Federal Court  Cour fédérale

Date: 20210924

Docket: IMM-1538-21

Citation: 2021 FC 999

Vancouver, British Columbia, September 24, 2021

PRESENT: THE CHIEF JUSTICE

BETWEEN:

LIN MA

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION CANADA

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] This application for judicial review concerns Ms. Ma's unsuccessful request for a work permit under the Labour Market Impact Assessment [**LMIA**] stream.

[2] Ms. Ma submits that the immigration officer who rejected her request erred in two principal ways. First, she maintains that the officer unreasonably concluded that she did not have

sufficient work experience or a sufficient knowledge of English to meet the requirements of the position in question. Second, she asserts that the officer ought to have given her an opportunity to provide corroboration for information that she provided in support of her request. That information was set forth in her personal resume, which was not addressed in the officer's decision.

[3] For the reasons that follow, this application will be dismissed.

II. **Background**

[4] Ms. Ma entered Canada in April 2017 and was authorized to remain in this country on a temporary work permit as an entrepreneur/owner of a new business, Aqua Pacific Pools and Hot Tubs [**Aqua**]. That work permit was valid until her previous passport expired in January 5, 2021 of this year.

[5] Shortly afterwards, Ms. Ma received a new passport and submitted her request for a new work permit. That request was based on a positive LMIA that she received in relation to a job offer to work at Aqua as a waterproofing forewoman. The LMIA required verbal and written English language skills and a secondary school education.

[6] In support of her request, Ms. Ma included her resume. Among other things, the resume described Ms. Ma's responsibilities at Aqua since April 2017 and her experience with waterproofing services in China. It also stated that she completed a Bachelor of Engineering in Water Supply and Drainage, between 1986 and 1990.

III. **The Decision Under Review**

[7] The officer's decision [the **Decision**] was communicated by way of a single sentence in a brief form letter. That sentence stated: "Based on a careful review of the information and documentation supporting your application, I am not satisfied that you meet the requirements of the Immigration and Refugee Protection Act and Regulations."

[8] It is common ground that the officer's decision includes very brief notes that were made in the Global Case Management System of the Department of Immigration, Refugees and Citizenship Canada. For the present purposes, the relevant notes are as follows:

> Duties of the position as indicated in offer of employment letter and LMIA requires [*sic*] English language skills. The LMIA language requirements are English oral and written.
>
> Such of documents was not provided [*sic*] with current application. Proof that they have experience and education for this position not submitted.
>
> The onus lies on the client to submit all required documents and applicable fees at time of application or when needed …
>
> Application is refused as I am not satisfied that they can perform the job they sought and therefore to meet all the requirements of the LMIA.

IV. **Relevant Legislation**

[9] Paragraph 200(3)(a) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [the **Regulations**] provides that an immigration officer shall not issue 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.

V. **Issues**

[10] The principal issues in this application are as follows:

i. Was the Decision unreasonable?

ii. Was it procedurally unfair for the officer to fail to provide Ms. Ma with an opportunity to present additional information in support of her application?

VI. **Standard of Review**

[11] The first issue concerns the merits of the Decision, which are reviewable on a standard of reasonableness. In assessing whether a decision is reasonable, the Court will assess whether the decision is appropriately justified, transparent and intelligible. To meet these requirements, the decision must reflect "an internally coherent and rational chain of analysis" and be "justified in relation to the facts and law that constrain the decision maker": *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 85 [***Vavilov***].

[12] Stated differently, an appropriately justified, transparent and intelligible decision is one that enables the Court to understand the basis upon which it was made and then to determine whether it "falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law": *Vavilov*, above, at paras 86 and 97.

[13] The second issue, which concerns procedural fairness, has traditionally been understood to be reviewable on a standard of correctness: see e.g., *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 43. More recently, the Federal Court of Appeal has observed that "correctness" in the context of procedural fairness contemplates an assessment of "whether the procedure was fair having regard to all of the circumstances": *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at paras 35 and 54.

VII. **Analysis**

A. *Was the Decision unreasonable?*

[14] Ms. Ma submits that the Decision was unreasonable because it was made without regard to the information in her resume, which provided sufficient proof of both her relevant work experience and her English language skills. She maintains that her resume reflected that she exceeded the educational requirements for a "waterproofing forewoman" position and that she had extensive relevant experience for that position. She adds that it should have been readily apparent to the officer that she would have been required to use English on a daily basis at Aqua since she started that business in April 2017.

[15] I am sympathetic to Ms. Ma's position. The Decision is far from a model one. I understand that the sheer volume of applications for work permits may, as a practical matter, put immigration officers in the position of writing decisions that are very brief in nature: *Patel v Canada (Citizenship and Immigration)*, 2020 FC 672 at para 10 [***Patel***]. However, it would not

have taken more than a few more moments to state that objective corroboration for information contained in Ms. Ma's resume ought to have been provided.

[16] Nevertheless, it was not unreasonable for the officer to have omitted any mention of Ms. Ma's resume in the course of dismissing her application on the basis that she had not presented documentation or other proof to support the information she had provided. Stated differently, it was reasonably open to the officer to have required corroboration for the information that Ms. Ma provided in her resume, and to have then simply noted the absence of such corroboration, without specifically mentioning the resume: *Kumar v Canada (Citizenship and Immigration)*, 2020 FC 935 at para 29 [***Kumar***]; *Patel*, above, at paras 18 and 22.

[17] For greater certainty, this conclusion also applies to Ms. Ma's English language skills. In the absence of any information regarding the extent to which Ms. Ma had used her verbal and written language skills at Aqua during the period that she was an owner/manager there, it was reasonably open for the officer to have required corroboration regarding those skills: *Kumar*, above, at para 30.

[18] Although a reference to Ms. Ma's resume would have confirmed to her that the officer had in fact read it, the fact remains that the lack of corroboration for the information she provided was fatal to her application. This was clear from the Decision.

[19] This deficiency in Ms. Ma's application also provided reasonable grounds to believe that she is unable to perform the work contemplated by the LMIA: *Regulations*, para 200(3)(a); *Santos v Canada (Citizenship and Immigration)*, 2016 FC 1360 at paras 15–17.

[20] In brief, while the Decision was very short, it permitted the Court to understand the rational basis upon which it was made and to determine that it fell "within a range of possible, acceptable outcomes which are defensible in respect of the facts and the law": *Vavilov*, above, at paras 86 and 97.

B. *Was it procedurally unfair for the officer to fail to provide Ms. Ma with an opportunity to present additional information in support of her application?*

[21] Ms. Ma submits that the failure of the officer to provide her with an opportunity to provide additional information in support of her application was procedurally unfair.

[22] I disagree.

[23] The requirements of procedural fairness will vary according to the specific context of each case: *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 at para 21 [***Baker***]. In the context of an application for a work permit, a consideration of the relevant factors that should be assessed in determining those requirements suggests that they are relatively low: *Kumar*, above at para 19; *Lazar v Canada (Citizenship and Immigration)*, 2017 FC 16 at para 20 [***Lazar***]. This is because, (i) the structure of the assessment process is far from judicial in nature, (ii) unsuccessful applicants can simply re-apply, and (iii) the refusal of such

applications is not likely to have a substantial adverse impact on the applicant, in the sense of carrying “grave,” “permanent,” or “profound” consequences: *Baker*, above, at paras 23–25; *Masych v Canada (Citizenship and Immigration)*, 2010 FC 1253 at para 30 [***Masych***]; *Li v Canada (Citizenship and Immigration)*, 2012 FC 484 at para 31 [***Li***]). There was no evidence to the contrary in the present proceeding.

[24] The onus was on Ms. Ma to provide the requisite information in support of her application: *Lazar*, above, at para 20. The officer was under no obligation to provide her with an opportunity to provide additional information: *Kumar*, above, at paras 19 and 25; *Patel*, above, at para 26; *Masych*, above, at para 31; *Li*, above, at para 31.

[25] The authorities cited by Ms. Ma in support of her position that the officer ought to have afforded her such an opportunity are distinguishable. Specifically, each of *Muliadi v Canada (Employment and Immigration)*, [1986] 2 FC 205 at 214-217 (CA) [***Muliadi***] and *Jang v Canada (Minister of Citizenship and Immigration)*, 2001 FCA 312 at paras 13–14 [***Jang***] involved reliance by the decision-maker on extrinsic evidence. Given that the applicant in *Muliadi* did not have an opportunity to review and address that evidence prior to receiving the decision, it was held that he ought to have been provided with such an opportunity. In *Jang*, the Court agreed with that statement of principle, but then held that there had been no breach of procedural fairness because the applicant was provided with a copy of the extrinsic evidence in question, together with an invitation to respond.

[26] Ms. Ma further submits that her procedural fairness rights were breached by the brevity of the Decision and its use of the pronoun “they,” which suggests that the officer did not conduct an individualized analysis of her application.

[27] I disagree. For essentially the same reasons as provided at paragraphs 18–19 above, the brevity of the Decision did not breach Ms. Ma’s procedural fairness rights. Moreover, given that it was readily apparent that the officer had engaged with Ms. Ma’s application, the use of the gender-neutral words “they have” (education and experience) was an acceptable alternative to the words “she has.”

VIII. **Conclusion**

[28] For the reasons set forth above, this application is dismissed.

[29] I agree with the parties’ position that the legal and factual matrix of this application does not give rise to a serious question of general importance for certification.

JUDGMENT in IMM-1538-21

THIS COURT'S JUDGMENT is that:

1. This application is dismissed.

2. The legal and factual matrix of this application does not give rise to a serious question of general importance for certification.

"Paul S. Crampton"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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