Federal Court  Cour fédérale

Date: 20231201

Docket: IMM-1801-23

Citation: 2023 FC 1617

Ottawa, Ontario, December 1, 2023

PRESENT: The Honourable Mr. Justice Régimbald

BETWEEN:

VIEN HONG NGUYEN
PHI HUNG NGUYEN
NGOC HONG ANH NGUYEN
HOANG TRUNG ANH NGUYEN

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] This is an application for judicial review pursuant to subsection 72(1) of the *Immigration and Refugees Protection Act* (LC 2001, c27) of a decision [Decision] dated December 15, 2022, by an immigration officer [Officer] denying Vien Hong Nguyen [the Principal Applicant or the PA] her work permit application, as well as her family members' [Applicants] own requests for visas.

[2] The Officer refused the PA's application because they were not satisfied that the PA's proposed wages, as well as her assets and financial situation, were sufficient to support herself and her accompanying family's stay in Canada.

[3] As set out in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov] at para 99, a reasonable decision is one that exhibits the hallmarks of justification, transparency, and intelligibility, and is justified in the context of the applicable factual and legal constraints.

[4] Having considered the record before the Court, including the parties' written and oral submissions, as well as the applicable law, the Applicants have discharged their burden and demonstrated that the Officer's decision is unreasonable. For the reasons that follow, this application for judicial review is granted.

I. Factual background

[5] The PA is a 42-year-old chef from Vietnam who applied for a work permit in October 2020 to work as a cook at a restaurant in Fort McMurray. She applied to bring her husband and their two children. Her husband applied for an open work permit and the two children applied for study permits.

[6] The job in Fort McMurray offered a wage of $17.50/hour, and the restaurant agreed to assume the cost of round-trip transportation for the PA. The restaurant obtained a positive Labour Market Impact Assessment [LMIA] on April 26, 2022.

[7] According to her resume, the PA had been working as a sous-chef and chef since 2010 at "Eye Hospital Canteen." Her current salary in Vietnam is approximately $400 (CAD) per month.

[8] On December 15, 2022, the PA and her family's permit applications were denied. The decision letter relating to the PA reads:

> I am not satisfied that you will leave Canada at the end of your stay as required by paragraph 200(1)(b) of the IRPR (https://laws.justice.gc.ca/eng/regulations/SOR-2002-227/section-200.html). I am refusing your application because you have not established that you will leave Canada, based on the following factors:
>
> The compensation (monetary or other) indicated in your job offer and your assets and financial situation are insufficient to support the stated purpose of travel for yourself (and any accompanying family member(s), if applicable).
>
> The purpose of your visit to Canada is not consistent with a temporary stay given the details you have provided in your application.

[9] The Officer's notes in the Global Case Management System [GCMS] provide a more detailed description as to why the work permit application of the PA was rejected. The Officer wrote:

> … PA provided a self-written letter stating she works at a canteen since 2010 and makes 7M a month (approx 403 CAD a month). Insufficient proof of funds and financial establishement [sic] in COR. I also note the stamp from the canteen does not have usual tax code. No solid proof of employment provided. The compensation (monetary or other) indicated in the applicant's job offer and their assets and financial situation are insufficient to support the stated purpose of travel for the applicant and any accompanying family members.

II. Issues and standard of review

[10] This matter raises the following issues:

1. Was there a breach of procedural fairness?
2. Was the Officer's decision unreasonable?

[11] Regarding questions of procedural fairness, the reviewing court must be satisfied of the fairness of the procedure with regard to the circumstances (*Singh v Canada (Citizenship and Immigration)*, 2023 FC 215 at para 6; *Do v Canada (Citizenship and Immigration)*, 2022 FC 927 at para 4; *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54 [*Canadian Pacific Railway*]). In *Canadian Pacific Railway*, the Federal Court of Appeal noted that trying to "shoehorn the question of procedural fairness into a standard of review analysis is… an unprofitable exercise" (at para 55). Instead, the Court must ask itself whether the party was given a right to be heard and the opportunity to know the case against them, and that "[p]rocedural fairness is not sacrificed on the altar of deference" (*Canadian Pacific Railway* at para 56).

[12] The standard of review applicable to work permit decisions is reasonableness (*Vavilov* at para 23; *Singh v Canada (Citizenship and Immigration)*, 2022 FC 1645 at para 13; *Shah v Canada (Citizenship and Immigration)*, 2022 FC 1741 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). The reviewing court must ensure that the decision is justifiable, intelligible, and transparent (*Vavilov*

at para 95). Justifiable and transparent decisions account for central issues and concerns raised in the parties' submissions to the decision maker (*Vavilov* at para 127).

[13] For a decision to be set aside, the reviewing court must determine that the shortcomings or flaws are central to the decision (*Vavilov* at para 100). Examples of unreasonableness include irrational reasoning and indefensible outcomes in light of the relevant factual and legal constraints before the decision maker (*Vavilov* at para 101).

III. Analysis

[14] The Applicants submit that the decision is unreasonable and procedurally unfair. The Applicants primarily take issue with the Officer's assessment of the evidence and the lack of opportunity to address the Officer's credibility concerns.

A. *The Decision is procedurally unfair*

[15] Regarding the procedural fairness issue, the Applicants submit that the Officer had credibility concerns regarding the PA's employment in Vietnam. The Applicants submit that these credibility concerns gave rise to an obligation on the Officer to allow the PA an opportunity to address these concerns (relying on *Al Aridi v Canada (Citizenship and Immigration)*, 2019 FC 381 at para 20; *Hassani v Canada (Citizenship and Immigration)*, 2006 FC 1283 at para 24 [*Hassani*]).

[16] The Respondent argues that the Officer's finding is not on credibility, which would require the Officer to offer an opportunity to respond, but is rather an issue of sufficiency of

evidence. In such cases, procedural fairness does not require the officer to provide a right to respond or to bolster an incomplete application because the applicant is deemed to be aware of the content - and presumably the weaknesses - of their application (*Roopchan v Canada (Citizenship and Immigration)*, 2021 FC 1342 at para 28; *Hamza v Canada (Citizenship and Immigration)*, 2013 FC 264; *Kuhathasan v Canada (Citizenship and Immigration)*, 2008 FC 457; *Noulengbe v Canada (Citizenship and Immigration)*, 2021 FC 1116 at para 10; *Hakimi v Canada (Citizenship and Immigration)*, 2015 FC 657).

[17] In *Haghshenas v Canada (Citizenship and Immigration)*, 2023 FC 464 at para 16 [*Haghshenas*], the Court noted that the level of procedural fairness owed in work permit applications is relatively low (citing *Sulce v Canada (Citizenship and Immigration)*, 2015 FC 1132 at para 10 [*Sulce*]). Officers do not have a duty to "provide a running score, nor to give advance notice of a negative decision" to applicants (*Haghshenas* at para 21). However, where an officer may have concerns relating to the "credibility, accuracy, or genuine nature of the information submitted by an applicant, this Court has held that the officer may have a duty to request further information" (*Sulce* at para 11, citing *Singh v Canada (Citizenship and Immigration)*, 2015 FC 115 at para 25; *Hassani* at para 24; *Singh v. Canada (Citizenship and Immigration)*, 2021 FC 691 at paras 9-12).

[18] In *Ansari v Canada (Citizenship and Immigration)*, 2013 FC 849, Justice Kane confirmed that "when a concern is raised that is truly about credibility, there may be – and often will be – a duty to notify an applicant of these concerns so that the applicant may be able to provide an

explanation or further documentation" (at para 19). Similarly, in *Patel v Canada (Minister of Citizenship and Immigration)*, 2020 FC 77 at para 10, Justice Diner wrote:

> [10] I agree with Mr. Patel that the Officer denied him his rights to procedural fairness by failing to conduct an interview or providing him with an opportunity to address the concerns about the genuineness of his application. While I acknowledge that the level of procedural fairness owed to visa and study permit applicants falls at the low end of the spectrum (see, e.g., Al Aridi v Canada (Citizenship and Immigration), 2019 FC 381 at para 20 [Al Aridi]), concerns with credibility should be raised with the applicant, at minimum in writing. At a practical level, this means that visa officers are not required to inform applicants of concerns regarding the sufficiency of supporting materials or evidence. However, that changes when the officer impugns the authenticity of the documents or the applicant's credibility (Hassani v Canada (Citizenship and Immigration), 2006 FC 1283 at para 24).

[19] In this case, the Officer's notes reveal that they had concerns regarding the PA's employment history: "PA provided a self-written letter stating she works at a canteen since 2010 and makes 7M a month (approx 403 CAD a month). Insufficient proof of funds and financial establishement [sic] in COR. I also note the stamp from the canteen does not have usual tax code. No solid proof of employment provided".

[20] In my view, the Officer's reasons appear to be influenced by their credibility assessment of the PA's employment history. The Officer therefore questions the integrity of the evidence, not merely its sufficiency. As such, the Officer had a duty to provide the PA with an opportunity to respond to satisfy them on the issue, or request additional documents. As the PA's right to procedural fairness was breached, the matter should be remitted back to a new officer for re-determination.

B. *The decision is unreasonable*

[21] Regarding the reasonableness of the decision, the Applicants argue that the positive LMIA including the $17.50/hour wage for a cook in Fort McMurray met the prevailing requirement/median wage. The Applicants submit that by ignoring the LMIA and concluding that the PA's wage would not be sufficient for her travel to Canada and to support her family, the Officer made an unreasonable decision. The Applicants also submit that the Officer ignored the other evidence in the record regarding the PA's bank accounts and real estate holdings, in determining that the PA had "[i]nsufficient proof of funds and financial establishement [sic…and] their assets and financial situation are insufficient to support the stated purpose of travel".

[22] The Applicants argue that the Officer failed to provide coherent reasons regarding their belief that the PA and her family would not leave Canada at the end of the two-year work permit period. The Applicants submit that the reasons, read in conjunction with the record, do not make it possible to understand the decision maker's reasoning on a critical point, rendering the decision unreasonable (citing *Vavilov* at para 103). The Officer failed to consider the evidentiary record before them and explain their decision on the basis of that evidence, which further demonstrates that the decision was unreasonable (citing *Khir v Canada (Citizenship and Immigration)*, 2021 FC 160 at paras 40, 49 [*Khir*]).

[23] I agree with the Applicants.

[24] On the issue of her job and hourly wage offered, an LMIA had been approved and the proposed wage had previously been analyzed and deemed consistent with the prevailing wage rate for the occupation in Fort McMurray. While the Officer could disagree with that assessment or find that nevertheless, that wage was insufficient for the PA to support her family, or that the PA was otherwise not qualified, the Officer had to explain why (see for example, *Singh v Canada (Citizenship and Immigration),* 2022 FC 80 at para 16). Nevertheless, there is no explanation in the Officer's reasons in this case.

[25] Regarding the PA's financial assets, she included in her application evidence of two bank accounts demonstrating her assets. The PA also included deeds to her properties jointly owned with her husband. The PA's husband was also applying for a work permit and would have had the opportunity to earn income once in Canada. The Officer does not weigh these factors in their reasons.

[26] The Officer therefore failed to provide any reasons regarding the PA's assets, bank accounts or financial situation, and concerning the impact of his conclusions on those evidentiary issues on his ultimate Decision. The ignorance of contrary evidence by an officer may be an indicator of unreasonableness, such as is the case here with the PA's financial situation (*Khir* at para 40, citing *Vavilov* at para 126; *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, 1998 CanLII 8667 at para 15).

[27] Therefore, the Decision "lacks the requisite justification, intelligibility and transparency to avoid judicial interference" and "is an example of an administrative decision lacking a rational chain of analysis that otherwise could permit the Court to connect the dots or satisfy itself that

the reasoning ‘adds up’” (*Seyedsalehi v Canada (Citizenship and Immigration)*, 2022 FC 1250 at paras 6, 11; see also *Donnellan v Canada (Citizenship and Immigration)*, 2020 FC 227 at paras 2, 3, 7, 8).

IV. Conclusion

[28] The Officer’s Decision is unreasonable. The application for judicial review is granted. The matter is remitted to a different decision maker for reconsideration.

[29] The parties do not propose a question for certification and I agree that none arises in the circumstances.

JUDGMENT in IMM-1801-23

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is granted.

2. The matter will be remitted to a different decision maker for reconsideration.

3. There is no question for certification.

"Guy Régimbald"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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