

Federal Court



Cour fédérale

Date: 20160810

Docket: IMM-335-16

Citation: 2016 FC 913

Ottawa, Ontario, August 10, 2016

PRESENT: The Honourable Mr. Justice Manson

BETWEEN:

MD MOBASSHIRUL ISLAM

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] The Applicant applies for leave and judicial review of the decision of the Immigration Officer, High Commission of Canada, Immigration Section, Singapore, dated November 16, 2015, denying the Applicant's application for permanent residence under the Skilled Worker Category and finding the Applicant inadmissible for misrepresentation under subsection 40(1)(a) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

II. Background

[2] The Applicant, Md Mobasshirul Islam, is a citizen of Bangladesh. He worked for his employer, Prime Bank Limited, since August 2004 in various different Information System Analyst positions. Prior to this, the Applicant worked for Mantrust Software & Media Ltd, from 2001 to August 2004, in the position of IT System analyst.

[3] Based on his work experience, the Applicant submitted an Application for Permanent Residence in Canada as a Federal Skilled Worker [FSW] under the occupation stream NOC 2171: Information Systems Analysts and Consultants. The Applicant filed this application without a representative.

[4] In the submitted FSW application, the Applicant provided documentation to support his work experience and employment in the field of Information System Analysts and Consultants, including the following documents:

- Certificate of Employment with Prime Bank Limited - April 28, 2014;
- Employment Reference letters from Prime Bank Limited – 2014;
- Appointment letter - Prime Bank Limited - 2004;
- Confirmation letter - Prime Bank Limited 2005;
- Posting letter - Prime Bank Limited – 2004;
- Promotion related letters from Prime Bank Limited - 2007, 2009, 2011;
- 2006 Salary increase letter from Prime Bank Limited – 2006;
- Salary fixation letters from Prime Baille Limited – 2009;

- Payment Network Workshop Certification
 - MasterCard Academy Course: Migrating EMV Technology
 - Visa Business School Certificate of Completion: EMV Workshop
 - MasterCard Worldwide: MChip (EMV) Technical Training Symposium;
- FIS Acceptance Letter - accepted by Prime Baille Limited, signed by the Applicant;
- Employment letters from Mantrust Software & Multimedia Systems Ltd - 2001 and 2004.

[5] The Application was received on July 3, 2014, and an initial assessment as to eligibility was made by a Case Processing Agent at the Centralized Intake Office. The Agent reviewed the Applicant's file under the FSW - Eligible occupation stream for Ministerial Instructions Eligibility and determined that based on the documentation provided, the duties performed by the Applicant corresponded to the lead statement and main duties for the NOC 2171 and that the Applicant appeared to have the minimum of at least one year of continuous full-time (or equivalent part-time) paid work experience in the last ten years. The Agent made an initial assessment that the Applicant appeared to have the required 67 points or more on the selection grid; the Application was then forwarded to the Singapore High Commission for further assessment and decision.

[6] In April of 2015, the Applicant submitted two requests for an update as to the processing of his applications.

[7] After not receiving an update for almost a year, the Applicant filed an Access to Information Request in May 2015.

[8] On September 8, 2015, the Applicant received by e-mail a procedural fairness letter from the Canadian High Commission in Singapore. In the letter, the Deputy Immigration Program Manager [DIPM] advised that the Applicant may not meet the requirements for immigration to Canada on the basis that he may have contracted the services of an unauthorized agent, Visa Center Inc., without identifying them on his application. Furthermore, the DIPM also indicated that he had concerns that the employment references provided by the Applicant from Prime Bank Limited were not genuine and as a result, the Applicant could be found to be inadmissible for misrepresentation.

[9] With regards to the genuineness of the employment letters, the DIPM had concerns that the employment references from Prime Bank Limited, shared too many similarities in style and content with other documents submitted with the assistance of Visa Center Inc. to others, to be coincidental.

[10] The Applicant provided a responding submission letter and additional documentation to prove his employment with Prime Bank Limited. In the submissions, the Applicant advised that he had used the Visa Center Inc. address due to the familiarity of courier companies with that address, and that he had only used them in order to take the English Language Testing System [ELTS] exam and the Educational Credential Assessment [ECA] correspondence. The Applicant provided additional documents to prove employment.

[11] The Officer reviewed the Applicant's responses, and determined that the Applicant did not address his concerns. The Officer decided that it was too much a coincidence and not credible that the Applicant chose the same style and format for the reference letters as those submitted by Visa Centre Inc.

[12] The Applicant was refused without an interview on November 16, 2015. The basis of the refusal was the Officer's finding that the Applicant had submitted fraudulent employment references from Prime Bank Limited in his application.

[13] The Officer also noted that although given the chance to respond, the Applicant's submission did not satisfactorily address the raised concerns, and that furthermore “you alluded to the fact that the original reference letter submitted with your application did not actually originate from Prime Bank Limited. Your assertion about not using the services of an unauthorized agent: Visa Center contrary to Section 91 of the Act was not credible given the similarities in your file's presentation when compared with other Visa Center clients.” As a result, the FSW application was denied and the Applicant was found to be inadmissible due to misrepresentation pursuant to subsection 40(1)(a) of the IRPA.

III. Issues

[14] The issues are:

- A. Was the Officer's decision reasonable?

- B. Did the Officer breach principles of procedural fairness in failing to give adequate details in the procedural fairness letter about the concerns with the Visa Centre Inc documentation?

IV. Standard of Review

[15] The standard of review for the Officer's decision is reasonableness. The standard of review concerning procedural fairness is correctness.

V. Analysis

- A. *Was the Officer's decision reasonable?*

[16] The Respondent submits that the Officer's concerns that the Applicant engaged an unauthorized agent (Visa Centre Inc) and that the reference letters he submitted may not be genuine were reasonable. However, the Applicant submits that the provided extensive documentation to support his employment in various information system analyst positions since 2004 with Prime Bank Limited – the Officer was unreasonable in both suggesting similarities with Visa Centre Inc documentation rendering the initial documentation not to be genuine, based on use of a mailing address, but also in failing to consider that the documentation submitted in response to the procedural fairness letter contradicted that the initial documentation was fraudulent, including:

- Salary fixation letters from Prime Bank Limited – 2015;
- The Applicant's ID card, official stamp and visiting card from Prime Bank Limited;
- Visiting business cards from various supervisory personnel at Prime Bank Limited, including Muhammad Mahmud Hassan, Assistant Vice President of IT; Md Iqbal Hossain, Head of IT, A.S.M. Khairuzzaman, CTO;

- Employment Reference letters from Prime Bank Limited – 2015;
- Employment Certification letters from Prime Bank Limited – 2015;
- Prime Bank Diary page showing his name and position;
- The Applicant’s statement of salary and account;
- Newspaper cuttings of the Applicant at the inauguration of the program that the Applicant was working on (the Prime Bank Limited – JCB interface);
- Photographs of the Applicant at the JCB opening night event and also in the Prime Bank Date Center;
- Project plans from the programs that he was working on at Prime Bank Limited.

[17] I agree with the Applicant that the DIPM’s determination of misrepresentation under subsection 40(1)(a) of the IRPA, appears to be unreasonable.

B. *Did the Officer breach principles of procedural fairness in failing to give adequate details in the procedural fairness letter about the concerns with the Visa Centre Inc documentation?*

[18] The Respondent argues that the Officer’s procedural fairness letter, indicating that the reference letters may not be genuine as they were quite similar to those submitted by many other Visa Centre Inc clients, in terms of style and content, was also fair and that the Applicant had a meaningful opportunity to respond and did so.

[19] However, the Applicant correctly points out that of the four criteria relied on by the Officer to make his finding of possible fraudulent or non-genuine letters, or misuse of the Visa Centre Inc as an agent, really only the address of the Visa Centre Inc was a valid issue.

[20] The use of the Visa Centre Inc address was explained and clarified by the Applicant, and as in the case of *Chawla v Canada (Minister of Citizenship and Immigration)*, 2014 FC 434, at paragraphs 16-19, the Applicant here was not given a meaningful opportunity to respond to

credibility concerns with respect to his file. This failure by the Officer amounts to procedural unfairness.

[21] The cases relied on by the Respondent, *Karahroudi v Canada (Minister of Citizenship and Immigration)*, 2016 FC 522 and *El Maghraoui v Canada (Minister of Citizenship and Immigration)*, 2013 FC 883 [*El Maghraoui*], are both national security cases and distinguishable on their facts. In fact, Mr. Justice de Montigny in *El Maghraoui*, above, at paragraph 22, is quite clear in stating that “the concern will always be to ensure that the applicant has the opportunity to fully participate in the decision-making process by being informed of information that is not favourable to the applicant and having the opportunity to present his or her point of view”.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The Application is allowed and the Application is referred back to a different Officer for reconsideration;
2. There is no question for certification.

"Michael D. Manson"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-335-16

STYLE OF CAUSE: MD MOBASSHIRUL ISLAM V MCI

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: AUGUST 9, 2016

JUDGMENT AND REASONS: MANSON J.

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