

Federal Court



Cour fédérale

Date: 20210622

Docket: IMM-1763-20

Citation: 2021 FC 638

Vancouver, British Columbia, June 22, 2021

PRESENT: The Honourable Mr. Justice Bell

BETWEEN:

AMRITPAL SINGH

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION ALSO KNOWN AS THE
MINISTER OF IMMIGRATION,
REFUGEES AND CITIZENSHIP CANADA**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Amritpal Singh (Mr. Singh) is a 28-year-old citizen of India and temporary resident of the United Arab Emirates. Mr. Singh has worked as a truck driver since 2014. On November 11, 2019, he submitted an application for a temporary resident visa to work in Canada as a long-haul truck driver with ADP Transport Ltd. in Richmond, British Columbia.

[2] On January 6, 2020, a visa officer refused the work permit application. He or she was of the opinion that Mr. Singh was unable to demonstrate that he would be able to adequately perform the work. Importantly, the visa officer concluded Mr. Singh had not demonstrated that he possessed the language skills necessary to work as a long haul truck driver. In reaching this conclusion, the visa officer compared Mr. Singh's International English Language Testing System ("IELTS") results with the British Council comparators.

[3] Mr. Singh brings an application for judicial review, pursuant to s. 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] of the January 6, 2020 refusal decision. For the reasons set out below, I allow the application for judicial review and refer the matter to another visa officer for re-determination.

II. Relevant Provisions

[4] The relevant provision is paragraph 200(3)(a) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227.

***Immigration and Refugee
Protection Regulations,
SOR/2002-227***

Exceptions

200(3) An officer shall not issue a work permit to a foreign national if

(a) there are reasonable grounds to believe that the foreign national is unable to perform the work sought;

***Règlement sur l'immigration
et la protection des réfugiés,
DORS/2002-227***

Exceptions

200(3) Le permis de travail ne peut être délivré à l'étranger dans les cas suivants :

a) l'agent a des motifs raisonnables de croire que l'étranger est incapable d'exercer l'emploi pour

lequel le permis de travail
est demandé;

III. Analysis

[5] The only issue raised is whether the decision of the visa officer meets the test of reasonableness as set out in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 [*Vavilov*] and *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190.

[6] Among the many documents submitted by Mr. Singh with his application, was a letter from his prospective employer dated November 4, 2019, which reads in part:

I am writing this letter to give my highest recommendations to Amritpal Singh and express my interest in bringing Amritpal Singh as a Long-Haul Truck Driver, as we are in urgent need of a Long-Haul Truck Driver for our company.

Service Canada has given positive Labour market impact assessment for the position of Long-Haul Truck Driver and issue a letter of support. (LMIA # 8444793)

In the month of October, we offered this position of a Long-Haul Truck Driver to Mr. Amritpal Singh after a successful interview. Mr. Singh proved his skills as an experienced Truck Driver. Moreover, he also proved his knowledge about handling emergency situations on road while travelling long distances. Beside his knowledge about handling abnormal loads he also has an excellent command on English language. He is a perfect candidate for this position.

[7] In that same letter, the prospective employer set out in detail its requirements for a long haul trucker. Under the title language, the employer stated that the position requires “functional English/CLB level 4 (Canadian Language benchmark level 4). Please refer to LMIA...”. The

prospective employer also compared IELTS testing with the Canadian Language Benchmark and provided the following comparisons, referring to Mr. Singh's IELTS Transcript:

IELTS Score/Category	CLB Level
6.0/Listening	7
4.5/Reading	5
5.5/Writing	6
5.0/Speaking	5

[8] The visa officer's notes, which form part of the decision, read in part:

[...] I have concerns regarding the applicant's English language skills which are also listed as a requirement for the position on the LMO. While the applicant has an overall band score of 5.5. on the IELTS, I note that he only received a score of 4.5 in reading and a 5 in speaking. Although the LMIA does not explicitly state a minimum required IELTS score for this position, I note that the British Council classifies students at this band level as being a "Limited user [whose] basic competence is limited to familiar situations. [They] frequently show problems in understanding and expression. [They] are not able to use complex language".

[9] The visa officer does not mention the Canadian Language Benchmark, the prospective employer's declared language requirement (level 4 of the Canadian Language Benchmark), nor does he or she mention the fact that the prospective employer qualified Mr. Singh's language skills as excellent. Finally, I note that the British Council referred to students' abilities. It clearly did not refer to an adult's language abilities in his or her own trade or calling.

[10] A decision is unreasonable when, when read in conjunction with the evidence, it is impossible to understand the decision-maker's reasoning on a critical point (*Vavilov* at para. 103). A decision-maker also fails to provide a transparent, justified and intelligible decision

when he or she fails to engage with evidence which contradicts findings of fact: see, *Ul Zaman v. Canada (Citizenship and Immigration)*, 2020 FC 268 at para. 30.

[11] I am of the view the visa officer fixated on Mr. Singh's IELTS test results and British Council comparisons. He failed to consider the very real and probative evidence before him. That evidence included; i. the employer's language requirements; ii. the employer's assessment of language ability; iii. the Canadian Language Benchmark. iv. the fact no minimum IELTS result was required; and, v. the detailed comparison between the IELTS and the CLB provided by the employer.

[12] Much of the evidence contradicted the visa officer's conclusion. He or she was required to engage with that evidence and explain why it was either irrelevant or plainly wrong.

[13] Mr. Singh seeks costs. Rule 22 of the *Federal Courts Citizenship, Immigration and Refugee Protection Rules*, SOR/93-22 states that no costs will be awarded in an immigration judicial review, except where special reasons exist. The threshold for establishing special reasons is high and must be assessed in the context of the particular circumstances of each case. This Court has found special reasons to exist in situations where, for example, a party has unnecessarily or unreasonably prolonged legal proceedings, acted in an unfair, oppressive or improper manner, or acted in bad faith (*Taghiyeva v. Canada (Citizenship and Immigration)*, 2019 FC 1262 at paras. 16-23; and *Garcia Balarezo v. Canada (Citizenship and Immigration)*, 2020 FC 841 at para. 48). I am not satisfied that costs are appropriate in the circumstances. The errors noted do not rise to special circumstances, which would justify an award of costs.

[14] I asked the parties whether either proposed a question to be certified for consideration by the Federal Court of Appeal and neither proposed a question. In the circumstances, the facts do not reveal a question appropriate for consideration by the Federal Court of Appeal.

IV. Conclusion

[15] In the result, the application for judicial review is allowed. The matter is referred to another visa officer for redetermination. There is no order of costs and no question is certified for consideration by the Federal Court of Appeal.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is allowed.

The matter is referred to another visa officer for redetermination. There is no order of costs and no question is certified for consideration by the Federal Court of Appeal.

“B. Richard Bell”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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STYLE OF CAUSE: AMRITPAL SINGH v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION ALSO KNOWN
AS THE MINISTER OF IMMIGRATION, REFUGEES
AND CITIZENSHIP CANADA

PLACE OF HEARING: VANCOUVER, BRITISH COLUMBIA

DATE OF HEARING: JUNE 14, 2021

JUDGMENT AND REASONS BELL J.

DATED: JUNE 22, 2021

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