

Federal Court



Cour fédérale

Date: 20240503

Docket: IMM-7359-23

Citation: 2024 FC 684

Ottawa, Ontario, May 3, 2024

PRESENT: The Honourable Mr. Justice Manson

BETWEEN:

NAEIM NADERIBOROUJENI

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] This is an application for judicial review of a decision (the “Decision”) by an immigration officer (the “Officer”). The Decision denied the Applicant’s application for a work permit.

II. Background

[2] Naeim Naderiboroujeni (the “Applicant”) resides in, and is a citizen of, Iran.

[3] The Applicant alleges that he has worked as a cabinet maker in Iran since March 2013, first with Akazhu Woodworking Ltd and then with the Sima Choub Borojen Technical and Engineering Workshop (collectively, the “Iranian Employers”). He purports to have acquired two work experience certificates, one from each employer (the “Work Certificates”). The Work Certificates provide generic descriptions of the Applicant’s time with each employer and the time he spent in each position.

[4] The Applicant received a training certificate in cabinet making in February 2022 from the Iran Technical and Vocational Training Organization (the “Training Certificate”). The Training Certificate states that the Applicant received 240 hours of training. A few months later, he was offered a position with Dena Oak Woodworking Ltd in British Columbia (the “Canadian Employer”). The position was for permanent, full-time employment and was conditional on acquiring a work permit or a permanent residency visa, which the Applicant failed to secure.

[5] In April 2023, the Canadian Employer confirmed that the offer was still open to the Applicant, subject to the same terms. The Applicant filed an application for a work permit that month. Included in his application were the Work Certificates, the Training Certificate, and a copy of the Canadian Employer’s letters of offer.

[6] In order to issue a work permit, the Officer must in part be satisfied that (1) the Applicant will leave Canada by the end of the period authorized for their stay *and* (2) there are no reasonable grounds to believe that the Applicant is unable to perform the work sought (*Immigration and Refugee Protection Regulations*, SOR/2002-227 at sections 200(1)(b) and 200(3)(a) [*Regulations*]). Both conditions must be satisfied.

[7] The Officer denied the Applicant's application for a work permit, finding that the Applicant had failed to meet either condition. Regarding the condition to leave Canada at the end of the period authorized for their stay, the Officer made the general observation that the application details provided by the Applicant were "not consistent with a temporary stay". As for the condition that there be no reasonable grounds to believe that the Applicant is unable to perform the work sought, the Officer noted that the Work Certificates provided failed to state what the Applicant's duties were during his time with the Iranian Employers. The Officer also observed that the Applicant had not provided any evidence of wages or pay slips received from the Iranian Employers.

[8] The Applicant submits that the Officer's findings were unreasonable. He argues that the Officer erred by (1) requiring wage or pay slips as evidence of the Applicant's prior employment as a cabinet maker, and (2) failing to justify the finding that the Applicant's evidence indicates he is not likely to leave Canada at the end of his authorized stay. The Applicant further argues that the Officer breached procedural fairness by making veiled credibility findings regarding his work experience without the benefit of an oral hearing.

III. Issues

[9] Was the Officer's decision to deny the application for a work permit unreasonable?

[10] Did the Officer breach the duty of procedural fairness?

IV. Analysis

[11] The standard of review with respect to the Officer's substantive findings is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at para 25). The standard of review with respect to the Applicant's procedural rights is correctness or a standard with the same import (*Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at paras 34-35 and 54-55, citing *Mission Institution v Khela*, 2014 SCC 24 at para 79).

A. *Evidence of Wages or Pay Slips*

[12] The Applicant argues that the Officer denied his application for a work permit partly because the application did not include evidence of wages or pay slips from the Iranian Employers. The Applicant suggests that the Officer considered such evidence to be necessary and therefore failed to consider the record appropriately and misconstrued the requirements under the *Regulations*. The Applicant adds in his further memorandum that the Officer's assessment is one-sided and amounts to a confirmation bias.

[13] However, the Officer was not stating that the evidence of wages or pay slips from the Iranian Employers was necessary *in and of itself*. Rather, the Officer was observing, by way of example, that there was no objective evidence on the record to corroborate the Applicant's claim that he worked with the Iranian Employers. The only evidence before the Officer as to the Applicant's experience were the Work Certificates, both of which failed to indicate what the Applicant's duties were, the Officer having considered the duties elaborated in National Occupational Classification (NOC) 7272.

[14] The Applicant relies on *Kharaud v Canada (Citizenship and Immigration)*, 2022 FC 801 at paragraph 15, where the Court held that “[w]hile pay slips from the employer may also be useful evidence, they are not necessary”. However, the facts in *Kharaud* are distinguishable. In *Kharaud*, the applicant had provided objective evidence in the form of income tax returns and bank statements that attest to their employment. Here, the Applicant provided none, and it was open to the Officer to conclude from the absence of such evidence that there were reasonable grounds to believe that the Applicant is unable to perform the work in question. The Officer's finding in that respect was reasonable.

B. *Lack of Justification*

[15] The Applicant complains that the Officer provided no justification in support of the conclusion that “the purpose of [the Applicant's] visit to Canada is inconsistent with a temporary stay”. He submits that the Officer's failure to justify this finding is unreasonable. In addition, the Applicant argues that the Officer's finding failed to consider that the Applicant owns immovable assets in Iran and that his mother and four of his siblings will remain in Iran.

[16] The Respondent submits that there *was* evidence to support the Officer's conclusion, given that the Canadian Employer's job offer was for a "permanent, full-time" position, implying that the Applicant intended to stay in that position on a permanent basis. The Respondent also balances the Applicant's reference to family ties in Iran given that the Applicant has two siblings in British Columbia.

[17] However, the Respondent cannot, by way of argument, fill in evidentiary gaps apparent from the Officer's decision. The Officer must provide the evidence in their reasons to justify their decision. As the Supreme Court of Canada held in *Vavilov*, the Court's role is to "develop an understanding of the decision maker's reasoning process in order to determine whether the decision as a whole is reasonable" (at para 99).

[18] Here, the Officer provided no reasons to justify their conclusion that the purpose of the Applicant's visit to Canada was inconsistent with a temporary stay. The Officer's failure to do so does not meet the "hallmarks of reasonableness", namely justification, transparency and intelligibility (*Vavilov* at para 99).

[19] The Officer's conclusion with respect to the Applicant's temporary stay was unreasonable.

C. *Veiled Credibility Finding*

[20] The Applicant argues that the Officer made a veiled credibility finding without an oral hearing, in breach of the Officer's duty of procedural fairness. He specifically states that the

Officer impugned his credibility by rejecting his claim that he is able to perform the requirements of the work in question. I do not agree.

[21] The Officer did not reject the Applicant's assertion that he is able to perform the duties of his position on grounds of credibility. Rather, the Officer's conclusion was that there was insufficient objective evidence to corroborate the Applicant's claim. Such a finding does not go to the credibility or authenticity of the Applicant's evidence, but to the sufficiency of that evidence before the Officer.

[22] The Officer did not make a veiled credibility finding.

V. Conclusion

[23] While the Officer's decision with respect to the nature of the Applicant's purported temporary stay was unreasonable, their finding that there were reasonable grounds to believe that the Applicant is unable to perform the work in question was reasonable. The latter finding is sufficient on its own to support the Officer's ultimate decision to reject the application for a work permit.

[24] The application is dismissed.

JUDGMENT in IMM-7359-23

THIS COURT'S JUDGMENT is that:

1. The application is dismissed.
2. There is no question for certification.

"Michael D. Manson"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-7359-23

STYLE OF CAUSE: NAEIM NADERIBOROUJENI v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

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