Federal Court  Cour fédérale

Date: 20230922

Docket: IMM-329-23

Citation: 2023 FC 1281

Vancouver, British Columbia, September 22, 2023

PRESENT: The Honourable Mr. Justice Ahmed

BETWEEN:

SULESH SUDHAKARAN VIMALA

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Sulesh Sudhakaran Vimala, seeks judicial review of a decision of a visa officer (the "Officer") of Immigration, Refugees and Citizenship Canada ("IRCC") dated December 21, 2022, refusing his application for a work permit 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 Regulations*, SOR/2002-227 ("IRPR"), owing to his immigration history in Canada.

[3] The Applicant submits that the Officer rendered an unreasonable decision in failing to consider the material evidence in the central issues of the claim and ignoring evidence that contradicted the Officer's conclusions.

[4] For the reasons that follow, I find that the decision is reasonable. The Officer reasonably assessed the evidence and the decision is justified in relation to the legal and factual constraints bearing upon it. This application for judicial review is therefore dismissed.

II. **Facts**

A. *The Applicant*

[5] The Applicant is a 35-year-old citizen of India.

[6] From 2007-2018, the Applicant worked as a truck driver for long-haul heavy vehicles in the United Arab Emirates ("UAE").

[7] In 2019, the Applicant entered Canada on a work permit and temporary resident visa, working as a long-haul truck driver for two different transport companies between 2019 and 2022.

[8] While in Canada, the Applicant made a claim for refugee protection. The Applicant's refugee claim was refused and a departure order was issued. A certificate of departure confirmed that he returned to India on May 1, 2022.

[9] On November 7, 2022, the IRCC confirmed that the Applicant applied for a work permit to return to Canada under the TFWP to work for Chohan Carriers Ltd. as a long-haul truck driver.

B. *Decision under Review*

[10] In a decision dated December 21, 2022, the Officer refused the Applicant's work permit application. The decision is largely contained in the Global Case Management System ("GCMS") notes, which form part of the reasons for the decisions.

[11] The GCMS notes state:

> I have reviewed the application.
>
> I have considered the following factors in my decision.
>
> PA was previously issued a WP. He went to Canada and made a refugee claim which was refused. Departure was confirmed. Hen now states that he was facing problems in India which are now resolved. Consultant states that he had "some problems" and those issues are now resolved. PA has again applied or a WP. Due to the above factors and on balance, I am not satisfied the applicant is a genuine temporary worker who will depart Canada at the end of his authorized stay. Not satisfied with purpose.
>
> 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 reason above, I have refused this application.

III. **Preliminary Issue**

[12] In his written submissions, the Applicant seeks costs against the Respondent, submitting that the Officer acted in bad faith in rendering the decision. At the hearing, counsel for the Applicant did not argue this position. The Respondent argues that costs are inappropriate, as the Applicant's arguments about the Officer's decision-making are speculative and without merit.

[13] I agree with the Respondent. The Applicant provides no evidence that support his contentions.

IV. **Issue and Standard of Review**

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

[15] 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 this 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).

[16] 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).

[17] For a decision to be unreasonable, the applicant must establish 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; *Canada (Citizenship and Immigration) v Mason*, 2021 FCA 156, at para 36).

V. **Analysis**

[18] The Applicant submits that the Officer's decision is unreasonable, as the Officer made the decision without regard to the Applicant's history of compliance with immigration laws, a sworn declaration stating he would abide by Canadian immigration laws, a letter offering employment in Canada, and family ties in India. The Applicant cites various judgments from this Court that allegedly bear similar facts to this case, where the failure to address evidence directly before an Officer constituted a reviewable error: *Gill v Canada (Citizenship and Immigration)*, 2021 FC 934 ("Gill"); *Singh v Canada (Citizenship and Immigration)*, 2022 FC

692 (“Singh #1”); *Singh v Canada (Citizenship and Immigration)*, 2022 FC 1718 (“Singh #2”). I disagree. The Officer considered the relevant evidence and did not make a reviewable error.

[19] The Respondent submits that the Officer’s decision is reasonable, arguing that the Officer considered the Applicant’s evidence and reasonably found that there was no explanation of the issues the Applicant had faced in India that caused him to apply for refugee status in Canada, nor relevant evidence presented to clear up these issues. The Respondent contends that the Officer did not ignore evidence about family ties, as this issue was irrelevant to the outcome. The Respondent further submits that the Applicant’s reliance on jurisprudence from this Court is misguided, as the Officer adequately considered the relevant evidence in this particular case. The Respondent also contends that the evidence establishes that the Applicant likely failed to comply with the terms of his initial work permit in Canada.

[20] I agree with the Respondent. The determinative issue in this matter is the Applicant’s immigration history, which the Officer meaningfully grappled with (*Vavilov* at para 128). The onus was on the Applicant to establish he would leave Canada at the end of the authorized stay and provide evidence to that effect (*Mahmoudzadeh v Canada (Citizenship and Immigration)*, 2022 FC 453 at paras 14-15). The Officer was entitled to consider the failed refugee claim and the accompanying evidence alleging the issues behind the claim were resolved and conclude that this evidence was not satisfactory to establish that the Applicant would leave Canada at the end of his stay. No other evidence was adduced that contradicts this finding, and I agree with the Respondent that the Applicant’s evidence about resolving his issues in India does not provide further explanation or clarity about that situation. The Officer’s consideration of the failed

refugee claim thus represents a reasonable assessment of the evidence, evidence which this Court is not to reassess on review (*Vavilov* at para 125).

[21] Furthermore, the Applicant claims that he relies upon cases that are "virtually indistinguishable" from this matter. These cases are, in fact, plainly distinguishable. Neither *Gill*, *Singh* #1, nor *Singh* #2 had applicants with a failed refugee claim who were re-applying for a work permit. This distinguishing fact is key to the Officer's decision and the Officer was entitled to rely upon it. In this regard, I find that the Officer's decision is justified in relation to the legal and factual constraints bearing upon the decision (*Vavilov* at paras 99-101).

VI. **Conclusion**

[22] The application for judicial review is dismissed without costs. The Officer's decision is justified, transparent, and intelligible in light of the relevant legal and factual constraints. No questions for certification were raised, and I agree that none arise.

JUDGMENT in IMM-329-23

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed without costs.

2. There is no question to certify.

"Shirzad A."
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-329-23
STYLE OF CAUSE:	SULESH SUDHAKARAN VIMALA v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	BY VIDEOCONFERENCE
DATE OF HEARING:	SEPTEMBER 20, 2023
JUDGMENT AND REASONS:	AHMED J.
DATED:	SEPTEMBER 22, 2023

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