

Federal Court



Cour fédérale

Date: 20240104

Docket: IMM-8588-22

Citation: 2024 FC 15

Ottawa, Ontario, January 4, 2024

PRESENT: Madam Justice McDonald

BETWEEN:

ALIREZA RAVESHI

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The Applicant, a citizen of Iran, seeks judicial review of a decision by an Officer of Immigration, Refugee, and Citizenship Canada [IRCC] refusing his application for a work permit.

[2] He applied for a work permit as the Chief Executive Officer of a start-up company, POYA Software Development Inc. [POYA] under Rule 205(a) of the *Immigration and Refugee*

Protection Regulations, SOR/2002-227 [IRPR], with the labour market impact assessment [LMIA] exemption code C12 as an intra-company transferee.

I. Decision under review

[3] The Officer's refusal letter states:

- There is insufficient documentation to establish that the applicant comes within the exceptions of R205(a) and that the proposed business would be of significant benefit to Canada.

[4] The Officer's Global Case Management System [GCMS] notes state:

... Company has plans to be located in Vancouver, BC. Physical premises have not yet been established and business plan states that applicant is expected to locate an office space once they are in Canada within the first 2 months. It is noted that representative submissions indicate that company will initially use counsels' address as its physical premises and applicant will be working at the client site of their first client (WestPower Energy Consulting Ltd.). I have reviewed the documents in this application and the applicant's intended employment in Canada does not appear reasonable given: - Business plan indicates that the Canadian company will offer lower cost and shorter turn around time for its services by utilizing the workflow process perfected by the Parent company. However, submissions only reference IT services in general terms and do not demonstrate that the applicant or POYA SOFTWARE DEVELOPMENT INC. would have proprietary knowledge that would set their offerings apart from the competition. As Vancouver is an extremely competitive market for IT services (open web search indicates there are hundreds of companies with ERP products), this business proposal does not demonstrate a unique business idea. - Submissions indicate that POYA SOFTWARE DEVELOPMENT INC. has already won a contract to implement an ERP System, Deltek Vantegpoint, for West Power Energy. However, an open web search appears to indicate that Deltek Vantegpoint is a 3rd party ERP system and does not appear to be specific to Poya. It is noted that letter indicating contract has been awarded is addressed to Poya Software [sic] Development Company (the company in Iran) and business plan indicates that service offerings are not generally hindered by

location. Submissions do not demonstrate an immediate need to be in Canada at this time. - Submissions indicate that applicant's position as Executive Director includes customer relations. In order to successfully connect with customers in Vancouver, it would be expected that applicant has a working ability in English. It is noted that the business plan indicates applicant would be hiring an administrative assistant in month 1 to assist them as an interpreter. It is unclear as to what extent an interpreter would be used for, however, this gives the impression that applicant's English language skills may not be strong enough to perform the work sought in Canada.

II. Relevant provisions

[5] The relevant provisions of the IRPR are:

Work permits

200 (1) Subject to subsections (2) and (3) — and, in respect of a foreign national who makes an application for a work permit before entering Canada, subject to section 87.3 of the Act — an officer shall issue a work permit to a foreign national if, following an examination, it is established that

...

(c) the foreign national

...

(ii) intends to perform work described in section 204 or 205 but does not have an offer of employment to perform that work or is described in section 207 or 207.1 but does not have an offer of employment,

Permis de travail — demande préalable à l'entrée au Canada

200 (1) Sous réserve des paragraphes (2) et (3), et de l'article 87.3 de la Loi dans le cas de l'étranger qui fait la demande préalablement à son entrée au Canada, l'agent délivre un permis de travail à l'étranger si, à l'issue d'un contrôle, les éléments ci-après sont établis :

...

c) il se trouve dans l'une des situations suivantes :

...

(ii) il entend exercer un travail visé aux articles 204 ou 205 pour lequel aucune offre d'emploi ne lui a été présentée ou il est visé aux articles 207 ou 207.1 et aucune offre

(ii.1) intends to perform work described in section 204 or 205 and has an offer of employment to perform that work or is described in section 207 and has an offer of employment, and an officer has determined, on the basis of any information provided on the officer's request by the employer making the offer and any other relevant information, that the offer is genuine under subsection (5), or

...

Canadian interests

205 A work permit may be issued under section 200 to a foreign national who intends to perform work that

(a) would create or maintain significant social, cultural or economic benefits or opportunities for Canadian citizens or permanent residents;

d'emploi ne lui a été présentée,

(ii.1) il entend exercer un travail visé aux articles 204 ou 205 pour lequel une offre d'emploi lui a été présentée ou il est visé à l'article 207 et une offre d'emploi lui a été présentée, et l'agent a conclu, en se fondant sur tout renseignement fourni, à la demande de l'agent, par l'employeur qui présente l'offre d'emploi et tout autre renseignement pertinent, que l'offre était authentique conformément au paragraphe (5),

...

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) il permet de créer ou de conserver des débouchés ou des avantages sociaux, culturels ou économiques pour les citoyens canadiens ou les résidents permanents;

[6] The relevant policy is titled International Mobility Program: Canadian interests – Significant benefit – Intra-company transferees [R205(a)] (exemption code C12). The policy explains the program in part as follows:

The entry of intra-company transferees is guided by the Immigration and Refugee Protection Regulations and the general provisions of this section, and is supplemented by provisions contained in international trade agreements for citizens of signatory countries.

- Qualified intra-company transferees require work permits and are exempted from the Labour Market Impact Assessment (LMIA) under paragraph R205(a) (exemption code C12) as they provide significant economic benefit to Canada through the transfer of their expertise to Canadian businesses. This applies to foreign nationals from any country, including under the General Agreement on Trade in Services (GATS).

...

Guidelines when assessing start-up companies

Requirements for the company

- Generally, the company must secure physical premises to house the Canadian operation, particularly in the case of specialized knowledge. However, in specific cases involving senior managers or executives, it would be acceptable that the address of the new start-up not yet be secured; for example, the company may use its counsel's address until the executive can purchase or lease a premise.
- The company must furnish realistic plans to staff the new operation.
- The company must have the financial ability to commence business in Canada and compensate employees.
- When transferring executives or managers, the company must
 - demonstrate that it will be large enough to support executive or management function.
- When transferring a specialized knowledge worker, the company must
 - demonstrate that it is expected to be doing business;
 - ensure that work is guided and directed by management at the Canadian operation.

III. Issues

[7] The Applicant argues that the Officer's decision is unreasonable in:

- a. finding no viable business plan; and
- b. concluding the business would not be a significant benefit to Canada.

IV. Standard of review

[8] The standard of review is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 23 [*Vavilov*]). To determine whether the decision is reasonable, the Court must ask “whether the decision bears the hallmarks of reasonableness—justification, transparency and intelligibility—and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision” (*Vavilov* at para 99).

[9] Reasonableness review is concerned with the decision as a whole (*Vavilov* at paras 15, 85, 99, and 116). Reviewing courts should not engage in a “line-by-line treasure hunt for error” (*Vavilov* at para 102, citing *Communications, Energy and Paperworkers Union of Canada, Local 30 v Irving Pulp & Paper Ltd*, 2013 SCC 34 at para 54 and *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para 14).

[10] It is not sufficient for an applicant to simply point to errors; the errors must be “sufficiently central or significant to render the decision unreasonable” or in other words, the

errors must be “material to the outcome” (*Vavilov* at para 100; *BCE Inc v Quebecor Media Inc*, 2022 FCA 152 at para 43).

V. Analysis

A. *Finding no viable business plan*

[11] The Applicant argues that the Officer failed to consider the business plan and failed to apply the C12 considerations to his application.

[12] However, in the GCMS notes, the Officer explicitly says “[a]pplication has been assessed as a C 12 start-up.” The GCMS notes indicate that the business plan was fully reviewed by the Officer. The issues that the Officer raised with the business plan include considerations highlighted in the C12 Guidelines, including physical premises and staffing considerations. More generally, with respect to the financial viability of the company, the Officer found that there was insufficient information that POYA would enjoy a competitive advantage in Vancouver’s IT market.

[13] The Applicant has offered no authority in support of the position that the Officer is bound to consider the C12 factors to the exclusion of the statutory requirements outlined in Rule 205(a) of IRPR. In fact, the exemption code C12 itself states that the consideration is the economic benefit to Canada.

[14] The Officer’s determination of the viability of the Applicant’s business plan was reasonable and within the Officer’s discretion, to which this Court must grant deference.

B. *Concluding the business would not be a significant benefit to Canada*

[15] The Applicant argues that the “significant benefit test” is not consistent with IRCC’s LMIA exemption code system. The Applicant argues that the decision is unreasonable as the Officer’s reasons do not address the C12 category requirements in the IRCC Guidelines and instead the Officer based their decision on unrelated considerations without explaining why they were departing from the IRCC Guidelines.

[16] The C12 Guidelines outline a series of considerations that the Officer must weigh. Here, the Officer was not satisfied the requirements for LMIA exemption as an intra-company transferee were met. The Applicant did not provide a viable business plan, did not show how his intended employment in Canada was reasonable, and did not show that POYA would create significant benefits for Canadian citizens or permanent residents.

[17] The onus was on the Applicant to provide all the necessary evidence to convince the Officer that he was LMIA exempt (*Chamma v Canada (Citizenship and Immigration)*, 2018 FC 29 at para 31). Here, the Officer was not satisfied that the Applicant met the requirements for LMIA exemption as an intra-company transferee.

[18] It is not the role of this Court to reassess the merits of the work permit application or to reweigh the evidence (*Vavilov* paras 125-126).

VI. Conclusion

[19] This judicial review is dismissed as the Officer's decision is reasonable and within the parameters of the broad discretion afforded to officers assessing such applications.

[20] There is no question for certification.

JUDGMENT IN IMM-8588-22

THIS COURT'S JUDGMENT is that:

1. This judicial review is dismissed.

2. There is no question for certification.

"Ann Marie McDonald"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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