Federal Court Cour fédérale

Date: 20240507

Docket: IMM-1055-23

Citation: 2024 FC 702

Ottawa, Ontario, May 7, 2024

PRESENT: The Honourable Madam Justice Tsimberis

BETWEEN:

ABUL KALAM AZAD

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT

UPON application for judicial review to review and set aside a decision by an Officer with Immigration, Refugees and Citizenship Canada [IRCC] dated December 19, 2022 refusing the Applicant's application for a Canadian work permit under the Temporary Foreign Worker Program [Decision];

AND UPON the Applicant, a national of Bangladesh, having received a positive Labour Market Impact Assessment [LMIA] for the position of Food Service Supervisor (NOC 6311);

AND UPON the Applicant, through his prospective employer, having applied for a LMIA-based work permit in order to work as a Food Service Supervisor (NOC 6311) for 2581494 Ontario Inc., operating under the name "Popeyes Louisiana Kitchen" in Toronto, Ontario who had offered him a position as a Restaurant Supervisor in their business;

AND UPON the Officer having reviewed the Applicant's work permit application and supporting documentation, having determined that his application did not meet the statutory requirements of the *Immigration and Refugee Protection Act* [IRPA] and the *Immigration and Refugee Protection Regulations* [IRPR], and concluding in their Decision that the Applicant has not established that he would leave Canada at the end of his stay, based on the following factors:

- The Applicant's immigration status outside his country of nationality or habitual residence;
- The purpose of the Applicant's visit to Canada is not consistent with a temporary stay given the details provided in the Application;
- The Applicant has limited employment possibilities in his country of residence;
- The Applicant was not able to demonstrate that he will be able to adequately perform the work sought by the Canadian employer;

AND UPON the Officer denying the work permit on the basis that the Applicant had not demonstrated he would be able to adequately perform the work, noting in the Global Case Management System [GCMS] notes the Applicant's employment as a Cost Account Manager (a position held since January 2016) and that the Applicant had "no previous experience in restaurants";

AND UPON reading the written submissions and hearing the oral submissions of the parties;

AND UPON considering the issues outlined by the parties are whether a) the Officer reasonably assessed the Application for work permit and b) the Officer complied with the requirement of procedural fairness in the determination of the application;

AND UPON considering that the Officer denying the Applicant's work permit on the basis that the Applicant had not demonstrated he would be able to adequately perform the work is the determinative issue as it is the legislative requirement for the work permit;

AND UPON reviewing the Certified Tribunal Record and the Applicant's Record;

AND UPON noting that the Certified Tribunal Record comprises the Applicant's current employment record with Dallah Food Service Group Co. since January 2016 as Cost Account Manager (filed as Exhibit A to the Applicant's Affidavit dated March 20, 2023 in the Applicant's Record) *in duplicate*;

AND UPON noting that the Certified Tribunal Record does not comprise the Applicant's Subway Diploma and Subway letter of reference for the Applicant as a Restaurant Manager (both filed as Exhibit B to the Applicant's Affidavit dated March 20, 2023 in the Applicant's Record), which are both missing from the Certified Tribunal Record;

AND UPON considering that whether or not certain documents, namely the Subway Diploma and Subway letter of reference for the Applicant as a Restaurant Manager (both filed as Exhibit B to the Applicant's Affidavit dated March 20, 2023 in the Applicant's Record), are part of the record and were before the Officer when it made its Decision is determinative on this judicial review;

AND UPON determining that this application should be dismissed for the following reasons:

A. *The Decision was reasonable*

[1] The Applicant's key argument is that the Officer ignored evidence that the Applicant has previous experience at a Subway restaurant doing the duties required for the prospective Restaurant Supervisor position in Canada. In my view, there was no error on the facts of this case.

[2] The Applicant has the burden to put together an application that is not only complete but also relevant, convincing and unambiguous (see, for example, *Obeta v Canada (Citizenship and Immigration)*, 2012 FC 1542 at para 25). In this case, the documentation put forward was neither complete, nor convincing nor unambiguous.

[3] The only evidence of the Applicant's educational qualifications relevant to the Restaurant Supervisor position was the diploma from Subway certifying the Applicant had "successfully completed the SUBWAY@ Management Training Course on the 27th of April, 2011". Similarly, the only evidence of the Applicant's professional experience relevant to the Restaurant Supervisor position was a letter of reference from Subway dated July 25, 2022 elaborating on the "SUBWAY Management Certifications through extensive Management training program and testing accompanied by on-site training" and the managerial restaurant duties completed from December 1, 2010 to January 31, 2016.

[4] At the hearing, counsel for the Applicant conceded that all the materials and credentials related to the Applicant's experience with Subway were not submitted to the Officer in support of the application. The Subway-related Diploma and reference letter filed as Exhibit B to the Applicant's Affidavit in the Applicant's Record were not part of the Court Tribunal Record and were not before the Officer. Without these Subway-related Diploma and reference letter proving the Applicant's educational training and professional experience as a Restaurant Manager at Subway as alleged in the Applicant's resume, there was no proof of the Applicant's restaurant experience. The evidence of experience as a Cost Accountants Manager was simply not sufficient, adequate or credible evidence, contrary to the Applicant's submission, to prove that these match with the NOC cod-6311-Food service supervisor for which the Applicant was applying in this work permit.

[5] I do not agree with the Applicant's submission at the hearing that the job description of the Cost Accountants Manager position "substantially embodies" the duties of the Restaurant Supervisor position offered to the Applicant and that the Officer ignored or unreasonably misinterpreted the Cost Accountants Manager duties on the record. While the two respective job descriptions mention a requirement to coach supervised employees, the Restaurant Supervisor's numerous duties are otherwise related entirely to the administration of food and ingredient management alongside the supervision of "staff who prepare and portion food." In contrast, the Cost Accountants Manager's duties require "monitoring employee productivity and providing constructive feedback and coaching" and its other duties are related entirely to the financial administration of a business. These jobs are not substantially similar and it was not unreasonable

for the Officer to have not considered the evidence submitted for the Cost Accounts Manager position as requisite experience for the Restaurant Supervisor position.

[6] Likewise, I distinguish this scenario from the decisions mentioned by the Applicant such as *Singh v Canada (Citizenship and Immigration)*, 2022 FC 690 [*Singh*], where the Court did not accept the submission that a resume was not satisfactory proof. In that decision, the officer did not critique the resume "or find the listing of duties there, in conjunction with the employer's letters, was not sufficient to establish relevant work experience" (*Singh* at para 17), whereas in this case, no employer's letter or documentation in respect of the Applicant's restaurant management experience at Subway was submitted (as opposed to the materials related to the Cost Accountants Manager position, which were submitted in full). The jurisprudence is unhelpful on whether an Officer must accept a resume as objective evidence (*Gulati v Canada (Citizenship and Immigration)*, 2010 FC 451 at paras 24-25). I agree with the Respondent that a resume is a document created and used by a person to present their background, skills, and accomplishments containing a summary of relevant job experience and education to secure new employment, which is sometimes embellished in order to match the skills to the position's requirements. It was within the Officer's discretion not to accept the resume as objective evidence given that a resume on its own without any corroborating evidence (e.g. diplomas and letters of reference) of the experience it described does not have the character of objective evidence, and the Officer's finding in this respect was reasonable.

[7] As such, when the Officer indicated "no previous experience in restaurants" and found that the Applicant was not able to demonstrate that he will be able to adequately perform the

work sought by the Canadian employer, these were reasonable conclusions on the evidence before the Officer because the Subway Diploma and Subway letter of reference, the only relevant evidence to substantiate the Applicant's Restaurant Manager experience, were not before the Officer.

B. *No breach of procedural fairness occurred*

[8] On a related note, the Applicant argues that the Officer did not comply with the procedural fairness requirements by not giving the Applicant an opportunity to provide further evidence if the Officer was not satisfied with the available evidence.

[9] I cannot agree with the Applicant for the same reasons as previously held by this Court in *Penez v Canada (Citizenship and Immigration)* 2017 FC 1001 at paragraphs 35 to 37:

> [35] It is well-recognized that the onus is on visa applicants to put together applications that are convincing, and that anticipate adverse inferences contained in the evidence and address them; procedural fairness does not arise whenever an officer has concerns that an applicant could not have reasonably anticipated (*Singh v Canada (Citizenship and Immigration)*, 2012 FC 526 at para 52).
>
> [36] Furthermore, the nature and scope of the duty of procedural fairness are flexible and will vary depending on the attributes of the administrative tribunal and its enabling statute, the specific context and the various factual situations dealt with by the administrative body, as well as the nature of the disputes it must resolve (*Baker* at paras 25-26; *Varadi v Canada (Attorney General)*, 2017 FC 155 at paras 51-52). The level and the content of the duty of procedural fairness are determined according to the context of each case. Its purpose is to ensure that administrative decisions are made using a fair and open procedure, appropriate to the decision being made and its statutory, institutional, and social context, with an opportunity for those affected by the decision to put forward their views and evidence fully, and to have them considered by the decision-maker (*Baker* at paras 21-22). It is well

> accepted that applicants for a study permit are owed a degree of procedural fairness that falls at the low end of the spectrum. Procedural fairness owed to a student permit applicant has been described as "relaxed" (*Duc Tran v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1377 at para 2).
>
> [37] Visa officers are therefore generally not required to provide applicants with opportunities to clarify or further explain their applications (*Onyeka v Canada (Citizenship and Immigration*), 2009 FC 336 at para 57). The onus remains on applicants to provide all the necessary information to support their application, not on the Officer to seek it out (*Ismaili v Canada (Citizenship and Immigration)*, 2012 FC 351 at para 18; *Singh v Canada (Citizenship and Immigration)*, 2010 FC 212 at para 11; *Arango v Canada (Citizenship and Immigration)*, 2010 FC 424 at para 15). Indeed, it is well-established that the Officer had no legal obligation to seek out explanations or more ample information to assuage concerns relating to Ms. Penez's study permit application by way of a 'Procedural Fairness Letter' or any other means (*Solopova* at para 38; *Mazumder v Canada (Minister of Citizenship and Immigration)*, 2005 FC 444 at para 14; *Kumari v Canada (Minister of Citizenship and Immigration)*, 2003 FC 1424 at para 7). Imposing such an obligation on a visa officer would amount to giving advance notice of a negative decision, which has been rejected by this Court on many occasions (*Dhillon v Canada (Citizenship and Immigration)*, [1998] FCJ No 574 (QL) at paras 3-4; *Ahmed v Canada (Citizenship and Immigration)*, [1997] FCJ No 940 (QL) at para 8).

[10] Having found that the findings arose from evidence (or lack thereof) placed before the Officer and that the Officer's concern arises directly from the requirements of the legislation or related regulations, the Officer did not have a duty to raise doubts or concerns with the applicant or provide an opportunity to the Applicant to address his concerns (*Kaur v Canada (Citizenship and Immigration)*, 2010 FC 442 at para 11 [*Kaur*]; *Hassani v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1283, at para 24). Such a duty arises only where credibility is impugned, which did not occur here (*Hajiyeva v Canada (Citizenship and immigration)*, 2020 FC 71 [*Hajiyeva*] at para 8, citing *Hassani* above, at para 24). The Officer is not required to inform the Applicant of concerns regarding the sufficiency of materials in support of the

application (*Hajiyena* at para 9, citing *Al Aridi v Canada (Citizenship and Immigration)*, 2019 FC 381 at para 20), which was the problem in this matter. As pointed out by the Respondent, this Court previously held in *De la Cruz Garcia*, at para 12, albeit in a different context:

> Procedural fairness does not stretch to the point of requiring a visa officer "to provide an applicant with a 'running score' of the weaknesses in their application" (*Rukmangathan v Canada (Minister of Citizenship and Immigration)*, 2004 FC 284 (CanLII), at para 23).

[11] As the Officer stated, the Applicant is not precluded from re-applying for a new work permit application, this time fully supported by the necessary documents required to convince the Officer that he intends to come to Canada for a work permit reason as a Restaurant Supervisor and not for some other purpose.

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed; and

2. No question of general importance is certified.

"Ekaterina Tsimberis"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-1055-23
STYLE OF CAUSE:	ABUL KALAM AZAD v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	TORONTO, ONTARIO
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