

Federal Court



Cour fédérale

Date: 20230713

Docket: IMM-8435-22

Citation: 2023 FC 962

Ottawa, Ontario, July 13, 2023

PRESENT: The Honourable Mr. Justice Manson

BETWEEN:

JOVY TIBAY

Applicant

and

**MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] This is an application for judicial review of a decision of a visa officer (the “Officer”), dated July 4, 2022, denying the Applicant’s work permit application (the “Decision”). The Officer was not satisfied that the Applicant’s job offer was genuinely for work as a light duty cleaner in line with National Occupation Classification (“NOC”) 6731.

II. Background

[2] The Applicant, Jovy Tibay, is a citizen of the Philippines. On August 11, 2021, Employment and Social Development Canada issued a positive Labour Market Impact Assessment (“LMIA”) to a Canadian employer to hire a temporary foreign worker as a light duty cleaner in line with NOC 6731. The Applicant submitted an application on November 27, 2021 seeking a work permit to enter Canada to work for 12 months and fill this position.

[3] On June 16, 2022, the Officer sent a letter to the Applicant requesting an interview and asking the Applicant to provide additional information about the Applicant’s proposed employer.

[4] The Officer conducted an interview with the Applicant on June 29, 2022. At the interview, the Officer informed the Applicant that they had concerns that the Applicant’s job offer was not genuine; that the Applicant would be working not as a live-in light duty cleaner but rather as a caregiver to the proposed employer’s children.

[5] On July 4, 2022, the Officer rejected the Applicant’s work permit application. On August, 18, 2022, the Applicant requested a reconsideration of the Decision. The Officer rejected that request on the same day.

III. Decision under Review

[6] The Officer rejected the Applicant’s work permit application because the Officer maintained that the Applicant’s job offer was not a genuine offer for a light duty cleaner

position, in line with NOC 6731, but was instead an offer to work as a live-in caregiver. The Officer noted that there was incentive to mislead about the nature of the job offer, given instructions from the Minister that stated that caregivers are not to be admitted under NOC 6731 and found the following factors cast doubt on the genuineness of the job offer:

- A. The Applicant has significant experience in childcare, working as a domestic helper to the same family in Hong Kong for six years.
- B. The proposed Canadian employer has two young children, a five-year-old and a two-year-old. The proposed employer stated that they were self-employed and had flexible schedules and therefore less need for childcare services; however, they failed to provide evidence to support this position. Moreover, the employer claims that the grandparents, who live close by, would be able to provide childcare if needed; however a grandparent is not obligated to care for the children and in any event there would be situations where the responsibilities would fall on the Applicant.
- C. The Applicant found the job through an organization called “Nannies Inc”, a nanny/caregiver job posting website.

[7] The Officer also noted that the Applicant was given a chance to address the concerns about the genuineness of the job offer at the June 29, 2022 interview. The Applicant told the Officer that she would refuse any caregiving work offered to her; however, the Officer was not persuaded.

[8] The Decision was communicated to the Applicant through letter dated July 4, 2022.

IV. Issues

A. *Did the Officer breach the duty of procedural fairness?*

B. *Did the Officer err by failing to consider evidence?*

V. Standard of Review

[9] Issues that relate to a breach of procedural fairness are reviewed on the standard of correctness or a standard with the same import (*Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at paras 34-35, 54-55 [CPR], citing *Mission Institution v Khela*, 2014 SCC 24 at para 79).

[10] The standard of review relating to the substance of the Decision is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 25).

VI. Analysis

A. *Did the Officer breach the duty of procedural fairness?*

[11] The Applicant argues that the Officer breached the duty of procedural fairness in two ways:

- A. The Officer failed to give the Applicant adequate notice of their concerns that the Applicant's job offer was not genuine; and
- B. The Officer improperly relied on speculation that there was an incentive for the Applicant to mislead about the nature of the Applicant's employment, given the instructions of the Minister with respect to NOC 6731.

[12] I find no breach of procedural fairness. The Applicant was given sufficient opportunity to address the Officer's concerns in the June 29, 2022 interview. In the letter where the Officer requests an interview with the Applicant, the Officer specifically requests that the Applicant provide "employment proof" and "proof of any other assistance/helpers or if there are children in the household, caregivers employed in the employer's household". This was sufficient to alert the Applicant that the Officer was concerned about the genuineness of the Applicant's job offer and whether it met the requirements of NOC 6731.

[13] In addition, a letter from the Applicant's immigration representative dated June 28, 2022 attached to it a statutory declaration that addressed these very concerns. The Applicant's proposed Canadian employer stated that they had no need for childcare services because of their flexible employment and availability of grandparents and day care services to care for their children.

[14] Furthermore, during the June 29, 2022 interview, the Officer put several questions to the Applicant about the Applicant's proposed job and the Applicant was given a complete opportunity to respond.

[15] The Applicant was aware of the case to meet and had the opportunity to meet it (*CPR* at para 56). There is no breach of procedural fairness.

B. *Did the Officer err by failing to consider evidence?*

[16] The Applicant argues that the Officer ignored or dismissed key evidence in arriving to the Decision. The Applicant points to the following evidence that should, in the Applicant's view, have established that the Applicant's job offer was genuine:

- A. The statutory declaration from the Canadian employer regarding the duties the Applicant would be employed to perform.
- B. The fact that a positive LMIA was issued.
- C. The employment contract between the Applicant and the employer specifying the nature of duties to be performed by the Applicant.
- D. The Applicant's statements at the June 29, 2022 interview.

[17] I disagree with the Applicant. The Officer did not unreasonably ignore or disregard evidence. In their reasons, the Officer expressly references statements and evidence from the Applicant's statutory declaration and statements the Applicant made during the interview. Moreover, the Applicant's reliance on the presumption of credibility attached to sworn statements, derived from *MalDonado v Minister of Employment and Immigration*, [1980] 2 FC

302 (CA), is misplaced, as such a presumption may be overcome by contradictory evidence.

Here, the Officer simply did not believe the Applicant in light of the other evidence of the Applicant's experience, the employer's profile and the manner through which the Applicant was recruited for the job

[18] Such a conclusion was reasonable and open to the Officer, especially since the Applicant was given the procedural opportunity to assuage the Officer's credibility concerns at the June 29, 2022 interview.

[19] The application is dismissed.

JUDGMENT in IMM-8435-22

THIS COURT'S JUDGMENT is that:

1. The application is dismissed.
2. There is no question for certification.

"Michael D. Manson"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-8435-22

STYLE OF CAUSE: JOVY TIBAY v MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: HELD BY VIDEOCONFERENCE

DATE OF HEARING: JULY 5, 2023

JUDGMENT AND REASONS: MANSON J.

DATED: JULY 13, 2023

APPEARANCES:

Tatiana Gulyaeva FOR THE APPLICANT

Nadine Silverman FOR THE RESPONDENT

SOLICITORS OF RECORD:

Tatiana Gulyaeva FOR THE APPLICANT
Barrister and Solicitor
Toronto, Ontario

Attorney General of Canada FOR THE RESPONDENT
Toronto, Ontario