Federal Court  Cour fédérale

Date: 20210525

Docket: IMM-5830-19

Citation: 2021 FC 491

[ENGLISH TRANSLATION]

Ottawa, Ontario, May 25, 2021

PRESENT: The Honourable Madam Justice Roussel

BETWEEN:

JOHARDY RAFAEL PEREZ PENA

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Background

[1] The applicant, Johardy Rafael Perez Pena, is seeking judicial review of a decision of a visa officer of the Canadian Embassy in Colombia [the officer], denying his application for a work permit.

[2] The applicant is a citizen of Colombia.

[3] In May 2019, the applicant applied for a work permit under the Temporary Foreign Worker Program. He was one of four welders selected by a Quebec welding company to come work there.

[4] On June 14, 2019, the applicant received a negative decision. He filed an application for leave and for judicial review of that decision (file no. IMM-3782-19). Leave was granted on November 27, 2019.

[5] While that case was pending, the applicant filed a new work permit application. He added additional evidence to his application, including an affidavit from his future employer attesting to his qualifications as a welder.

[6] This second request was denied on September 18, 2019. In his refusal letter, the officer stated that he rejected the application for three reasons: (1) the officer was not satisfied that the applicant would leave Canada at the end of the authorized period of stay, given the applicant's family ties in Canada and Colombia; (2) the applicant did not demonstrate that he adequately meets the requirements of the intended employment in Canada; and (3) the officer was not satisfied that the applicant would leave Canada at the end of the authorized period of stay, given the applicant's travel history.

[7] In his notes to the Global Case Management System [GCMS], the officer added the following: (1) a first work permit was denied in 2019; (2) the applicant is single and has no travel history; (3) the applicant's employment history in Colombia is sporadic; (4) the applicant's ties in Colombia are not binding; (5) the applicant submitted a welding certificate, but it does not appear in the SENA National Apprenticeship Service's "SENA Cédula" database; and (6) the applicant does not meet the necessary requirements for the job.

[8] The applicant filed an application for leave and judicial review of that decision on September 27, 2019. Leave was granted on February 27, 2020.

[9] Despite various attempts by the applicant to have the two applications for judicial review heard together, it is agreed, due to the pandemic and the Court's recess period, that IMM-3782-19 should be dealt with in writing.

[10] On July 28, 2020, Justice Yvan Roy dismissed the application for judicial review in file IMM-3782-19 (*Perez Pena v Canada (Citizenship and Immigration)*, 2020 FC 796 [*Perez Pena*]). He found that the applicant has not discharged his burden and has not shown that the visa officer's decision of June 14, 2019 was unreasonable.

[11] In this application for judicial review, the applicant argued that the officer's September 18, 2019 decision is unreasonable on the basis that the work permit denial is not based on the evidence on record. He further argues that the officer should have given him an

opportunity to address his concerns and doubts regarding his family ties in Colombia, thereby violating his right to procedural fairness.

II. Analysis

A. *Standard of review*

[12] The standard of review of a visa officer's decision to refuse a work permit application is that of reasonableness (*Perez Pena* at para 7; *Sangha v Canada (Citizenship and Immigration)*, 2020 FC 95 at para 14; *Patel v Canada (Citizenship and Immigration)*, 2020 FC 77 at para 8).

[13] Where the reasonableness standard applies, the Court is concerned with "the decision actually made by the decision maker, including both the decision maker's reasoning process and the outcome" (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 83 [*Vavilov*]). It must consider 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). Finally, "the burden is on the party challenging the decision to show that it is unreasonable" (*Vavilov* at para 100).

[14] In the context of decisions made by visa officers, it is not necessary to have exhaustive reasons for the decision to be reasonable given the enormous pressure they are under to produce a large volume of decisions each day (*Vavilov* at paras 91, 128; *Hajiyeva v Canada (Citizenship and Immigration)*, 2020 FC 71 at para 6 [*Hajiyeva*]). Moreover, it is well established that visa

officers are accorded considerable deference given the level of expertise they bring to these matters (*Vavilov* at para 93; *Hajiyeva* at para 4).

[15] Regarding the allegation of a breach of procedural fairness, the Federal Court of Appeal has clarified that issues of procedural fairness do not necessarily lend themselves to a standard of review analysis. Rather, the role of this Court is to determine whether the procedure is fair in all the circumstances (*Canadian Pacific Railway v Canada (Attorney General)*, 2018 FCA 69 at para 54; *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 79).

B. *Preliminary question*

[16] The respondent submitted that the issues the applicant raised against the impugned decision were finally decided by Justice Roy in file IMM-3782-19. As a result, he claims that the principles of *res judicata* and issue estoppel apply since the three prerequisites—same parties, same issue, final decision—are satisfied (*Timm v Canada*, 2014 FCA 8 at paras 22–28). This case should therefore follow the same pattern since it is the same applicant seeking the same conclusion with the same facts and circumstances.

[17] The Court is not satisfied that Justice Roy's decision is *res judicata* in this case. Although the applicant formulated the issues in a similar manner, the two judicial reviews involve different decisions rendered on different evidence. In this case, the officer had an obligation to consider the additional evidence the applicant submitted and to make a new decision in light of that new evidence. This Court must also rule on the reasonableness of that new decision. The respondent cannot reasonably argue that the facts and circumstances are the same. To accept the

respondent's argument would be to preclude any reapplication for a permit that was initially denied on the basis of insufficient evidence.

C. *Officer's decision is reasonable*

[18] The applicant raised four arguments against the officer's decision.

[19] First, he alleged that he is qualified to practice as a welder in Canada. In support of his application, he submitted his high school diploma, certificates of professional training and an affidavit from his future employer stating that he meets the requirements of the job. He argued that he is not required to submit the Alberta Certificate of Qualification or the Red Seal endorsement required by qualified welders for the purposes of the visa application.

[20] Second, he alleged that it was wrong for the officer to conclude that he was working only on a sporadic basis since welders in Colombia work under contracts for the provision of services on a non-permanent basis. He referred to the work certificates issued by the service providers with whom he has had contracts. When he does not have a welding contract, he runs his own gym business.

[21] Third, he alleged that the officer erred in his assessment of his family ties in Colombia. Although he is single and has no children, all of his family members live in Colombia, demonstrating a strong and sufficient connection to that country. According to the applicant, it is [TRANSLATION] "inconceivable" that he would decide to stay in Canada after his temporary

worker status expires. He also pointed out that the same documentary evidence was submitted by the three other welders whose applications were granted.

[22] Fourth, he alleged that the mere fact an applicant has no travel history cannot be sufficiently persuasive to deny the visa application.

[23] The Court cannot agree with the applicant's arguments.

[24] The officer is presumed to have assessed and considered all the evidence before them unless there is evidence to the contrary (*Florea v Canada (Minister of Employment and Immigration)*, [1993] FCA No 598 (FCA) (QL) at para 1). There is nothing in the record to show that the officer disregarded the evidence the applicant filed. On the contrary, according to the GCMS notes, the officer specifically stated that he considered, among other things, the applicant's multiple training certificates, letters from his former employers, a letter from the Quebec employer and a letter from the applicant regarding the previous refusal.

[25] Contrary to the applicant's claim, the officer did not require a certificate of qualification or a Red Seal endorsement. He only referred to these items when reviewing the various entry requirements for the welding occupation under the National Occupational Classification [NOC] 2011-7237. The officer stated that an apprenticeship program of three years or more of experience in the trade, as well as specialized training in welding, either in an academic or industrial setting, is usually required to qualify for the certificate of qualification. The officer considered the documents the applicant filed, but was not satisfied that the applicant meets the

requirements for entry into the welding occupation as set out in the NOC. In this context, the officer noted that the documentation filed by the applicant demonstrates that his work experience between 2016 and 2019 is sporadic and that he did not file anything on his status prior to 2016. The officer also noted that the number listed on the applicant's welding certificate issued by the SENA National Apprenticeship Service in December 2018, does not appear in the SENA National Apprenticeship Service's "SENA Cédula" database and that according to the applicant's resumé, the applicant obtained it in 2006. Based on the record provided by the applicant, the officer could reasonably doubt that the applicant did not have the required training or experience to meet the NOC requirements to become a welder.

[26] The applicant's record also demonstrates that it was reasonable for the officer to conclude that the applicant had worked only sporadically as a welder for several years in Colombia. Indeed, the letters from the employers show long periods of time when the applicant was not working as a welder. The fact that he only works as a welder sporadically, when work is available, demonstrates that employment opportunities are limited, which may constitute an additional motivation to remain in Canada (*Perez Pena* at para 12).

[27] Moreover, it is not enough for the applicant to raise socio-cultural differences to justify the sporadic nature of his work as a welder. He also had to prove this, which he did not do (*Nazari v Canada (Citizenship and Immigration)*, 2014 FC 1097 at para 11; *Baines v Canada (Minister of Citizenship and Immigration)*, 2002 FCT 603 at para 13).

[28] Regarding the applicant's ties to Colombia, the fact that the applicant's family is in Colombia does not demonstrate that he will return to Colombia at the end of his stay. The record before the officer shows that only the applicant's parents and sister live in Colombia. The officer had no evidence before him to show what kind of relationship or ties he has with them (*Sadiq v Canada (Citizenship and Immigration)*, 2015 FC 955 at para 22). Although the applicant pleads that he owns a gym business in Colombia, the applicant has not shown any establishment in Colombia that would lead to the belief that he would return there.

[29] Finally, as to the applicant's argument that the officer erred in relying on the lack of prior travel history as grounds for refusal, the case law does confirm that the lack of prior travel history must be treated as a neutral factor (*Ekpenyong v Canada (Immigration, Refugees and Citizenship)*, 2019 FC 1245 at paras 31–32; *Adom v Canada (Citizenship and Immigration)*, 2019 FC 26 at para 15; *Dhanoa v Canada (Citizenship and Immigration)*, 2009 FC 729 at para 12). The officer therefore erred in considering the lack of previous travel as an adverse factor. However, the Court is of the view that this error is not "sufficiently central or significant" to render his decision unreasonable, given the other two valid grounds for refusal (*Vavilov* at para 100; *Gonzalez Zuluaga v Canada (Citizenship and Immigration)*, 2017 FC 1105 at para 12; *Rahman v Canada (Citizenship and Immigration)*, 2016 FC 793 at para 29; *Charara v Canada (Citizenship and Immigration)*, 2016 FC 1176 at paras 31–32). From the notes recorded in the GCMS, it is clear that the officer's primary concerns related to the requirements of the proposed employment and the applicant's family ties in Colombia.

[30] After reviewing the record, the Court finds that it was reasonable for the officer to conclude there was a possibility that the applicant would not leave Canada when the work permit expired. The doubts about the applicant's qualifications, the sporadic work history in Colombia, and the absence of binding family ties allowed the officer to conclude this.

[31] The officer was not bound by the results obtained by the three other welders hired by the Quebec company. Each application is distinct, and the officer must consider the facts and circumstances of each (*Bromberg v Canada (Minister of Citizenship and Immigration)*, 2002 FCT 939 at para 34).

D. *Applicant's procedural fairness rights not infringed*

[32] The applicant submitted that the officer clearly had concerns about his family ties in Colombia. He alleged that, in this situation, the officer should have allowed him to address his concerns and doubts. The applicant claimed that he was never given the opportunity to make submissions on this issue.

[33] This argument is ill founded.

[34] It is well established that a visa officer's duty of procedural fairness is at the lower end of the scale (*Penez v Canada (Citizenship and Immigration)*, 2017 FC 1001 at para 36 [*Penez*]; *Monteverde v Canada (Citizenship and Immigration*), 2011 FC 1402 at para 13).

[35] In the context of visa applications, case law distinguishes between adverse findings of credibility and adverse findings regarding the insufficiency of the evidence. Where the visa officer raises doubts about the credibility, truthfulness or authenticity of the information submitted in support of an application, it is incumbent upon the visa officer to provide the applicant with an opportunity to resolve those doubts. On the other hand, if the decision is based on the sufficiency of the evidence presented by the applicant, or on the failure to meet the statutory requirements, the visa officer has no obligation to inform the applicant (*Penez* at paras 35, 37; *Cayanga v Canada (Citizenship and Immigration)*, 2017 FC 1046 at para 12; *Tollerene v Canada (Citizenship and Immigration)*, 2015 FC 538 at para 16).

[36] In reviewing the file, the officer's decision focuses on the sufficiency of the evidence presented by the applicant. The officer was not required to provide the applicant with an opportunity to present additional evidence or to inform the applicant of his concerns. The applicant has not satisfactorily demonstrated a breach of procedural fairness.

III. Conclusion

[37] The onus was on the applicant to prove that he would leave Canada at the end of his stay. Based on the documentation filed by the applicant, the officer could reasonably conclude that the applicant had not met his burden and refuse the work permit application. While the applicant disagrees with the officer's conclusion, it is not for this Court to reconsider and reweigh the evidence to reach a different conclusion (*Vavilov* at para 125; *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 59). Furthermore, the applicant has not demonstrated a violation of procedural fairness.

[38] For all these reasons, the application for judicial review is dismissed. No question of general importance has been submitted for certification, and the Court is of the view that none are raised by this case.

JUDGMENT in IMM-5830-19

THE COURT'S JUDGMENT is as follows:

1. The application for judicial review is dismissed.

2. No question of general importance is certified.

"Sylvie E. Roussel"
Judge

Certified true translation
Michael Palles, Reviser

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-5830-19
STYLE OF CAUSE:	JOHARDY RAFAEL PEREZ PENA v MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	HELD VIA VIDEOCONFERENCE
DATE OF HEARING:	JANUARY 18, 2021
JUDGMENT AND REASONS:	ROUSSEL J.
DATED:	MAY 25, 2021

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