Federal Court Cour fédérale

Date: 20241011

Docket: IMM-9818-23

Citation: 2024 FC 1612

Ottawa, Ontario, October 11, 2024

PRESENT: The Honourable Mr. Justice Roy

BETWEEN:

LOVEPREET SINGH

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] In this judicial review application made pursuant to s 72 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [Act], the applicant, Mr. Lovepreet Singh, challenges the refusal of a work permit he sought under the Temporary Foreign Worker Program.

I. The facts

[2] Mr. Singh is 27 years old and he lives in the Punjab with his parents. We learn from his application for a work permit made outside Canada that he has an older brother who lives in Abbotsford, BC. The form reveals that he has already seen two applications for visitor visas to Canada refused.

[3] The Dhalian Farms, in Aldergrove, BC, not far from Abbotsford, is the employer who offered a job to Mr. Singh as a farm labourer. The Dhalian Farms experienced a labour shortage for farm workers. According to the application, Dhalian Farms met with Mr. Singh and a job was offered. The employer was issued a positive Labour Market Impact Assessment [LMIA] and Mr. Singh was identified as a prospective employee. The duration of the employment was for 24 months, with the positive LMIA set to expire on October 5, 2024. The application speaks of the duration of the expected employment as expiring on August 14, 2025.

[4] The applicant holds a Diploma in Carpentry and Aluminium Fabrication from India. He does not appear to have practised his craft as he has been helping his father on his farm since 2018. In his application for a work permit, he presents himself as a self-employed farmer where his family owns agriculture land. The reality is that he works for his father on a plot of 1.75 acres.

[5] In his application for the work permit, the applicant offered the following rationale:

> In India, farming is a sort of in our blood as like any other business, farms are handed down from one generation to the next

> generation and that's why since childhood, farmer's children like me start helping their families in operating farms and learn farming techniques at very early age.
>
> Recently I got a job offer from Dhalian Farms to work with them as a farm laborer. This is great opportunity for me as my future plans are to work as an-achieving farmer in India. I am strongly convinced that the experiences and knowledge I can learn in Canada will enhance not only my understanding of Canadian work culture and manner, but also broaden my horizon by working with more variety of people who are locally from Canada or originally from other countries like me.
>
> I am the only male child of my parents and my family owns agricultural land from generations. After gaining valuable experience from Canadian Agriculture Sector, I will return back to India to use my skills and work experience on my family farms for increasing farm profitability. I do not have any intention to live beyond validity of my status and promise that I will always obey any and all rules imposed upon me for temporary residence in Canada.
>
> (transcribed as in original)

II. The decision under review

[6] The decision letter in this case states two reasons for the refusal: the decision maker is not satisfied the applicant will leave Canada at the end of his stay and the purpose of his visit to Canada is said not to be consistent with the temporary stay in view of the record presented. The Global Case Management System [GCMS] provides the articulation of the reasons:

> Application and submissions reviewed. Applicant offered one of 4 positions of a Farm Worker to work with Devinder Singh Boparai in BC. LMIA indicates no specific education, experience or language requirements. Applicant is 26, unmarried, male. Applicant states he is a farm worker since September 2018 and that his family owns agriculture land. Land documents show that applicant's father is one of many owners of the land. There is no land or farm in applicant's name. Crop sale receipts show name of applicant's father as the seller. Noted applicant's previous attempt at going to Canada to visit family in BC. I am not satisfied that

> applicant is well established in his home country or that he does not have family ties in Canada. Based on an overall review, on balance, I am not satisfied the applicant will be motivated to leave Canada by the end of his temporary stay should it be authorized. Refused pursuant to R200(1)(b).

In effect, two reasons are given for why the decision maker is not satisfied the applicant will leave Canada. His establishment in India is not sufficient and he has family in Canada.

III. The challenge

[7] The applicant argues that the decision is unreasonable and that the Court's intervention is warranted. The decision maker ignored or misunderstood the evidence. It would be the applicant's ties to India which were not considered in any manner.

[8] The applicant faults the decision maker for not having discussed the "income documents" and the affidavit of support from his father. Referring to *Chhetri v Canada (Citizenship and Immigration)*, 2011 FC 872 [*Chhetri*], at para 14, he claims that the focus ought to be on the ties to the home country. What are those ties that bind or pull so that the concern that the person might overstay becomes unreasonable?

[9] These principles are well-known. What the applicant had to show is what, precisely, are those ties that will bring him back to India. It seems that, in the end, the applicant relies on his own statement that he will return to his country of nationality; his father says that much. The "income documents" which prove business activities as he was gainfully employed as a farmer in India are invoked in support of ties that bind. That, argues the applicant, is evidence of financial status or establishment.

IV. The counter

[10] The Minister argues conversely that the evidence presented by the applicant was fully considered. The decision maker is owed a high degree of deference in view of their expertise, which explains their wide discretion. It is for an applicant to put his best foot forward, which includes establishing that he will leave once the permit expires (s 200(1)(b) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227). There is no room for the benefit of the doubt.

[11] The fact that the applicant declared being without spouse or children, together with very limited financial assets, indicate a lack of establishment. Indeed there was no demonstration of the strength of the connection with the parents; in fact, he has a brother who lives near the Dhalian Farms where the applicant is to be a farm worker. It has not been shown that the reasons are not sufficient to satisfy the standard of reasonableness.

V. Analysis

[12] These types of cases must start with the understanding that an immigration officer is entitled to considerable deference. In an oft-quoted paragraph, Justice Rennie, then of this Court, summarized the approach taken in *Chhetri*:

> [9] Decisions of visa officers in their assessment of the facts and the weight to be accorded criteria relevant to temporary work visas are entitled to considerable deference. The combined effect of section 11(1) of the *Immigration and Refugee Protection Act*, 2001, c. 27 (*IRPA*) and Division 3 of Part 11 of the *Immigration and Refugee Protection Regulations* (SOR/2002-227) (the *Regulations*) is to require visa officers to be satisfied that the

> individuals are not inadmissible and that they will leave Canada on expiry of their visa. It is often over-looked that it must be "established" that the foreign national will leave at the end of their visa. The combined effect of the *IRPA* and the *Regulations* does not leave much room for officers to give the applicant the benefit of the doubt; rather there is a positive obligation that it be *established* that the foreign national will leave before the visa be issued.
>
> (emphasis in original)

The Court in that case also stated that career experience or financial benefit cannot be in and of themselves the sole reasons to refuse a permit. That is because it goes without saying that an applicant sees a benefit in coming to Canada for a short period, and the very nature of the *quid pro quo* procures a benefit to Canada. The very reason for the program should not become the sole reason for rejecting an applicant.

[13] However, that does not mean that the financial considerations are irrelevant. They are part of the picture that emerges as the decision maker focuses on the ties that are present to satisfy that an applicant will abide by the rules and return to their country of origin rather than staying in this country without status. It follows that the economic advantages in Canada are not to be discarded. The real question becomes what are the "strong social and economic links to the home country" that will satisfy "the onus to establish an intent to return" (*Chhetri*, para 14).

[14] It was for the applicant to establish, on a balance of probabilities, that the decision is unreasonable (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65, [2019] 4 SCR 653 [*Vavilov*], at para 100). Shortcomings that are merely superficial or peripheral will not do. Only serious shortcomings may go to demonstrate that the decision maker did not exhibit the requisite degree of justification, intelligibility and transparency (*Vavilov*, para 100).

[15] The reviewing court looks to the record as a whole to understand the decision made. Here, the applicant's main contention is that the decision maker either ignored or misunderstood the evidence concerning his ties to India. He refers to "income documents" which were not considered in his view. I have reviewed these documents. They merely point to the applicant working for his father on a plot of 1.75 acres. He has no tangible assets: it is stated that the applicant "is selling his crop in the name of Gurmail Singh Khangura [the applicant's father] to our shop since April 2020" (Applicant's Record, p 51). The net worth statement shows that "movable assets" are exclusively in the name of the father: even the car and a motorcycle are in the name of Gurmail Singh. The same is true of immovable assets. They are all owned by the father.

[16] In effect, the applicant relies on his statement that he intends to return to India; his father states that much in his affidavit of support (Applicant's Record, p 45). That is far from establishing a serious shortcoming in the decision under review. The evidence presented does not demonstrate establishment of a significant size in India. Quite the opposite. In fact, as noted by the decision maker, he has family nearby where he will be employed in Canada, which tends to bring some shadow to the countervailing social and economic links to the home country. To put it simply, his links to his country of nationality are quite weak, such that the pull to return to India has not been shown to be significant.

[17] The applicant had to show that in exercising their significant discretion, the decision maker made an unreasonable decision in not being satisfied that the applicant will leave Canada at the end of his authorized stay. The finding that the applicant lacked establishment in India, on

the record submitted by him, was not shown to be unreasonable. The same can be said of the benefit expected by coming to work on a farm in British Columbia. It is very much unclear what is to be gained by coming to Canada as a farm labourer. The presence of his brother nearby, as noted by the decision maker, also contributes to the conclusion that the pull may well be to stay in Canada. At any rate, it was for the applicant to establish that he will return to India once his work permit expires. The applicant did not discharge his burden and the Court must show the decision made considerable deference.

VI. Conclusion

[18] The judicial review application must be dismissed. There is no question to be certified in accordance with s 74 of the Act.

JUDGMENT in IMM-9818-23

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed; and

2. There is no question to be certified.

"Yvan Roy"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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