

Federal Court



Cour fédérale

**Date: 20220707**

**Docket: IMM-3534-20**

**Citation: 2022 FC 1004**

**Ottawa, Ontario, July 7, 2022**

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

**BETWEEN:**

**HARMAN PAL**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

**I. Introduction**

[1] This is an application for judicial review of a decision made on March 13, 2020 refusing to issue the work permit which the Applicant sought under the Temporary Foreign Workers Program [TFWP] to come to Canada as a General Farm Worker.

[2] For the reasons that follow, the application is granted.

II. **Background**

[3] The Applicant is aged thirty-one (DOB: December 28, 1990). He is not married and does not have any children. He is a citizen of India and no other country. He currently resides in Hoshiarpur, Punjab, India. Both the Applicant's parents and his only brother all reside in Hoshiarpur.

[4] The Applicant applied to enter Canada under the TFWP on February 12, 2020, with intentions to work as a General Farm Worker. His application was refused on March 13, 2020 on the basis that the Officer was not satisfied that the Applicant would return to India at the end of his authorized stay.

[5] The Applicant currently works as a farm worker at VPO Gondpur in Hoshiarpur. His prospective Employer in Canada is Sukhdev Rai, Amarjit Rai, DBA Colebrook Heritage Farm in Surrey, B.C. Due to a shortage of farm workers in Canada, the Employer applied for a Labour Market Impact Assessment [LMIA].

[6] A positive LMIA was issued on November 18, 2019 for four farm workers. The Applicant subsequently received an employment offer and proceeded to apply for a work permit. His application contained the following enclosures:

- A) The positive LMIA:
- B) The offer of employment;

- C) The Applicant's affidavit attesting that he has been a farm worker since May 2016;
- D) Letters of support stating that the Applicant is a farmer;
- E) Letters from suppliers of farming equipment confirming that the Applicant purchases supplies from them for agriculture;
- F) Letter from a merchant stating that the Applicant sells him crops;
- G) Letter from the Applicant's father; and
- H) Financial statements demonstrating the assets of the Applicant and his father.

### III. **Decision under Review**

[7] The Officer found that the Applicant would be unlikely to leave Canada at the end of the work permit based on family ties in Canada and in his country of residence.

[8] In the Global Case Management Notes [GCMS Notes], the Officer acknowledged that the Applicant applied for a work permit under National Occupation Code [NOC] 8431, "General Farm Worker". The Officer also noted that the Applicant received a job offer to work in Surrey, B.C. and that the LMIA for that position did not have any specific education, experience or language requirements.

[9] The GCMS notes contain the following sparse remarks about the reasons for the decision:

I am not satisfied with the PA's level of establishment in home country, his ties to home country. I am not satisfied that PA will be motivated to leave Canada by the end of his temporary stay should it be authorized. Refused pursuant to R200(1)(b).

IV. **Issues and Standard of Review**

[10] The Applicant raised two issues. First, whether the Officer's refusal of the Applicant's work permit is reasonable. Second, whether the Officer breached the principles of procedural fairness by denying the Applicant an opportunity to respond to concerns regarding the purpose of Mr. Harman Pal's visit and family ties in Canada and in India.

[11] At the hearing, I advised counsel that I saw no basis for the procedural fairness argument in the written materials and was not persuaded by the oral argument that it needed to be addressed. This was not a case where there may have been a veiled credibility finding. The authenticity or credibility of the documents submitted, including the Applicant's affidavit, was not questioned.

[12] That left the issue of reasonableness. As discussed by the Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 24, reasonableness is the presumptive standard of review of administrative decisions. It requires internally coherent reasoning justified in relation to the facts and law relevant to the decision. In assessing whether a decision meets the standard, the Court must consider whether the decision is justified, transparent and intelligible: *Vavilov* at para 86, citing *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47 [*Dunsmuir*].

[13] While the duty of a visa officer to provide reasons for a work permit decision is minimal, the reasons are the means by which the decision maker communicates the rationale for its decision. A reviewing court must begin its inquiry into the reasonableness of a decision by examining the reasons provided with respectful attention and seeking to understand the process followed by the decision maker to arrive at its conclusion: *Dunsmuir* at para 48; *Vavilov* at para 84.

V. **Analysis**

[14] It is apparent from the documents submitted in support of the application for a work permit that the Applicant and his father have accumulated substantial assets relating to their agricultural business in Hoshiarpur, Punjab, India. To mention this is not to suggest that it should have been sufficient reason to allow the application for a work permit.

[15] However, the GCMS notes disclose no reasoning for the conclusion that the Officer is not satisfied that the Applicant will return to his home country at the expiry of the work permit. The notes are silent as to the extent of the Applicant's economic establishment in India. Nor do the notes acknowledge that he was engaged not only in the aspects of agricultural work that involve manual labour, but also the purchase of supplies relating to agricultural production, such as fuel, pesticides, and seeds, and the sale of crops to retailers and wholesalers.

[16] Moreover, the Applicant's entire family, as far as the record indicates, reside in India. There was no document in the evidentiary record indicating that the Applicant had family in Canada. The GCMS notes do not suggest that the Officer had information to the contrary. The

Officer did not explain why, in light of the ample evidence to the contrary, the Applicant's level of establishment in India was not sufficient to motivate him to return.

[17] While the Respondent has attempted to explain why the Officer could have arrived at the decision based on the record, those explanations do not appear in the reasons given.

VI. **Conclusion**

[18] Based on the decision, including the GCMS notes, the Court is unable to understand the reasoning process followed by the visa Officer to arrive at the conclusion that the Applicant would be unlikely to return to India at the conclusion of the work permit. In the result, it must find that the decision is unreasonable and return the matter for reconsideration by a different officer.

[19] No serious questions of general importance were submitted and none will be certified.

**JUDGMENT IN IMM-3534-20**

**THIS COURT'S JUDGMENT is that:**

1. The application for judicial review is granted and the matter is remitted for determination by a different officer; and
2. No questions are certified.

"Richard G. Mosley"

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Judge

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

**DOCKET:** IMM-3534-20

**STYLE OF CAUSE:** HARMAN PAL v THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION

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

**DATE OF HEARING:** APRIL 6, 2022

**JUDGMENT AND REASONS:** MOSLEY J.

**DATED:** JULY 7, 2022

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