Federal Court  Cour fédérale

Date: 20220506

Docket: IMM-3943-21

Citation: 2022 FC 651

Ottawa, Ontario, May 6, 2022

PRESENT: The Honourable Madam Justice Rochester

BETWEEN:

TAN DO MAI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Tan Do Mai, is a citizen of Vietnam. He seeks judicial review of a decision by a visa officer [Officer] refusing his request for a three-year work permit, under the Temporary Foreign Worker Program, to work at Metropolitan Eddie Sushi, his father's sushi restaurant in Quebec City [Decision].

[2] For the reasons that follow, this application for judicial review is allowed.

II. Background

[3] The Applicant was born in Vietnam in 1982. His father had come to Canada as a refugee in 1984. In 2003, the Applicant applied for a permanent resident visa, under the family class, as an unmarried dependant of his father in Canada who acted as a sponsor. He obtained his visa and arrived in Canada in 2005. From 2005 until the Applicant's departure from Canada in 2011, he worked as a chef in his father's sushi restaurant.

[4] In between the filing of his application in 2003 and the granting of his visa in 2005, the Applicant had married his pregnant girlfriend in a religious ceremony. The marriage was not, however, registered at the time with the Vietnamese government, nor was the birth of his child in 2004.

[5] As per paragraph 40(1)(a) of the *Immigration and Refugee Protection Act* [IRPA], a permanent resident or a foreign national is inadmissible for misrepresentation, "for directly or indirectly misrepresenting or withholding material facts relating to a relevant matter that induces or could induce an error in the administration of this Act". In 2009, the Immigration Division concluded that the Applicant had made a misrepresentation and on April 20, 2009, a removal order was issued.

[6] The Immigration Appeal Division rejected the Applicant's appeal in 2010. The Applicant then sought judicial review and plead that the misrepresentations, i.e. not reporting the religious

marriage and the birth of his child, did not disqualify him from obtaining his permanent residence as a dependant on his father. The judicial review was dismissed by Justice Martineau in 2011 (*Mai v Canada (Public Safety and Emergency Preparedness)*, 2011 FC 101).

[7] Following the dismissal of the application for judicial review, the Applicant complied with the removal order and left Canada as required in 2011. He returned to Vietnam, where he worked in an import and export company. As result of the misrepresentation, the Applicant was barred from Canada for five years. The interdiction expired in 2016.

[8] In 2021, the Applicant applied for a work permit. Prior to filing the application, the employer, Metropolitan Eddie Sushi, had obtained a Labour Market Impact Assessment [LMIA] and the Applicant had obtained a Quebec Acceptance Certificate [CAQ]. In the application, the Applicant disclosed that (i) he previously obtained permanent residence in Canada in 2005, (ii) he then lost his Canadian permanent residence because he had omitted to mention the existence of his spouse and son and to include them as non-accompanying family members, and (iii) he had complied with the departure order and left on his own accord ten years earlier.

[9] The Officer's notes in the Global Case Management System [GCMS] form a part of the Decision. In the Decision, the Officer noted that his permanent residency had been revoked for a misrepresentation, and that there was no current bar in effect. The Officer noted that the employer is the same as the one where he worked in Canada and that it was owned by the Applicant's father. The Officer declared that he had concerns that the employment was to facilitate the re-entry of the Applicant into Canada, and highlighted that the Applicant had been

working in the field of import and export while in Vietnam. The Officer stated that on balance he was not satisfied that the Applicant would be a *bona fide* temporary resident.

[10] The Officer refused the Applicant's request for a work permit based on the purpose of his visit and his history of having contravened the conditions of admission on a previous stay in Canada. The Officer was not satisfied therefore that the Applicant would comply with paragraph 200(1)(b) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [IRPR] and leave Canada at the end of his stay.

III. Issues

[11] The Applicant submits that Decision is unreasonable.

[12] The Applicant further submits that there was a breach of procedural fairness by the Officer. In the Applicant's view, the Officer ought to have granted him an interview or requested further documentation given the Officer's concerns with the application.

IV. Analysis

[13] It is common ground between the parties that, save for the issue of procedural fairness, the standard of review is reasonableness as set out in *Canada* (*Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*]. Ultimately, the reviewing court must be satisfied that the administrative decision is "based on an internally coherent and rational chain of

analysis and […] is justified in relation to the facts and law that constrain the decision maker" (*Vavilov* at para. 85).

[14] The Applicant argues that the Decision does not exhibit the requisite degree of justification, intelligibility and transparency. The Applicant focuses on several issues, however, I will address the one that I find to be determinative, namely the Officer's concern that the employment at his father's restaurant is to facilitate, or is a pretext to, entering the country, justifying refusal on the basis of the purpose of the Applicant's visit.

[15] The Applicant submits that the record before the Officer was clear that the Applicant was previously a chef at his father's restaurant and was seeking to return to the same position. The necessary steps had been taken with Service Canada to obtain the LMIA for the position, and the Applicant had received his CAQ. There is no indication whatsoever in the record that the employment at Metropolitan Eddie Sushi is in anyway a pretext. The Applicant highlights his years of history working at that very restaurant and the fact that once a departure order was issued, he left of his own accord voluntarily and found employment in Vietnam.

[16] The Respondent submits that the Officer reasonably doubted the good faith of the Applicant by reasons of his parental link with his employer, being his father, and the fact that the employment in Canada as a chef did not correspond to the Applicant's prior work experience in Vietnam in the export and import business. The Respondent further submits that the Officer was entitled to take notice of the prior misrepresentation by the Applicant, and to take it into account, even though the interdiction had expired in 2016. The Respondent submits that the Officer was

rightfully worried that the Applicant would stay illegally at the end of his stay given his past misrepresentation and that he has been working in an unrelated field since his return to Vietnam.

[17] I agree with the Respondent's position that past interactions with Canadian immigration officials are generally relevant to an officer's assessment under paragraph 200(1)(b) of the IRPR, and an officer is entitled to take them into account (*Soni v Canada (Citizenship and Immigration)*, 2020 FC 813 at para 56 [*Soni*]). Nevertheless, on the facts, I find *Soni* to be distinguishable from the present case. In *Soni*, the applicant entered Canada on a tourist visa, declaring herself to be a housewife, despite having accepted an offer of employment as a bookkeeper in Canada. Within a matter of days, she went to the Rainbow Bridge and applied for a work permit, and then sought to do so again several days later at the Peace Bridge. Ultimately, concerns were raised that, among other things, she had declared the purpose of her trip to be personal, not business, with respect to her tourist visa, but as to her work permit application, she had indicated she held a Bachelor's degree in Mathematics and was employed as a bookkeeper. In *Soni*, my colleague Justice Little, found that Ms. Soni's case was not one where a decision-maker ignored, fundamentally misapprehended or failed to account for evidence (at para 59).

[18] The difficulty in the present case is that the Officer's finding as to the purpose of the visit, i.e. his employment at his father's restaurant, does not follow a rational chain of analysis that is justified in relation to the facts (*Vavilov* at para 85) given that the record clearly showed that the Applicant had worked as a chef in his father's restaurant for the entire six years he was in Canada prior to his departure. I agree with the Applicant that there is no indication in the record whatsoever that the offer of employment from his father's restaurant was a pretext or that

the Applicant would not actually work there as he had done in the past. The fact that the restaurant belonged to his father is the very reason he worked there in the past and sought to do so in the future. Yet this fact, taken alongside the Applicant's work in export and import, gave rise to the Officer's concern that the Applicant was not in good faith as to the purpose of his visit.

[19] In *Patel v Canada (Citizenship and Immigration)*, 2020 FC 77, my colleague Justice Diner acknowledged the significant operational pressures upon visa officers, but found that this does not exempt them from being responsive to the facts before them:

> [17] Again, while the reality of visa offices and the context in which its officers work include significant operational pressures and resource constraints created by huge volumes of applications, this cannot exempt their decisions from being responsive to the factual matrix put before them. Failing to ask for basic responsiveness to the evidence would deprive reasonableness review of the robust quality that *Vavilov* requires at paras 13, 67 and 72…

[20] Here, the Officer did not offer a rational chain of rational chain of analysis that is justified in relation to the facts (*Vavilov* at para 85). The reasons, being that the Applicant's father owned the restaurant and that he had previously worked in import and export, do not provide a reasonable basis or justification for the Officer's conclusion that the purpose of his trip was not *bona fide* given the evidence in the record. The Decision lacked responsiveness to the evidence in the record in this respect and thus the Officer committed a reviewable error (*Patel* at paras 15-16).

[21] Having found that Decision to be unreasonable, I find it unnecessary for me to address the remaining issues raised by the Applicant.

V. Conclusion

[22] For the foregoing reasons, this judicial review is allowed. The Decision is hereby set aside and the matter is to be remitted to a different visa officer for redetermination. No serious question of general importance for certification was proposed by the parties, and I agree that no such question arises.

JUDGMENT in file IMM-3943-21

THIS COURT'S JUDGMENT is that:

1. The Applicant's application for judicial review is allowed;

2. The Decision is hereby set aside and the matter is to be remitted to a different officer for redetermination;

3. There is no question for certification.

"Vanessa Rochester"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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