Federal Court  Cour fédérale

Date: 20240913

Docket: IMM-1909-23

Citation: 2024 FC 1445

Ottawa, Ontario, September 13, 2024

PRESENT: The Honourable Mr. Justice Zinn

BETWEEN:

MAYSAM FAHIMI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Mr. Maysam Fahimi, seeks judicial review of a decision dated December 15, 2022, in which an Immigration Officer refused his application for a work permit under the C11 category of the International Mobility Program. The Applicant sought to enter Canada to establish and operate an information technology consulting company.

[2] The central issues in this case are whether the Officer's decision to refuse the work permit application was procedurally fair and reasonable. For the reasons below, I find that the decision was fairly rendered and is reasonable.

II. Facts

[3] The Applicant is a 43-year-old citizen of Iran. He holds a master's degree in Information Technology Management and a bachelor's degree in Agricultural Engineering from universities in Iran. He has been the Information and Communication Technology Manager of Moein Insurance Company in Iran since 2013.

[4] On January 26, 2022, the Applicant applied for a Labour Market Impact Assessment [LMIA] exempt work permit under the C11 category, pursuant to paragraph 205(a) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [the *Regulations*]. This category is intended for entrepreneurs or self-employed candidates seeking to operate a business that would "create or maintain significant social, cultural or economic benefits or opportunities for Canadian citizens or permanent residents."

[5] In support of his application, the Applicant submitted a 77-page business plan for an IT consulting company he proposed to establish in Toronto, Ontario. The Applicant had taken steps to start the business, including incorporating the company in British Columbia on June 18, 2021, registering it in Ontario, securing a virtual office in Brampton, and developing a staffing plan to hire Canadian employees.

[6] On November 21, 2022, while the Applicant's work permit application was still under consideration, Immigration, Refugees and Citizenship Canada [IRCC] updated its Program Delivery Instructions [PDI] for the C11 category.

III. Decision Below

[7] On December 15, 2022, the Officer refused the Applicant's work permit application. The refusal letter stated:

> I am not satisfied there is documentary evidence to establish that you meet the exemption requirements of C11 Significant benefit – Entrepreneurs/self-employed under R205(a).

[8] The Officer's Global Case Management System notes provided more detailed reasons for the refusal:

> I have reviewed the business plan submitted. I have found that a large part of the information submitted is general and appears to have been copied from open source websites.
>
> I note the low salary offer to Canadian staff: (p.36/37) Computer system Manager: $27 per hour when the average salary for this job is over 40$ per hour in Toronto area – Computer technician: $18 per hour which is the lowest possible offer for this type of work in Toronto area –
> Network Engineer: $25
> Software Developer: $22.78
>
> I have carefully reviewed the documents submitted, weighing the factors in this application, I am not satisfied Applicant have demonstrated his admission to Canada would be a significant benefit for Canada and that he qualifies for LMIA exemption.
>
> [emphasis added]

[9] In short, the Officer concluded that the Applicant failed to establish that his business would generate significant economic, social, or cultural benefits or opportunities for Canadian citizens or permanent residents, as required by paragraph 205(a) of the *Regulations*.

IV. Issues

[10] The Applicant raises two issues on this application for judicial review: whether he was denied procedural fairness, and whether the Officer's decision was reasonable.

V. Standard of Review

[11] For procedural fairness, the parties agree that it is decided on correctness. I find that a more accurate way to describe the standard is provided by Justice Pentney in *Kambasaya v Canada (Minister of Citizenship and Immigration)*, 2022 FC 31 at para 19:

> Questions of procedural fairness require an approach resembling the correctness standard of review that inquires "whether the procedure was fair having regard to all of the circumstances" (*Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54 [*Canadian Pacific*]; *Heiltsuk Horizon Maritime Services Ltd v Atlantic Towing Limited*, 2021 FCA 26 at para 107). As noted in *Canadian Pacific* at paragraph 56, "the ultimate question remains whether the applicant knew the case to meet and had a full and fair chance to respond", and at paragraph 54, "[a] reviewing court… asks, with a sharp focus on the nature of the substantive rights involved and the consequences for an individual, whether a fair and just process was followed".

[12] On assessing the merits of the decision, I agree with the parties that the standard of review is reasonableness, as articulated by the Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*]. None of the exceptions based

in legislative intent or the rule of law, as articulated by the Supreme Court in *Vavilov* and in *Society of Composers, Authors and Music Publishers of Canada v Entertainment Software Association*, 2022 SCC 30, apply to displace the presumption of reasonableness as the standard of review.

[13] Reasonableness is a deferential, yet robust, standard of review: *Vavilov* at paras 12-13. The court must give considerable deference to the decision-maker, recognizing that this entity is empowered by Parliament and equipped with specialized knowledge and understanding of the "purposes and practical realities of the relevant administrative regime" and "consequences and the operational impact of the decision" that the reviewing court may not be attentive towards: *Vavilov* at para 93. Absent exceptional circumstances, reviewing courts must not interfere with the decision maker's factual findings and cannot reweigh and reassess evidence considered by the decision-maker: *Vavilov* at para 125.

[14] For decisions on temporary resident visas, including work permits, the reasons need not be extensive for the decision to be reasonable: *Vavilov* at paras 91, 128; *Wardak v Canada (Citizenship and Immigration)*, 2020 FC 582 at para 71. This is in light of the "enormous pressures [visa officers] face to produce a large volume of decisions every day:" *Patel v Canada (Citizenship and Immigration)*, 2020 FC 672 at para 10. Further, visa officers are afforded considerable deference, given the level of expertise they bring to these matters: *Vavilov* at para 93. The onus is on the applicant who seeks a work permit to satisfy a visa officer that they meet the criteria outlined in the *Regulations*.

VI. Legal Framework

[15] Subsection 200(1) of the *Regulations* governs the issuance of work permits:

Work permits	**Permis de travail — demande préalable à l'entrée au Canada**
200 (1) Subject to subsections (2) and (3) — and, in respect of a foreign national who makes an application for a work permit before entering Canada, subject to section 87.3 of the Act — an officer shall issue a work permit to a foreign national if, following an examination, it is established that	**200 (1)** Sous réserve des paragraphes (2) et (3), et de l'article 87.3 de la Loi dans le cas de l'étranger qui fait la demande préalablement à son entrée au Canada, l'agent délivre un permis de travail à l'étranger si, à l'issue d'un contrôle, les éléments ci-après sont établis :
[…]	[…]
(b) the foreign national will leave Canada by the end of the period authorized for their stay under Division 2 of Part 9;	**b)** il quittera le Canada à la fin de la période de séjour qui lui est applicable au titre de la section 2 de la partie 9;

[16] Sections 204 to 208 of the *Regulations* govern the issuance of LMIA exempt work permits. The applicable provision to the Applicant's situation is paragraph 205(a) of the *Regulations*:

Canadian interests	**Intérêts canadiens**
205 A work permit may be issued under section 200 to a foreign national who intends to perform work that	**205** Un permis de travail peut être délivré à l'étranger en vertu de l'article 200 si le travail pour lequel le permis est demandé satisfait à l'une ou l'autre des conditions

	suivantes:
(a) would create or maintain significant social, cultural or economic benefits or opportunities for Canadian citizens or permanent residents;	**a)** il permet de créer ou de conserver des débouchés ou des avantages sociaux, culturels ou économiques pour les citoyens canadiens ou les résidents permanents;

[17] At paragraphs 17 to 18 of *Shahbazian v Canada (Citizenship and Immigration)*, 2023 FC 1556 [*Shahbazian*], Justice Aylen summarized the analysis that visa officers reviewing an application for a C11 work permit must undertake.

[18] In considering an application for a work permit under the significant benefit – entrepreneurs/self-employed category (as was the case here), officers are instructed to consider certain questions in determining whether an applicant has satisfied subsection 205(a). Those questions are outlined in the IRCC's PDI and they provide guidance to officers assessing work permit applications under the C11 administrative code. The PDI is not binding on officers and the considerations they contain are not exhaustive.

[19] On November 21, 2022, IRCC updated its PDI for the assessment of work permit applications under administrative code C11. The updated PDI was entitled "Entrepreneurs or self-employed individuals seeking only temporary residence – [R205(a) – C11] – International Mobility Program" [Updated PDI]. The Updated PDI replaced the previous PDI, which was entitled "International Mobility Program: Canadian interests – Significant benefit – Entrepreneurs/self-employed candidates seeking to operate a business [R205(a) – C11]" [Initial PDI]. The Updated PDI raises the same questions for consideration by officers as the Initial PDI,

but includes three additional questions: (i) does the applicant have the language abilities needed to operate the business? (ii) is the business of a temporary nature (for example, seasonal businesses)? and (iii) is the foreign national establishing a long-term business that will require their presence indeterminately (for example, an auto mechanic shop)? The evidence of the Respondent is that these additional questions were not "new" because they reflected considerations that were already relevant and being assessed by officers.

[20] In *Wang v Canada (Citizenship and Immigration)*, 2021 FC 1002 at para 21 [*Wang*], this Court confirmed that a visa officer may consider the sufficiency of an applicant's proposed business plan when considering whether the proposed business will provide a significant benefit to Canada, as required under the *Regulations*.

VII. Analysis

[21] The Applicant's arguments are nearly identical to those raised in *Shahbazian*, *Tehranimotamed v. Canada (Citizenship and Immigration)*, 2024 FC 548, and *Mousavimianji v. Canada (Citizenship and Immigration)*, 2024 FC 726, which similarly involved the refusal of Iranian applicants applying for C11 work permits. For many of the same reasons given in those decisions, I am not persuaded that the present application warrants this Court's intervention.

A. *There is no breach of procedural fairness*

[22] The Applicant submits that a relatively high level of procedural fairness is owed to him due to the finality of the decision and its significant impact on his life and business. He argues

that his right to procedural fairness was breached in many ways; however, only two were addressed in oral argument, the remaining being abandoned:

- The refusal letter's generic, check-marked response lacks specific grounds, breaching the duty to provide clear, precise reasons reflecting the facts and evidence, and violating the Applicant's right to understand the basis of the decision;
- The failure to allow the Applicant to address concerns about the application, particularly given its complexity and significant investment, breaches the heightened threshold for procedural fairness;

[23] All of the Applicant's submissions lack merit.

[24] Contrary to the Applicant's assertions, the level of procedural fairness owed in the context of work permit applications lies on the lower end of the scale. This position is supported by a number of decisions from this Court: *Wang* at paras 34-35; *Singh v Canada (Citizenship and Immigration)*, 2022 FC 266 at para 37; *Igbedion v Canada (Citizenship and Immigration)*, 2022 FC 275 [*Igbedion*] at para 16; *Maghami v Canada (Citizenship and Immigration)*, 2023 FC 542 at para 20; *Koshteh v. Canada (Citizenship and Immigration)*, 2023 FC 1518 at para 7. The finality of the decision and its impact on the Applicant do not raise substantive rights, as visa applicants do not have an unqualified right to enter Canada and they can always apply again: *Sulce v Canada (Citizenship and Immigration)*, 2015 FC 1132 at para 10. Without other supporting circumstances, the refusal itself does not constitute a severe consequence: *Shahbazian*, at para 21; *Canada (Minister of Citizenship and Immigration) v Khan*, 2001 FCA 345 at paragraph 31.

[25] The Applicant's submission on the supposed errors relating to the generic nature of the Officer's reasons is also without basis. The inadequacy of reasons is not a procedural fairness defect: *Shidfar v. Canada (Citizenship and Immigration)*, 2023 FC 1241 at para 13; *Shahbazian*, at para 14.

[26] The Applicant's submission that the Officer was required to allow him to address perceived weaknesses in his application is unsupported by law. Numerous cases from this Court establish that an officer has no duty to notify work permit applicants of concerns arising directly from the legislation or related requirements: *Singh v Canada (Minister of Citizenship and Immigration)*, 2021 FC 790 at para 9; *Masam v Canada (Citizenship and Immigration)*, 2018 FC 751 at para 11; *Penez v Canada (Citizenship and Immigration)*, 2017 FC 1001 at para 37. Specifically, for business plans, the Officer is under no obligation to advise the Applicant that the business plan was insufficient. As Justice Aylen observed in *Igbedion* at para 16:

> There is no obligation on a visa officer to advise an applicant of concerns about, or deficiencies in, their application or to offer an applicant an interview. The onus does not shift to a visa officer to take any additional steps to address or satisfy outstanding concerns [see *Chhetri v Canada (Citizenship and Immigration)*, 2011 FC 872 at paras 9-10; *Qin v Canada (Minister of Citizenship and Immigration)*, 2002 FCT 815 at para 5].

B. *The decision is reasonable*

[27] A bulk of the Applicant's submissions regarding the merits of the decision consists of general statements claiming fundamental flaws as outlined by *Vavilov* at para 101. He raises only two specific issues: errors in the Officer's evaluation of the business plan and the consideration of salary in the analysis. I reject both.

[28] The Applicant argues that the Officer's finding that the business plan contained general information copied from open-source websites is unreasonable. Specifically, the Applicant disputes the characterization of Statistics Canada and IBISWorld as open-source websites. This Court has previously rejected this argument in *Mousavimianji v. Canada (MCI)*, 2024 FC 726 at para 11. The Applicant concedes in his memorandum of fact and law that his business plan used information from publicly-accessible websites. Given this factual basis, it was reasonable for the Officer to characterize portions of the Applicant's business plan as derived from open-source resources and to take issue with it.

[29] The Applicant argues that the Officer's consideration of the below-average salary proposed by the business plan is unreasonable. He contends, without citing any authority, that it is flawed because it overlooks the adjustable nature of salaries, the goal to retain a qualified workforce, and the fact that average wages fluctuate and are not a requirement under the C11 criteria. Again, this Court has rejected near-identical arguments advanced by the Applicant's counsel in *Naeini v. Canada (Citizenship and Immigration)*, 2024 FC 899 at paras 28-30. The salary is a relevant factor in the Officer's assessment of how the proposed business plan would contribute to the Canadian economy and create jobs. The onus is on the Applicant to present a compelling case to the Officer, not for the Officer to base the decision on the best scenario for the Applicant. The Applicant's argument is no more than a disagreement with the Officer's conclusions. Mere request for this Court to reweigh the evidence is not a basis for judicial intervention.

VIII. Conclusion

[30] In summary, the Applicant's procedural fairness arguments are either unsubstantiated or rejected by this Court in highly similar cases. Likewise, his arguments regarding the reasonableness of the decision either consist of general, unsupported claims or specific submissions that amount to requests for reweighing evidence. None are grounds warranting the intervention of this Court.

[31] No question was proposed for certification.

JUDGMENT in IMM-1909-23

THIS COURT'S JUDGMENT is that this application is dismissed and no question is certified.

"Russel W. Zinn"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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