

Federal Court



Cour fédérale

Date: 20240812

Docket: IMM-11493-23

Citation: 2024 FC 1257

Vancouver, British Columbia, August 12, 2024

PRESENT: Mr. Justice Diner

BETWEEN:

KUAN WEN LIU

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

Delivered Orally from the Bench on August 12, 2024

[1] Mr. Liu seeks judicial review of a decision made by a visa officer [Officer] dated August 30, 2023, refusing his application for permanent residence [PR] under section 25.2 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [Decision]. The application is granted for the following reasons.

[2] Mr. Liu is a Chinese citizen. He applied for PR under the *Temporary Public Policy: Temporary Resident to Permanent Resident Pathway* [TR to PR Pathway]. His application was received on May 7, 2021.

[3] One of the requirements to qualify for PR through this pathway is to be employed at the time of application. To meet this requirement, he submitted a letter of employment dated May 6, 2021, which states that he worked for the employer from December 6, 2020 to May 6, 2021. He also provided a single paystub for the pay period of April 1 to April 30, 2021.

[4] The Respondent issued a procedural fairness letter [PFL] to Mr. Liu, outlining its concerns regarding his employment status at the time of his application. In his response to the PFL, Mr. Liu specified that he was employed, and he submitted the same letter of employment dated May 6, 2021, stating that he “worked with our company ... from December, 2020 to May 6, 2021”. With this company letter, he provided paystubs covering the period from March 1, 2021 until July 31, 2021. He also wrote in his letter responding to the PFL, that:

I was indeed working during the specified time, and I can provide supporting documentation to substantiate this claim. I have gathered the necessary evidence, payslips between March 2021 to July 2021, and a letter from my employer confirming my employment during the relevant period. These documents clearly demonstrate that I was engaged in work activities for which wages were paid, in accordance with the definition of work under subsection 73(2) of the Regulations.

[5] The Officer remained unsatisfied. The application was ultimately denied by way of a letter dated August 30, 2023. The Decision indicates that the Respondent was not satisfied that Mr. Liu met the employment requirement, because the letter of employment states that his last day of work was on May 6, 2021.

[6] The sole issue before this Court is whether the Decision to refuse Mr. Liu's PR application was reasonable (*Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 at paras 59–63; *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 99 [*Vavilov*]) or has any procedural defects.

[7] Mr. Liu argues that the Decision was unreasonable and procedurally unfair. He claims that it was unreasonable because he provided paystubs in response to the procedural fairness letter that he states collectively demonstrate that he was employed at the time of the application. He contends that it was unreasonable that the Officer only mentions the letter of employment in the Decision, and does not refer to the additional evidence (i.e. the paystubs) that he provided to the Respondent. Mr. Liu also argues that he was owed an opportunity to respond to the Officer's concerns.

[8] The Respondent, on the other hand, argues that it was reasonable for the Officer to not be satisfied with the paystubs, given that the letter of employment explicitly states that he worked until May 6, 2021. Furthermore, the Respondent submits that there was no breach of procedural fairness because the PFL stated exactly the Officer's concerns with the application, and it was Mr. Liu's duty to demonstrate that he satisfied the requirements.

[9] In my view, the Officer's Decision to refuse Mr. Liu's PR application on the basis that he was unsatisfied that Mr. Liu met the employment requirement, was unreasonable. Mr. Liu bore the onus of demonstrating that he met the requirements to be eligible for the TR to PR Pathway, and in this case, provided evidence by way of a series of pay stubs that the Officer did not mention anywhere in the Decision (i.e. neither in the refusal letter nor the accompanying computer notes).

[10] While the letter of employment Mr. Liu submitted both in his original PR application and in response to the PFL states that he was employed until May 6, 2021, that letter was written the day prior to his application. It was natural that the employment letter could only have spoken to the date it was signed (i.e. May 6, 2021). While the Applicant certainly might have produced an updated letter – which he failed to do - he did nonetheless submit paystubs that covered the months of May through July, 2021.

[11] *Vavilov* states that the “decision maker must take the evidentiary record and the general factual matrix that bears on its decision into account, and its decision must be reasonable in light of them” (at para. 126). *Vavilov* also states, in the next paragraph, that “the principles of justification and transparency require that an administrative decision maker’s reasons meaningfully account for the central issues and concerns raised by the parties” (at para. 127). The Supreme Court also stated at para. 136 of *Vavilov* that “where reasons are provided but they fail to provide a transparent and intelligible justification as explained above, the decision will be unreasonable”. Reviewing courts must keep in mind that the reasons must be justified, intelligible and transparent not in the abstract, but to the individuals subject to it (*Vavilov* at para. 95).

[12] Here, by failing to mention the key and only new evidence provided in response to the Officer’s concerns – the pay stubs - or mention why they may have been problematic, the Officer failed to provide a reasonable justification for the Decision.

[13] Given these findings, there is no need to address the fairness issue raised. This application for judicial review is granted.

JUDGMENT in file IMM-11493-23

THIS COURT'S JUDGMENT is that:

1. The judicial review is granted.
2. There is no question to certify.
3. No costs will issue.

"Alan S. Diner"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: IMM-11493-23

STYLE OF CAUSE: KUAN WEN LIU v THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: VANCOUVER, BRITISH COLUMBIA

DATE OF HEARING: AUGUST 12, 2024

JUDGMENT AND REASONS: DINER J.

DATED: AUGUST 12, 2024

APPEARANCES:

Samin Mortazavi FOR THE APPLICANT

Richard Li FOR THE RESPONDENT

SOLICITORS OF RECORD:

Pax Law Corporation FOR THE APPLICANT
North Vancouver, British Columbia

Attorney General of Canada FOR THE RESPONDENT
Vancouver, British Columbia