision lacks justification and is therefore not reasonable.

[Emphasis added]

[22] In my view, the same reasoning applies in the Applicant’s case. Reasonableness review requires that a decision be viewed in light of the institutional context and visa officers’ reasons should be understood to be brief given the high volume of cases (*Vavilov* at paras 89, 91). However, decisions should be viewed as a whole to review for a rational line of reasoning overall, and the hallmarks of justification, transparency and intelligibility (*Vavilov* at para 15). Applying this Court’s analysis in *Singh #1* and *Singh #2*, the outcome of the decision is at odds with the evidence before the decision-maker.

[23] The Respondent submits that the strength of the Applicant’s family ties is undermined by his time working in the UAE and signals his willingness to be away from his family. The GCMS notes do not mention that the Officer found this to be a mitigating factor. Reasonableness review cannot reweigh or reassess the evidence before the decision-maker (*Vavilov* at para 125). It is also not open to the Respondent to buttress the decision-maker’s reasons and substitute its own justification for an outcome that is based on an unreasonable chain of analysis (*Vavilov* at para 96).

[24] The Court is no stranger to applicants for work permits who have work experience in countries outside their home country, especially those applicants with similar situations to the Applicant (*Singh #1* at para 1; *Singh #2* at para 2; *Singh v Canada (Citizenship and*



*Immigration*), 2021 FC 1164 (“*Singh #3*”) at para 2). It is common for people, particularly those from lower-income backgrounds, to make personal sacrifices to better their financial situations. It is unreasonable to penalize the Applicant for making this sacrifice and assume that this sacrifice is not difficult for him, to be away from his wife and young child. The Officer’s conclusion that the Applicant has weaker ties to his family in India because he has been working in the UAE does not display the rational line of reasoning required of a reasonable decision, and offends the purpose of the TFWP scheme.

B. *Employment*

[25] The Applicant cites *Singh #2*, in which the applicant was also working as a truck driver in the UAE before making an application for a work permit in Canada. The Applicant submits that the difference in weather and driving conditions is an insufficient ground to find that the Applicant does not have the skills or ability to drive trucks in Canada.

[26] The Respondent submits that the Applicant bears the onus to provide sufficient evidence to establish his competence and his failure to do so is sufficient to refuse his application. In the case of long-haul truck driving, safety is a significant consideration in assessing one’s competence to adequately perform the job and the Applicant provided limited evidence about his truck driving experience. The Respondent also submits that the Officer reasonably considered the difference in weather and terrain between Canada and the UAE to assess the Applicant’s necessary skills and ability, citing *Sangha v Canada (Citizenship and Immigration)*, 2020 FC 95 and *Singh #3*.

[27] I find the Officer's decision is unreasonable because the Officer makes adverse findings based on irrelevant criteria, rather than focusing on the evidence supporting the Applicant's ability to perform the work.

[28] This Court's jurisprudence in this area is somewhat divergent. For instance, in *Singh #2*, the Court reviewed a visa officer's finding that the applicant did not show he could adequately work as a long-haul truck driver because "road and weather conditions, as well as speed and topography in the Gulf region is considered vastly different from road and weather conditions as well as speed and topography in Canada" (at para 19). My colleague Justice McDonald found these comments on weather and driving conditions were "unrelated to the job requirements" and "in any event, the Officer was not in a position to assess the Applicant's skills and ability to drive in Canadian weather conditions" (*Singh #2* at para 21, citing *Chen v Canada (Minister of Citizenship and Immigration)*, [2000] FCJ No 594 at paras 21-23).

[29] On the other hand, this Court decided differently in *Singh #3*, where the visa officer found that the applicant, who had also worked as a truck driver in the UAE, had not shown he could adequately and safely perform the work of a long-haul truck driver in Canada. The visa officer in *Singh #3* also made specific reference to the difference in terrain and weather conditions between the UAE and Canada (*Singh #3* at para 6). My colleague Justice Pallotta found that "it was not unreasonable for the Officer to note the differences between Canada and the UAE in this regard" (*Singh #3* at para 11).

[30] Considering this jurisprudence, I do not find that the Officer considered the Applicant's evidence in totality. Contrary to the Respondent's submissions, the Applicant did include his UAE driver's license in his work permit application. The Applicant also provided employment reference letters from each of the three companies he worked for, confirming his employment as a truck driver in the UAE and reflecting positively on his work performance in their respective businesses. This evidence points directly to the Applicant's ability to perform the work of a truck driver in Canada, for which he has several years of positively regarded experience. It is unreasonable for the Officer to weigh the differences in weather conditions between the UAE and Canada to be determinative of his abilities, in light of this evidence.

[31] This reasoning exhibits a lack of attentiveness to the evidentiary record before the Officer, undermining the decision's reasonableness (*Vavilov* at paras 125-126). Applying the analysis in *Singh #2*, the Officer based the conclusion regarding the Applicant's ability to adequately perform the work on an irrelevant consideration, without proper regard to the evidence, and it is nevertheless not the Officer's role to assess the Applicant's driving skills (*Singh #2* at para 21).

## **V. Conclusion**

[32] The application for judicial review is granted. The Officer's decision to refuse the Applicant's work permit application is unreasonable because the Officer's reasoning surrounding the Applicant's family ties and his ability to adequately perform the work exhibits a lack of justification in light of the evidence. No questions for certification were raised, and I agree that none arise.

**JUDGMENT in IMM-1094-22**

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

1. This application for judicial review is granted. The decision under review is set aside and the matter referred back for redetermination by a different decision-maker.
2. There is no question to certify.

“Shirzad A.”

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Judge

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

**DOCKET:** IMM-1094-22

**STYLE OF CAUSE:** SATNAM SINGH v THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION

**PLACE OF HEARING:** BY VIDEOCONFERENCE

**DATE OF HEARING:** SEPTEMBER 8, 2022

**JUDGMENT AND REASONS:** AHMED J.

**DATED:** NOVEMBER 29, 2022

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