

Federal Court



Cour fédérale

Date: 20230417

Docket: IMM-1295-22

Citation: 2023 FC 552

St. John's, Newfoundland and Labrador, April 17, 2023

PRESENT: The Honourable Madam Justice Heneghan

BETWEEN:

SIMRANPREET SINGH

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS AND JUDGMENT

[1] Mr. Simranpreet Singh (the “Applicant”) seeks judicial review of the decisions of an officer (the “Officer”) made on January 21, 2022, and on November 17, 2021. In the first decision, the Officer refused the request for reconsideration of the decision made on November 17, 2021, refusing the Applicant’s application for permanent residence in Canada as a member of the Canadian Experience Class, as defined in the *Immigration and Refugee Protection Regulations*, SOR/2002-227.

[2] The Applicant applied for permanent residence in the National Occupational Classification (“NOC”) 1241, as an administrative assistant. His application was dismissed on the basis that he had not performed a substantial number of the main duties as set out in the NOC 1241, including all of the essential duties.

[3] By letter dated November 27, 2021, the Applicant sought reconsideration of the refusal.

[4] The Officer refused the reconsideration request in a letter dated January 21, 2022. The letter provides, in part, as follows:

Your application was considered on its substantive merits according to the applicable section of the Immigration and Refugee Protection Act and was refused on 2021/11/17. Your request for reconsideration has been reviewed and there are insufficient reasons for re-opening your application.

A letter explaining the reasons for this rejection was sent to you at your MyCIC account on 2021/11/17, thereby fully concluding your application.

[5] The Applicant submits that the Officer fettered her discretion, thereby breaching his right to procedural fairness. He also argues that the decision is unreasonable.

[6] The Minister of Citizenship and Immigration (the “Respondent”) submits the Officer did not breach the duty of procedural fairness and that the decision is reasonable.

[7] Issues of procedural fairness are reviewable upon the standard of correctness; see the decision in *Canada (Minister of Citizenship and Immigration) v. Khosa*, [2009] 1 S.C.R. 339 (S.C.C.).

[8] The merits of the decisions are subject to review on the standard of reasonableness, following the decision in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, [2019] 4 S.C.R. 653 (S.C.C.).

[9] In considering reasonableness, the Court is to ask if the decision under review “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”; see *Vavilov, supra* at paragraph 99.

[10] According to the decision in *Borovic v. Canada (Citizenship and Immigration)*, 2016 FC 939, at paragraph 17, an officer is not obliged to consider new evidence as long as the officer decides whether or not to reopen a decision.

[11] The Applicant’s reconsideration request included a copy of his passport and his work permit. It is unclear if the passport was submitted on the initial application.

[12] In this case, it seems that the Officer “reviewed” the Applicant’s request for reconsideration. The Officer then, apparently, purported to dismiss that request on the grounds that “insufficient reasons for re-opening” the application were provided by the Applicant.

[13] In my opinion, this “decision” fails to meet the applicable standard of reasonableness. It is not intelligible on its face. Indeed, it is not clear if the Officer considered the Applicant’s request and if so, what decision was subsequently made, or for what reason.

[14] The initial decision is likewise unreasonable, in my opinion. The Officer's decision fails to show consideration of all the evidence submitted by the Applicant. The Officer unreasonably suggested that the Applicant had failed to perform "all" the essential duties of the occupation, as set out in the NOC 1241.

[15] It is not necessary for me to address the arguments about procedural fairness.

[16] In the result, this application for judicial review will be allowed, the decisions of January 21, 2022, and November 17, 2021, set aside and the matter remitted to another officer for redetermination. There is no question for certification.

JUDGMENT in IMM-1295-22

THIS COURT'S JUDGMENT is that the application for judicial review is allowed, the decisions of January 21, 2022, and November 17, 2021, are set aside and the matter is remitted to another officer for redetermination. There is no question for certification.

“E. Heneghan”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-1295-22

STYLE OF CAUSE: SIMRANPREET SINGH v. THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: HELD BY WAY OF VIDEOCONFERENCE

DATE OF HEARING: March 15, 2023

REASONS AND JUDGMENT: HENEGHAN J.

DATED: April 17, 2023

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