

Federal Court



Cour fédérale

Date: 20240613

Docket: IMM-3817-23

Citation: 2024 FC 905

Ottawa, Ontario, June 13, 2024

PRESENT: The Honourable Madam Justice Tsimberis

BETWEEN:

CHARN JEET SINGH

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT

UPON application for judicial review to review and set aside a decision by an officer of Immigration, Refugees and Citizenship Canada [Officer] dated February 8, 2023, refusing the Applicant's application for a Canadian work permit under the Temporary Foreign Worker Program [Decision];

AND UPON Mr. Charn Jeet Singh [Applicant], a national of India, having received a positive Labour Market Impact Assessment [LMIA] for the position of Long Haul Truck Driver under NOC 7511 following a job offer to work as a NOC #7511 long haul truck driver with Jugteg Enterprises Ltd. and having applied for a work permit as a temporary foreign worker;

AND UPON the Officer, having reviewed the Applicant's work permit application and supporting documentation, and having determined that his application did not meet the statutory requirements of the *Immigration and Refugee Protection Act* [IRPA] and the *Immigration and Refugee Protection Regulations* SOR/2022-227 [IRPR] and concluding in their Decision that the Applicant has not sufficiently demonstrated that he meets the requirements of section 200 of the IRPR;

AND UPON noting that the notes contained in the contained in the Global Case Management System [GCMS], which form part of the reasons, indicate that:

1. The Officer was not satisfied that the Applicant would be able to adequately perform the proposed work given his insufficient ability in the English language because the English language proficiency test results submitted by the Applicant showed listening and reading scores of 4.5 and 4.0, respectively, while the expected threshold was a score of 5.0, suggesting the Applicant could not adequately perform the duties of a long haul truck driver, which would include conversing with the general public, communicating with the dispatcher, other drivers, and customers, using the on-board computers and other communication devices, understanding highway traffic signs and

signals in the English language, responding to official inquiries, interacting effectively with law enforcement and emergency personnel, and making entries on reports and records;

2. The Officer also not being satisfied that the Applicant would leave Canada at the end of their period of authorized stay because, despite being a national of India, were living and working on a modest income as a temporary resident of the United Arab Emirates [UAE], and this temporary status would be cancelled upon his departure from the UAE;

AND UPON noting that the Federal Court of Appeal has held that it is the Applicant's burden to establish his eligibility for a temporary resident visa, which in this matter is the work permit (*Khan v Canada (Minister of Citizenship and Immigration)*, 2001 FCA 345 at para 22);

AND UPON reading the Applicant's Memorandum of Fact and Law, the Respondent's Memorandum of Argument (all at the leave stage, as no further memoranda were submitted), and hearing the oral submissions of the counsel of the parties on June 4, 2024;

AND UPON acknowledging the Applicant alleges there was a breach of procedural fairness because the Officer relied upon generalizations and stereotypes and did not provide the Applicant with an opportunity to respond to significant concerns not reasonably foreseeable;

AND UPON acknowledging the Applicant argues that the Decision is unreasonable because the Officer failed to analyze how the Applicant's language abilities would affect his capacity to perform the proposed work, and the Officer either disregarded relevant evidence or failed to provide reasons as to why the factors listed supported the Decision;

AND UPON reviewing the Applicant's Record and Certified Tribunal Record;

AND UPON determining that this application should be dismissed for the following reasons:

[1] There was no breach of procedural fairness, as the Applicant has failed to provide any evidence or examples of the Officer relying on generalizations or stereotypes. Simply referring to jurisprudence without showing how they apply in this particular case is not sufficient. Similarly, it is not a procedural fairness requirement that the Applicant, for a work permit be entitled to an opportunity to respond to or rebut the Officer's concern or finding that the Applicant has not submitted sufficient evidence to establish their eligibility for the work permit applied to, before the Officer denies the Applicant's work permit (see *Bautista v Canada (Citizenship and Immigration)*, 2018 FC 669 at para 17). The onus of satisfying the Officer of their eligibility in the first place rests with the Applicant. Where an Officer's concerns arise directly from the legislative requirements, as they do here, there is no duty to raise such concerns with the Applicant.

[2] As previously held by the Court, visa officers are entitled to independently assess and exercise their discretion in determining whether an applicant is capable of performing the work

duties; visa officers are not bound by the NOC or LMIA requirements (where applicable)

(*Dhaliwal v Canada*, 2022 FC 666 at para 21 citing *Singh Grewal v Canada (Citizenship and Immigration)*, 2013 FC 627 at para 17; *Sulce v Canada (Citizenship and Immigration)*, 2015 FC 1132 at para 28).

[3] I find the determinative issue is the Officer's treatment of the English language requirements.

[4] The Officer's reasons, which were thorough for a temporary work permit application, discuss at length the fact that the Applicant's low scores on the English language proficiency test raised concerns that the Applicant can read and speak English sufficiently such that it affects his capacity to perform the proposed work. The Officer explained and gave a list of concrete examples summarised above as to how the Applicant's low English language scores could affect his capacity to perform the long haul truck driving work. This is directly related to the statutory requirement of section 200(3)(a) of the IRPR that prohibits the issuance of a work permit if there are reasonable grounds to believe that he is unable to perform the work of the prospective employment.

[5] The long haul truck driving job requirements included an English verbal and written language requirement, but did not specify a required IELTS score. The Applicant completed an International English Language Testing System [IELTS] exam on March 12, 2022. The Applicant had an overall band score of 5.0, with 4.5 in listening, 4.0 in reading, 5.0 in writing, and 6.0 in speaking.

[6] The Respondent cited *Singh v Canada (Citizenship and Immigration)*, 2023 FC 170

[*Singh*] where Justice McDonald at para 24 held:

[24] Further, in *Patel v Canada (Citizenship and Immigration)*, 2021 FC 573 [*Patel*], Justice Brown upheld a decision that found an ILETS score of 4.5 on reading was insufficient to perform the job of a long-haul trucker. In *Patel*, the applicant had an overall IELTS score of 5.5, the same as the Applicant in the case at bar. The individual IELTS scores in *Patel* were 4.5 for reading, 5.5 for listening, 6.0 for writing and 5.0 for speaking. In dismissing the application and upholding the officer's language assessment, Justice Brown held:

[26] ... in this respect, the Applicant fails to appreciate the considerable discretion and deference Officers are given in matters such as this, as noted above. In addition, he invites the Court to engage in the reweighing and reassessing of evidence, a matter that is expressly withheld from judicial review in many cases of the Supreme Court of Canada including *Vavilov*. It was up to the Officer to determine what standard testing method to use, and to interpret the score against the job requirements and other evidence.

[27] In any event, in my respectful view, as it was reasonable to conclude the Applicant's English skills would impact his ability to read and understand manuals, course material, required documentation to be provided by a long-haul truck driver, not to mention traffic signs. It was for the Officer to determine the importance of reading in a case like this. In this connection and in my respectful view, the Officer reasonably assessed the Applicant's language ability in light of the job requirements in the National Occupational Classification for truck drivers particularly to "obtain special permits and other documents required to transport cargo on international routes" and "communicate with dispatcher and other drivers using two-way radio, cellular telephone and on-board computer".

[7] The onus rested on the Applicant to demonstrate that his English language skills were sufficient to ensure that he could adequately perform the duties and activities of a long haul truck driver. The Respondent points out that the Applicant's reading level was 4.0, which is classified as limited user, frequently showing problems in understanding and expression. The Applicant's listening level was 4.5, which is somewhere between limited and modest user or, in order words, he should be able to handle basic communication in his own field and has a partial command of the language and copes with overall meaning in most situations, although he is likely to make many mistakes (citing from www.IELTS.org website).

[8] The Applicant has an overall IELTS score of 5.0, lower than the applicants in both *Patel* and *Singh* referenced above. The Applicant also has lower individual scores for reading, listening, writing and speaking in *Patel*. The Applicant also relies on *Sandhu v Canada (Citizenship and Immigration)*, 2022 FC 301 [*Sandhu*], where an officer's decision was found unreasonable where the reasons did not explain "why the applicant's IELTS scores caused concern about 'safety due to language issues'" (*Sandhu* at para 25). *Sandhu* is distinct from this case because the Officer here explicitly stated that their concern over the Applicant's grasp of the English language was related to, *inter alia*, his ability to "understand highway traffic signs and signals in the English language", which is understandably a safety concern for a long haul truck driver. I agree with the reasoning of the Court in *Patel* and *Singh* and my finding is that the Officer's Decision is reasonable.

[9] The Applicant failed to meet his onus of establishing that he met the requirements for obtaining a favorable decision on his work permit application. The Court's review is that the Officer properly reviewed the evidence on the work permit application and did not base the

Decision on a misapprehension of the law or any erroneous finding of fact but rather, based its findings on the evidence before them, for which the Officer has expertise. The Decision falls within the range of possible acceptable outcomes that are defensible on the facts and the law and the Decision should not be disturbed.

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed; and
2. No question of general importance is certified.

"Ekaterina Tsimberis"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3817-23

STYLE OF CAUSE: CHARN JEET SINGH v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: CALGARY, ALBERTA

DATE OF HEARING: JUNE 4, 2024

JUDGMENT: TSIMBERIS J.

DATED: JUNE 13, 2024

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