

Federal Court



Cour fédérale

Date: 20230829

Docket: IMM-10495-22

Citation: 2023 FC 1167

Vancouver, British Columbia, August 29, 2023

PRESENT: The Honourable Madam Justice Furlanetto

BETWEEN:

ASHISH SHARMA

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] This is an application for judicial review of an August 25, 2022 decision [Decision] of a visa officer [Officer] denying the Applicant's application for a work permit under the Temporary Foreign Worker Program. The Officer was not satisfied the Applicant would leave Canada at the end of his stay, pursuant to section 200(1)(b) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [IRPR], and refused the application on the basis that the Applicant had not demonstrated he would be able to adequately perform the work sought. The Officer was

also not satisfied the Applicant had answered all questions truthfully in the application submitted as required by subsection 16(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

[2] For the reasons that follow, the application is granted and the matter is remitted back to be redetermined by another officer.

I. Background

[3] The Applicant, Ashish Sharma, is a citizen of India. On November 4, 2020, Employment and Social Development Canada issued a positive Labour Market Impact Assessment [LMIA] to 0800126 BC Ltd to hire a temporary foreign worker as a Motel Manager at a Days Inn in British Columbia. In December 2020, the Applicant applied for a work permit pursuant to the positive LMIA [WP Application].

[4] The reviewing officer had concerns with contradicting information about the Applicant's work experience provided in a 2016 Express Entry application for a Restaurant Manager position [2016 Application]. The 2016 Application indicated the Applicant had been working at Hotel Shiven since 2011 as a Restaurant Manager. However, in the WP Application, the Applicant indicated he was employed by Hotel Ramneek since 2011 in various capacities, including as Steward and as Manager.

[5] The Applicant was sent a Procedural Fairness Letter [PFL] that enquired about the discrepancy and was given 15 days to provide documentation and/or an explanation to address the Officer's concerns.

[6] The Applicant requested records and information relating to the alleged misrepresentation of his employment history. In his response to the PFL, the Applicant noted that he did not receive these records. He indicated that he was unaware of the 2016 Application, that he suspected that he was the victim of identity fraud, and that he had filed a complaint with the police. The response stated that the Applicant had worked for Hotel Ramneek since 2011 and that the Applicant had never worked for Hotel Shiven. The Applicant indicated that he tried to make inquiries of Hotel Shiven to establish that he never worked there, but could not locate the hotel and that he learned from others that the hotel was no longer in operation.

[7] In August 2022, the Officer completed a verification of the Applicant's employment with Hotel Ramneek. The Officer first called the hotel number and spoke with the restaurant manager who was unable to confirm whether the Applicant worked at the hotel but referred the Officer to his senior manager. The Officer then called the senior manager, who was also the signatory of the reference letter submitted by the Applicant. The senior manager confirmed that the Applicant worked at the hotel and indicated that he was currently on leave, but could not explain the reason for the leave. When asked about the Applicant's salary and job profile, the senior manager referred the Officer to the hotel owner. The Officer called the owner, but the owner said he was unable to hear the Officer clearly and disconnected the call. The Officer was unable to reach the Applicant, as he did not have his personal phone number.

[8] On August 25, 2022, the Officer refused the WP application. In the Global Case Management System (GCMS) notes, the Officer states that he is not satisfied the Applicant will be able to adequately perform the proposed work because of insufficient work experience. The Officer states that he has concerns regarding the experience letters and evidence submitted by the Applicant to show relevant experience. The Officer refers to the Applicant's response to the PFL. He notes that the 2016 Application was submitted using the same passport number as the WP Application and that the same work experience from May 2010- August 2010 was listed in both applications. The Officer states that "on a balance" he is satisfied that the Applicant made an application in 2016 and that the declared work experience is not consistent. He concludes that the Applicant has not been truthful when answering all questions regarding his previous work experience and in responding to the PFL and that credibility is of concern.

II. Analysis

[9] The Applicant argues that the Decision was unreasonable as the Officer misapprehended the evidence before him, there was no rational or intelligible chain of analysis underlying the Officer's conclusions, and the Decision was based on a subjective finding. The Applicant also argues that the Officer breached procedural fairness by failing to set out all of his concerns in the PFL.

[10] The parties assert and I agree that the standard of review of the substance of the Decision is reasonableness. None of the situations that would rebut the presumption that all administrative decisions are reviewable on a reasonableness standard are present in this case: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov] at paras 16-17 and 25. A

reasonable decision is “based on an internally coherent and rational chain of analysis” and is “justified in relation to the facts and law that constrain the decision maker”: *Vavilov* at paras 85-86; *Canada Post Corp v Canadian Union of Postal Workers*, 2019 SCC 67 at paras 2, 31. A decision will be reasonable if when read as a whole and taking into account the administrative setting, it bears the hallmarks of justification, transparency, and intelligibility: *Vavilov* at paras 91-95, 99-100.

[11] Questions of procedural fairness ask whether the procedure was fair having regard to all of the circumstances with the ultimate question being whether the applicant knew the case it had to meet and had a full and fair chance to respond: *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at paras 54, 56.

[12] In this case, I agree with the Applicant, the Decision does not set out a rational chain of analysis for refusing the application on the basis that the Applicant would not be able to adequately perform the work sought, nor does it provide sufficient justification for the finding that the Applicant had not answered all aspects of the application truthfully.

[13] The Respondent argues that the second ground for refusal (that the Applicant did not answer all questions truthfully on his application) is tied to the first ground for refusal (the Applicant’s inability to demonstrate that he would be able to adequately perform the work sought). However, the Decision does not make this connection with sufficient transparency and justification.

[14] While the Officer does not accept the Applicant's explanation that he was unaware of the 2016 Application, the Officer does not sufficiently explain how he arrived at this conclusion nor does the Officer tie this finding to the separate conclusion (and ground for refusing the application) based on insufficient work experience.

[15] Instead, the Officer states only that he has concerns regarding the experience letters and evidence submitted by the Applicant without saying what those concerns are. The Officer does not discuss the information obtained through his verification calls nor does he resolve this information against the other evidence provided by the Applicant.

[16] As noted by the Applicant, the Officer's inquiries indicated that the Applicant was employed at Hotel Ramneek as the front office manager and that he had been working with the hotel since 2011. This information was consistent with the Applicant's other documentation, which included job offer, promotion and reference letters, salary slips, income tax documents and photographs. The Officer did not state why he found the Applicant's evidence insufficient to establish his work qualifications or what further evidence should have been provided to support the work experience asserted. Some further explanation was warranted: *Ayeni v Canada (Citizenship and Immigration)*, 2019 FC 1202 at para 28.

[17] The Officer's inquiries suggest if any information was incorrect, it was the information on the 2016 Application and not that in the WP Application, or its accompanying documentation, which consistently referred to the Applicant's employment as being with Hotel Ramneek.

[18] The Officer notes the Applicant's response to the PFL where he indicates that he was not aware of the 2016 Application. More specifically, the Applicant stated that he did not submit the application and that upon learning of the application he made a police complaint asserting identify fraud, which he attached. The Officer does not explain with sufficient justification why he does not accept this explanation. The observation that the 2016 Application and WP Application both relied on the same passport information and 2010 work experience is not inconsistent with the Applicant's explanation. The Officer's reliance on these facts as the basis for why the Applicant's response to the PFL was not accepted does not provide sufficient transparency and justification for the conclusions reached.

[19] For these reasons, it is my view that the Decision is unreasonable. Accordingly, the application will be allowed and the matter referred back for redetermination.

[20] There was no question for certification proposed by the parties, and I agree none arises in this case.

JUDGMENT IN IMM-10495-22

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is granted. The August 25, 2022 decision is set aside and the matter is remitted back to be redetermined by another officer.
2. No question of general importance is certified.

"Angela Furlanetto"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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APPEARANCES:

Puneet Khaira FOR THE APPLICANT

Richard Li FOR THE RESPONDENT

SOLICITORS OF RECORD:

Citylaw Group FOR THE APPLICANT
Barristers and Solicitors
Surrey, British Columbia

Attorney General of Canada FOR THE RESPONDENT
Vancouver, British Columbia