Federal Court | Cour fédérale

Date: 20230922

Docket: IMM-12808-22

Citation: 2023 FC 1280

Vancouver, British Columbia, September 22, 2023

PRESENT: The Honourable Mr. Justice Ahmed

BETWEEN:

MARYAM FARBOODI LANGAROODI
KEYVAN MOHAMMADI

Applicants

and

THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The Applicants, Maryam Farboodi Langaroodi ("Principal Applicant") and Keyvan Mohammadi ("Associate Applicant"), seek judicial review of a decision of a visa officer (the "Officer") of Immigration, Refugees and Citizenship Canada ("IRCC") dated December 1, 2022, denying the Applicants' work permit applications under the Temporary Foreign Worker Program and International Mobility Program, respectively.

[2] The Officer was not satisfied that the Applicants would leave Canada at the end of their stay, as per subsection 200(1) of the *Immigration and Refugee Protection Act,* SC 2001, c 27 ("*IRPA*"), due to the Principal Applicant's language abilities and the Associate Applicant's dependency on the Principal Applicant's application.

[3] The Applicants submit that the Officer rendered an unreasonable decision, especially with regards to the Principal Applicant's language abilities as they relate to the proposed employment.

[4] For the reasons that follow, I find that the decision is reasonable. The Officer's decision is justified in regards to the legal and factual constraints that bore upon them. This application for judicial review is dismissed.

I. **Facts**

A. *The Applicants*

[5] The Principal Applicant and the Associate Applicant are 51-year-old and 54-year-old citizens of Iran, respectively.

[6] The Principal Applicant was a Home Design and Renovation Manager for 7 years in Damavand, Iran, and the Associate Applicant was a Project Manager for 18 years.

[7] On July 5, 2022, the Principal Applicant signed an employment agreement with the company KCM Construction Incorporated ("KCM Construction") located in Vancouver for the position of Residential Home Builder. The job description's duties and responsibilities include planning and preparing work schedules, selecting and employing trade subcontractors, and planning and managing budgets.

[8] On August 10, 2022, KCM Construction received a positive Labour Market Impact Assessment ("LMIA"). On September 1, 2022, KCM Construction was registered to hire temporary foreign workers for employment in British Columbia.

[9] On October 22, 2022, IRCC confirmed that the Applicants' work permit applications had been received.

B. *Decision under Review*

[10] In a decision dated December 1, 2022, the Officer refused the Applicants' work permit applications. The decision is largely contained in their Global Case Management System ("GCMS") notes, which form part of the reasons for the decision.

[11] The GCMS notes state:

> Filed reviewed. HOF seeks LMIA work permit as a Residential home builder. Given the nature of the work, ability to meet the language requirements are critical. PA provided IELTS showing a band of B1, overall score of 5, with reading showing at a 3.5.
>
> Based upon the above and documentation before me, I am not satisfied PA meets the LMIA requirements. Refused
>
> Accompanying spouse - refused OWP given the above.

II. **Issue and Standard of Review**

[12] The application for judicial review raises the sole issue of whether the Officer's decision is reasonable.

[13] The standard of review is not disputed. The parties agree that the applicable standard of review is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16–17, 23–25) ("*Vavilov*"). I agree. This is also consistent with this Court's review of decisions on work permits (*Choi v Canada (Minister of Citizenship and Immigration)*, 2008 FC 577 at para 12; *Toor v Canada (Citizenship and Immigration)*, 2019 FC 1143 at para 6; *Baran v Canada (Citizenship and Immigration)*, 2019 FC 463 at paras 15-16).

[14] Reasonableness is a deferential, but robust, standard of review (*Vavilov* at paras 12-13). 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 reasonable decision 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).

[15] 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).

III. **Analysis**

[16] The Applicants maintain that the Officer's decision is unreasonable. I disagree. The Officer's decision about the Principal Applicant is reasonable in regards to the legal and factual constraints that bore upon it (*Vavilov* at paras 99-101). Accordingly, the Officer's decision with regards to the Associate Applicant is reasonable.

[17] The Applicants submit that the Officer's decision lacks a rational chain of analysis about the Principal Applicant failing to meet the LMIA language requirements. The Applicants maintain that there is no specific LMIA language "requirement"; the Officer did not clearly explain why or how the Principal Applicant had failed to establish that she met the language requirements; and the Officer's reasons do not show that there was a clear indication of a language assessment and a detailed analysis on how the Principal Applicant failed to satisfy the Officer that she would be able to perform the work sought. The Applicants further maintain that there is no evidence in the record to confirm the Officer's finding that the Principal Applicant's English language ability is insufficient to gain employment.

[18] The Applicants contend that the Officer erred by using a bald statement as a reason for refusal and submit that the Officer ignored contradictory evidence, including the Principal Applicant's parents and siblings in Iran, immovable assets in Iran, and previous travel to Canada. The Applicants maintain that the Officer failed to meaningfully grapple with positive aspects of the application, including travel history. Additionally, the Applicants submit that the Respondent should not attempt to "fill in the blanks" for the Officer's deficient reasoning.

[19] The Respondent maintains that the Officer's decision is reasonable. The Respondent submits that the Officer reasonably found that "language requirements are critical" for the Principal Applicant to perform the duties of her proposed employment and reasonably concluded that she had failed to meet these requirements, in light of her "low" IELTS scores and no other evidence to support her language capabilities. The Respondent also submits that the Applicants have not established that the Officer ignored or misapprehended evidence in concluding that they would not leave Canada at the end of their stay.

[20] I agree with the Respondent. The Applicants bore the onus of submitting all relevant documentation to obtain this work permit and were required to put their best case forward, which the Officer reasonably determined they did not (*Patel v Canada (Citizenship and Immigration)*, 2021 FC 483 at para 30, citing *Sangha v Canada (Citizenship and Immigration)*, 2020 FC 95 at paras 42 and 47, *Chamma v Canada (Citizenship and Immigration)*, 2018 FC 29 at para 35, and *Sulce v Canada (Citizenship and Immigration)*, 2015 FC 1132 at paras 10 and 14). The Respondent is correct in noting that there was no evidence other than the IELTS scores to conclude that the Principal Applicant has sufficient language skills for her position. The Respondent is also correct in aptly citing at the hearing in this matter my colleague Justice

Kane's ruling that an overall IELTS score of 5 provides evidence of basic, rather than effective, communication skills (*Singh v Canada (Citizenship and Immigration)*, 2022 FC 266 at para 34). The Officer was therefore justified to conclude that the evidence of IELTS showing an overall score of 5 was insufficient to meet the requirements for the position.

[21] I disagree with the Applicants that reference to *Bano v Canada (Citizenship and Immigration*), 2020 FC 568 ("*Bano*") supports the Applicants' submission that the language requirements are unclear in the Officer's reasons. The Officer did not impose a higher language threshold on the Principal Applicant, as the officer did in *Bano* (at para 24); nor had the Principal Applicant previously worked for this employer, as the applicant had in *Bano*. Rather, the Officer evaluated the only evidence of language abilities before them and reasonably concluded that the Principal Applicant's scores fell short of the language requirements. I therefore find the Officer's decision in this regard to be justified in light of the evidence (*Vavilov* at paras 99-101).

[22] I also disagree with the Applicants that the case of *Singh v Canada (Citizenship and Immigration)*, 2023 FC 1036 ("*Singh*") is instructive. In *Singh*, my colleague Justice Mosley found that the IRCC guidelines, which an officer was to apply in assessing language sufficiency in an LMIA work permit application, demanded that in the case of a refusal, system notes must clearly show a detailed analysis on how the applicant failed to satisfy the officer that they would be able to perform the work sought (at para 29). It must be recalled, however, that decision-maker's reasons are not to be assessed against a "standard of perfection" and must not be divorced from the institutional context in which the decision was made (*Vavilov* at para 91). Here, in the context of a work permit application, the Officer provided sufficiently detailed analysis about the Principal Applicant's English abilities being insufficient for her proposed employment in light of the scant evidence put forward of her language abilities in relation to this

work. In this regard, I find the Officer's decision remains well inside its legal and factual constraints (*Vavilov* at paras 99-101).

[23] I agree with the Respondent that the Applicants have not established that the Officer ignored or misapprehended evidence of family ties, assets, and travel history in the Principal Applicant's decision. It is trite law that visa officers are presumed to have weighed the evidence presented to them unless proven otherwise (*Florea v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 598 (FCA) at para 1). It is not this Court's role to reweigh or reassess the evidence (*Vavilov* at para 125). The Applicants have not shown that the Officer did not consider evidence that points to an opposite conclusion (*Kheradpazhooh v Canada (Citizenship and Immigration*), 2018 FC 1097 at para 18). Rather, the Officer's decision shows that the conclusion that the purpose of the Applicants' visit to Canada was inconsistent with a temporary stay was based on the Principal Applicant's language abilities, not the Applicants' family ties, assets, or travel history. The Applicants do not point to any evidence contradicting this conclusion and instead ask that the evidence in reference to the conclusion, divorced from the Officer's reasons, be reweighed. This is not the Court's role on judicial review (*Vavilov* at para 125).

IV. **Conclusion**

[24] The application for judicial review is dismissed. The Officer's decision is justified, transparent, and intelligible in light of its legal and factual constraints. No questions for certification were raised, and I agree that none arise.

JUDGMENT in IMM-12808-22

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-12808-22
STYLE OF CAUSE:	MARYAM FARBOODI LANGAROODI AND KEYVAN MOHAMMADI v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	BY VIDEOCONFERENCE
DATE OF HEARING:	SEPTEMBER 20, 2023
JUDGMENT AND REASONS:	AHMED J.
DATED:	SEPTEMBER 22, 2023

APPEARANCES:

Samin Mortazavi	FOR THE APPLICANTS
Devi Ramachandran Michelle Liu	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Pax Law Corporation Barristers and Solicitors North Vancouver, British Columbia	FOR THE APPLICANTS
Attorney General of Canada Vancouver, British Columbia	FOR THE RESPONDENT