

Federal Court



Cour fédérale

Date: 20241118

Docket: IMM-10658-23

Citation: 2024 FC 1836

Toronto, Ontario, November 18, 2024

PRESENT: The Honourable Mr. Justice A. Grant

BETWEEN:

**FARAAHA IQBAL, GHULAM MUSTAFA,
MUHAMMAD SHAHWAIZ, JAHANZAIB AND
MUHAMMAD SHAHEER**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. OVERVIEW

[1] The Applicants seek judicial review of a Visa Officer's decision refusing the Principal Applicant's application for a work permit under the Entrepreneur stream of the International Mobility Program for Ontario. The Principal Applicant proposed to establish a home appliances and furnishings store in Woodstock, Ontario, into which he was required to invest CAD

\$530,000 within the first year. An Officer refused the application because they were not satisfied that the Principal Applicant would leave Canada at the end of his stay, and found that the Principal Applicant likely would not have sufficient assets to fulfill the investment requirement.

[2] For the reasons that follow, I have concluded that there was no procedural unfairness in the rejection of the Applicants' applications. I have also concluded that this rejection was based on a reasonable assessment of the evidence. As a result, I will dismiss this application for judicial review.

II. BACKGROUND

A. *Facts*

[3] The Applicants are a family from Pakistan. The Principal Applicant [PA] applied for a Labour Market Impact Assessment [LMIA]-exempt work permit under the Entrepreneur stream of the International Mobility Program for Ontario [the Program], through the Ontario Immigrant Nominee Program [OINP]. He proposed to establish a new home appliances and home furnishings store in Woodstock, Ontario. In order to do so, and as part of his OINP Performance Agreement, the PA committed to invest CAD \$530,000 into the business, in its first year of operations.

[4] In support of his work permit application, the PA tendered the following documentation:

- a) His OINP Performance Agreement;
- b) Bank statements, showing an initially low balance with large lump sum deposits at irregular intervals;

- c) A business plan;
- d) His International English Language Testing System [IELTS] score; and
- e) An OINP Net Worth and Legal Accumulation of Funds Verification Report, confirming his net worth as CAD \$1,378,423, his income as CAD \$74,571, and his bank balance as CAD \$34,063.

[5] In order to accompany the PA, his wife applied for an open work permit and their three children applied for study permits. The PA's work permit application is the "anchor" application, with his spouse's open work permit application and their children's study permit applications being dependent upon it. All of these applications were denied based on the PA's refusal, and applications for judicial review have been filed in respect of all of these refusals. The five files were consolidated by an order on consent issued by Associate Judge Crinson on September 12, 2023.

B. *Decision under Review*

[6] An Officer denied the PA's work permit in a decision-letter dated August 2, 2023, primarily on the basis that the PA had not established that he and his family would leave Canada at the end of their stay. In coming to that conclusion, the Officer found as follows:

- a) the compensation indicated in the PA's job offer and his finances were insufficient to support the stated purpose of his and his family's travel;
- b) the PA was not able to demonstrate he would be able to perform the work sought;
- c) the PA's current employment situation does not show that he is financially established in his country of residence; and

d) the PA does not have significant family ties outside Canada.

[7] In notes entered into the Global Case Management System [GCMS], which form a part of the reasons for decision, the Officer noted that under the ONIP agreement, the applicant was required to invest CAD \$530,000 into the business in the first twelve months. The Officer was not satisfied the PA would be able to do so, as his liquid assets only amounted to \$34,000 and he would be accompanied by his spouse, who does not work, and their three children. The Officer also noted very low balances until March 2023, after which large deposits were made – the source of which was unclear.

[8] The Officer also noted that the PA seeks to establish a home furnishings and appliance store, and while he does have a business in Pakistan, he has not worked in the specific area before. Further, the PA's IELTS certificate shows he has the English language ability of a modest user, and the Officer was not satisfied that that would be sufficient when opening a new business in a new country, in a new area of specialization.

[9] Finally, the Officer acknowledged that the PA owns a business, and that he and his wife have a large extended family in Pakistan – but noted that the Applicants are prepared to travel to Canada for two years or even permanently and so assigned those factors less weight. The Officer also noted that the PA's Pakistani business has been managed without his physical presence. As a result, the Officer was not satisfied that the PA's financial position was such that he and his family would be incentivized to depart Canada.

[10] As noted above, because the PA's application was refused, his spouse's open work permit and the children's study permits were also refused by letters dated June 20, 2023. The Officer was not satisfied that they would leave Canada at the end of their stay, as the purpose of the visit was not consistent with a temporary stay.

III. ISSUES

[11] It is common between the parties that the issues are: a) Whether the Decision was procedurally fair, and b) whether the Decision was reasonable.

IV. STANDARD OF REVIEW

[12] The standard of review in respect of the reasons provided by the Officer for rejecting the PA's application is reasonableness: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 10, 16, 23.

[13] The standard of review in respect of the fairness of the process that lead to the decision is akin to the correctness standard: *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at paras 34-35, 54-55.

V. ANALYSIS

A. *The Decision was fair*

[14] The Applicants submit that the Officer breached the PA's right to procedural fairness by failing to consider the principle of dual intent, as set out at s.22(2) of the *Immigration and Refugee Protection Act* [IRPA], which states:

An intention by a foreign national to become a permanent resident does not preclude them from becoming a temporary resident if the officer is satisfied that they will leave Canada by the end of the period authorized for their stay.

[15] The Applicants elaborate on this argument by noting that the applicable Immigration, Refugees and Citizenship Canada [IRCC] Guideline specifically contemplates that applicants in the PA's class may have a dual intent in coming to Canada, that is "to seek status as temporary workers and eventually as permanent residents, as per paragraph R200(1)(b)."

[16] Therefore, the Applicants submit that the Officer breached the PA's legitimate expectations that they would apply the dual intent principle. I disagree, as I do not find that the doctrine of legitimate expectations has any application to this matter.

[17] I would first note that the doctrine of legitimate expectations is a procedural safeguard which does not create substantive rights: *Ahani v. Canada (Attorney General)*, 2002 CanLII 23589 (ONCA), [2002] OJ No 431 (QL) at para 63. Put another way, the doctrine ensures that publicly communicated procedures are followed, but does not guarantee any particular result in a legal proceeding.

[18] In this case, there was no procedure that was disregarded by the Officer. Rather, the Applicants contend that the Officer failed to have adequate regard to a statutory provision that they contend is material to the matter at hand. Understood in this light, it is clear that if there is an error here, it was a legal error on the part of the Officer, not a breach of fairness principles.

[19] In any event, I find that the decision under review meets the requirements of s.22(2) of the IRPA because the Officer considered, at length, the question of whether the Applicants will leave Canada by the end of their authorized period of stay – this is, quite literally, an essential consideration under s.22(2). While the Officer may not have explicitly cited the dual intent provision, I find that the principle was considered in substance.

[20] The IRCC Guideline referred to above confirms that the Officer's consideration of the Principal Applicant's application complied with a core element of the dual intent principle: "the applicant must be able to demonstrate that they maintain the capacity and willingness to leave Canada should their employment end or they fail to obtain permanent residence."

[21] In my review of the Officer's GCMS notes, it is clear that the Officer considered precisely what is contemplated in the Guideline, namely whether the PA had demonstrated that he maintained the capacity and willingness to leave Canada should he fail to obtain permanent residence. Indeed, in the GCMS notes, the Officer explicitly tracked the language of the Guideline, noting as follows: "Based on the bank statements provided I am not satisfied that the applicant's financial position is such that he and his family would be incentivized to depart Canada."

[22] In the end, it does not matter whether this issue is characterized as one of procedural fairness or substance. The reality is that the Officer considered a key element of s.22(2) of the IRPA, concluding that the Applicants had failed to establish that they would leave Canada at the end of their authorized period of stay. I see no error in this conclusion, irrespective of the applicable review standard.

B. *The Decision was reasonable*

[23] Individuals seeking a work permit in Canada must satisfy an officer that they meet the eligibility requirements for the requested visa. Most notably for the purposes of this application, applicants to the Entrepreneur stream of the International Mobility Program, through the Ontario Immigrant Nominee Program who seek to establish a business must make a minimum personal investment, the amount of which varies based on a number of factors. As noted above, in order to qualify for the OINP, the PA committed in his Performance Agreement to invest CAD \$530,000 into his proposed business during its first year of operations. As such, he must be able to meet this investment requirement to be eligible for an LMIA-exempt work permit.

[24] As proof of his finances, the PA provided documentation confirming his net worth as CAD \$1,378,423, his income as CAD \$74,571, and his bank balance as CAD \$34,063.

[25] Despite the Applicant's arguments to the contrary, the Officer considered the evidence and reasonably concluded that the PA would likely not be able to meet the OINP Performance Agreement investment requirement. In coming to this determination, the Officer noted that although the client owns properties and a business in Pakistan, his liquid funds only amount to

\$34,000. It was thus unclear to the Officer how the PA would have access to the \$530,000 that he is required to invest in his business within the first year of its operations. This is a logical chain of analysis that can be followed without encountering any overarching flaws in the reasoning, and thus this finding should not be disturbed.

[26] The Applicant submits that the Officer erred by failing to provide a reasonable explanation for how the Applicant would be unable to meet the \$530,000 investment requirement, given that his certified net worth is CAD \$1,378,423 as confirmed by the OINP Net Worth and Legal Accumulation of Funds Verification Report. The Applicant further submits that it was unreasonable for the Officer to expect him to hold CAD \$530,000 in liquid funds to demonstrate his ability to make the investment. Respectfully, I disagree.

[27] It is trite law that the onus rests upon an applicant to put their best foot forward and provide, “complete, clear and convincing evidence to fulfill the eligibility requirements”: *Lakhanpal v Canada (Citizenship and Immigration)*, 2021 FC 694 at para 27. In this case, while the PA provided proof of his net worth, he did not provide any explanation as to how he would be able to access those funds in order to make the required \$530,000 investment. Notably, much of the PA’s net worth appears to be tied up in four properties in Pakistan. However, there was no suggestion from the PA that he planned to sell any of those properties in order to liquidize sufficient assets. Nor did the PA provide any other explanation as to how he planned to access the funds in question.

[28] Therefore, absent any explanation regarding how the PA’s net worth would be converted into sufficient liquid assets to cover his required \$530,000 investment within one year of

establishing his business, it was reasonable for the Officer to conclude that it was unlikely that the PA would be able to fulfill his investment requirement. As a consequence, it was also reasonable for the Officer to deny the work permit.

VI. CONCLUSION

[29] While the Applicant has made other arguments on judicial review, the Officer's finding on the liquidity of the Principal Applicant's assets provided a sufficient basis on which to deny the work permit application. As I have concluded that this finding was reasonable, I must therefore dismiss this application for judicial review. The parties did not propose a question for certification and I agree that none arises.

JUDGMENT in IMM-10658-23

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.
2. No question is certified for appeal.

"Angus G. Grant"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-10658-23

STYLE OF CAUSE: FARAAHA IQBAL, GHULAM MUSTAFA,
MUHAMMAD SHAHWAIZ, JAHANZAIB AND
MUHAMMAD SHAHEER V THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: OCTOBER 8, 2024

JUDGMENT AND REASONS: GRANT J.

DATED: NOVEMBER 18, 2024

APPEARANCES:

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