Federal Court Cour fédérale

Date: 20230914

Docket: IMM-2823-22

Citation: 2023 FC 1241

Toronto, Ontario, September 14, 2023

PRESENT: Madam Justice Go

BETWEEN:

ARMAN SHIDFAR

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Mr. Arman Shidfar [Applicant] is a citizen of Iran who set up an auto parts company in Ontario. The Applicant applied for a work permit under the International Mobility Program as an Entrepreneur/self-employed candidate seeking to operate a business pursuant to subsection 205(a) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [*IRPR*].

[2] By a decision dated March 10, 2022, an immigration officer at the High Commission in Ankara, Turkey [Officer] denied the Applicant's work permit application [Decision].

[3] The Applicant seeks judicial review of the Decision. For the reasons set out below, I find that there was no breach of procedural fairness and that the Decision is reasonable. I therefore dismiss the application.

II. Issues and Standard of Review

[4] The Applicant raises the following issues:

a. The Officer breached procedural fairness; and

b. The Decision was unreasonable.

[5] The Applicant submits that issues of procedural fairness are reviewable on a correctness standard, and the parties agree that issues related to the merits of the Decision are reviewable on a reasonableness standard: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at paras 10 and 23.

[6] 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 and 133-135.

[7] For a decision to be unreasonable, the applicant must establish that the decision contains flaws that are sufficiently central or significant: *Vavilov* at para 100. Not all errors or concerns about a decision will warrant intervention. A reviewing court must refrain from reweighing evidence before the decision-maker, and it should not interfere with factual findings absent exceptional circumstances: *Vavilov* at para 125. Flaws or shortcomings must be more than superficial or peripheral to the merits of the decision, or a "minor misstep": *Vavilov* at para 100.

[8] A court assessing procedural fairness determines whether the procedure used by the decision-maker was fair, having regard to all of the circumstances including the nature of the substantive rights involved and the consequences for the individual(s) affected: *Gordillo v Canada (Attorney General)*, 2022 FCA 23, at para 63.

III. Analysis

[9] The relevant section with respect to an application for a work permit is set out under section 205 of the *IRPR* which reads in part:

Canadian interests **205** A work permit may be issued under section 200 to a foreign national who intends to perform work that	**Intérêts canadiens** **205** Un permis de travail peut être délivré à l'étranger en vertu de l'article 200 si le travail pour lequel le permis est demandé satisfait à l'une ou l'autre des conditions suivantes :
(a) would create or maintain significant social, cultural or economic benefits or	(a) il permet de créer ou de conserver des débouchés ou des avantages sociaux,

opportunities for Canadian citizens or permanent residents	culturels ou économiques pour les citoyens canadiens ou les résidents permanents

[10] As confirmed by this Court in *Wang v Canada (Citizenship and Immigration)*, 2021 FC 1002 [*Wang*] at para 21, an officer may consider the sufficiency of the proposed business plan when considering whether the proposed business will provide a significant benefit to Canada.

a. *There was no breach procedural fairness*

[11] The Applicant raises several procedural fairness issues:

a. The Officer failed to provide reasons;

b. The Officer failed to provide the Applicant with a procedural fairness letter [PFL] to respond to the Officer's concerns;

c. The Applicant's right to processing without undue delay was breached; and

d. The Applicant's right to fair and impartial decision-maker and legitimate expectation was breached

[12] I reject all of the Applicant's procedural fairness arguments.

[13] I note that first, as a matter of law, adequacy of reasons is not a procedural fairness issue. Besides, contrary to the Applicant's assertion, reasons have been provided in the form of Global Case Management System [GCMS] notes.

[14] The Officer observed in the GCMS notes several concerns with regard to the Applicant's intended employment in Canada:

> There are numerous well established automotive parts suppliers in Canada.

> I also have concerns regarding the sales estimates and profit projections, the lack of physical location of work for the two planned employees and lack of space for parts storage.
>
> Significant benefit would be limited to approximately $66,000 for two employees with no details provided related to physical workspace or integrated and no details provided on where these employees would be working from.
>
> 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.

[15] I agree with the Respondent that the reasons in this case are responsive to the issues raised, namely, whether the business plan proposed by the Applicant was viable and whether it represents a significant benefit to Canada.

[16] I also reject the Applicant’s argument that the Officer ought to have provided them with a PFL to set out their concerns. As this Court stated in *Singh v Canada (Minister of Citizenship and Immigration)*, 2021 FC 790 [*Singh*]:

> [9] …While a duty of fairness to applicants exists in work permit cases, the duty does not require an officer to notify an applicant of a concern that arises directly from the legislation or related requirements (*Masam v Canada (Citizenship and Immigration)*, 2018 FC 751 at para 11; *Penez v Canada (Citizenship and Immigration)*, 2017 FC 1001 at para 37). The onus is on applicants to provide all the necessary information to support their application, not on the officer to seek it out.

[17] Similarly in *Zargar v Canada (Minister of Citizenship and Immigration)*, 2023 FC 905 [*Zargar*] at para 14, this Court reiterated that:

> Further, a finding that the business plan was not sufficient on some key metrics is an assessment within the Officer's discretion. Relatedly, the Officer is under no obligation to advise the Applicant

> that the business plan was insufficient (*Igbedion v Canada (Citizenship and Immigration)*, 2022 FC 275 at para 16).

[18] In this case, the deficiencies identified in the GCMS notes, including the absence of a physical workspace, arise from the business plan submitted by the Applicant, and are directly related to the requirements in the *Immigration and Refugee Protection Act*, SC 2001, c 27, and related requirements set out by the *IRPR* and the International Mobility Program. Applying *Singh* and *Zargar*, and in light of *Patel v Canada (Citizenship and Immigration)*, 2021 FC 483 at para 40, I conclude that the Officer was not obligated to put their concerns to the Applicant before making their final determination.

[19] I also reject the Applicant's argument with respect to the breach of procedural fairness arising from the delay in processing time.

[20] In *Almuhtadi v. Canada (Citizenship and Immigration)*, 2021 FC 712, Justice Ahmed outlined the applicable principles for delay:

> [32] A delay may be unreasonable if the following three criteria are met (*Thomas v Canada (Public Safety and Emergency Preparedness)*, 2020 FC 164 at para 19, citing *Conille v Canada (Minister of Citizenship and Immigration)*, 1998 CanLII 9097 (FC), [1999] 2 FC 33, 159 FTR 215 (FCTD) ("*Conille*") at para 23):
>
> 1. the delay in question is *prima facie* longer than the nature of the process required;
> 2. the applicants are not responsible for the delay; and
> 3. the authority responsible for the delay has not provided satisfactory justification.
>
> …

> [37] The reasonableness of a delay depends on the facts of a given case; the jurisprudence is only helpful in quantifying what constitutes an unreasonable delay insofar as it provides broad, guiding parameters (*Tameh v Canada (Public Safety and Emergency Preparedness)*, 2017 FC 288 at para 52). There is no uniform length of time for the limit of what is reasonable (*Bhatnager v Canada (Minister of Employment & Immigration)*, 1985 CanLII 5558 (FC), [1985] 2 FC 315, [1985] FCJ No 924 (FC) at para 4). That said, this Court has previously found a delay of two to three years or greater to be unreasonable (*Dragan v Canada (Minister of Citizenship and Immigration)*, 2003 FCT 211 (CanLII), 2003 FC 211 at para 55).

[21] The GCMS notes indicate that, in response to an inquiry from the Applicant about the progress of their application, the visa officer provided the following explanations for the delay:

> Please be informed that your application is in queue for processing. As we are only providing essential services, longer processing delays are to be expected.
>
> Due to the impacts of the coronavirus disease (COVID-19) on our operations, we cannot process applications normally nor provide accurate processing times.

[22] I find the above-cited explanation reasonably justified the delay.

[23] Further, as the Respondent points out, similar procedural fairness arguments concerning delay have been rejected by this Court, as noted in *Zargar*, at para 12. In my view, the Court’s analysis in *Zargar* is equally applicable to the case at hand.

[24] Finally, the Applicant’s argument with respect to bias appears to be based on the other procedural fairness arguments, which I have already rejected. Furthermore, the Applicant fails to point to any evidence in support of this argument, and thus fails to meet the high threshold

required to establish a reasonable apprehension of bias: *Committee for Justice and Liberty v Canada (National Energy Board)*, [1978] 1 SCR 369.

b. *The Decision was reasonable*

[25] As to the reasonableness of the Decision, the Applicant takes issues with various findings in the Decision: a) the finding that the business plan is not viable because there are well-established auto parts businesses in Canada; b) the Officer's concerns about the company's sales estimates and profit projections; and c) the Officer's concern about the lack of physical workspace.

[26] The Applicant's arguments, in my view, amount to a disagreement with the Officer's findings and do not raise any reviewable errors. The Officer engaged with the evidence and provided reasons for finding that the Applicant failed to satisfy the statutory requirements. The Officer's analysis was sufficient and reasonable in the context of a work permit application: *Wang* at para 21 and *Zargar* at para 19.

[27] In particular, at para 19 of *Wang*, Justice McDonald noted:

> [19] The Applicant also takes issue with the Officer noting that the Applicant had not provided a business address or plan to purchase property. In her work permit application the Applicant lists the "intended location of employment in Canada" as "to be determined." Although the Applicant did include an address in her 2018 business plan, it was reasonable for the Officer to note the lack of location on the Applicant's 2020 application form.

[28] Similarly, in this case, the Applicant did not include a physical workspace for his auto parts business in the business plan. Given the nature of the business, I find it reasonable for the Officer to highlight the lack of physical location of work for the employees and lack of space for parts storage as a basis for rejecting the Applicant's work permit application.

[29] At the hearing, the Applicant raised three additional arguments:

a. The Guidelines for Entrepreneurs or self-employed individuals seeking only temporary residence – [R205(a) – C11] – International Mobility Program [C11 Guidelines] was changed "significantly" in November 2022. The Officer relied on the new Guidelines to render their decision without giving the Applicant an opportunity to update their file.

b. Under the C11 Guidelines, the significant benefit considerations are based on the assessment of whether the proposed business plan is viable. Therefore, so long as the business plan is viable, an applicant would meet the significant benefit considerations, which the Applicant did in this case.

c. The visa office in Ankara lacked the expertise and knowledge to assess the Applicant's application, and should have assessed the application based solely on the proof of source of fund, and the Applicant's employment history, as indicated by the Case Processing Center [CPC] in Edmonton.

[30] I reject these additional arguments as they lack merit.

[31] While the Applicant asserts there have been "significant" changes to the C-11 Guidelines, he is unable to point to which aspects of the guidelines have been changed, or how they may have affected the Officer's assessment of the Applicant's application. Having reviewed the new C-11 Guidelines, post-dated November 2022, and compared that to the excerpts of the former C-11 Guidelines as contained in the Applicant's materials, I agree with the Respondent that there is no material change that would have affected the Applicant. More to the point, both sets of Guidelines require the Applicant to demonstrate that the work is "likely to create a viable

business that will benefit Canadian or permanent resident workers or provide economic stimulus", and that the Applicant has taken some measures to put the business plan in action, including renting space.

[32] The Applicant's argument that the significant benefit ground is based on having a viable business plan cuts both ways. In any event, regardless of whether there are one ground or two separate grounds, the concerns highlighted by the Officer speak both to their concerns about the viability of the business plan, as well as the lack of significant benefits.

[33] Finally, I find that the CPC Edmonton did not mandate how the work permit application should have been assessed. It simply referred the Applicant's file to Ankara as it was "complex and local knowledge required for review of applicant source of funds and employment history." In other words, the CPC Edmonton relied on Ankara to review two components of the Applicant's file, using their local knowledge, but did not suggest that those were the only requirements to be met in this case.

IV. Conclusion

[34] The application for judicial review is dismissed.

[35] There is no question for certification.

JUDGMENT in IMM-2823-22

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. There is no question for certification.

"Avvy Yao-Yao Go"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-2823-22
STYLE OF CAUSE:	ARMAN SHIDFAR v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	HELD VIA VIDEOCONFERENCE
DATE OF HEARING:	AUGUST 29, 2023
JUDGMENT AND REASONS:	GO J.
DATED:	SEPTEMBER 14, 2023

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