

Federal Court



Cour fédérale

**Date: 20211007**

**Docket: IMM-2925-20**

**Citation: 2021 FC 1050**

**Ottawa, Ontario, October 7, 2021**

**PRESENT: The Honourable Mr. Justice Southcott**

**BETWEEN:**

**GURPREET SINGH**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

**I. Overview**

[1] This is an application for judicial review of a June 4, 2020 decision [the Decision] of an officer [the Officer] in the Visa Section of the Canadian Embassy in Abu Dhabi, United Arab Emirates [UAE], denying the Applicant a work permit under the Temporary Foreign Worker Program. The Officer was not satisfied that the Applicant would leave Canada at the end of his

stay, based on his family ties in Canada and in his country of residence, or that his employment offer was genuine.

[2] As explained in greater detail below, this application is allowed, because it is not possible to understand the Officer's reasoning on a critical point surrounding the genuineness of the employment offer upon which the Applicant's work permit application was based. The Decision is therefore unreasonable and must be set aside.

## II. **Background**

[3] The Applicant is a 28-year-old citizen of India. He worked as a heavy truck driver in the UAE from April 2016 to at least December 2019.

[4] In February 2020, the Applicant applied for a temporary work permit to work as a long haul truck driver with Neptune Freightways Ltd. in Surrey, British Columbia [Neptune]. The Applicant submitted that application following Neptune obtaining a positive Labour Market Impact Assessment [LMIA] in January 2020. The LMIA named the Applicant as one of twelve proposed foreign workers.

[5] The Applicant's work permit application included a submission letter explaining his reasons for wishing to come to Canada and his ties to India, along with supporting documentation. On April 16, 2020, the Canadian Embassy in the UAE sent the Applicant a procedural fairness letter, expressing the concern of the officer reviewing his application that, due to its size, Neptune's employment offer may not be genuine. On April 18, 2020, in response

to the procedural fairness letter, the Applicant provided additional evidence, including information related to Neptune's business structure, operations, financials, and commitments to purchase additional trucks.

III. **Impugned Decision**

[6] In the letter conveying the Decision that is the subject of this application for judicial review, the Officer states two grounds for refusing the Applicant's work permit application:

- A. The Officer was not satisfied the Applicant would leave Canada at the end of his stay, based on his family ties in Canada and in his country of residence;  
and
- B. The Officer was not satisfied that Neptune's offer of employment was genuine.

[7] The record before the Court also includes the Officer's Global Case Management System [GCMS] notes, the substantive content of which states as follows:

Documents uploaded after decision was rendered, due to administrative error related to COVID situation. Application reassessed in its entirety, including additional submissions. LMIA is for 12 truck drivers 26yrs old. single. Working as Truck Driver since 2016. To work as Long Haul Truck Driver for Neptune Freightways ltd in BC. I note the applicant's work experience as a truck driver is entirely limited to the UAE, the terrain and weather conditions of which are significantly different compared to those in Canada. IELTS overall band score: 6.0 with reading score: 4.5 Noted that LMIA was issued for 12 Truck Drivers. Open source information shows that Company is registered to residential address. owner/director of sales of Ameri-Can Logistics ltd has provided a ltr states that Neptune Freightways ltd has been

contracted with “Ameri-Can Logistics Ltd” for 2019 to present. After reviewing all submissions, not satisfied employment is consistent with the reasonable employment needs of employer. Submissions do not explain sufficiently how this company requires applicant to perform duties of a long haul truck driver. Neptune Freightways Org Structure chart shows , president & 4 employees & 4 drivers. Employer states that they own 8 trucks & 5 trucks ordered. Concern Company may not have the capacity to hire 12 TFW. I have also considered the immigration status of PA in the UAE, which is temporary in nature, and the fact that PA’s submissions evidence limited to no ties in CoB or CoR, while incentives to remain in Canada are high. Based on these factors, not satisfied applicant would depart Canada at the end of authorized stay. Application refused.

IV. **Issues and Standard of Review**

[8] The Applicant identifies the following issues for the Court’s consideration:

- A. Did the Officer act unreasonably in giving his reasons of refusal?
- B. Did the Officer breach the rules of procedural fairness by failing to provide the Applicant with an opportunity to respond to concerns irrespective of the Applicant providing sufficient evidence in support of his Application?
- C. Did the Officer’s decision lead to reasonable apprehension of bias?

[9] The parties agree, and I concur, that the first of these issues is reviewable on a standard of reasonableness. The other two issues, both of which raise matters of procedural fairness, are reviewable on a standard of correctness.

V. **Analysis**

[10] My decision to allow this application for judicial review turns on the Applicant's arguments surrounding the Officer's analysis of the genuineness of Neptune's offer of employment. As the Supreme Court of Canada has explained in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at para 103, an administrative decision will be unreasonable and fail to stand up to review if the reasons read in conjunction with the record do not make it possible to understand the decision-maker's reasoning on a critical point. I find that the Decision at hand suffers from such a deficiency, as I cannot discern how the Officer arrived at the conclusion that Neptune's offer of employment to the Applicant was not genuine.

[11] It is clear from the GCMS notes that the Officer's conclusion on this point is based on concern that Neptune may not have the capacity to hire the Applicant and the other foreign workers that are the subject of the LMIA. What is not clear is how the Officer arrived at that concern based on the evidence provided. In the GCMS notes, the Officer observes that Neptune's organizational chart shows that it currently employs four drivers and that Neptune has stated that it owns eight trucks and has ordered five more. Immediately after noting this evidence, the Officer expresses the concern that Neptune may not have the capacity to hire 12 temporary foreign workers. However, it is unclear how the evidence noted by the Officer leads to that concern.

[12] As the Applicant submits, the evidence he provided in response to the procedural fairness letter included a letter dated April 18, 2020, apparently authored by Neptune, which explains its

current and intended operations. The evidence also includes corroborating documentation from Neptune's accountants, its insurer, a dealer in Volvo trucks, and Volvo Financial Services. Critically, Neptune's letter explained that Neptune performs long-haul trucking, delivering cargo on an expedited basis, by assigning two drivers to each truck so the truck can be operated 24 hours per day. As previously noted, the Officer referred to Neptune currently employing four drivers, owning eight trucks and having ordered five more. Thirteen trucks would appear to support capacity for 26 drivers, significantly more than four drivers plus the additional 12 temporary foreign workers that Neptune sought to hire.

[13] I note that, as pointed out by both parties, it appears the Officer misinterpreted Neptune's organizational chart, which depicted four spots for generic drivers within a particular segment of its organizational structure, with additional spots indicated for ".....N Drivers" Both parties accept that it was a factual error for the Officer to assume the four depicted spots reflected the total number of Neptune's drivers, as the evidence demonstrates there are currently six drivers employed. The Respondent submits that this factual error is not itself material, as the difference between four and six drivers would not alter the Officer's finding that Neptune is not able to hire an additional 12 drivers. While I agree with that particular submission, allowing for correction of the factual error still does not assist the Court in understanding the Officer's reasoning. Thirteen trucks (and therefore capacity for 26 drivers) would still appear to support a requirement for more than the six current drivers plus an additional 12 temporary foreign workers.

[14] I accept the Respondent's submission that the Officer was not obliged to refer to every piece of evidence, that the Decision is not to be read hyper-critically, and that it is not the role of this Court to re-examine or reweigh the evidence (see *Ahmed v Canada (Citizenship and Immigration)*, 2013 FC 1083 at para 34). As I understand the Respondent's argument, it is possible that the Officer reasoned, based on the financial evidence or otherwise, that Neptune did not actually have the business opportunities necessary to support the additional trucks, and therefore the additional drivers, that it was seeking to add to its operations. It is also possible that the Officer simply missed the evidence that Neptune assigns two drivers to each truck. However, the difficulty with the Decision is that, even when read in conjunction with the record before the Officer, it is simply not possible to identify how the Officer arrived at the conclusion that Neptune's employment offer was not genuine. As it is not possible to understand the decision-maker's reasoning on a critical point, the Decision is unreasonable and must be set aside.

[15] As I have reached this conclusion on the first issue raised by the Applicant, this application for judicial review will be allowed, and it is unnecessary for the Court to consider the other issues or arguments the Applicant advances.

[16] Neither party proposed any question for certification for appeal, and none is stated.

**JUDGMENT IN IMM-2925-20**

**THIS COURT'S JUDGMENT is that** this application for judicial review is allowed, the Decision is set aside, and the matter is returned to a different officer for redetermination.

“Richard F. Southcott”

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Judge



**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-2925-20

**STYLE OF CAUSE:** GURPREET SINGH v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** HEARD BY VIDEOCONFERENCE VIA  
VANCOUVER, BRITISH COLUMBIA

**DATE OF HEARING:** SEPTEMBER 29, 2021

**JUDGMENT AND REASONS:** SOUTHCOTT J.

**DATED:** OCTOBER 7, 2021

**APPEARANCES:**

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