Federal Court Cour fédérale

**Date: 20240228**

**Docket: IMM-7537-23**

**Citation: 2024 FC 323**

**Ottawa, Ontario, February 28, 2024**

**PRESENT: Madam Justice Azmudeh**

**BETWEEN:**

**GURDEEP SINGH BUMRA**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION**

**Respondent**

# JUDGMENT AND REASONS

## I. Overview

[1] The Applicant, Gurdeep Singh Bumra (the "Applicant"), is seeking a Judicial Review under section 72(1) of the *Immigration and Refugee Protection Act* ("IRPA") concerning the rejection of his Restoration of status and Work Permit application for Canada. The Judicial Review is granted for the following reasons.

[2] The Applicant is 53-year-old citizen of India. He is a foreign national who first entered Canada on May 10, 2019, as a visitor. While in Canada, he received a job offer to work as a temporary worker as a Carpenter. He was issued a work permit valid until October 5, 2021.

[3] In October 2021, the Applicant received a new job offer (the "Job Offer") as a Cabinet Maker from True North Kitchen Cabinets Inc. (the "Employer"), in Surrey, B.C. The Employer submitted an application for Labour Market Impact Assessment (the "LMIA") to Employment and Social Development Canada ("ESDC") to hire the Applicant as a foreign worker. The Applicant's application for extension of work permit was refused on October 28, 2022, due to delay in the processing of the LMIA submitted to ESDC by the Employer.

[4] On January 06, 2023, the Applicant submitted an application for restoration of his status as a worker (the "Application") to Immigration, Refugee and Citizenship Canada ("IRCC") via the IRCC online application filing portal based on an updated job offer from the Employer.

[5] On June 5, 2023, an immigration officer ("Officer") denied the Application on the basis that the Applicant had failed to provide any proof that he met the language requirements in the LMIA. Here is a copy of the Global Case Management System ("GCMS") notes that form the Officer's reasoning:

> The applicant did not provide proof of language requirement met as per LMIA. Therefore client does not meet the eligibility requirements for a job specific work permit. Application is refused, restoration of status is also or consequently refused, advised client to leave Canada.

[6] The refusal letter to the Applicant also stated the following as the Officer's reason for refusal:

Based on your application and accompanying documentation that you have provided, I have carefully considered all the information and I am not satisfied that you meet the requirements of the Immigration and Refugee Protection Act and Regulations. Your application as requested is therefore refused.

[7] Persons wishing to obtain or extend a work permit in Canada must satisfy an Officer that they:

- have complied with all conditions imposed on their entry;
- will leave Canada by the end of the period authorized for their stay;
- are not in a category of persons inadmissible to Canada under the Immigration and
- Refugee Protection Act; and
- are able to perform the duties and otherwise meet the requirements of the job.

## II. Preliminary Matter

[8] In their written materials, the Respondent had raised a preliminary issue to exclude information on the Applicant's English abilities. They argued that this was because this information was not before the Officer and that the Applicant's attempt to include it on Judicial Review did not fall within the exceptions contemplated by *Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency (Access Copyright),* 2012 FCA 22.

[9] However, at the outset of the hearing, the following was brought to the Respondent's attention and the Respondent counsel agreed that the information was indeed before the Officer.

The Respondent therefore withdrew their preliminary matter to exclude the information on language ability from the record:

- On Form IMM5710, under heading “Language(s)” and in answer to Question b) “Are you able to communicate in English and/or French”, the Applicant had marked “English”.

- Evidence of the Applicant’s education from the “Central Board of Higher Education” had certified that the Applicant had completed English as a compulsory course with a mark of 69 over 100.

[10] Even though this preliminary matter was resolved during the hearing, it is worth mentioning this oversight because it appears that it formed the basis of not only the Respondent’s argument but also the Officer’s finding.

III. Issues and Standard of Review

[11] The only issue before me is whether the Officer’s decision was reasonable.

[12] Reasonableness review is a deferential and disciplined evaluation of whether an administrative decision is transparent, intelligible and justified: *Canada (Minister of Citizenship and Immigration) v Vavilov,* 2019 SCC 65*,* at paras 12-13 and 15 [*Vavilov*]; *Mason v Canada (Citizenship and Immigration),* 2023 SCC 21, at paras 8 and 63 [*Mason*].

[13] I have started by reading the reasons of the decision-maker in conjunction with the record that was before them holistically and contextually. As guided by *Vavilov,* at paras 83, 84 and 87, as the judge in reviewing court, I have focused on the reasoning process used by the decision-maker.

[14] A reasonable decision is based on an internally coherent and rational chain of analysis and is justified in relation to the facts and law that constrained the decision-maker: *Vavilov,* esp. at paras 85, 91-97, 103, 105-106 and 194; *Canada Post Corp v Canadian Union of Postal Workers,* 2019 SCC 67, [2019] 4 SCR 900, at paras 2, 28-33 and 61; *Mason,* at paras 8, 59-61 and 66. 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.

## IV. Analysis

[15] In this case, the Applicant had also been a carpenter in Canada for two years and had accordingly obtained a work permit. He also had a job offer from a new employer to be a cabinet maker and he had obtained a positive LMIA. These are the undisputed documents before the Officer on the Certified Tribunal Record:

- On Form IMM5710, under heading “Language(s)” and in answer to Question b) “Are you able to communicate in English and/or French”, the Applicant had marked “English”.
- Evidence of the Applicant’s education from the “Central Board of Higher Education” had certified that the Applicant had completed English as a compulsory course with a mark of 69 over 100.
- The favourable LMIA had listed English as the verbal and written language requirement for the job of the cabinet maker – 2021 NOC 72311

- A job offer from the prospective employer. In the job offer letter, the employer had stated the Applicant's responsibilities, including "study plans, specifications or drawings of articles to be made or prepare specifications".

- A letter of recommendation from the same prospective employer. In this letter, the employer comments on the Applicant's experience and knowledge, as verified during an "in-person interview".

- The Applicant had included his curriculum vitae. Under "Work Experience", he lists his Canadian employer with the following comment: "read and interpret buildings, drawings and sketches to determined [sic] specifications and calculate requirements."

- Letters by previous employers on his skills as a carpenter and ability to perform all his job duties.

[16] It is not this Court's role to reweigh the evidence. However, the Officer here simply ignored and did not engage with any of the relevant evidence that formed the basis for their refusal. As a result, the decision became arbitrary and lacked the transparency and intelligibility required in a reasonable decision.

[17] In his argument, counsel for the Respondent argued that the Applicant's educational document on his English ability was dated and it was therefore reasonable for the Officer not to give it much weight. This Court cannot substitute counsel's speculation for what might have gone into the Officer's mind when the Officer was silent on the issue. The Officer's complete silence and lack of engagement with material evidence and reaching a contrary conclusion is the very definition of an unreasonable decision.

[18] At the hearing, counsel for the Respondent also argued that if English was not a requirement for the job, the onus was on the prospective Employer to apply for an exemption when requesting an LMIA. This argument is simply without merit. A favourable LMIA was issued with English notes as a requirement that was satisfied. There is no evidence to suggest that the Employer contemplated an exemption or that they were not satisfied with the Applicant's English proficiency. There was evidence before the Officer that the Applicant was engaged in similar employment in British Columbia, where English is the dominant official language. There was also evidence from the prospective employer that they had interviewed the Applicant in person and satisfied of their qualifications.

[19] I agree with the parties that the Officer was not bound by the positive LMIA and had to engage with the evidence independently to reach their own conclusion. However, this is not what happened in this case. The Officer simply overlooked the evidence on language and did not engage with the evidence independently. This oversight was repeated when the Respondent initially raised their preliminary issue.

[20] As it was found by Justice Strikland in *Safdar v Canada (Citizenship and Immigration),* 2022 FC 189 at para. 11, "while it is the Applicant's onus to provide the sufficient evidence to meet the eligibility requirements, it remains the Officer's task to evaluate the evidence before them and explain how it does not fulfill the eligibility requirement for which they are refusing the application (*Lakhanpal v Canada (Citizenship and Immigration)*, 2021 FC 694)." There was no such explanation here.

[21] I appreciate that immigration officers operate under pressure to produce a large volume of decisions every day. I therefore understand that extensive reasons may not be necessary.

However, they should still be responsive to the evidence before them. They must explain, in light of the available evidence, how an applicant fails to meet the language standard (*Bano v Canada (Citizenship and Immigration)*, 2020 FC 568 [*Bano*] at para 24).

[22] The Officer's failure to engage with the evidence on the Applicant's language ability renders the decision unreasonable.

## V. Conclusion

[23] The application for judicial review is granted. This matter is returned to IRCC to be decided by a different immigration officer.

[24] There are no certified questions in this case.

**JUDGMENT IN IMM-7537-23**

**THIS COURT'S JUDGMENT is that**

1. The application for judicial review is granted. This matter is returned to IRCC to be decided by a different immigration officer.

2. There are no certified questions.

"Negar Azmudeh"
Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

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| **DOCKET:** | IMM-7537-23 |
| **STYLE OF CAUSE:** | GURDEEP SINGH BUMRA v THE MINISTER OF CITIZENSHIP AND IMMIGRATION |
| **PLACE OF HEARING:** | VANCOUVER, BRITISH COLUMBIA |
| **DATE OF HEARING:** | FEBRUARY 20, 2024 |
| **REASONS FOR JUDGMENT AND JUDGMENT:** | AZMUDEH J. |
| **DATED:** | FEBRUARY 28, 2024 |

**APPEARANCES:**

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|---|---|
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| Richard Li | FOR THE RESPONDENT |

**SOLICITORS OF RECORD:**

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