

Federal Court



Cour fédérale

Date: 20250120

Docket: IMM-1342-24

Citation: 2025 FC 109

Toronto, Ontario, January 20, 2025

PRESENT: Madam Justice Whyte Nowak

BETWEEN:

**NEHA JAIN
MANISH JAIN
SHAURYA JAIN (THROUGH LITIGATION
GUARDIAN, NEHA JAIN)
KAYAAN JAIN (THROUGH LITIGATION
GUARDIAN, NEHA JAIN)**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicants seek judicial review of decisions made by a visa officer [Officer] of Immigration, Refugees and Citizenship Canada on August 21, 2023 rejecting the work permit

application of Neha Jain [Principal Applicant] and her family's related applications, which included her husband's work permit application and the study permit and visitor visa applications for her children [collectively the Applications].

[2] For the reasons that follow, this application for judicial review is granted as I find that the Officer acted in a manner that was procedurally unfair in determining whether the Principal Applicant would be able to adequately perform the work of a food service supervisor. The Officer conducted his own investigation into the supporting documentation submitted by the Principal Applicant, questioned the veracity of the contents of her supporting documentation and then failed to offer the Principal Applicant an opportunity to respond to the serious questions he had with her education and experience. The Officer's decision dated August 21, 2023 [the Decision], which rejected the Principal Applicant's Temporary Foreign Worker Program application on the basis that she had failed to demonstrate that she will be able to adequately perform the work she seeks, is set aside, as are the related decisions.

II. Legislative Framework

A. *Work Permit*

[3] Paragraph 200(3)(a) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [IRPR] prevents a visa officer from issuing a work permit to a foreign national if there are reasonable grounds to believe that the foreign national is unable to perform the work sought.

[4] The National Occupational Classification 2021 Version 1.0 [NOC] lists the following employment requirements for a position as a food service supervisor (NOC 62020): (i) completion of secondary school (which is stated to be “usually required”); and (ii) completion of a community college program in food service administration, hotel and restaurant management or related discipline, or several years of experience in food preparation or service.

III. Facts

A. *The Applications*

[5] The Principal Applicant applied for a work permit based on her confirmed job offer and a positive Labour Market Impact Assessment [LMIA] to come to Canada as a food service supervisor in June 2023. Based on the Principal Applicant’s work permit application, her spouse and her two children [Co-Applicants] applied for a work permit, study permit and visitor visa, respectively.

[6] The LMIA for the food service supervisor position listed the following requirements: (1) completion of a community college program in food service administration, hotel and restaurant management or related discipline [the Education Requirement]; or (2) several years of experience in food preparation or service [the Experience Requirement].

[7] In support of her application, the Principal Applicant submitted various supporting documents, which included, *inter alia*, certificates from the Global Institute of Information Technology showing that the Principal Applicant completed a 1-year diploma in commercial

cooking and a 1-year advanced diploma in food and beverage services from Elysium Institute of Numerous Streams [the Institute]. She also submitted employment documents showing that she had been working as a food service supervisor at Hotel Mohan Tulip [the Hotel] since August 2019.

B. *The Decision*

[8] On August 21, 2023, the Officer rejected the Principal Applicant's application pursuant to paragraph 200(3)(a) of the *IRPR* on the grounds that she had not demonstrated that she will be able to adequately perform the work. A printout of the Officer's Global Case Management System notes [GCMS notes] shows that the Officer was not satisfied that the Principal Applicant met either the Education or Experience requirements of the NOC and LMIA.

[9] First, the Officer found that the Principal Applicant had not shown that she had completed a community college program in food service administration, hotel and restaurant management or related discipline. The Officer found that the Institute, where the Principal Applicant claimed to have received diplomas from, is non-accredited, unrecognised, founded in 2021 and is not regulated or approved by any government educational authority. The Officer's open-source search showed limited hits for the Institute, and the Institute's website was found to be not functional and linked to an immigration lawyer. The Officer concluded, "I am not satisfied that the [Principal Applicant] has community college program in food service administration, hotel and restaurant management or related discipline."

[10] Second, the GCMS notes also show that the Officer was not satisfied that the Principal Applicant has several years of experience in food preparation or service. The Officer noted that the Principal Applicant's employment documents "appear identical and created at the same time," and that there are "no bank statements to show payroll deposits" despite the submitted pay slips showing that the salary was deposited into the Principal Applicant's bank account. The Officer concluded that there were "[i]nsufficient documents on file to demonstrate several years of experience in food preparation or service."

[11] The Officer refused the Principal Applicant's application finding, on balance, that she had not adequately shown that she meets the requirements for the NOC and LMIA. As the Co-Applicants' applications were based on the Principal Applicant's work permit application, their applications were also refused in separate decisions dated August 21, 2023.

IV. Issues and Standard of Review

[12] The Applicants submit that the Decision is unreasonable and was arrived at in a manner that was procedurally unfair to the Principal Applicant. As will be explained in the paragraphs that follow, I am satisfied that the Principal Applicant was denied procedural fairness in the manner in which the Officer assessed her application. In these circumstances, I do not find it necessary to address the Applicants' argument that the Decision was also unreasonable.

[13] The parties agree that the standard of review that applies to an allegation of procedural unfairness is akin to correctness as articulated in *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 [*Canadian Pacific*] at paragraphs 34-35 and 54-55. The

ultimate question to be answered is “whether the proceedings were, on a whole, fair” and provided an opportunity for those affected by the decision to understand the case they had to meet and respond to it fully for consideration by an impartial decision maker (*Canadian Pacific* at para 41).

V. Analysis

A. *The Officer breached the duty of procedural fairness*

[14] The parties’ submissions raise two questions.

- (1) *Did the Officer question the legitimacy as opposed to the sufficiency of the Principal Applicant’s evidence?*

[15] The first question is whether the Officer found that the Principal Applicant simply provided insufficient evidence to make out the requirements of the NOC and LMIA (as the Respondent argues), or whether the Officer questioned the veracity of the Principal Applicant’s supporting documentation (as the Applicants argue). The jurisprudence is clear that considerations of procedural fairness may be engaged by a visa officer’s concerns about the “credibility, accuracy or genuine nature of information” submitted by an applicant (*Perez Enriquez v Canada (Citizenship and Immigration)*, 2012 FC 1091 at paras 26-27), but not where their concerns relate to the sufficiency of an application (*Kaur v Canada (Citizenship and Immigration)*, 2010 FC 442 at para 12).

[16] I find that the Decision clearly shows that the Officer had concerns related to the credibility, accuracy or genuine nature of the evidence submitted by the Principal Applicant related to both the Education and Experience Requirements.

[17] In assessing the Education Requirement, the Officer conducted his own search of open-sources and noted that the Institute where the Principal Applicant had obtained her community college diplomas was “unrecognised” and “not regulated or approved by any government educational authority.” The Respondent submits that this goes to the sufficiency of the Principal Applicant’s evidence since she had the onus of satisfying the Officer that her education was at the community college level. Had the Officer stopped there, I might have agreed. However, the Officer’s notes go further and refer to the fact that the Officer’s search for the Institute yielded “limited hits,” the website for the institute was not functional and the website was linked to an immigration lawyer. These comments are unquestionably directed to the credibility of the Institute.

[18] Second, in assessing the Experience Requirement, the Officer notes that while the Principal Applicant had submitted pay slips from her work in 2019 at the Hotel, she had not provided corresponding bank account information showing their deposit. I agree with the Respondent that this comment goes to the sufficiency of the Principal Applicant’s evidence. However, the Officer made a further comment that, again, clearly goes to the credibility of the evidence: “[the documents] appear to be identical and created at the same time.” This observation implies impropriety and therefore raises a question going to the credibility and authenticity of the Principal Applicant’s evidence.

(2) *Was the Applicant denied procedural fairness?*

[19] If the Officer is found to have questioned the credibility of the Principal Applicant's evidence, the question is whether the Officer was required to provide the Principal Applicant with an opportunity to respond to the Officer's concerns.

[20] The Respondent submits that since the duty of procedural fairness owed to visa applicants is at the lower end of the spectrum (*Patel v Canada (Citizenship and Immigration)*, 2021 FC 483 at para 40) and there is no absolute right to an interview even where there are concerns about the fabrication of evidence (*Ponican v Canada (Citizenship and Immigration)*, 2020 FC 232 at para 33 [*Ponican*]), it does not follow that the Officer was required to grant the Principal Applicant an interview.

[21] The Court's decision in *Ponican* is distinguishable. In *Ponican*, the only evidence provided by the applicant regarding his past employment was a reference letter from his past employer, which the Court found was insufficient to "engage the higher duty of fairness" (*Ponican* at para 33). As I have already found, the Officer's reasons in this case go beyond concerns with sufficiency and include issues of credibility.

[22] I also agree with the Applicants that the fact that the Officer sought out information beyond that provided by the Principal Applicant is also relevant to the question of whether the Officer should have afforded the Principal Applicant the opportunity to respond to the

information obtained through the Officer's searches. As the Court held in *Begum v Canada (Citizenship and Immigration)*, 2013 FC 824 [*Begum*]:

... the general rule to be distilled from the jurisprudence considering the use of information unilaterally obtained from the internet by a decision-maker is that when the information that is relied on contains novel and significant information that an applicant could not reasonably anticipate, then fairness dictates that the applicant should have the opportunity to challenge its relevance or validity ... (*Begum* at para 36).

[23] I am of the view that the Officer's open-source search results revealed novel and significant information related to the Institute's connection to an immigration lawyer that could not have been anticipated and that the Principal Applicant should have been given a chance to respond to it.

VI. Conclusion

[24] The Applicants have established that the Officer arrived at the Decision in a manner that denied procedural fairness to the Principal Applicant. Accordingly, I am granting this application for judicial review.

JUDGMENT in IMM-1342-24

THIS COURT’S JUDGMENT is that:

1. The application for judicial review is granted.
2. The matters are remitted back for redetermination by a different decision maker; and
3. There is no question of general importance for certification.

“Allyson Whyte Nowak”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-1342-24

STYLE OF CAUSE: NEHA JAIN, MANISH JAIN, SHAURYA JAIN
(THROUGH LITIGATION GUARDIAN, NEHA JAIN),
KAYAAN JAIN (THROUGH LITIGATION
GUARDIAN, NEHA JAIN) v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: HELD BY WAY OF ZOOM VIDEOCONFERENCE

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DATED: JANUARY 20, 2025

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