Federal Court  Cour fédérale

Date: 20230523

Docket: IMM-2794-22

Citation: 2023 FC 719

Ottawa, Ontario, May 23, 2023

PRESENT: The Honourable Mr. Justice Ahmed

BETWEEN:

AFZAL RAJA

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Afzal Raja, seeks judicial review of a decision of a visa officer (the "Officer") of Immigration, Refugees and Citizenship Canada ("IRCC") dated March 14, 2022, refusing his application for a work permit under the International Mobility Program ("IMP").

[2] The Officer was not satisfied that the Applicant would leave Canada at the end of his stay, as per subsection 200(1) of the *Immigration and Refugee Protection Regulations,* SOR/2002-227 ("*IRPR*"), due to the purpose of his visit and his travel history.

[3] The Applicant submits that the Officer breached procedural fairness in several respects and rendered an unreasonable decision, warranting this Court's intervention.

[4] For the reasons that follow, I find that the Officer's decision is reasonable. The Applicant has failed to raise a reviewable error or a breach of procedural fairness in the decision. This application for judicial review is dismissed.

II. **Facts**

A. *The Applicant*

[5] The Applicant is a 67-year-old citizen of Iran.

[6] From 1973 to 1990, the Applicant worked as an assistant manager at a restaurant in Iran. In 1990, he inherited ownership of his father's Pakistani restaurant in Abadan, Iran. For the past 30 years, the Applicant has been the sole owner and manager of this restaurant.

[7] The Applicant claims that on June 9, 2020, he incorporated "Pakistan Restaurant Incorporated" as a business in Ontario.

[8] On June 22, 2021, the Applicant applied for a work permit through the IMP for entrepreneurs and self-employed candidates seeking to operate a business in Canada, under Labour Market Impact Assessment exemption code C11. In applications made under this class, IRCC assesses whether the work of the foreign national creates significant social, cultural or economic benefits, or opportunities for Canadians as per subsection 205(a) of the *IRPR*.

[9] The Applicant's work permit application expressed his intent to open a Pakistani restaurant in Georgina, Ontario and hire seven full-time employees to operate the business when he returns to Iran. The Applicant submitted supporting documentation including bank statements, a business plan, articles of incorporation, and share ownership documents.

B. *Decision Under Review*

[10] In a decision dated March 14, 2022, the Officer refused the Applicant's work permit application. The decision is largely contained in the Global Case Management System ("GCMS") notes, which form part of the reasons for the decision.

[11] The GCMS notes state:

> The applicant's intended employment in Canada does not appear reasonable given:
>
> The applicant has applied for a work permit under LMIA exemption C11 Canadian interests – Significant benefit.
>
> The business plan proposes to open a Pakistani restaurant in Georgina, Ontario, a smaller community of approximately 45,000 people. A physical location has not yet been secured for the restaurant. The business case presents high sales estimates but considering significant competition in the food service industry,

> high overhead and payroll costs it is unclear if these projections are realistic.
>
> The articles of incorporation indicate that there could be a maximum of 7 directors and the applicant is not listed as one of the current directors. It also indicates that there is no limit on the shares and not details on the current share ownership [sic]. Therefor [sic] it is not possible to assess the applicant's percentage of ownership.
>
> The applicant's travel history is not sufficient to count as a positive factor in my assessment.
>
> Weighing the factors in this application, I am not satisfied that the applicant will depart Canada at the end of the period authorized for their stay.
>
> For the reasons above, I have refused this application.

III. **Preliminary Issue**

[12] The parties dispute whether the Applicant attempted to adduce fresh evidence before this Court on judicial review that was not before the Officer. The Applicant's memorandum of argument includes a table listing different visa applications that the Applicant's counsel completed and the dates that they were approved. The Applicant provided this information to support his contention that there was an unreasonable delay in rendering the decision in his work permit application.

[13] The Respondent submits that this evidence is inadmissible because it is not supported by an affidavit and it fails to adhere to the general principle that a judicial review is confined to the evidence that was before the administrative decision-maker. The Respondent therefore requests that this portion of the Applicant's memorandum of argument be struck.

[14] The Applicant submits that he has not attempted to present fresh evidence before this Court. He submits that he "simply provided reference to a short list of some of the previously issued cases for a work permit" and in doing so, intended to demonstrate that the Applicant's legitimate expectation in receiving a timely decision on his work permit application was breached, thereby breaching the duty of fairness owed to him.

[15] I agree with the Respondent that the Applicant's inclusion of new information in his memorandum of argument qualifies as an attempt to proffer new evidence before this Court on judicial review. As this same information was not before the Officer in rendering the decision, it is improper and inadmissible at this stage. Therefore, this Court will not consider this evidence in assessing the reasonableness and procedural fairness of the decision.

IV. **Issues and Standard of Review**

[16] While the Applicant has raised numerous issues within the broader allegation that the Officer's decision is procedurally unfair, I find that the issues can be framed as follows:

A. Whether the Officer's decision is reasonable.

B. Whether there was a breach of procedural fairness.

[17] The applicable standard of review of the Officer's decision is reasonableness, in accordance with the Supreme Court of Canada's decision in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 ("*Vavilov*") at paragraphs 16-17. The issue of procedural

fairness is to be reviewed on the correctness standard (*Mission Institution v Khela*, 2014 SCC 24 at para 79; *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 ("*Canadian Pacific Railway Company*") at paras 37-56; *Canadian Association of Refugee Lawyers v Canada (Immigration, Refugees and Citizenship)*, 2020 FCA 196 at para 35).

[18] Reasonableness is a deferential, but robust, standard of review (*Vavilov* at paras 12-13; 75; 85). The reviewing court must determine whether the decision under review, including both its rationale and outcome, is transparent, intelligible and justified (*Vavilov* at para 15). A decision that is reasonable as a whole is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision-maker (*Vavilov* at para 85). Whether a decision is reasonable depends on the relevant administrative setting, the record before the decision-maker, and the impact of the decision on those affected by its consequences (*Vavilov* at paras 88-90, 94, 133-135).

[19] For a decision to be unreasonable, the applicant must establish the decision contains flaws that are sufficiently central or significant (*Vavilov* at para 100). Not all errors or concerns about a decision will warrant intervention. A reviewing court must refrain from reweighing evidence before the decision-maker, and it should not interfere with factual findings absent exceptional circumstances (*Vavilov* at para 125). Flaws or shortcomings must be more than superficial or peripheral to the merits of the decision, or a "minor misstep" (*Vavilov* at para 100; *Canada (Citizenship and Immigration) v Mason*, 2021 FCA 156 at para 36).

[20] Correctness, in contrast, is a non-deferential standard of review. The central question for issues of procedural fairness is whether the procedure was fair having regard to all of the circumstances, including the factors enumerated in *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 at paragraphs 21-28 (*Canadian Pacific Railway Company* at para 54).

V. **Analysis**

[21] The Applicant submits that the Officer's decision is procedurally unfair on several accounts: 1) in IRCC's use of the Chinook processing tool to assess the application; 2) in the Officer's failure to provide reasons until after the Applicant submitted a request for reasons pursuant to Rule 9 of the *Federal Courts Citizenship, Immigration and Refugee Protection Rules*, SOR/93-22; 3) in the delay in rendering the decision, and; 4) in raising a reasonable apprehension of bias. The Applicant also submits that the Officer's decision is unreasonable because the findings fail to accord with the Applicant's evidence.

[22] The Respondent maintains that the Officer's decision is both procedurally fair and reasonable. I agree. In my view, despite the Applicant's extensive and numerous allegations, he has failed to raise a reviewable error or a breach of procedural fairness in the Officer's decision that is supported by the evidence and jurisprudence.

A. *Reasonableness*

[23] The Applicant submits that the Officer's reasons are arbitrary in that they fail to accord with the evidence provided and there is nothing in the record to suggest that the Applicant's purpose of visiting Canada is anything beyond a temporary visit to start his business in Ontario, as he stated in his application. For instance, the Officer found that he had not yet secured a location for the restaurant, but the Applicant submits that he provided evidence indicating that he had signed a buyer representation agreement to pursue the search for a commercial space for the business. The Applicant submits that this signals that the Officer did not properly assess the totality of his evidence in making the decision.

[24] The Applicant submits that the Officer assessed his work permit application on the basis of irrelevant and extraneous criteria, but does not specify which criteria. The Applicant also submits that the IRCC's reliance on Chinook, an efficiency-enhancing tool used to organize information related to applicants for temporary residence, undermines the reasonableness of the Officer's decision.

[25] The Respondent maintains that the Officer's decision to refuse the Applicant's work permit application is reasonable. The Respondent submits that the Officer rendered the decision on the basis of several pertinent criteria, including the reasonableness of the Applicant's business case, given the projected high sales estimates, significant competition, and high cost of the food service industry, the failure to secure a physical location for the restaurant, and the plan to open the restaurant in a small community. The Respondent contends that brevity of reasons does not

amount to unreasonableness and that the Officer's reasons reveal specific justifications for the decision, on the basis of the evidence available. The Respondent submits that the Applicant ultimately bears the onus to provide sufficient evidence to demonstrate that he would provide a significant benefit as per subsection 205(a) of the *IRPR* and that he intends to leave Canada at the end of his stay, and the Officer reasonably found that he failed to do so.

[26] I agree with the Respondent. I find that the Applicant has failed to raise a reviewable error in the Officer's decision. The Applicant's submissions on this point amount to a request that this Court reweigh the evidence that was before the Officer, and that is not this Court's role on reasonableness review (*Vavilov* at 125). I do not find that the Officer's reasons exhibit a failure to account for central evidence or to grapple with key issues raised by the Applicant. For instance, the Applicant's buyer representation agreement proffered as evidence does not contradict the Officer's finding that a location has not been secured.

[27] Although the Applicant rightly notes that the articles of incorporation of his business list him as a director, contrary to the Officer's finding, it is ultimately reasonable for the Officer to find that the articles of incorporation and accompanying evidence do not provide sufficient means to assess the Applicant's percentage share ownership. I agree with the Respondent that this minor error in the Officer's reasons does not demonstrate a failure to account for the evidence and it does not displace the reasonableness of the overall decision, particularly given that the Officer did not base the decision on this factor alone.

B. *Procedural Fairness*

(1) Use of Chinook Processing Tool

[28] The Applicant submits that the Officer's use of the Chinook processing tool to assist in the assessment of the application is procedurally unfair. The Applicant contends that the tool, which he claims is able to extract information from the GCMS for many applications at a time and generate notes about these applications in "a fraction of the time" it would take to review an application otherwise, results in a lack of adequate assessment of the Applicant's work permit application.

[29] The Respondent submits that IRCC's use of the Chinook tool to improve efficiency in addressing a voluminous number of temporary residence applications does not amount to a specific failure of procedural fairness in the Applicant's case. The Respondent notes that the Applicant has failed to point to any evidence to support that the Officer's use of the Chinook tool resulted in the omission of a key consideration in the assessment of his application or deprived him of the right to have his case heard. The Respondent contends that the Applicant's submissions appear to be little more than an objection to IRCC's use of this tool.

[30] I agree with the Respondent. While it was open to the Applicant to raise the ways that the Chinook processing tool specifically resulted in a breach of procedural fairness in the Officer's assessment of his case, he has not provided any evidence of such a connection. I would also note that the Chinook tool is not intended to process, assess evidence, or make decisions on

applications, and the Applicant has failed to raise any evidence countering this or demonstrating that the tool impacts the fairness of the decision-making process.

(2) Rule 9 Request for Reasons

[31] The Applicant submits that the Officer's failure to provide reasons for the decision until after he submitted a Rule 9 request for reasons amounts to a breach of procedural fairness.

[32] The Respondent submits that this position is contrary to the settled jurisprudence, which states that there is no requirement for the applicant to receive the reasons at the time of the refusal letter and provision of the GCMS notes may occur after the application for leave and judicial review is commenced (*Veryamani v Canada (Citizenship and Immigration)*, 2010 FC 1268 at para 30).

[33] I agree with the Respondent. Separate GCMS notes for a decision are a usual part of the process in the assessment of visa applications. The Applicant has failed to demonstrate how this process gives rise to a breach of procedural fairness. This submission therefore lacks merit.

(3) Delay in Rendering the Decision

[34] The Applicant submits that the standard processing time for work permit applications of this nature, which he claims fall within the Global Skills Strategy ("GSS"), is two weeks if the applicant meets certain requirements. The Applicant submits that he meets these criteria and therefore had a legitimate expectation that his work permit application would have been

processed within this time, whereas he only received the decision after more than eight months. The Applicant contends that a breach of his legitimate expectations amounts to a breach of procedural fairness.

[35] The Respondent submits that the fact that there was a delay in processing the Applicant's work permit application is insufficient to find that there was a breach of procedural fairness. The Respondent notes that even a long delay is not in itself sufficient to establish unusual circumstances, demonstrate a breach of procedural fairness, or engage the interests of justice.

[36] I agree with the Respondent. The Applicant has proffered no evidence beyond the two-week processing time stated on the IRCC website to substantiate his claim of a legitimate expectation rising to the level of procedural unfairness. Specifically, there is nothing before this Court to demonstrate that the Officer's practice or conduct gave rise to a reasonable expectation about the procedure to be followed that was "clear, unambiguous and unqualified" (*Nshogoza v Canada (Citizenship and Immigration)*, 2015 FC 1211 at para 39, citing *Agraira v Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36 at para 95; *Dhaliwal v Canada (Citizenship and Immigration)*, 2022 FC 1344 at para 19).

[37] The IRCC website, which the Applicant references as stipulating his qualification for a two-week processing time under the GSS and providing the basis for his legitimate expectation, also states that processing times of GSS applicants continue to be affected and delayed by the COVID-19 pandemic and the increase in temporary residence applications. The website explicitly states that "it will probably take more than 2 weeks to process [an applicant's] GSS

application." While I do not find that the Applicant had a legitimate expectation in this case, the IRCC's explicit disclosure about possible delays qualifies any such expectation and any unreasonableness of a delay longer than two weeks.

[38] The Applicant has also failed to proffer evidence or submissions to substantiate the claim that the delay in rendering the decision was unreasonable or that he was prejudiced by the delay (*Blencoe v British Columbia (Human Rights Commission)*, 2000 SCC 44 at para 160).

(4) Reasonable Apprehension of Bias

[39] The Applicant submits that the refusal of his work permit on the basis of the purpose of his visit and his previous travel history demonstrates a reasonable apprehension of bias, given that the evidence shows he has traveled to and from Iran.

[40] The Respondent submits that there is insufficient evidence to demonstrate that the Officer's decision raises to a level of a reasonable apprehension of bias. The Respondent first contends that the Officer found that the Applicant's travel history could not count as a travel factor, not that it was weighed as a negative factor. The Respondent also submits that the finding that a decision raises a reasonable apprehension requires a high evidentiary threshold, which the Applicant has not met.

[41] I agree with the Respondent that the decision does not give rise to a reasonable apprehension of bias. The test to be met for such a finding is "whether an informed person, viewing the matter realistically and practically, and having thought the matter through, would

conclude that the officer consciously or unconsciously decided fairly" (*Committee for Justice and Liberty et al. v National Energy Board et al.*, [1978] 1 SCR 369 at 394-95; R v S (RD), [1997] 3 SCR 484 at para 31). Such a finding "cannot rest on mere suspicion, pure conjecture, insinuations" and requires "material evidence demonstrating conduct that derogates from the standard" (*Sharma v Canada (Citizenship and Immigration)*, 2020 FC 381 ("*Sharma*") at para 27, citing *Arthur v Canada (Attorney General)*, 2001 FCA 223 at para 8; *Kaur v Canada (Citizenship and Immigration)*, 2022 FC 30 ("*Kaur*") at para 12).

[42] The Applicant has not proffered any such evidence to meet the high threshold for a finding that the Officer's decision raises a reasonable apprehension of bias. This Court cannot make such a finding that "calls into question the personal integrity of the decision-maker" in an evidentiary vacuum, on the basis of suspicion (*Kaur* at para 13; *Sharma* at para 30).

VI. **Conclusion**

[43] This application for judicial review is dismissed. The Officer's decision is procedurally fair and reasonable on the basis of the available evidence. No questions for certification were raised, and I agree that none arise.

JUDGMENT in IMM-2794-22

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. There is no question to certify.

"Shirzad A."
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-2794-22
STYLE OF CAUSE:	AFZAL RAJA v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	OTTAWA, ONTARIO
DATE OF HEARING:	MARCH 1, 2023
JUDGMENT AND REASONS:	AHMED J.
DATED:	MAY 23, 2023

APPEARANCES:

Afshin Yazdani	FOR THE APPLICANT
Idorenyin Udoh-Orok	FOR THE RESPONDENT

SOLICITORS OF RECORD:

YLG Professional Corporation Barrister and Solicitor Toronto, Ontario	FOR THE APPLICANT
Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT