Federal Court  Cour fédérale

Date: 20211118

Docket: IMM-265-21

Citation: FC 2021 1263

Ottawa, Ontario, November 18, 2021

PRESENT: The Honourable Mr. Justice Bell

BETWEEN:

ELPIDIO BAUTISTA PASTOR

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

(Delivered from the Bench at Ottawa, Ontario, on November 2, 2021 and edited for syntax and grammar with added references to the relevant case law.)

I. Overview

[1] Elpidio Bautista Pastor (the "Applicant") is a Mexican citizen who lived and worked unlawfully in the United States of America from March 2008 to January 2018. He is married to

Marielena Gamboa Villa, an American citizen. They have three children, all of whom are American citizens.

[2] In January 2018, American law enforcement personnel arrested the Applicant and him to his country of citizenship, Mexico.

[3] In the United States, the Applicant worked as a Drywall Applicator for several years and then, in conjunction with his spouse, started his own drywall company.

[4] After his deportation to Mexico, the Applicant entered Canada as a visitor in July 2019. The Applicant's visitor visa has been renewed on at least one occasion, and a second application for renewal is either pending or has been granted. Counsel were unable to inform me as to his exact status in Canada, other than that he is here lawfully, either on a visitor visa or a pending extension of that visa.

[5] On September 16, 2020, while in Canada, the Applicant submitted a work permit application to work as a Drywall Applicator. His application was accompanied by a positive Labor Market Impact Assessment ("LMIA")

II. Decision under review

[6] On November 17, 2020, a Visa Officer (the "Officer") rejected the Applicant's application for a work permit on the following grounds:

- I am not satisfied that you will leave Canada at the end of your stay, as stipulated in subsection 200(1) of the IRPR, based on your travel history.
- I am not satisfied that you will leave Canada at the end of your stay, as stipulated in subsection 200(1) of the IRPR, based on the purpose of your visit.
- I am not satisfied that you will leave Canada the end of your stay, as stipulated in subsection 200(1) of the IRPR, based on the length of your proposed stay in Canada.

[7] It is from that decision that the applicant now brings this application for judicial review pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act,* SC 2001, c 27 ["IRPA"].

III. Analysis

[8] The Officer's Global Case Management System ("GCMS") notes further clarify the decision made:

> "R200(1)(b) states a work permit shall be issued if the foreign national "will leave Canada by the end of the period authorized for their stay".
>
> Based on the applicants lack of status in the U.S. and previous contravening of immigration laws, I am not satisfied subject has demonstrated ties that will be sufficient to motivate departure by the end of an authorized period of stay."

[9] The relevant provisions are ss. 179(b) and 200(1)*b*) of the *Immigration and Refugee Protection Regulations*, S.O.R./2002-227 ["IRPR"], both of which provide respectively:

***Immigration and Refugee Protection Regulations*, S.O.R./2002-227**	***Règlement sur l'immigration et la protection des réfugiés*, DORS/2002-227**
Issuance	**Délivrance**
179 An officer shall issue a temporary resident visa to a foreign national if, following	**179** L'agent délivre un visa de résident temporaire à l'étranger si, à l'issue d'un

an examination, it is established that the foreign national	contrôle, les éléments suivants sont établis :
(b) will leave Canada by the end of the period authorized for their stay under Division 2	b) il quittera le Canada à la fin de la période de séjour autorisée qui lui est applicable au titre de la section 2
Work permits	**Permis de travail — demande préalable à l'entrée au Canada**
200 (1) Subject to subsections (2) and (3) — and, in respect of a foreign national who makes an application for a work permit before entering Canada, subject to section 87.3 of the Act — an officer shall issue a work permit to a foreign national if, following an examination, it is established that	**200 (1)** Sous réserve des paragraphes (2) et (3), et de l'article 87.3 de la Loi dans le cas de l'étranger qui fait la demande préalablement à son entrée au Canada, l'agent délivre un permis de travail à l'étranger si, à l'issue d'un contrôle, les éléments ci-après sont établis :
(b) the foreign national will leave Canada by the end of the period authorized for their stay under Division 2 of Part 9;	b) il quittera le Canada à la fin de la période de séjour qui lui est applicable au titre de la section 2 de la partie 9;

[10] The Applicant bore the burden of establishing that he would leave Canada at the end of his authorized stay. The Officer's decision as to whether or not the Applicant met that onus is subject to the review standard of reasonableness as set out in *Canada (Minister of Citizenship and Immigration.) v. Vavilov*, 2019 CSC 65, 441 DLR (4th) 1 ["Vavilov"]. The decision on whether the onus has been met must be based on an internally coherent and rational chain of analysis, and justified in relation to the relevant factual and legal constraints that bear on the decision (*Vavilov* at paras 25 and 85). This is consistent with the instructions set out in *Dunsmuir*

v. New Brunswick, 2008 SCC 9, [2008] 1 SCR 190 [“Dunsmuir”] at para 47 that decisions must be justified, transparent and intelligible.

[11] The Applicant contends that the Officer’s decision is not justifiable and is illogical. He contends his immigration history in the United States does not constitute evidence that militates against his motivation to leave Canada at the end of his stay. He points to the fact he entered Canada lawfully and obtained extensions to remain lawfully as proof of his intention to leave Canada when required.

[12] In addition to the lawful steps undertaken by the Applicant to enter and remain in Canada, he contends the Officer ignored evidence pointing to a conclusion contrary to that arrived at by him, namely that he would not leave Canada at the end of his stay. The Applicant points to the fact that his spouse and children have American passports to demonstrate that he has strong ties to the United States. He also points to the fact that he has parents and siblings living in Mexico to show that he has strong ties to Mexico.

[13] I fail to see any relevance to the fact that the Applicant has a spouse and three children in the United States as supporting a contention that there is a pull factor to that country. The evidence is that the Applicant was deported from the United States. Counsel, on questions from me today, indicates that he has no information that the Applicant is even permitted to enter into the United States at this time. The record is noticeably silent on that issue. I reach the conclusion, for purposes of this judicial review, that the Applicant cannot enter the United States of America.

[14] Secondly, with respect to the Applicant's contention that he has strong pull factors to Mexico, the record is silent with respect to any visits to Mexico during his 10 years of residence in the United States of America. The record is also silent about visits of children or grandchildren to Mexico during the Applicant's 10 years of residence in the United States of America. The facts that were before the officer demonstrate that the Applicant has not returned to Mexico since his arrival in Canada in 2019. Therefore, it appears that the Applicant spent only one of the last twelve years in Mexico, that being the year after his deportation from the United States and prior to his arrival in Canada.

[15] The record is silent with respect to property, real or personal, owned by the Applicant in Mexico. This absence of evidence constituted part of the context of the circumstances to be considered by the Officer given that the onus was on the Applicant.

[16] It is the fundamental principle of Canadian immigration law that foreign nationals do not have an unqualified right to enter or remain in Canada (*Medovarski v. Canada (Minister of Citizenship and Immigration*), 2005 SCC 51, 258 DLR (4th) 193 at para 46; *Canada (Minister of Employment and Immigration) v. Chiarelli*, [1992] 1 SCR 711, 90 DLR (4th) 289 at page 733; *Jahazi v Canada (Citizenship and Immigration*), 2010 FC 242, [2011] 3 FCR 85 at paras 31-32). AS already indicated, the burden is on the foreign national who seeks temporary entry into Canada to satisfy the officer that he or she will leave Canada at the end of the authorized period of stay. That principle is not only set out in the statute already cited, it has been often cited in the jurisprudence, including, but not limited to *Obeng v. Canada (Citizenship and Immigration*), 2008 FC 754, 330 FTR 196 at para 20; *Danioko v. Canada (Minister of Citizenship and*

Immigration), 2006 FC 479, 292 FTR 1 at para 15; and *Li v. Canada (Minister of Citizenship and Immigration*), 2001 FCT 791, 208 FTR 294 at para. 37).

[17] I find the decision and the GCMS notes of the Officer to be brief. In fact, they could be referred to as sparse. That being said, quality of reasons is not evidenced by their length. It is trite law that a reviewing court must look to the record as a whole to understand the decision, and that in doing so, it "will often uncover a clear rationale for the decision" (*Vavilov* at para 137; *Baker v. Canada (Minister of Citizenship and Immigration*), [1999] 2 SCR 817, 174 DLR (4th) 193 at para 44). Furthermore, there is no requirement for detailed reasons on a work permit application; brief reasons suffice (S*hang v. Canada (Citizenship and Immigration*), 2021 FC 633 at para 57; *Singh v. Canada (Citizenship and Immigration*), 2009 FC 621 at para 9; *Ekpenyong v. Canada (Immigration, Refugees and Citizenship*), 2019 FC 1245 at para 13).

[18] Visa Officers handle thousands of visa applications per year. Visa Officers are entitled to expect applicants to put their best foot forward and disclose all relevant information as it relates to their application. In this case the Officer was very much aware, based upon his review of the file, of the Applicants unlawful status in the United States, his brief visit to Mexico before coming to Canada and, of course, his length of time in Canada. It would be incorrect of this Court to conclude that the Officer was not aware of those factors, even though he may not have specifically stated them in his reasons. It is trite law that an administrative decision-maker is presumed to have considered the entirety of the evidence before it (*Hassan v. Canada (Minister of Employment and Immigration)* (1992), 147 N.R. 317, 36 A.C.W.S. (3d) 635).

[19] It also be unreasonable to think that a Visa Officer would be unaware of the lack of a pull factor to the United States and Mexico Mexico, given the contents of the work permit application.

[20] When I consider the instructions in *Vavilov*, the huge discretion afforded to Visa Officers, the onus upon the Applicant and the circumstances under which Visa Officers operate, I cannot conclude that this decision is unreasonable, either within the context of *Vavilov* or within the context of *Dunsmuir*.

IV. Conclusion

[21] For these reasons, I dismiss the application for judicial review.

[22] I inquired of the parties, whether they either proposed question for certification to be considered by the Federal Court of Appeal. None was offered. Upon my review, I see no question arising from the record suitable for certification for consideration by the Federal Court of Appeal.

[23] I wish to close by thanking both counsel for their excellent written and oral submissions. I wish to thank both counsel for their candid responses to my questions. It is abundantly clear to me that, even though this application has been rejected, that both parties were very ably represented.

JUDGMENT in IMM-265-21

THIS COURT'S JUDGMENT is that:

1. This Application for judicial review is dismissed.

2. 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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