

Federal Court



Cour fédérale

Date: 20211101

Docket: IMM-4406-20

Citation: 2021 FC 1164

Ottawa, Ontario, November 1, 2021

PRESENT: Madam Justice Pallotta

BETWEEN:

JARMANJIT SINGH

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The applicant, Jarmanjit Singh, applies for judicial review of a visa officer's (Officer) decision that refused his work permit application on grounds that he failed to demonstrate he would be able to adequately perform the work and he failed to demonstrate he will leave Canada at the end of the authorized stay.

[2] Mr. Singh is a citizen of India living in the United Arab Emirates (UAE) where he works as a truck driver. He was offered a position as a long haul truck driver with a company in Surrey, British Columbia. Mr. Singh alleges the Officer had no reasonable grounds to find he is unable to perform the work sought or that he will not leave Canada at the end of his authorized stay. He argues the Officer failed to justify the decision, rendering it unreasonable.

[3] For reasons below, I am not satisfied that the Officer's decision is unreasonable.

II. Preliminary Issue

[4] Prior to the hearing and with the applicant's consent, I granted leave for Ms. Sepideh Khazei, an articulated student in British Columbia, to make submissions on behalf of the respondent under the supervision of a lawyer: Rule 2-60 of the *Law Society Rules*, Law Society of British Columbia; Rules 119 and 2 (definition of "solicitor") of the *Federal Courts Rules*, SOR/98-106; subsection 11(3) of the *Federal Courts Act*, RSC 1985, c F-7.

III. Standard of Review

[5] The sole issue on this judicial review is whether the Officer's decision to refuse Mr. Singh's work permit application is unreasonable. A court undertaking a reasonableness review should ask 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: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65

[*Vavilov*] at paras 85, 99. Mr. Singh bears the onus of demonstrating that the Officer's decision is unreasonable: *Vavilov* at para 100.

IV. Analysis

[6] The Officer was not satisfied that Mr. Singh would be able to adequately perform the work based on: (i) a failure to demonstrate international long haul driving experience; (ii) Mr. Singh's experience driving exclusively in the UAE did not provide the necessary experience driving trucks to transport goods and materials across long distances; (iii) the UAE has significantly different terrain and weather conditions compared to Canada; (iv) a failure to demonstrate a clean driving record in the UAE and that Mr. Singh would be able to perform his work in a way that does not put the safety of Canadians at risk.

[7] In addition, the Officer was not satisfied that Mr. Singh would depart Canada at the end of his authorized stay based on: (i) the temporary nature of Mr. Singh's immigration status in the UAE; and (ii) that fact that his submissions and evidence demonstrated limited to no ties to India and the UAE, while the incentives to remain in Canada are high.

[8] Mr. Singh argues the Officer's finding that he is unable to perform the job of a long haul truck driver is not supported by evidence. He points out that the *Employment Standards Regulations*, BC Reg 396/95 defines a "long haul truck driver" to be a truck driver who drives more than a 160km radius from their home terminal, and a letter from Mr. Singh's employer in the UAE states that he drives 500km to 600km one way.

[9] Mr. Singh argues that the Officer failed to provide clear and reasonable explanations for the benchmarks adopted in the assessment (*Sevilla v Canada (Minister of Citizenship & Immigration)*, 2018 FC 424) and unreasonably imported subjective standards. The Officer did not explain why experience driving 500km to 600km one way is insufficient, or why Mr. Singh should have driving experience outside the UAE, under different terrain and weather conditions, and international truck driving experience. Mr. Singh argues the Officer made a finding he does not have a “clean driving record” in the UAE without an evidentiary basis. Also, he relies on *Randhawa v Canada (Minister of Citizenship & Immigration)*, 2006 FC 1294, where the Federal Court held it was unreasonable for the officer in that case not to take into account that some measure of job training would be provided. Mr. Singh states that he would be subject to Canadian driving licensing requirements.

[10] The respondent argues that Mr. Singh had the onus to demonstrate he is able to perform the work sought, and the Officer reasonably concluded that he had not met his burden in this regard. The respondent points to the lack of information on the safety training to be provided by the prospective employer and the lack of a UAE driving record as notable gaps in Mr. Singh’s work permit application. The respondent contends Mr. Singh’s arguments amount to a disagreement with the Officer’s assessment of the job requirements, which is not a ground of judicial review: *Sangha v Canada (Minister of Citizenship and Immigration)*, 2020 FC 95 [Sangha].

[11] I am not persuaded that the Officer made unsupported findings or adopted an unreasonable standard in finding that Mr. Singh had not established he would be able to

adequately perform the work sought. Different weather and terrain affects road conditions, and it was not unreasonable for the Officer to note the differences between Canada and the UAE in this regard. The job offer states that Mr. Singh is to drive trucks within Canada and the United States; it was therefore reasonable for the Officer to note the lack of international long haul driving experience. The onus is on the applicant to provide sufficient evidence to establish competence, and a visa officer has wide discretion to decide the issue: *Sangha* at para 42; *Patel v Canada (Minister of Citizenship and Immigration)*, 2021 FC 573 at para 31. The Officer's finding that Mr. Singh failed to demonstrate he can perform the work in a safe manner is reasonable in light of the record.

[12] The failure to demonstrate an ability to adequately perform the work provides sufficient justification for the Officer's refusal. Nonetheless, I will address the parties' arguments regarding the Officer's finding that they were not satisfied Mr. Singh would leave Canada.

[13] Mr. Singh argues that a finding that an applicant cannot be trusted to comply with Canadian law is a serious matter (*Cervjakova v Canada (Minister of Citizenship and Immigration)*, 2018 FC 1052 at para 12) and he submits the Officer failed to identify what would motivate him to overstay in Canada. Mr. Singh argues the evidence shows that he has returned to his country of citizenship, India, after working abroad in the UAE. Specifically, he returned to India for 15 months between two employment periods in the UAE. Furthermore, Mr. Singh provided evidence of his family's net savings and property as ties to India.

[14] The respondent submits that an assessment of whether an applicant has sufficient ties to their country of origin to infer that they will return at the end of their authorized stay is highly discretionary: *Cruz v Canada (Minister of Citizenship and Immigration)*, 2018 FC 1283 at para 14; *Pena v Canada (Minister of Citizenship and Immigration)*, 2020 FC 796 at para 14. In this case, Mr. Singh failed to show a significant connection to India. He has no job there and his family's assets are not his own ties. Despite the fact that Mr. Singh's parents and siblings live in India, he was willing to live apart from them previously, for economic reasons.

[15] In my view, the Officer's determination that Mr. Singh had not established he will leave Canada after his authorized stay is reasonable. An administrative decision maker is presumed to have considered all the evidence unless the contrary is shown (*Sekhon v Canada (Minister of Citizenship and Immigration)*, 2018 FC 700 at para 13, citing *Rahman v Canada (Minister of Citizenship and Immigration)*, 2016 FC 793 at para 17) and the Officer's finding that the evidence showed "limited to no ties" to India or the UAE is an accurate and reasonable finding based on the record in this case. The fact that Mr. Singh returned to India between jobs in the UAE is not determinative and does not contradict the finding of limited ties to India. Mr. Singh simply failed to meet his onus with sufficient evidence. When read in light of the record, the reasons justify the Officer's determination.

V. **Conclusion**

[16] Mr. Singh has not established that the Officer's decision is unreasonable, and accordingly, this application for judicial review is dismissed.

[17] The parties do not propose a question for certification. In my view, there is no question to certify.

JUDGMENT in IMM-4406-20

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is dismissed.
2. There is no question to certify.

"Christine M. Pallotta"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4406-20

STYLE OF CAUSE: JARMANJIT SINGH v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: HELD BY WAY OF VIDEOCONFERENCE

DATE OF HEARING: AUGUST 30, 2021

JUDGMENT AND REASONS: PALLOTTA J.

DATED: NOVEMBER 1, 2021

APPEARANCES:

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