

Federal Court



Cour fédérale

**Date: 20230608**

**Docket: IMM-3542-22**

**Citation: 2023 FC 809**

**Ottawa, Ontario, June 8, 2023**

**PRESENT: Madam Justice McDonald**

**BETWEEN:**

**LEONARD CARCIU**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] The Applicant is a 45-year-old citizen of Albania and a permanent resident of Greece. He seeks judicial review of the decision of a visa officer [Officer], dated February 24, 2022, denying his application for a work permit under the Temporary Foreign Worker Program [Decision].

[2] The Applicant was offered a position with Limen Group Construction [Limen] in December 2021 as a bricklayer, and he applied for a work permit in February 2022.

[3] Limen received a positive Labour Market Impact Assessment [LMIA] for the position of bricklayer. The LMIA stated the written and verbal language requirements for the position were English. The National Occupation Classification Code for a bricklayer requires a low verbal ability – a level of aptitude that is only required by the bottom 10-33% of the Canadian working population.

[4] The Officer denied the work permit on the basis that the Applicant had not demonstrated he would be able to adequately perform the work. The Global Case Management System [GCMS] notes state, in full:

I have reviewed the application. Based on the documentation submitted, I am not satisfied that the applicant will be able to adequately perform the proposed work given their: -Insufficient ability in the language of the proposed employment. No proof of English proficiency submitted. 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. For the reasons above, I have refused this application.

I. Issues

[5] This Application for judicial review raises two issues on the reasonableness of the Decision:

- A. *Is the finding that the Applicant would not depart Canada reasonable?*
- B. *Is the language assessment reasonable?*

[6] The parties submit, and I agree, that the standard of review is reasonableness, per *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65.

## II. Analysis

### A. *Is the Finding that the Applicant Would Not Depart Canada Reasonable?*

[7] The Applicant argues the Officer failed to offer any justification for the conclusion in the GCMS notes that he would not leave Canada at the end of his authorized stay. He has a positive travel history and has complied with all the immigration laws in Greece. He relies on *Momi v Canada (Citizenship and Immigration)*, 2013 FC 162 at paragraph 20 for the proposition that “previous immigration encounters are good indicators of an applicant’s likelihood of future compliance.”

[8] Further, the Applicant argues the Officer failed to consider the fact that he intends to apply for permanent residence in Canada. The Applicant’s proposed employer submitted a letter, confirming the company intends to support his permanent residence application. The Applicant relies on *Jewell v Canada (Public Safety and Emergency Preparedness)*, 2015 FC 1046, for the proposition that failing to consider an applicant’s dual intent to become a permanent resident is unreasonable (at paras 12-14).

[9] In response, the Respondent submits that the Applicant’s failure to provide proof of his English language proficiency supports the Officer’s finding he would not leave Canada, as he has not demonstrated the ability to perform the work sought.

[10] In my view, this argument is not reasonable. The Officer does not justify any link between the inability to perform the work and whether the Applicant would leave Canada. There is no reasoning to support this conclusion in the GCMS notes. The GCMS notes state “[w]eighing the factors in this application. I am not satisfied that the applicant will depart Canada”. There is no explanation of what factors were weighed or considered, beyond the stated lack of English proficiency. There is no discussion of his previous immigration history, which appears to all be positive. There is no connection drawn between the lack of English proficiency and the likelihood the Applicant will not leave Canada.

[11] In my view, the Officer’s conclusion is unjustified and unintelligible, as it is impossible to know what information or evidence the Officer considered.

B. *Is the Language Assessment Reasonable?*

[12] The Applicant submits there is no independent language requirement for a work permit; the requirement relates to the Applicant’s ability to perform the work sought. The Applicant acknowledges that a visa officer should assess an applicant’s language ability when considering a work permit application. However, the Applicant asserts, relying on Immigration, Refugees and Citizenship Canada’s “Foreign workers: Assessing language requirements” policy, the visa officer should also consider the employer’s assessment, terms in the actual job offer, and any accommodations the employer has made to address an applicant’s limited language abilities.

[13] The Applicant argues the GCMS notes do not refer to any submissions or evidence regarding the Applicant's language abilities. There is simply a statement: "No proof of English proficiency submitted".

[14] The Applicant concedes the LMIA included an English language requirement and that no English language test scores were provided in his work permit application. However, the Applicant interviewed with Limen and the company determined his English skills were sufficient for the job. The employer's letter states:

During the interview I had with Mr. Leonard Carciu, he was able to communicate and understand in English.

As I have experience in this industry over the years, Mr. Leonard Carciu does not required [sic] English proficiency in order to perform the duties. In addition, our company has [an] outsourcing partner in English courses available to employees to improve for their personal development in Canada.

I am providing my professional opinion, Mr. Leonard Carciu is able to perform the duties required and listed on the Labour Market Impact Assessment.

[15] The Court in *Singh v Canada (Citizenship and Immigration)*, 2022 FC 692 [*Singh*], found the LMIA language requirements only form one part of the assessment, which can include other factors such as the job offer (at para 11). In *Singh*, Justice Diner held "as the Guideline suggests, an officer should look beyond the LMIA to the nature of the work itself and consider the precise level of language required. That did not occur in this case" (at para 14).

[16] The Respondent's submissions focus exclusively on the lack of a language proficiency test in the work permit application. The Respondent submits the decision to issue a work permit

is made on the officer's assessment of an applicant's language skills, not an employer's assessment. While I agree that the Officer has the right to assess language skills, the assessment must still take into consideration the evidence submitted in support of the application.

[17] The Officer's Decision is unreasonable, as the Officer does not appear to have considered the evidence of language proficiency provided, namely the employer's assessment that the Applicant possessed the language skills necessary for the job. The decisions in *Singh* (at para 13) and *Singh v Canada (Citizenship and Immigration)*, 2021 FC 638 (at para 11, where an employer's letter was also disregarded) support this conclusion. There is also no articulation of the level of proficiency the Applicant was required to demonstrate or how he failed to meet that standard.

[18] The Officer failed to consider any evidence of language proficiency required for the job that was submitted, which renders the Decision unreasonable.

### III. Conclusion

[19] This judicial review is granted as the Decision of the Officer is unreasonable.

[20] There is no question for certification.

**JUDGMENT IN IMM-3542-22**

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

1. The Application for judicial review is allowed. The matter is remitted to another officer for re-determination; and
2. There is no question for certification.

"Ann Marie McDonald"

Judge

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

**DOCKET:** IMM-3542-22

**STYLE OF CAUSE:** CARCIU v THE MINISTER OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** HELD BY VIDEOCONFERENCE

**DATE OF HEARING:** APRIL 27, 2023

**JUDGMENT AND REASONS:** MCDONALD J.

**DATED:** JUNE 8, 2023

**APPEARANCES:**

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