Federal Court Cour fédérale

Date: 20241024

Docket: IMM-7411-23

Citation: 2024 FC 1694

Vancouver, British Columbia, October 24, 2024

PRESENT: Justice Andrew D. Little

BETWEEN:

DALJINDER KAUR NANDHA

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The applicant has asked the Court to set aside a decision made by letter dated May 25, 2023, refusing her request for a work permit under subsection 200(3) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 (the *"IRPR"*).

[2] The applicant submitted that the decision was unreasonable under the principles in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, [2019] 4 SCR 653.

[3] For the following reasons, the application will be dismissed.

[4] The applicant is a citizen of India. She is in Canada on a visitor visa and currently resides with her husband in Brampton, Ontario.

[5] In November 2022, Bridgwater Electricals Ltd., a company in Winnipeg, Manitoba, offered the applicant a position as an Administrative Assistant. She accepted. Her contract of employment set out her job description as follows:

> The EMPLOYEE agrees to carry out the following tasks
>
> • Prepare, key in, edit and proofread all correspondence
>
> • Open and distribute incoming regular and electronic mail
>
> • Schedule and confirm appointments and meetings of employer
>
> • Order office supplies and maintain inventory
>
> • Answer telephone and electronic enquiries and relay telephone calls and messages
>
> • Set up and maintain manual and computerized information filing systems
>
> • Determine and establish office procedures
>
> • Greet visitors and direct visitors to employer or appropriate person
>
> • Record and prepare minutes of meetings
>
> • Arrange travel schedules and make reservations

[6] In December 2022, the applicant applied for a temporary work permit visa. In addition to the relevant forms, she submitted:

a) A labour market impact assessment ("LMIA") dated November 15, 2022, obtained by her prospective employer;

b) Documents related to the applicant's high school education including certain of her marks for the year 2001;

c) Employment letter dated November 23, 2022, from her former employer in India;

d) Pay stubs from her former employer in India from 2021-2022;

e) Indian tax documents for 2021-2022 and 2022-2023; and

f) Personal documents including passport, certificate of registration of marriage and photograph.

[7] By letter dated May 25, 2023, an officer refused the applicant's work permit request for failure to comply with the *IRPR*. The letter referred to the contents of *IRPR* subsection 200(3) but did not specify the basis for the refusal.

[8] The Global Case Management System ("GCMS") contained the following entry on May 25, 2023:

> Client is applying for Work Permit W307756271 LMIA 8937854, Administrative Assistant application rec'd 2022/12/06. Under Public policy allowing certain visitors in Canada to apply for a work permit: However; LMIA 8937854 Employment Details Language Requirements indicate Oral En Written En, "An officer shall not issue a work permit to a foreign national if, there are reasonable grounds to believe that the foreign national is unable to perform the work sought;" As per LMIA Duties "Administrative Eligibility assistants perform some or all of the following duties: KB25450 / Prepare, key in, edit and proofread correspondence,

> invoices, presentations, brochures, publications, reports and related material from machine dictation and handwritten copy". Client has not provided IELT/CELPIP test results or evidence of language proficiency. As I am unable to assess clients language proficiency as per LMIA 8937854 Language Requirements. Application is therefore refused as per R200(3)(a). Refusal letter sent 2023/05/25. Client advised of status.

A. ***Was the Officer's Decision Reasonable?***

[9] The standard of review applicable to the officer's refusal decision is reasonableness, as described in *Vavilov.* Reasonableness review is a deferential and disciplined evaluation of whether an administrative decision is transparent, intelligible and justified: *Vavilov,* at paras 12-13 and 15. The starting point is the reasons provided by the decision maker, which are to be read holistically and contextually, and in conjunction with the record that was before the decision maker. A reasonable decision is based on an internally coherent and rational chain of analysis and is justified in relation to the facts and law that constrained the decision maker: *Vavilov,* esp. at paras 85, 91-97, 103, 105-106 and 194. In order to intervene on this application, the Court must find an error in the decision that is sufficiently central or significant to render the decision unreasonable: *Vavilov,* at para 100.

[10] It is well established in the jurisprudence that GCMS notes form part of the officer's reasons for the decision: see e.g., *Patel v. Canada (Citizenship and Immigration)*, 2024 FC 999, at para 6; *Foumani v. Canada (Citizenship and Immigration),* 2024 FC 574, at para 21; *Serimbetov v. Canada (Immigration, Refugees and Citizenship)*, 2022 FC 1130, at para 28.

[11] The refusal of the work permit turned on the applicant's English language abilities. The Job Information in the LMIA for the Administrative Assistant position stated "Verbal Language Requirements: English" and "Written Language Requirements: English". The officer's GCMS entry recognized that the LMIA "Language Requirements indicate[d] Oral En Written En". The GCMS entry advised that the applicant had "not provided IELT/CELPIP test results or evidence of language proficiency" and therefore the officer was unable to assess the applicant's language proficiency under the LMIA language requirements. On this basis, the officer refused the work permit under *IRPR* paragraph 200(3)(a).

[12] The applicant's written submission was that the officer failed to consider or properly peruse the applicant's high school mark in English from 2001. The applicant took the position, without reference to any supporting evidence, that she was "well versed" in English having had it as a subject in high school and for 12 years of schooling during which she "would organically acquire an understanding of the language". She referred to her prior employment as evidence that she could perform the role of an Administrative Assistant. The applicant also maintained that as an applicant from inside Canada, "chances are that her proficiency in English has already been assessed". The applicant further contended that the applicant's English language ability had already been assessed by her prospective employer, who was in the best position to assess her ability to perform the duties assigned to her.

[13] At the hearing in this Court, the applicant submitted that the officer erred in the analysis in the GCMS notes. She argued that while it was correct to say that her the duties of her offered position would include "[p]repare, key in, edit and proofread correspondence …", the duties did

not include the rest of the officer's sentence ("… brochures, publications, reports and related material from machine dictation and handwritten copy"). The respondent observed that the officer's language came from the relevant National Occupation Classification for Administrative Assistant (as it read when the decision was made). Unfortunately, that document was not part of the record before the Court and therefore will not be considered in this analysis.

[14] The applicant's oral submissions focused on the officer's failure to articulate a standard of English proficiency in the GCMS notes and then apply it to the evidence. The applicant referred to IRCC's publication entitled "Foreign workers: Assessing language requirements" dated October 24, 2014. The applicant also argued that the officer must have stopped assessing the other information in her application after finding that she did not provide IELT/CELPIP test results.

[15] As the respondent submitted, an officer must carry out an independent assessment of whether an applicant has met the requirements of paragraph 200(3)(a) of the *IRPR*. An officer is not bound to issue a work permit because there is a "positive" LMIA or because a prospective employer has found that an applicant can perform the job: *Singh v. Canada (Citizenship and Immigration)*, 2024 FC 792, at para 18; *Yue v. Canada (Citizenship and Immigration)*, 2023 FC 417, at para 5. See also *Patel v. Canada (Citizenship and Immigration)*, 2021 FC 483, at para 32.

[16] The GCMS entry confirms that the officer was aware of the oral and written language requirements for the Administrative Assistant job in the LMIA and that the officer considered how English language proficiency would affect the performance of the duties of that position.

[17] I appreciate the applicant's point that the GCMS entry suggests that the officer was "unable" to assess the applicant's proficiency in English and did not reach a conclusion on whether she was or was not sufficiently proficient in English. However, it was a conclusion that was open to the officer based on the paucity of information before the officer concerning the applicant's proficiency in English.

[18] On the record before the officer, it was reasonable to find the information submitted on the applicant's English ability to be insufficient to make a decision.

[19] The applicant's form requesting that she extend her stay or remain in Canada as a worker stated that her native language was Punjabi and that she could communicate in English. It also confirmed that she had not taken a test for English or French from a designated testing agency.

[20] The information before the officer consisted of a high school "Intermediate Exam Marks Sheet" showing that the applicant had done an English course in 2001 and a separate page confirming that she had passed the examination in English in March/April of that year. As the respondent noted at the hearing, there was nothing to assist the officer to interpret the applicant's mark of 38 out of 100 in the English course: see *Iqbal v. Canada (Citizenship and Immigration),* 2022 FC 727, at para 18.

[21] The applicant did not submit any other evidence of her English language ability for the proposed job. For example:

a) There was no letter from her prospective employer in Canada concerning the English language proficiency required for the position, nor anything about that employer's assessment of the applicant's proficiency: see *Iqbal,* at para 19.

b) The letter from the applicant's former employer in India, while written in English, did not address whether the applicant had performed her prior duties in English.

c) Despite the applicant's submissions, there was no information before the officer that the applicant had 12 years of English language instruction during her schooling or that the applicant's English skills were assessed after her arrival in Canada.

d) Finally, the present application also did not include a cover letter or submissions from the applicant or anyone representing her.

[22] Thus, apart from the single mark on the Intermediate Exam Marks Sheet in 2001 and the confirmation that she passed that examination in English over 20 years earlier, there was no information before the officer that contradicted or ran counter to the officer's overall conclusion or the GCMS statement that the applicant had not provided IELT/CELPIP test results "or evidence of language proficiency". The officer's conclusion on language was reasonable based on the information in the record: *Vavilov,* at paras 125-126.

[23] In this context, I do not agree with the applicant that the officer made a reviewable error by shirking the responsibility to determine the English language standard required for the Administrative Assistant job and then failing to apply that standard. The officer turned their mind to the English language requirements – hence the references to the LMIA requirements and

to the job requirements (“Prepare, key in, edit and proofread correspondence …”). It was open to the officer to conclude that no assessment could be done on the limited information in the record.

[24] This case is unlike *Singh v. Canada (Citizenship and Immigration),* 2022 FC 692, in which the applicant had performed the job for two years, which was evidence that the officer did not reconcile and ran counter to the finding in that case: see *Singh,* at paras 13, 15. This case is also distinguishable from *Singh v. Canada (Citizenship and Immigration),* 2023 FC 1036, in which there was considerable evidence submitted by the applicant that he had studied in English at the high school and college levels and could read and write the language: at para 30.

[25] It is true that the officer’s GCMS entry was not flawless. However, as the officer’s reasons for the decision, the entry did not have to be perfect – particularly in the institutional context of an application for a work permit: *Vavilov,* at para 91. Given the thin record before the officer, the errors were not fundamental to the decision under review: *Vavilov,* at para 100.

[26] Accordingly, I conclude that the applicant has not demonstrated that the officer’s decision was unreasonable, applying *Vavilov* principles.

B. ***No Procedural Unfairness***

[27] The applicant submitted that she was denied procedural fairness. Her position was that, in the circumstances, she was entitled to a high level of procedural fairness owing to the importance of the matter to her. The applicant argued that the officer deprived her of procedural fairness by failing to inform her of any concerns about her English language abilities and offer her an

opportunity to respond. Specifically, if the officer required IELT/CELPIP test results, she should have had an opportunity to provide them, or the officer should have offered to interview the applicant.

[28] I am unable to agree. The onus was on the applicant to provide evidence that she met the requirements in the *IRPR,* including that she was able to perform the work and otherwise meet the requirements of the job: *IRPR,* paragraph 200(3)(a). Those requirements included an English language component in the LMIA. The officer had no obligation in law to provide another opportunity for the applicant to provide information seeking to establish that she met those requirements. See *Moradian v. Canada (Citizenship and Immigration),* 2024 FC 1343, at para 16; *Mohammadhosseini v. Canada (Citizenship and Immigration),* 2024 FC 848, at para 20; *Penez v. Canada (Citizenship and Immigration),* 2017 FC 1001, at para 37; *Solopova v. Canada (Citizenship and Immigration),* 2016 FC 690, at para 38.

[29] The application must therefore be dismissed. Neither party raised a question to certify for appeal and none arises.

JUDGMENT IN IMM-7411-23

THIS COURT'S JUDGMENT is that:

1. The application is dismissed.

2. No question is certified under paragraph 74(*d*) of the *Immigration and Refugee Protection Act*.

"Andrew D. Little"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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STYLE OF CAUSE:	DALJINDER KAUR NANDHA v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
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