

Federal Court



Cour fédérale

Date: 20231102

Docket: IMM-7664-22

Citation: 2023 FC 1470

Ottawa, Ontario, November 2, 2023

PRESENT: The Honourable Madam Justice Heneghan

BETWEEN:

DAVINDER KAUR

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS AND JUDGMENT

[1] Ms. Davinder Kaur (the “Applicant”) seeks judicial review of the decision of an Officer, refusing her application for a work permit. The Officer found that the Applicant was inadmissible to Canada for misrepresentation, pursuant to paragraph 40(1)(a) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the “Act”).

[2] The Applicant applied for a work permit in order to join her spouse who was working in Canada. Following a review of her application, she was invited for an interview, by way of a letter dated June 1, 2022. In the letter, the Applicant was told that there were “concerns about the genuineness of your relationship to your spouse”.

[3] The Applicant attended the interview on July 4, 2022. In the notes taken about the interview, the interviewing officer recorded that the Applicant had “possibly misrepresented by submitting false information about her relationship with the host”, that is her husband.

[4] The Applicant’s file was referred for further review by the Officer. According to the Global Case Management System (“GCMS”) notes produced in the Certified Tribunal Record, the Officer concluded, after reviewing the file, that the Applicant’s marriage was not genuine and that it “would seem more likely that the marriage and relationship is a business deal rather than a genuine and ongoing relationship”. The Officer concluded that the Applicant “has committed misrep” (SIC) within the meaning of paragraph 40(1)(a) of the Act and refused the Applicant’s application.

[5] The Applicant now argues that the decision was made in breach of her right to procedural fairness since she was not told of the concerns of the first officer about her marriage and she did not receive a procedural fairness letter. She also submits that the Officer did not “engage” with the evidence that she submitted with her application, making the decision unreasonable.

[6] The Minister of Citizenship and Immigration (the “Respondent”) argues that there was no breach of procedural fairness, the decision is reasonable and there is no basis for judicial intervention.

[7] Any issue of procedural fairness is reviewable on the standard of correctness; see the decision in *Canada (Citizenship and Immigration) v. Khosa*, [2009] 1 S.C.R. 339 (S.C.C.). The merits of the decision are reviewable on the standard of reasonableness, following the decision in *Canada (Citizenship and Immigration) v. Vavilov*, [2019] 4 S.C.R. 653 (S.C.C.).

[8] In considering reasonableness, the Court is to ask if the decision under review “bears the hallmarks of reasonableness – justification, transparency and intelligibility – and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision”; see *Vavilov, supra* at paragraph 99.

[9] It is not necessary for me to address the arguments about a breach of procedural fairness since I am satisfied that the Applicant has shown that the decision fails to meet the applicable standard of review. The decision appears to be based on suspicions and suppositions made by the Officer, without regard to the evidence submitted, including the documents submitted upon the application for the work permit.

[10] In my opinion, the finding about the genuineness of the Applicant’s marriage is not reasonable. This conclusion underlies the misrepresentation finding and that finding is also unreasonable.

[11] In the result, the application for judicial review will be allowed, the decision will be set aside and the matter remitted to another officer for redetermination. There is no question for certification.

JUDGMENT IN IMM-7664-22

THIS COURT'S JUDGMENT is that the application for judicial review is allowed, the decision of the Officer is set aside and the matter is remitted to another officer for redetermination. There is no question for certification.

"E. Heneghan"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-7664-22

STYLE OF CAUSE: DAVINDER KAUR V. THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: HELD BY WAY OF VIDEO CONFERENCE

DATE OF HEARING: SEPTEMBER 20, 2023

JUDGMENT AND REASONS: HENEGHAN J.

DATED: NOVEMBER 2, 2023

APPEARANCES:

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Leanne Briscoe FOR THE RESPONDENT

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