Federal Court  Cour fédérale

Date: 20170221

Dockets: IMM-2124-16
IMM-2125-16

Citation: 2017 FC 202

Ottawa, Ontario, February 21, 2017

PRESENT: The Honourable Mr. Justice Russell

Docket: IMM-2124-16

BETWEEN:

POONAM BAJWA

Applicant

and

THE MINISTER OF IMMIGRATION,
REFUGEES AND CITIZENSHIP

Respondent

Docket: IMM-2125-16

AND BETWEEN:

MANJINDER SINGH RANDHAWA

Applicant

and

**THE MINISTER OF IMMIGRATION,
REFUGEES AND CITIZENSHIP**

Respondent

JUDGMENT AND REASONS

I. INTRODUCTION

[1] This is an application under s 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [Act] for judicial review of two decisions of an immigration officer at the Citizenship and Immigration Canada office in Edmonton [Visa Officer], both dated May 9, 2016 [Decisions], which denied the Applicants' applications for work permit extensions. The applications have been consolidated into a single hearing because the application of Manjinder Singh Randhawa [Male Applicant] is dependent on the work status of Poonam Bajwa [Female Applicant].

II. BACKGROUND

[2] The Applicants are a wife and husband who are citizens of India. By profession, the Female Applicant is a religious worker; specifically, a Granthi or Sikh priest. The Male Applicant is a truck driver. Prior to their arrival in Canada, they were employed in Greece for several years. On February 26, 2013, the Applicants entered Canada via Toronto on visitor visas with a stated purpose of visiting a friend in Calgary.

[3] The Female Applicant was issued a work permit ostensibly dated February 27, 2013 in Coutts, Alberta. She received an employment offer dated February 26, 2014 from the Sri Guru Arjun Dev Ji Sikh Society of Saskatoon [Sikh Society]. She then applied twice to extend her work permit and was refused on February 12, 2014 and June 22, 2015. After the latter refusal, the Female Applicant was advised to leave Canada. She then submitted a third application for a work permit extension, which was refused. That refusal is the subject of this judicial review.

[4] On May 27, 2013, the Male Applicant was issued a work permit in Coutts, Alberta. The work permit was extended on April 3, 2014. Subsequent applications to further extend the work permit as a dependent of his spouse were denied and the Male Applicant was advised to leave Canada on June 22, 2015. The Male Applicant then submitted another application for a work permit extension on June 26, 2015, which was refused. This is the other decision under review.

III. DECISIONS UNDER REVIEW

[5] Decisions sent from a Visa Officer to the Applicants by letters dated May 9, 2016 determined that the Applicants did not qualify for work permit extensions.

[6] The Visa Officer determined that the Applicants had failed to meet the requirements for a work permit extension. In both Decisions, the Visa Officer was not satisfied that the Applicants were genuine workers in Canada and would leave at the end of their stay as temporary residents. In reaching the Decisions, the Visa Officer considered several factors, including the length of

their proposed stay in Canada, their reasons for original entry and reasons for requested extension, and the purpose of their visits.

A. *Female Applicant*

[7] In the Global Case Management System [GCMS] Notes for the Female Applicant, the Visa Officer considered the Female Applicant's immigration history and noted that although she had been advised to leave Canada after the refusal of a prior application for a work permit extension, the Female Applicant had remained in Canada.

[8] The Visa Officer also considered the circumstances of the Applicants' arrival in Canada. The Applicants entered Canada via Toronto, Ontario on February 26, 2013 with a stated purpose of visiting a friend in Calgary. The next day, the Applicants applied for work permits in Coutts, Alberta. Based on this sequence of events, the Visa Officer was not satisfied that the Applicants had entered Canada with the intention of visiting friends rather than working.

[9] Next, the Visa Officer concluded that, based on the vague outline of her job description and duties, the Female Applicant had failed to satisfy the Visa Officer that she had the ability to minister to a congregation under the auspices of the Sikh religious denomination.

[10] Additionally, the Visa Officer noted that the website provided for the employer did not exist, nor did evidence of the Female Applicant's pay stubs, despite claims to the contrary.

[11] Furthermore, the Visa Officer was not satisfied with the letters provided by the employer, as there were discrepancies in the signatures.

[12] Finally, the Visa Officer noted that the Female Applicant had gained a significant amount of experience in Canada and would not have problems seeking employment outside of Canada.

[13] Based on these reasons, the Visa Officer was not satisfied that the Female Applicant was a *bona fide* worker or would leave after her authorized stay and refused the application for a work permit extension.

B. *Male Applicant*

[14] In the GCMS Notes for the Male Applicant, the Visa Officer also considered the Male Applicant's immigration history and noted that, despite being advised to leave Canada after the refusal of prior applications for work permit extensions, the Male Applicant had remained in Canada. The Visa Officer also concluded that the Male Applicant did not qualify for a work permit extension since his application was dependent on being the spouse of a skilled worker and the Female Applicant's application for a work permit extension had been denied.

IV. ISSUES

[15] The Applicants submit that the following are at issue in this application:

A. Did the Visa Officer err in the assessment of the applications by not basing it on reasonable inferences drawn from the known facts, thereby rendering the Decisions unreasonable?

B. Did the Visa Officer act without jurisdiction, act beyond his or her jurisdiction, or refuse to exercise his or her jurisdiction?

C. Did the Visa Officer fail to observe a principle of natural justice, procedural fairness, or other procedure that she was required by law to observe?

D. Did the Visa Officer err in law in making a decision or an order, whether or not the error appears on the face of the record?

E. Did the Visa Officer base his or her decision or order on an erroneous finding of fact that she made in a perverse or capricious manner or without regard for the material before him or her; in particular, the finding that the employment offer was not genuine?

F. Did the Visa Officer fail to treat the Applicants fairly and fail to provide the Applicants with any procedural safeguards, including full disclosure and full opportunity to cross-examine any evidence alleged against the Applicants?

G. Did the Visa Officer abuse the process by taking irrelevant considerations into account and failing to properly execute his or her discretion, fettering his or her discretion, and abusing his or her discretion by using it for an improper purpose?

H. Did the Visa Officer exhibit bias against the Applicants, thereby preventing the impugned Decisions from being allowed to stand?

I. Did the Visa Officer deny the Applicants the right to a properly constituted hearing, conducted accordingly with all of the proper judicial principles, including the proper rules of evidence and procedure?

J. Did the Visa Officer:

    i. Fail to follow the rule of *audi alteram partem*?

    ii. Make a decision that was against the evidence and the weight of the evidence?

    iii. Fail to act judicially in all of the circumstances?

    iv. Base his or her decision on undisclosed factors and assumptions that were not made known to the Applicants?

K. Did the Visa Officer act in any other way that was contrary to law?

L. Did the Visa Officer fail to observe the principles of natural justice and procedural fairness and base his or her decisions on erroneous findings without regard to the materials before him or her?

[16] The above are generic grounds that don't necessarily arise on the facts of this case. A review of the submissions suggests the following actual issues for review:

1. Is the Visa Officer's decision reasonable?
2. Did the Visa Officer err in inferring that the Applicants' purpose of visit was to obtain work rather than visit a friend? Alternatively, did the Visa Officer make an error of fact in determining the Applicants had applied for work permits the day after their arrival in Canada?
3. Did the Visa Officer err in finding that the job description provided by the Female Applicant was too vague to demonstrate she had the ability to perform the job?
4. Did the Visa Officer err in inferring that the job did not exist for the reason that:
    - The employer's website did not exist at the time it was investigated?
    - There were no pay stubs in the application, despite the cover letter stating their inclusion?
5. Did the Visa Officer err in according less weight to the employer's letters on the basis that the signatures were different despite being from the same person?
6. Did the Visa Officer err in not providing the Female Applicant an opportunity to respond to the concerns regarding the documentation?
7. Did the Visa Officer demonstrate bias against the Applicants?

[17] The Respondent submits that the following are at issue in this application:

1. Are the affidavits submitted by the Applicants admissible?
2. Was the Visa Officer's decision reasonable?
3. Was the Visa Officer's decision made with procedural fairness?

V. STANDARD OF REVIEW

[18] The Supreme Court of Canada in *Dunsmuir v New Brunswick*, 2008 SCC 9 [*Dunsmuir*] held that a standard of review analysis need not be conducted in every instance. Instead, where

the standard of review applicable to a particular question before the court is settled in a satisfactory manner by past jurisprudence, the reviewing court may adopt that standard of review. Only where this search proves fruitless, or where the relevant precedents appear to be inconsistent with new developments in the common law principles of judicial review, must the reviewing court undertake a consideration of the four factors comprising the standard of review analysis: *Agraira v Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36 at para 48.

[19] The issues raised by the Applicants regarding a visa officer's assessment of an application in the context of a decision regarding the issuance of a work permit is reviewable on a standard of reasonableness: see *Sharma v Canada (Citizenship and Immigration)*, 2014 FC 786 at para 10.

[20] The Applicants have also raised issues concerning procedural fairness, including bias, which will be reviewed under the standard of correctness and tests established in the jurisprudence for these issues: *Khosa v Canada (Citizenship and Immigration)*, 2009 SCC 12 at para 43 [*Khosa*].

[21] When reviewing a decision on the standard of reasonableness, the analysis will be concerned with "the existence of justification, transparency and intelligibility within the decision-making process [and also with] whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law." See *Dunsmuir*, above, at para 47, and *Khosa*, above, at para 59. Put another way, the Court should intervene only if the

Decision was unreasonable in the sense that it falls outside the "range of possible, acceptable outcomes which are defensible in respect of the facts and law."

VI. STATUTORY PROVISIONS

[22] The following provisions from the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [*Regulations*] are relevant in this proceeding:

Work permits	**Permis de travail — demande préalable à l'entrée au Canada**
200 (1) Subject to subsections (2) and (3) — and, in respect of a foreign national who makes an application for a work permit before entering Canada, subject to section 87.3 of the Act — an officer shall issue a work permit to a foreign national if, following an examination, it is established that	200 (1) Sous réserve des paragraphes (2) et (3), et de l'article 87.3 de la Loi dans le cas de l'étranger qui fait la demande préalablement à son entrée au Canada, l'agent délivre un permis de travail à l'étranger si, à l'issue d'un contrôle, les éléments ci-après sont établis :
(a) the foreign national applied for it in accordance with Division 2;	a) l'étranger a demandé un permis de travail conformément à la section 2;
(b) the foreign national will leave Canada by the end of the period authorized for their stay under Division 2 of Part 9;	b) il quittera le Canada à la fin de la période de séjour qui lui est applicable au titre de la section 2 de la partie 9;
(c) the foreign national	c) il se trouve dans l'une des situations suivantes :
(i) is described in section 206 or 208,	(i) il est visé aux articles 206 ou 208,
(ii) intends to perform work described in section 204 or 205 but does not have an offer of	(ii) il entend exercer un travail visé aux articles 204 ou 205 pour lequel aucune offre

employment to perform that work or is described in section 207 but does not have an offer of employment,	d’emploi ne lui a été présentée ou il est visé à l’article 207 et aucune offre d’emploi ne lui a été présentée,
(ii.1) intends to perform work described in section 204 or 205 and has an offer of employment to perform that work or is described in section 207 and has an offer of employment, and an officer has determined, on the basis of any information provided on the officer’s request by the employer making the offer and any other relevant information,	(ii.1) il entend exercer un travail visé aux articles 204 ou 205 pour lequel une offre d’emploi lui a été présentée ou il est visé à l’article 207 et une offre d’emploi lui a été présentée, et l’agent a conclu, en se fondant sur tout renseignement fourni, à la demande de l’agent, par l’employeur qui présente l’offre d’emploi et tout autre renseignement pertinent, que :
(A) that the offer is genuine under subsection (5), and	(A) l’offre était authentique conformément au paragraphe (5),
(B) that the employer	(B) l’employeur, selon le cas :
(I) during the six-year period before the day on which the application for the work permit is received by the Department, provided each foreign national employed by the employer with employment in the same occupation as that set out in the foreign national’s offer of employment and with wages and working conditions that were substantially the same as — but not less favourable than — those set out in that offer, or	(I) au cours des six années précédant la date de la réception de la demande de permis de travail par le ministère, a confié à tout étranger à son service un emploi dans la même profession que celle précisée dans l’offre d’emploi et lui a versé un salaire et ménagé des conditions de travail qui étaient essentiellement les mêmes — mais non moins avantageux — que ceux précisés dans l’offre,
(II) is able to justify, under subsection 203(1.1), any failure to satisfy the criteria set out in subclause (I), or (iii) has been offered employment, and an officer has made a positive determination under	(II) peut justifier le non-respect des critères prévus à la sous-division (I) au titre du paragraphe 203(1.1), (iii) il a reçu une offre d’emploi et l’agent a rendu une décision positive conformément aux

paragraphs 203(1)(a) to (e); and

alinéas 203(1)a) à e);

(d) [Repealed, SOR/2004-167, s. 56]

d) [Abrogé, DORS/2004-167, art. 56]

(e) the requirements of subsections 30(2) and (3) are met, if they must submit to a medical examination under paragraph 16(2)(b) of the Act.

e) s'il est tenu de se soumettre à une visite médicale en application du paragraphe 16(2) de la Loi, il satisfait aux exigences prévues aux paragraphes 30(2) et (3).

…

…

Application for renewal

Demande de renouvellement

201 (1) A foreign national may apply for the renewal of their work permit if

201 (1) L'étranger peut demander le renouvellement de son permis de travail si :

(a) the application is made before their work permit expires; and

a) d'une part, il en fait la demande avant l'expiration de son permis de travail;

(b) they have complied with all conditions imposed on their entry into Canada.

b) d'autre part, il s'est conformé aux conditions qui lui ont été imposées à son entrée au Canada.

Renewal

Renouvellement

(2) An officer shall renew the foreign national's work permit if, following an examination, it is established that the foreign national continues to meet the requirements of section 200.

(2) L'agent renouvelle le permis de travail si, à l'issue d'un contrôle, il est établi que l'étranger satisfait toujours aux exigences prévues à l'article 200.

…

…

Canadian interests

Intérêts canadiens

205 A work permit may be issued under section 200 to a foreign national who intends to perform work that

205 Un permis de travail peut être délivré à l'étranger en vertu de l'article 200 si le travail pour lequel le permis est demandé satisfait à l'une ou

	l'autre des conditions suivantes:
…	…
(d) is of a religious or charitable nature.	d) il est d'ordre religieux ou charitable.

VII. ARGUMENTS

A. *Applicants*

[23] The Applicants base their submissions on the position of the Female Applicant as the Male Applicant's application is dependent on her work status.

[24] The Applicants submit that the Visa Officer erred by refusing the Female Applicant's application for a work permit without valid or justifiable reason. In particular, the Applicants take issue with the Visa Officer's failure to consider the Female Applicant's acceptance as a Provincial Nominee by the Province of Saskatchewan, which needlessly deprived a congregation of a Granthi who was urgently needed. If the Applicants are forced to leave, it will be difficult for the Sikh Society to find a full-time replacement and religious services will have to be suspended.

(1) Employment Position Description

[25] In the GCMS Notes related to the Decisions, the Visa Officer doubted the Female Applicant's ability to perform such work due to a "vague job description." The Applicants take issue with this reason because the job description provided is nearly identical to

the advertisements for religious worker positions on official government websites. Additionally, the Applicants argue that the ability to perform the work has no relation to the provision of a job description. Furthermore, the Female Applicant qualifies as a religious worker in accordance with the National Occupation Classification [NOC] Code 4154 for Ministers of Religion. In fact, the NOC description closely mirrors the Female Applicant's job description, with the exception of specific adaptations for the Sikh religion. Moreover, the Applicants argue that it is not necessary to provide lengthy and complicated details because the duties required for a priest or minister of a religion are almost universally understood. Finally, the law is clear that visa officers are not experts and should not assess the employment qualifications of applicants: see *Chen v Canada (Minister of Citizenship and Immigration)*, [2000] FCJ No 594 at paras 21-24.

(2) The Sikh Society Website

[26] Next, the Applicants disagree with the Visa Officer's implication that the employment position does not exist due to her inability to access the Sikh Society website. At the time of the application, the website was functional; however, in the ten and a half months following the application, the website was hacked and the Sikh Society decided to create a new website with a different address, which contains photographs of the Female Applicant in her role as a Granthi. The Applicants argue that they should not be blamed for the demise of the old website; rather, the fault is on the Visa Officer, who took ten and a half months to investigate the matter. Additionally, the Applicants contend that the website was not submitted, but merely appeared as part of a letterhead and for that reason they were not obligated to provide the new website. The Applicants believe the Visa Officer should have conducted a proper investigation by attempting

to contact the employer through physical mail, e-mail, or telephone rather than merely view a website and conclude the job, like the website, must be non-existent.

(3) Mr. Singh's Letters

[27] With regards to the letters written by Mr. Balvir Singh, the director of the Sikh Society, the Visa Officer had concerns with discrepancies. However, the Applicants argue that the letters are in fact consistent with each other. Two are offers of employment dated February 26, 2014 and March 4, 2015 and another is a letter of reference dated March 11, 2015; furthermore, Mr. Singh has sworn an affidavit that states he is the author of all three letters. The reason for the second offer of employment is because Citizenship and Immigration Canada required a new letter upon the Female Applicant's completion of the one-year term of employment. Additionally, the Applicants argue that if there had been issues concerning the credibility of the letters, the Visa Officer was obligated to provide the Applicants an opportunity to respond: see *Kaur v Canada (Citizenship and Immigration)*, 2011 FC 219 at paras 23-29 [*Kaur*]. As for the reason why the Applicants did not explain any discrepancies between the letters, the Applicants argue that they did not believe anything to be wrong with the letters since they were provided by her employer; thus, there was no obligation to explain the letters.

(4) Pay Stubs

[28] As to the concerns regarding the lack of pay stubs for 2014 to support the application, the Applicants contend that pay stubs were submitted, which is why they were referenced in the covering letter that accompanied the Female Applicant's application. The Applicants believe that

Citizenship and Immigration Canada misplaced them; however, they have provided copies in this application. The Applicants are entitled to correct errors and omissions; the reason why they could not do so previously is because they were never informed that the pay stubs were not in the file until the process for judicial review was initiated. The Applicants also do not believe they should be attributed blame for the absence of the pay stubs in the application; rather, it is the fault of Citizenship and Immigration Canada.

(5) The Visa Officer's Conclusions

[29] The Applicants also find the Visa Officer's conclusions to be contradictory. Despite implying that the employment position is fraudulent, the Visa Officer found that the Female Applicant had gained significant experience in Canada and would not have problems finding employment elsewhere. These conclusions are inconsistent with each other.

[30] The Applicants also argue that it was inappropriate for the Visa Officer to conclude that the Female Applicant was not a *bona fide* worker who would not leave after her authorized stay. The position of a Granthi requires work of a religious or charitable nature; thus, the Female Applicant is a *bona fide* worker. In regards to the assumption that the Female Applicant would not leave after her stay, the Applicants submit that this is an inappropriate assumption as the Applicants have never broken immigration laws, whether in Canada or elsewhere; nor do they have criminal records. The jurisprudence requires visa officers to provide reasonable explanations for such a conclusion, which are not present in this case: see *Patel v Canada (Citizenship and Immigration)*, 2009 FC 602*; Villagonzalo v Canada (Citizenship and Immigration)*, 2008 FC 1127; *Portillo v Canada (Citizenship and Immigration)*, 2014 FC 866 at

para 27 [*Portillo*]. Moreover, the jurisprudence also requires visa officers to provide an opportunity to respond to any doubts regarding intentions to leave Canada on the expiry of a visa: see *Li v Canada (Citizenship and Immigration)*, 2008 FC 1284.

[31] Furthermore, the Applicants submit that the Visa Officer made a mistake in determining that the Female Applicant applied for the work permit in Coutts, Alberta on February 27, 2013, the day after her arrival. In actuality, the application was made on February 27, 2014. The Applicants contend that the Visa Officer did not have the proper document when making the Decision; otherwise, the year in which the first work permit was issued would have been clear. Additionally, the Visa Officer completely ignored the third letter from Mr. Singh, which is not referenced in the Decision.

(6) Seriousness of the Decision

[32] Another issue that the Applicants disagree with is the contention that the Decision does not carry serious consequences. The Applicants claim that once an applicant is rejected for a work permit, it is very unlikely the applicant will be permitted to return to Canada, let alone be granted a work permit. Although they may be technically permitted to apply, the grant of a work permit to a previously denied applicant is rare, as evident by the question on the application form that asks whether the applicant has ever been required to leave or been denied entry to Canada. Thus, this Decision does carry a serious consequence because the Applicants may be barred from ever working in Canada or other countries.

(7) Bias

[33] The Applicants submit that the Visa Officer was, as described in para 45 of *Portillo*, above, quoting Justice Harrington in *Serrudo Sempertegui v Canada (Citizenship and Immigration)*, 2009 FC 1176 at para 9, an officer "who simply will not be satisfied, no matter what." The Visa Officer was biased in assuming that the Female Applicant would break the law and remain in Canada unauthorized. The Applicants believe that the reasons display extreme bias and were possibly motivated by racism or malice. The Applicants contend that the Visa Officer exhibited utter contempt for the Female Applicant, her employment position, her employment, and her religion by declaring that the job was fraudulent without providing a rational basis. Moreover, the Applicants argue that the Visa Officer's extra scrutiny and ultimate refusal were influenced by her bias against a foreign religion practiced by non-Caucasians and racism against non-Caucasians.

(8) Additional Evidence

[34] Finally, the Applicants submit that they are justified in submitting additional evidence as part of this judicial review. Mr. Singh's third letter was submitted because it was missing from Citizenship and Immigration Canada's file and it was not clear which of his letters the Visa Officer referred to in the Decision. The pay stubs were submitted because, again, they were missing from Citizenship and Immigration Canada's file despite their inclusion in the original application. The Female Applicant's reference to the new Sikh Society website was also necessary to explain why the old website did not work and counter the Visa Officer's inference that the job was fraudulent.

B. *Respondent*

(1) Additional Evidence

[35] The Respondent submits that the affidavits submitted by the Applicants are inadmissible for the reason that they consist largely of evidence that was not before the Visa Officer, hearsay evidence, and/or argument. The affidavits attempt to introduce new evidence that was not submitted as part of the work permit applications, including a third letter from Mr. Singh, a reference to a new website address, previous experience as an unpaid Granthi in Greece, pictures of the Female Applicant, and pay stubs. The new evidence, such as Mr. Singh's letter and the pay stubs, which was not before the decision-maker is not admissible in a judicial review proceeding save in exceptional circumstances, which the Applicants have not demonstrated: see *Bekker v Canada*, 2004 FCA 186 at para 11 [*Bekker*]. Additionally, affidavits should be confined to facts within the personal knowledge of the deponent; the Applicant's affidavits consist of conclusions and arguments as to the merits of the Visa Officer's Decision or other non-factual matters and should be inadmissible: see *Bakary v Canada (Citizenship and Immigration)*, 2006 FC 1111 at para 5.

(2) Reasonableness

[36] The Respondent submits that the Visa Officer's conclusion that the Female Applicant was not a *bona fide* worker who would leave at the end of her authorized stay was reasonable based on the record. The Female Applicant had provided minimal information supporting her work, which consisted of: a letter from the Saskatchewan Immigration Nominee Program;

documentation related to her education; a copy of her work permit BB 162 265 530; a cover letter that indicated the provision of a pay stub, which was not submitted; and two letters from Mr. Singh, dated March 5, 2015 and March 11, 2015, with two different signatures. Additionally, both Applicants had already failed to leave Canada upon the expiry of a previous permit.

[37] As a temporary work permit applicant, the Female Applicant had the onus of providing all relevant supporting documentation and sufficient credible evidence to satisfy the Visa Officer that she could fulfil the job requirements: see *Sulce v Canada (Citizenship and Immigration)*, 2015 FC 1132 at para 10. Although she indicated that she submitted pay stubs in her cover letter, the Visa Officer's notes state there was no evidence of a pay stub in any attachment in the GCMS and a bare assertion that documents were sent as part of a package is generally insufficient to prove that they were actually sent to the decision-maker: see *Jeevaratnam v Canada (Citizenship and Immigration)*, 2011 FC 1371 at para 7.

[38] It was reasonable for the Visa Officer to assess whether the work to be performed by the Female Applicant was of a religious or charitable nature and whether the Female Applicant would leave at the end of her stay because s 200 of the *Regulations* requires the issuance of a work permit to a foreign national if, following an examination, it is established that the foreign national applied for it in an appropriate manner, would leave following its expiry, and intends to perform the work described in s 205 of the *Regulations*.

[39] As the Applicants state in their Memorandum of Argument, the job description provided in Mr. Singh's letter of March 4, 2015 mirrored the generic description for NOC Code 4154 –

Ministers of Religion. This did not establish the particular Sikh rituals or other functions that the Female Applicant would be asked to perform or what her qualifications were to satisfy the description. Thus, it was reasonable for the Visa Officer to conclude that she was not satisfied the Female Applicant had the ability to minister.

[40] The Respondent argues that it was reasonable for the Visa Officer to determine the letters to be inadequate. First, the signatures are significantly different and this is can be observed with a brief examination. Second, the March 4, 2015 letter states that the position was offered following the application and interview with a start date of May 1, 2015. Meanwhile, the March 11, 2015 letter indicates the Female Applicant had worked there since March 1, 2014. Based on this inconsistency and the lack of indication elsewhere in the record to establish the Female Applicant's prior employment with the Sikh Society, it was reasonable for the Visa Officer not to give Mr. Singh's letters any weight.

[41] Furthermore, the Visa Officer was unable to review pay stubs or the employer's website because they were not provided and did not work, respectively. If the website address had changed, the Female Applicant was obligated to notify the Visa Officer. However, since the Visa Officer did not have these documents available for review, the Decision had to be made based on the vague job description provided in letters that could not be given much weight. Thus, the Respondent submits it was reasonable for the Visa Officer to find the Female Applicant was not a *bona fide* worker.

[42] The Female Applicant made her initial application for a work permit one day after arriving in Canada, which is strong evidence that she entered with the intention to work rather than visit a friend. Although the Applicants' Memorandum of Further Argument states that she applied for the permit on February 27, 2014 and not February 27, 2013, there is no evidence in her affidavit that supports this contention. Thus, such evidence would also not have been before the Visa Officer. Additionally, the work permit submitted by the Female Applicant had a date of February 27, 2013. As with the letters, if there was a reason as to why this date was inaccurate, the onus was on the Female Applicant to provide an explanation. Furthermore, the fact that the Applicants had failed to leave when their previous applications for work permit extensions were denied on June 22, 2015 provides a basis for the Visa Officer's conclusion that they would not leave after the end of their authorized stay. Thus, the Visa Officer's conclusion was reasonable and not made based on bias or stereotype.

(3) Procedural Fairness

[43] The Respondent argues that the Visa Officer's Decision was not based on the credibility of the Female Applicant but rather on the insufficient information provided by the Female Applicant to establish that she met the requirements of ss 200 and 205 of the *Regulations*. In immigration applications, the applicant has the onus of satisfying the officer of all parts of the application and it is generally not a procedural fairness requirement that work permit applicants be granted an opportunity to respond to the concerns of officers, particularly when there is no evidence of serious consequences to the applicant: see *Li v Canada (Citizenship and Immigration)*, 2012 FC 48 at para 31.

[44] The discrepancies in Mr. Singh's letters were evident on the face of the documents, and the Female Applicant should have been aware of them; thus, she had the opportunity to explain the discrepancies when the letters were submitted and there was no obligation on the Visa Officer to provide a further opportunity. The Female Applicant had the onus of satisfying the Visa Officer on all parts of the application, which she did not do.

VIII. ANALYSIS

A. *Preliminary Matters*

(1) Conduct of Counsel

[45] The written submissions of Applicants' counsel (Atinder Jit Uppal of Uppal Pandher LLP) are replete with extravagant and/or offensive language and accusations that have no evidentiary basis to support them. I will provide a few examples to illustrate the problems from the Applicants' Reply to the Respondent's Memorandum of Argument:

(a) Paragraph 12:

> First of all, to respond in general, to the Memorandum, it must be pointed out, that both presently in this document, and in the previous Memorandum of Applicant, as well as her and the employer's Affidavits, the Applicant and employer were merely responding to the Rule 9 Reasons, and they are certainly entitled to do so, particularly as the Reasons were so FULL OF ERRORS ON THE FACE OF THE RECORD, and exhibited EXTREME BIAS, to the point of great unreasonableness, possibly motivated by RACISM or MALICE against the Respondent. At the very least, Officer has exhibited utter contempt for the Applicant, her job (which is/was real), her employer (who is also real), and the Sikh religion (and possibly religion and religious workers generally), to the extent of declaring her job to be fake, without any rational basis for that, whereas another officer would normally have accepted her applications and documents at face value, as they were in fact, in the first time she applied for her Work Permit,

> when she encountered no difficulties at all with the Respondent, and it was routinely granted as it should have been.

(b) Paragraph 16:

> An Applicant clearly can not be expected to re-supply earlier documents that she or her employer submitted to CIC on earlier applications, one clearly expects that the Officer would have access to all of these, and be able to refer to it in the decision making process. In Officer's failure in this regard, and in making the errors that she did, the Officer displayed gross incompetence and negligence of a high degree.

(c) Paragraph 20:

> Both the Applicant and the Employer were very shocked and surprised by the refusal, as both believe strongly that everything was done correctly; she submitted precisely the same types of documents on the most recent application, as were submitted on the first, nothing was known to be wrong. It is our understanding that normally applications for Religious Workers, especially of Ministers of Religion, are accepted routinely by the Respondent, as a matter of course, and very seldom questioned. It is believed that the extra scrutiny and ultimate refusal by the Officer may have been influenced by BIAS against a "foreign" religion practised by "non-whites"[.]

(d) Paragraph 22:

> Another indicia of the Officer's gross incompetence is that it took her ten and a half months to come up with a decision, while she was supposedly "investigating" this matter. It is submitted, that no bona fide "INVESTIGATION" ever actually took place, the only thing she acknowledges that was ever done, was to attempt to view the website that had become defunct (probably many months after the fact), and NOTHING ELSE. THERE WAS NO ATTEMPT TO CONTACT APPLICANT OR HER EMPLOYER WHATSOEVER, TO ASK ANY QUESTIONS, OR TO CLARIFY, AND THIS COULD HAVE VERY EASILY BEEN DONE, AS A PHYSICAL/MAILING ADDRESS, TELEPHONE NUMBER, AND E-MAIL WERE PROVIDED. IT WOULD HAVE BEEN VERY EASY TO VERIFY THE EXISTENCE OF THE SIKH TEMPLE, AND OF THE GENUINENESS ("BONA FIDES") OF THE JOB AND JOB OFFER, BUT NO SUCH CONTACT FROM CIC WAS EVER RECEIVED. Both the Applicant, as well as Balvir Singh and/or anyone else at the Temple would gladly have answered questions to allay any doubts

CIC may have had. SO WHAT WAS THE OFFICER DOING FOR THOSE 10 $^{1/2}$ MONTHS? CERTAINLY NOT "INVESTIGATING" ANYTHING PERTAINING TO THIS MATTER. Clear evidence of incompetence, and then a .decision was made based on inaccurate and patently unreasonable perceptions.

(e) Paragraph 31:

In the second paragraph of the Officer's Report, entitled "Details", it was stated: "The client provided a vague outline of her job description and her duties. I am not satisfied that the client has the ability to minister to a congregation under the auspices of the Sikh religious denomination due to her vague job description". This is a complete non-sequitur, and a totally stupid statement to make, and also the statement is completely false, as a proper 41-word job description complying with NOC 4154 had in fact been provided in the job offer letter. Therefore, this job description is obviously very clear and not "vague" in any way. In fact, it appears to coincide identically or near-identically to the advertisements for this position that were posted on the SaskJobs (provincial) and Job Bank (federal) websites. A job description does not need to be excessively lengthy and complicated. The fact is, that this job description does appear to be very closely patterned on that found in NOC 4154 - Ministers of Religion, with much of the wording being identical or very similar, with a few adaptations specific to the Sikh religion. Further, ability to minister to a congregation, which Balvir Singh wrote he was very satisfied with, has nothing whatsoever to do with the length of a job description, or whether some bureaucrat, departing from normal past practice and policy, thinks it is too short or supposedly "vague". It is plain and obvious that this person knows nothing at all about the Sikh religion. Nor does she appear to know anything, or have any understanding of what a priest – minister of religion – preacher – clergyperson – Granthi actually does, whereas most ordinary Canadian do understand this occupation very well.

(f) Paragraph 38:

It is submitted that the Officer exhibited bias against the Applicant & therefore, the impugned decision can not be allowed to stand. In particular, and without restricting the generality of the above, such bias included being influenced by inappropriate assumptions or stereotypes, and in particular by the Applicant's religion, national origin, ethnicity, or race. The Officer in what she has written, has exhibited bias, whether it be against Sikhs, persons from India, or religious workers/ministers of religion generally. It is strongly

> suggested that the Officer involved was very likely RACIST, and such a person has no place working for the Respondent, especially as a decision-maker whose decisions affect others. Another possible scenario for BIAS, is that she may have biased against Applicants generally, with a penchant for disallowing Applications for apparently trivial reasons, as was the case here, in comparison to other Officers. It is likely that she happens to be one of those Officers that Justice Blais describes and condemns as "officers who will not be satisfied, no matter what", and that in itself is an indicia of BIAS, it is submitted.

(g) Paragraph 39:

> It is believed that the Officer, who appears to be a Francophone from Quebec with somewhat poor English skills, may have been motivated by racist tendencies. It is notorious that CIC and its associated tribunals, have had a longstanding problem with racism on the part of some of its Francophone employees, who have sometimes tended to exhibit race-based hostility against non-white Applicants.

(h) Paragraph 40:

> The Respondent has falsely claimed (in para. 32, of the Respondent's Memorandum, quoting the ***Li*** decision), that in a negative decision of refusal of a permit or visa, that usually **"there is no evidence of serious consequences to the applicant"**.
>
> This is simply not true. The Respondent's counsel claims, and this is a claim that is very often made in Court or tribunal proceedings, that any rejected Applicant can simply apply again (and impliedly have a chance of getting his/her application actually accepted, the second time around). This is a falsehood that has been much repeated in arguments in immigration cases in Courts and tribunals (and also in letters to rejected applicants), and sometimes accepted by overly gullible Judges, who have been willing to believe the propaganda spouted by CIC counsel. The actual truth is, that once an Applicant is rejected for a work permit, by Canada, he or she is very unlikely to ever be granted one again, or even be allowed to return to Canada for any reason. True, he/she "technically" may be able to **fill out**, and **submit** an application, and this be able to "apply" again, in that sense. But it is very, very seldom that an Application is ever actually accepted from a previously rejected Applicant. To claim otherwise, is to perpetuate a cruel hoax, that needlessly gives false hopes to many people, and causes them to unnecessarily waste their time, efforts, and money, in futile attempts to re-apply.

> The fact is, that when anyone applies to come to Canada, for any reason, he/she is ALWAYS ASKED ON THE FORM: Have you ever been denied entry to Canada or any other country? Have you ever been required to leave Canada or any other country? If he/she answers NO to either question, that Applicant generally becomes essentially "blacklisted" from ever travelling to Canada, for any reason, and usually this lasts for life. There seem to be very few known exceptions to this occurring.
>
> This scenario also involves many other countries, which also ask the same questions on their forms. So the fact is, that a negative decision of rejection, DOES INDEED HAVE VERY SERIOUS CONSEQUENCES to an Applicant, it not only means that he/she can never expect to be able to work in Canada, again, or come to Canada for any reason - but would also be barred from many other countries. This indeed, is SERIOUS, nothing trivial at all.
>
> [emphasis in original, except underlining]

[46] In my view, these remarks (and there are others throughout the Applicants' written submissions) constitute inappropriate and unacceptable conduct on the part of Applicants' counsel that has no place in this Court. Without an evidentiary basis to support them, they are little more than insults. Instead of, for example, stating the law on bias and objectively stating the facts that would support a finding of bias in this case, Applicants' counsel believes that it is sufficient to offer a personal view that:

> It is believed that the Officer, who appears to be a Francophone from Quebec with somewhat poor English skills, may have been motivated by racist tendencies. It is notorious that CIC and its associated tribunals, have had a longstanding problem with racism on the part of some of its Francophone employees, who have sometimes tended to exhibit race-based hostility against non-white Applicants.

[47] We are not told who believes this and no evidence is provided to support it. It is simply a comment by Applicants' counsel that the Court is supposed to take judicial notice of as though it

is so notorious that no one could think otherwise. This is not only poor and ineffective advocacy, it is highly offensive and unbecoming of an officer of this Court and a member of the bar. There is no mistaking the air of condescension in Applicants' counsel's tone:

> The Officer in what she has written, has exhibited bias, whether it be against Sikhs, persons from India, or religious workers/ministers of religion generally. It is strongly suggested that the Officer involved was very likely RACIST, and such a person has no place working for the Respondent, especially as a decision-maker whose decisions affect others.

[48] There is nothing in the Decisions or the record under review to support any of this.

[49] When I raised these matters at the judicial review application hearing before me in Saskatoon on January 19, 2017, the Applicants' were represented by different counsel, at least for the purpose of oral argument. Mr. Kevin Mellor of the Mellor Law Firm accepted the inappropriateness of these remarks and others like them. He explained that Mr. Uppal of Uppal Pandher LLP, whose signature is on the Applicants' written materials, did not review the briefs of law before he signed them, and that the person responsible for the drafting, who was not named, will no longer be allowed to draft written memoranda.

[50] In a way, this makes the situation even worse because it means that Mr. Uppal is willing to sign extensive written memoranda that will be filed in Court without reading them. In other words, there really is no excuse for this conduct. Mr. Uppal remains fully responsible for documentation he signs. Nor am I entirely convinced that the exaggerations in these materials are not Mr. Uppal's direct responsibility. In the case of *Arif v Canada (Citizenship and Immigration)*, 2016 FC 1149, that Mr. Uppal brought before me and, as in this case, called upon

Mr. Mellor to conduct the oral argument, the written submissions also contained exaggerated assertions not supported by the facts of that case, although there was nothing as offensive as in the present case.

[51] Mr. Uppal cannot go on relying upon Mr. Mellor's professionalism and good reputation. He must take responsibility for documents that he signs.

[52] I also wish to make it clear that Mr. Kevin Mellor bears no responsibility for the documentation that was filed before he was engaged, and he indicated he was equally troubled by what he read when he was preparing for the hearing. Mr. Mellor handled the matter before me in an entirely satisfactory way and even conveyed the message to me through the Court Registry Officer before Court opened that he wished to address the Court on these very issues before he argued the merits. The Court is grateful to Mr. Mellor for stepping into the breach and ensuring that the real issues at play in this application were efficiently and fully placed before the Court.

[53] However, Mr. Pandher was present at the hearing and, through Mr. Mellor, he offered a full apology for the offending documentation and reassurances that nothing like this would happen again from the Uppal Pandher LLP firm who plan to specialize in immigration law and expect to appear regularly before the Federal Court.

[54] I indicated that I was prepared to accept these reassurances and that, relying upon them, this conduct issue need go no further. However, counsel should note that this issue is now a matter of record and may be cited in any other proceedings where similar problems arise.

B. *Evidentiary Issues*

[55] As the Respondent points out, the Applicants have submitted with this application affidavits by Poonam Bajwa and Balvir Singh that consist largely of evidence that was not before the Visa Officer, as well as inadmissible hearsay evidence and inadmissible argument.

[56] The jurisprudence of the Court is clear that evidence that was not before the tribunal or decision-maker whose decision is under review is not admissible except in certain exceptional circumstances. As the Federal Court of Appeal made clear in *Bekker*, above:

> [11] Judicial review proceedings are limited in scope. They are not trial *de novo* proceedings whereby determination of new issues can be made on the basis of freshly adduced evidence. As Rothstein J.A. said in *Gitxsan Treaty Society v. Hospital Employees' Union*, [2000] 1 F.C. 135, at paragraph 15, "the essential purpose of judicial review is the review of decisions" and, I would add, to merely ascertain their legality: see also *Offshore Logistics Inc. v. Intl. Longshoremen's Assoc. 269* (2000), 257 N.R. 338 (F.C.A.). This is the reason why, barring exceptional circumstances such as bias or jurisdictional questions, which may not appear on the record, the reviewing Court is bound by and limited to the record that was before the judge or the Board. Fairness to the parties and the court or tribunal under review dictates such a limitation. Thus, the very nature of the judicial review proceeding, in itself, precludes a granting of the applicant's request. In addition, there are other reasons, just as compelling, to refuse the applicant's request.

[57] In the present case, the only possible grounds for admitting further evidence are the Applicants' allegation of bias (which was changed at the hearing to reasonable apprehension of bias) and procedural unfairness. Consequently, the evidence in these affidavits is excluded except to the extent that it provides acceptable factual evidence of either procedural unfairness or a reasonable apprehension of bias.

C. *Connected Decisions*

[58] Both sides agree that Manjinder Singh Randhawa's application for a work permit extension was dependent upon his wife's application, and that the Visa Officer's decision to deny his application for a work permit extension to accompany his spouse, Poonam Bajwa, was based upon the related decision to deny his wife's work permit extension. Consequently, both sides agree that the Decision in IMM-2124-16 regarding Poonam Bajwa should be determinative of Manjinder Singh Randhawa's application in IMM-2125-16. The Court concurs with this conclusion and will only address the issues raised in IMM-2124-16.

D. *Procedural Fairness*

[59] The procedural fairness issue appears to centre on the two letters from Balvir Singh, the Director of the Sikh Society, that were submitted by Poonam Bajwa in her application.

[60] In the Decision, the Visa Officer refers to these letters as follows:

> The client provided two separate letters from the Director Balvir Singh of Sri Guru Arjun Dev Ji Sikh Society, both signatures are completely different [*sic*]; I am not satisfied with the discrepancy [*sic*] of these documents.

[61] These words, however, have to be read in conjunction with the Visa Officer's final conclusions:

> Based on the information provided by the client, the application has been refused since I am not satisfied that the client is a *bona fide* worker.

[62] These words give rise to a familiar dispute in the jurisprudence as to whether the Visa Officer is questioning the credibility of the Applicants or simply deciding that the evidence is not sufficient to support the criteria that must be established in order to qualify for the status applied for. Justice Kane provided a summary of the Court's approach to this issue in *Ansari v Canada (Citizenship and Immigration)*, 2013 FC 849:

> [14] If the concern is truly about credibility, the case law has established that a duty of procedural fairness may arise [*Hassani*]. However, if the concern is about the sufficiency of evidence, given that the applicant is clearly directed to provide a complete application with supporting documents, no such duty arises. Distinguishing between concerns about sufficiency of evidence and credibility is not a simple task as both issues may be related.
>
> …
>
> [30] The case law has established that each case must be assessed to determine if the concern does in fact relate to credibility. In several of the cases referred to, although the duties were copied or paraphrased from the NOC, there were additional factors confirming that the concern of the officer was about the authenticity or veracity of the document or the credibility of the author of the document. Simply using the term credibility is not determinative of whether the concern is about credibility, though the use of the term cannot be ignored.

[63] Applicants often find it very difficult to understand this distinction. They reason that if their own representations are not accepted then they are not believed, so the officer concerned must be questioning their credibility and this requires an interview or an adequate opportunity to address credibility on grounds of procedural fairness.

[64] I think the issue is best explained in lay terms by recognizing that applicants have a double obligation. First of all, they are under a duty of candor to tell the truth and not to conceal relevant facts. If an officer suspects that the duty of candour is not being met, then he or she must

put the matter to the applicant and provide a reasonable opportunity – either in writing or in person – for the applicant to address the officer's concerns. Where misrepresentation or breach of the duty of candor is the issue, then an application is usually refused on the basis of misrepresentation and s 40 of the Act.

[65] But applicants also have an obligation – over and above the duty of candor – to support their applications with documentation that confirms their positions. Documentation is required by the legislation in all applications and a failure to provide adequate documentation can result in a refusal that is not based upon credibility. If this were not the case, then all applications would have to be accepted upon their own unsupported assertions. There will be situations where documentation is not available and the Act makes adequate allowances for this. Applicants are permitted to explain why they cannot provide documents that are required and/or expected in their particular situations.

[66] In the present case, the treatment of the two letters from Mr. Singh has to be read in the context of the Decision as a whole in order to determine what the Visa Officer means by "satisfied." Does she mean that the evidence is inadequate to support the application or does she mean that she questions the veracity of that evidence when she says that "I am not satisfied that the client is a bona fide worker under R 205 (D) or will leave after her authorized stay."

[67] In all work permit applications and extension applications, the officer has to decide on the evidence whether the applicant is likely to leave at the end of the period requested. And interviews and/or fairness letters are not required in most situations. As the Respondent points

out, it is generally not a procedural fairness requirement that work permit applicants be granted an opportunity to respond to the concerns of officers. However, there have been situations in the context of work permit applications where officers have been required for reasons of procedural fairness to seek further clarification for credibility concerns in particular.

[68] In *Hamza v Canada (Citizenship and Immigration)*, 2013 FC 264, the application was rejected on the basis that the work experience letter mirrored the job duties of the NOC description, which the visa officer described as "self-serving." Justice Bédard found that by stating the letter was self-serving, the officer was saying that he or she doubted the veracity of its content. It was thus distinguished from *Kaur*, above, because the applicant had provided sufficient evidence and a duty to provide the applicant an opportunity to respond was found. The decision quoted Justice Snider in *Perez Enriquez v Canada (Citizenship and Immigration)*, 2012 FC 1091:

> [26] The first duty raised by the Applicant is the duty to seek clarification. When an Applicant puts his or her best foot forward by submitting complete evidence and a visa officer doubts that evidence, the officer has a duty to seek clarification (*Sandhu*, above at paras 32-33). Although this duty is not triggered in situations where an applicant simply presents insufficient evidence, it will arise if the officer entertains concerns regarding the veracity of evidence; for example, if the officer questions the credibility, accuracy or genuine nature of the information provided (*Olorunshola*, above at paras 32-35). On the facts of this case, a duty to clarify may have arisen but was discharged by the Officer's questions to the Applicant during the interview. There was no breach of fairness.
>
> [27] The second duty raised by the Applicant is a duty to provide an opportunity to respond. When an applicant submits information that, if accepted, supports the application, he or she should be given an opportunity to respond to the officer's concerns if the officer wishes to make a decision based on those concerns (*Kumar*, above at paras 30-31). Procedural fairness may require an

> interview; for example, if a visa officer believes an applicant's documents may be fraudulent (*Patel*, above at paras 24-27). (...)
>
> (some references omitted)

[69] Justice Zinn's decision in *Madadi v Canada (Minister of Citizenship and Immigration)*, 2013 FC 716 at para 6 provides a succinct summary:

> The jurisprudence of this Court on procedural fairness in this area is clear: Where an applicant provides evidence sufficient to establish that they meet the requirements of the Act or regulations, as the case may be, and the officer doubts the "credibility, accuracy or genuine nature of the information provided" and wishes to deny the application based on those concerns, the duty of fairness is invoked[.]
>
> (references omitted)

[70] In the present case, the Decision itself makes it clear that the Visa Officer's concerns were credibility concerns. She specifically says that "I am not satisfied that the client entered Canada on the intention to visit Balwinder Singh Khalon but had the intention to work in Canada." The remainder of the Decision then goes on to point to various factors that bolster the Visa Officer's belief that the Female Applicant has not been honest in saying that she originally came to Canada to visit a friend and only later applied for a work permit when work was offered to her. The Visa Officer's distrust of the Female Applicant's stated intention permeates the rest of the Decision and the Visa Officer's treatment of the evidence. This was a credibility, and not a sufficiency, issue, and the jurisprudence suggests that the Female Applicant should have been given a reasonable opportunity to disabuse the Visa Officer of her credibility concerns.

[71] Had the Visa Officer provided an opportunity in the present case, the website issue, the pay stub issue and the discrepancy issue in relation to Mr. Singh's letters could have been addressed and, in my view, this would have significantly impacted the Decision. In addition, there is evidence from the Male Applicant that the Applicants did not drive to Coutts, Alberta on the day after they arrived in Toronto, which is the basis of the Visa Officer's credibility concerns. This makes little sense on its face and the Visa Officer should have checked if it was an obvious mistake on the record. As the Male Applicant makes clear in his affidavit at para 11:

> She was selected for the job and then got the work permit on 27th February 2014 which CBSA officer/Immigration officer did a mistake while printing a work permit and wrote the date 27th February 2013 instead of the actual date 27th February 2014. My wife pointed this mistake out to the officer at the Coutts Border when he handed over the work permit but he instead of changing replied that 'PLEASE GO.'

It would be difficult to get from Toronto to Coutts in the span of a day, particularly after a long flight. Additionally, it would be unlikely that Citizenship and Immigration Canada would be able to issue a work permit the same day of application, considering that the current application of the subject of judicial review required 10.5 months for a decision to be made.

[72] The Respondent says that the Visa Officer had no obligation to put the discrepant Singh letters to the Female Applicant because the problems with the letters can be observed on their face by a brief examination, and the Female Applicant should have noticed this and provided an explanation up front. This may be the case in some situations, but the basis for the Visa Officer's credibility concerns in this case arises, at least in part, from her initial finding about the arrival of the Applicants in Canada and their being in Coutts the next day and being issued a work permit on that day. The Visa Officer should have realised that this couldn't have happened and should

have given the Female Applicant an opportunity to clarify the situation. Instead, she decided it was sufficient proof that the Applicants entered Canada with a dishonest intention, and this credibility finding affected the way the Visa Officer dealt with the other evidence. The Applicants could not have known that the Visa Officer would find that they were in Coutts the day after they arrived in Canada and that the Female Applicant obtained a work permit on the same day.

[73] The Respondent also says that a procedural unfairness finding does not justify returning the matter for reconsideration because the Visa Officer made a separate finding that she was not satisfied that the Female Applicant would leave Canada at the end of her authorized stay.

[74] This issue was not fully canvassed in the original written submissions for this application and, at the hearing of this application, I asked counsel to provide me with supplementary written submissions.

[75] The Applicant's position on this issue is as follows:

> 5. The Applicant submits she was not in Canada illegally because she had applied for a restoral permit and an extension to her existing work permit by making the "Application To Change Conditions, Extend My Stay Or Remain In Canada As A Worker" within the time allowed by the laws of Canada.
>
> …
>
> 7. The restoral permit was made by the Applicant within 90 days of her work permit expiring as allowed by subsection 182(1) of the Regulations.
>
> 8. Nowhere in the evidence does the Respondent's officer state that the Applicant did not apply for restoration outside the 90 day period nor does she indicate that any examination was

performed by the officer as allowed under the regulations. There was no examination by the officer at any time and therefore we have to conclude that the officer had no concerns over the Applicant being in Canada.

9. The Applicant submits that on this first issue, she applied. within the 90 days to restore her status and Canada never conducted any examination or made her aware of any concern referenced in this subsection and therefore she can only conclude that she satisfied all aspects of Canadian law for restoral and extension of her work permit.

…

11. The Applicant submits that the only reason the CIC officer initially relied upon in her decision was that she was, not a bonafide worker. Please refer to the decision category referenced in the "Work Permit Extension-Report to File". The CIC officer at this time did not (state in this section that she was relying upon the reason that the Applicant would not leave Canada on the expiry of her authorized stay, to deny the Applicant her extension to her work permit. This reason was included in the mailed out letter to the Applicant stating their decision to deny the extension as an add on reason.

12. There is no evidence before the Court that would suggest that the Applicant would not leave Canada once her work permit had expired in accordance with Canadian law. She has been a law abiding citizen (*sic*) of Canada during her stay and she has worked as a Granthi as her work permit allowed. She has satisfied all Canadian laws to our knowledge and that is in evidence before the court as there is no evidence that she was not a law abiding citizen.

…

14. The Applicant submits that the officer did not enquire with her whether she would leave Canada when legally obligated to. This reason was never discussed with her and should have been if it was a legitimate concern. This is another example that if procedural fairness was followed this concern could have been addressed.

…

16. The Applicant states that she was not asked by the officer whether she would leave Canada upon the expiry of her work permit and therefore the officer must have subjectively determined that she would not leave Canada. The officer had no basis to make

> this conclusion and as stated above seems to have thrown this reason into the decision letter delivered to the Applicant but yet it does not form the basis of her decision in her internal report to the file.
>
> 17. It is reasonable to conclude that the officer never even considered this point as a legitimate reason to deny the application for restoral and the work permit extension as she did not discuss any facts that would address this issue. The Applicant submits that this was included in her decision letter as an afterthought.

[76] The Respondent's position is as follows:

> 2. The temporary work permit issued to the Applicant dated February 27, 2013 was valid until May 26, 2015. It stated she was required to leave Canada by that date. This coincided with the requirement in paragraph 183(1)(a) of the *Immigration and Refugee Protection Regulations* (the "*Regulations*") that a temporary resident must leave Canada at the end of their authorized stay.
>
> 3. The May 9, 2016 decision which is under review in this proceeding noted that the Applicant applied for an extension of her work permit on December 24, 2013 which was refused on May 13, 2014, and that she applied for another extension on May 17, 2015 which was denied on June 22, 2015. The decision goes on to indicate the Applicant was advised she must leave Canada but did not ultimately do so.
>
> 4. The Applicant appears to argue that because she applied for restoration of her temporary status within 90 days of the June 22, 2015 she was not required to leave. With respect, the wording of the *Regulations* does not support this. While an application for an extension of a temporary permit can extend the authorized period of stay while the application is being decided, a restoration application itself does not confer status.
>
> 5. Where a temporary permit has not yet expired and a temporary resident wishes to stay longer, subsection 183(5) of the *Regulations* provides for an extension of the period a temporary resident is authorized to stay:
>
> > **183 (5)** Subject to subsection (5.1), if a temporary resident has applied for an extension of the period authorized for their stay and a decision is not made

> on the application by the end of the period authorized for their stay, the period is extended until
>
> (a) the day on which a decision is made, if the application is refused; or
>
> (b) the end of the new period authorized for their stay, if the application is allowed.

6. A temporary resident who has lost status for certain reasons can apply for restoration pursuant to section 182:

> **182 (1)** On application made by a visitor, worker or student within 90 days after losing temporary resident status as a result of failing to comply with a condition imposed under paragraph 185(a), any of subparagraphs 185(b)(i) to (iii) or paragraph 185(c), an officer shall restore that status if, following an examination, it is established that the visitor; worker or student meets the initial requirements for their stay, has not failed to comply with any other conditions imposed and is not the subject of a declaration made· under subsection 22.1(1) of the Act.

7. The June 22, 2015 decision was based on the following: the Applicant had not met the indicators of a C50 work permit, had not met the LMIA exemption, had not demonstrated experience as a Granthi prior to corning to Canada, did have the opportunity to fulfill the goal of visiting her friend, and did not establish ties to her country of last residence.

8. It is noteworthy that section 182 is silent on whether an application for restoration extends the period authorized for stay while that application is pending. In light of the explicit wording in subsection 183(5), the Respondent submits section 182 provides a last chance to restore status but does not relieve the applicant of the requirement to leave Canada.

9. Applying these provisions to the facts, the Applicant's May 17, 2015 application for an extension of her permit did have the effect of extended her authorized period beyond the original May 26, 2015 expiry until the date the extension application was decided on June 22, 2015. However, the application was refused and at that point she was out of status and required to leave Canada pursuant to paragraph 183(l)(a) of the Act. The June 22, 2016 refusal letter informed the Applicant that she was in Canada

> without legal status and was required to leave Canada immediately. The subsequent application to restore her status did not affect this obligation to leave. Therefore the Applicant did not have status in Canada at the time of the decision under review in this proceeding.
>
> **B. Was the CIC Officer's decision reasonable and procedurally fair in determining the Applicant would not leave Canada at the end of her authorized stay?**
>
> 10. Both the GCMS notes and the letter to the Applicant indicated that the Officer was no satisfied the Applicant would leave at the end of her authorized stay. The reasons enumerated in the GCMS notes recorded the Applicant's previous failure to leave following the June 22, 2015 refusal letter instructing her to leave Canada. This past failure to comply with Canada's immigration laws provided reasonable grounds for her to refuse the application.
>
> 11. The onus was on the Applicant to satisfy the Officer that the permit should be. An officer is generally not under a duty to inform an applicant about concerns when they arise directly from the requirements of the legislation or regulations. The Officer's concern in the present application arose from the Applicant's failure to establish she would leave Canada at the end of her stay and her past failure to leave at the end of an authorized period. The Applicant did not submit sufficient information to overcome this concern, and there was no breach in procedural fairness in not asking the Applicant for further explanation.
>
> [footnotes omitted]

[77] In the Decision itself, the Visa Officer notes under the "Details" section that "I am not satisfied that the client is a bona fide worker under R205(D) or will leave after her authorized stay."

[78] Under the "Decision" section, the Visa Officer says that "the application has been refused since I am not satisfied that the client is a bona fide worker. A44 Report will be written."

[79] It seems to me then, that the Visa Officer's conclusions that the Applicant will not leave is inextricably tied to the credibility concerns of whether the Applicant is a *bona fide* worker. There is nothing to indicate that the Visa Officer ever turned her mind to the *Regulations* and the arguments now presented by the Respondent as to how those *Regulations* should be interpreted. I think the Court should be reluctant to offer its own interpretation as to how the *Regulations* should apply in any particular case. There may well be guidelines and practices that are not before the Court in this case. Hence, I think I have to conclude that the reason for refusing the extension application is the one given in the "Decision" section of the Decision: "the application is being refused since I am not satisfied that the client is a bona fide worker."

[80] I think it would be unwise to completely separate the "*bona fide* worker" and the "leave Canada" issues on these facts. The Visa Officer's whole view of what the Female Applicant is likely to do is coloured by her initial finding that the Female Applicant entered Canada with a dishonest purpose. Although the Visa Officer says "or will leave after her authorized stay," this does not mean that this issue is totally separate from the credibility issue. It is necessary to get the whole back-story clear before this kind of conclusion can be arrived at and/or assessed. In addition, before the Court can decide whether the Applicants were legally in Canada, it requires a full assessment on this point by a qualified officer. It would be dangerous to step in and say that the Applicants have no right to remain in Canada so that the Visa Officer simply dismissed their extension applications on this basis. Consequently, on these facts, I do not think it provides a stand-alone reason for the Decision.

E. *Bias*

[81] Having found the Decisions were procedurally unfair, it is not necessary to deal with reasonable apprehension of bias.

F. *Reasonableness*

[82] The Applicants have raised numerous issues that question the reasonableness of the Decisions. I agree with some of them. For example, it was unreasonable for the Visa Officer to find that, on the one hand that the Visa Officer was not satisfied "that the [Female Applicant] has the ability to minister to a congregation…," but to be "satisfied that the [Female Applicant] has gain [*sic*] a significant amount of experience in Canada and will not have problems finding employment outside of Canada." The only evidence of experience gained in Canada by the Female Applicant was as a minister to a congregation under the auspices of the Sikh religion. This was her only employment. However, my procedural unfairness finding alone requires that this matter be referred back for reconsideration by a different officer, so there is no point in addressing the reasonableness arguments.

IX. Certification

[83] Counsel concur that there is no question for certification and the Court agrees.

JUDGMENT

THIS COURT'S JUDGMENT is that

1. The applications are allowed. The decisions in IMM-2124-16 and IMM-2125-16 are quashed and the matters on both files are returned for reconsideration by a different officer.
2. A copy of this Judgment and Reasons shall be placed on both files.
3. There is no question for certification.

"James Russell"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-2124-16
STYLE OF CAUSE:	POONAM BAJWA v THE MINISTER OF IMMIGRATION, REFUGEES AND CITIZENSHIP
DOCKET:	IMM-2125-16
STYLE OF CAUSE:	MANJINDER SINGH RANDHAWA v THE MINISTER OF IMMIGRATION, REFUGEES AND CITIZENSHIP
PLACE OF HEARING:	SASKATOON, SASKATCHEWAN
DATE OF HEARING:	JANUARY 19, 2017
JUDGMENT AND REASONS:	RUSSELL J.
DATED:	FEBRUARY 21, 2017

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