Federal Court  Cour fédérale

Date: 20241015

Docket: IMM-2391-23

Citation: 2024 FC 1631

Ottawa, Ontario, October 15, 2024

PRESENT: Mr. Justice McHaffie

BETWEEN:

TALVEER SINGH

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] Talveer Singh's application for a work permit under the Temporary Foreign Worker Program was refused because a visa officer was not satisfied that he would leave Canada at the end of his stay. Mr. Singh seeks judicial review of that decision. For the following reasons, Mr. Singh's application for judicial review will be granted and the refusal of his work permit application will be set aside and remitted for expedited redetermination.

[2] As the parties agree, the Court reviews administrative decisions, such as the refusal of Mr. Singh's work permit application, on the reasonableness standard: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16–17, 23–25; *Singh v Canada (Citizenship and Immigration)*, 2022 FC 1718 at paras 11–12. The reasonableness standard does not seek to assess whether a decision is correct, or whether it accords with how the Court might decide a particular case. Rather, the Court is limited to assessing whether the decision is "reasonable," in the sense that it is internally coherent, rational, transparent, intelligible, and justified in relation to the facts and law that constrain the decision maker: *Vavilov* at paras 83, 85, 90, 99–101. The Court will only set aside a decision on judicial review if an applicant demonstrates that the decision has sufficiently serious shortcomings that it does not exhibit the requisite degree of justification, intelligibility, and transparency: *Vavilov* at para 100.

[3] In performing this exercise, the Court looks primarily at the reasons given by the decision maker, as these are the means by which they communicate the rationale for their decision: *Vavilov* at para 84. In the present case, the visa officer's reasons are found in the letter sent to the applicant refusing his application, and in the notes they made in the Global Case Management System (GCMS) at the time of the decision. The letter states that the visa officer was not satisfied that Mr. Singh would leave Canada at the end of his stay, citing two factors: (1) the purpose of his visit to Canada was not consistent with a temporary stay given the details provided in the work permit application; and (2) Mr. Singh's immigration status outside his country of nationality or habitual residence.

[4] The second of these two factors refers to the fact that since 2017, Mr. Singh has lived and worked as a truck driver in Kuwait, where he holds a work permit. The visa officer expanded on this issue and their reasons for refusing the work permit application in their GCMS notes, which read as follows in their entirety, using the term "PA" to refer to Mr. Singh as the principal applicant:

> I have reviewed the application. I have considered the following factors in my decision. The purpose of the applicant's visit to Canada is not consistent with a temporary stay given the details provided in the application. Taking the applicant's current employment situation into consideration, the employment does not demonstrate that the applicant is sufficiently established that the applicant would leave Canada at the end of the period of authorized stay. PA has weak ties to Kuwait given that his immigration status is tied to employment and PA has weak ties to India given that he has not resided there for many years while in pursuit of economic betterment. In view of the applicant's temporary Immigration status in Kuwait, his modest income and the fact that his Kuwait visa would be cancelled upon his departure from the Kuwait, I am not satisfied that PA has sufficient ties to Kuwait or elsewhere that would result in him departing Canada at the end of the period authorised for his stay. Based on the applicant's immigration status outside their country of nationality or habitual residence, I am not satisfied that they will leave Canada at the end of their stay as temporary resident. Weighing the factors in this application. I am not satisfied that the applicant will depart Canada at the end of the period authorized for their stay. For the reasons above, I have refused this application.

[5] As is clear from these notes, the visa officer's reasons for concluding they were not satisfied Mr. Singh would leave Canada at the end of his stay were that Mr. Singh only has temporary status and employment in Kuwait; that he would lose that status and ties to Kuwait if he comes to Canada; and that he has "weak ties" to India. Notably, the only analysis of Mr. Singh's ties to India the visa officer presents is that they are weak since he had lived in Kuwait for many years while in pursuit of economic betterment.

[6] Mr. Singh argues that the visa officer's decision unreasonably assessed his ties to India, noting that his wife, his two children, and his mother all lived in India; that his travel history shows he travelled to India multiple times to visit his family; and that he had presented evidence of his assets there, including a residential building and agricultural land. He also argues the visa officer unreasonably failed to consider his prior travel history and compliance with the immigration rules of other countries, which indicate he would not disregard those of Canada.

[7] I agree with Mr. Singh that the visa officer's analysis of his ties to India does not show the transparency, intelligibility, and justification required of a reasonable decision.

[8] As the Minister notes, this Court has recognized that reasons for decision in the high-volume area of visa applications need not be detailed or lengthy: *Pastor v Canada (Citizenship and Immigration)*, 2021 FC 1263 at para 17. A visa officer need not engage in a lengthy review of every piece of evidence filed or every conceivable issue. However, visa officers must still "indicate their thought process in an intelligible manner, and address evidence that may contradict important findings of fact": *Ekpenyong v Canada (Immigration, Refugees and Citizenship)*, 2019 FC 1245 at para 23. In other words, the reality of visa offices and the operational pressures on visa officers "cannot exempt their decisions from being responsive to the factual matrix put before them": *Patel v Canada (Citizenship and Immigration)*, 2020 FC 77 at para 17, citing *Vavilov* at paras 13, 67, 72.

[9] In the present case, the visa officer cited an aspect of Mr. Singh's file they felt decreased his ties to India—his work in Kuwait—without giving any consideration to the evidence that contradicted their conclusion of "weak ties" to India, namely the presence there of Mr. Singh's

wife, children, and mother. This failure to consider the ties that bind or pull Mr. Singh to India renders the analysis of those ties unreasonable: *Nesarzadeh v Canada (Citizenship and Immigration)*, 2023 FC 568 at para 9, citing *Chhetri v Canada (Citizenship and Immigration)*, 2011 FC 872 at para 14. Given the importance of an applicant's ties to their home country in the analysis of whether they are likely to remain in Canada, both generally and in the visa officer's assessment in this case, this is sufficient to render the decision as a whole unreasonable.

[10] As Mr. Singh points out, this Court faced a similar situation in *Singh v Canada (Citizenship and Immigration)*, 2022 FC 1718 [*Baljinder Singh*]. In that case, the applicant was similarly working in a third country while his wife and child resided in India. As in this case, a visa officer refused the applicant's work permit application, noting that his immigration status in the third country was temporary, reducing his ties to that country. However, the visa officer did "not explain why they discounted evidence of the Applicant's ties to his home country, in particular the Applicant's close family ties with his spouse and child in India, and his previous travel history and compliance with immigration rules of other countries": *Baljinder Singh* at para 15. Given the absence of any analysis of the applicant's ties to India, Justice Lafrenière concluded that the decision refusing the work permit application was unreasonable: *Baljinder Singh* at paras 16–17. I agree with Mr. Singh that the reasoning in *Baljinder Singh* is applicable in this case.

[11] I also note that this Court has questioned the reasonableness of relying on an applicant's willingness to make personal sacrifices by working in a third country as a factor weakening their ties to their home country: *Singh v Canada (Citizenship and Immigration)*, 2022 FC 1645 [*Satnam Singh*] at para 24.

[12] The Minister argues that a strong and central finding by the visa officer, undisputed by Mr. Singh, was that he could not return to Kuwait if he came to Canada. While I agree that the visa officer made this finding, I am unable to see how it affects the reasonableness of the visa officer's analysis of Mr. Singh's ties to India. The Minister similarly suggests that Mr. Singh put forward no evidence of a job to return to in India or what he would do in India when he returned, and that the visa officer could reasonably consider this in concluding that Mr. Singh would not leave Canada. An applicant's plans upon the conclusion of their temporary stay in Canada may potentially be relevant to an officer's assessment. However, the argument now put forward by the Minister formed no part of the visa officer's reasons in this case, which refer only to Mr. Singh's current employment in Kuwait. It is not open to the Minister, or the Court, to buttress the visa officer's reasons by providing a different justification for the decision than that set out in the reasons: *Satnam Singh* at para 23, citing *Vavilov* at para 96. In any event, this argument does not justify the absence of any consideration of Mr. Singh's significant family ties to India.

[13] I therefore conclude that despite the deference due to decisions of visa officers, the visa officer's decision refusing Mr. Singh's work permit application cannot stand as it does not show the transparency, intelligibility, and justification required of a reasonable decision. The application for judicial review is therefore allowed and the decision is set aside.

[14] Neither party proposed a question for certification and I agree that none arises in the matter.

JUDGMENT IN IMM-2391-23

THIS COURT'S JUDGMENT is that

1. The application for judicial review is allowed. The decision of a visa officer dated February 9, 2023, refusing the applicant's application for a work permit is set aside and the application is remitted for expedited redetermination by a different officer.

"Nicholas McHaffie"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-2391-23
STYLE OF CAUSE:	TALVEER SINGH v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	APRIL 25, 2024
JUDGMENT AND REASONS:	MCHAFFIE J.
DATED:	OCTOBER 15, 2024

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