

Federal Court



Cour fédérale

Date: 20170907

Docket: IMM-5404-16

Citation: 2017 FC 808

Ottawa, Ontario, September 7, 2017

PRESENT: The Honourable Madam Justice Kane

BETWEEN:

CHARANJIT SINGH

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The Applicant, Charanjit Singh, seeks judicial review pursuant to section 72 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the Act] of the November 3, 2016 decision of an Immigration Officer [the Officer] at the High Commission of Canada at Colombo, Sri Lanka which refused his application for permanent residence in Canada as a skilled worker pursuant to subsection 87(3) of the *Immigration and Refugee Protection Act Regulations* [the Regulations].

I. The Background

[2] The Applicant applied for permanent residence as a nominee in the Manitoba Provincial Nominee Program in April 2014. The Applicant acknowledges that he neglected to indicate in Schedule A of his 2014 application that he had twice previously been denied a temporary residence visa. He corrected the error, but was refused permanent residence. The Applicant sought judicial review of the refusal. Based on the Respondent's agreement to re-consider the application for permanent residence, the Applicant subsequently withdrew his application for judicial review.

[3] In September 2015, the Applicant provided updated information for the reconsideration of his application.

[4] In November 2015, the Applicant received a "procedural fairness" letter setting out the Officer's concerns about the letter submitted by the Applicant's employer regarding the Applicant's work experience. The Officer noted that it would be expected that the employer have a website or letterhead. The Officer also noted concerns about the Applicant's proficiency in the English language, and his lack of work experience in the occupation in which he was nominated, Vocational Computer Training Instructor.

[5] The Applicant responded on December 9, 2015. Among other information, the Applicant submitted a written job offer from Sood Brothers Travel and Tours in Winnipeg, Manitoba offering him a position as a Data Entry Operator subject to the completion of his "visa

formalities”, and a document describing the recruitment procedure for Computer teachers by the Punjab Information and Communication Technology Education Society. The Applicant explained that in the Punjab, there is no requirement for formal training as a teacher because it is a technical field and that he had the other necessary qualifications. With respect to the lack of a website for his employer, the Applicant explained that the use of g-mail accounts is common in areas of the Punjab. The Applicant added that he was not asked to provide updated test results for his English proficiency but would upgrade his skills and provide the test results.

II. The Decision Under Review

[6] The Officer found that the Applicant did not meet the requirements for immigration as a member of the provincial nominee class and refused the application for permanent residence in Canada.

[7] The Officer noted that pursuant to subsection 87(3) of the Regulations, where the fact that a foreign national is named in a certificate as a provincial nominee is not a sufficient indicator of their ability to become economically established in Canada, and where the Officer has consulted the government that issued the certificate, the Officer may evaluate the likelihood of an applicant’s ability to become economically established and substitute his or her own evaluation. The Officer indicated that he was not satisfied by the provincial certificate; therefore, he was substituting his own evaluation of the Applicant’s likelihood to become economically established in Canada.

[8] The Officer explained that the information provided by the Applicant in response to the concerns noted in the Officer's November, 2015 letter did not satisfy the Officer that the Applicant is likely to become economically established in Canada. The Officer added that a second Officer had concurred in this evaluation.

[9] The Officer concluded that based on the Applicant's educational background and official language abilities, he was not satisfied that the Applicant was likely to become economically established in Canada.

III. The Standard of Review

[10] An officer's determination whether an applicant is likely to become economically established is a question of mixed fact and law. As a result, the determination is reviewable on the reasonableness standard: *Parveen v Canada (Minister of Citizenship and Immigration)*, 2015 FC 473 at para 13, 479 FTR 66 [*Parveen*].

[11] Where the reasonableness standard applies, the Court considers "the existence of justification, transparency and intelligibility within the decision-making process" and "whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47, [2008] 1 SCR 190). Deference is owed to the decision maker, in this case, the Officer, and the Court will not re-weigh the evidence.

[12] In *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at paras 14-15, [2011] 3 SCR 708 [*Newfoundland Nurses*], the Supreme Court of Canada elaborated on the requirements of *Dunsmuir*, noting that the reasons are to “be read together with the outcome and serve the purpose of showing whether the result falls within a range of possible outcomes.” In addition, where necessary, courts may look to the record “for the purpose of assessing the reasonableness of the outcome.”

IV. The Applicant's Submissions

[13] The Applicant submits that based on the evidence provided, the Officer erred in finding that the Applicant was not likely to become economically established in Canada and the decision is unreasonable. The Applicant points to the evidence he provided, including: his Master's degree in information technology; his teaching experience; his response to the Officer's concerns and expectations about the training for Computer teachers by the Punjab Information and Communication Technology Education Society; his English language proficiency results which were satisfactory for the Manitoba Provincial Nominee Class; his job offer in Manitoba; and his wife's experience in nursing and willingness to work in other health care positions.

[14] The Applicant submits that the Officer erred by ignoring relevant evidence and by considering irrelevant factors. The Officer erred by relying on the Applicant's job offer at \$11 per hour and finding this to be below the Low Income Cut Off (LICO) for one person. While it may be below the amount for one person, the Officer erred by ignoring that both he and his wife plan to work. The Applicant adds that the Officer may have also based his decision on irrelevant factors which were addressed by the Applicant in response to the November, 2015 procedural

fairness letter; for example, the lack of a website for the Applicant's employer. The Applicant further submits that his language proficiency is sufficient for the employment he has secured in Canada and that he has a plan to upgrade his proficiency.

V. The Respondent's Submissions

[15] The Respondent submits that the Officer's refusal of the application for permanent residence was based on the Applicant's lack of education in his intended occupation of teaching coupled with his lack of proficiency in English which is very relevant to his ability to teach, particularly at the Vocational level. The Officer did not base his refusal on the concerns set out in the November 2015 procedural fairness letter, i.e., the legitimacy of the email address of the Applicant's employer in India or the Applicant's work experience, nor did the Officer rely on the fact that the wage offered to the Applicant was below the LICO for one person.

[16] The Respondent notes that the Officer's reasons are not required to address every argument or detail (*Newfoundland Nurses* at para 16). The Respondent submits that, regardless, there is no ambiguity in the decision.

VI. The Decision is Reasonable

[17] The Officer has the jurisdiction and mandate to evaluate an applicant's likelihood to become economically established in Canada where the Officer concludes that the provincial nomination certificate is not a sufficient indicator. As required by subsection 87(2) of the Regulations, a second Officer concurred in the Officer's evaluation.

[18] The Global Case Management System [GCMS] notes, which are part of the Officer's reasons, reflect the Officer's consideration of the updated information provided by the Applicant following the agreement to re-open his application. The Officer's entries dated September 24, 2015 noted, among other things: that the Applicant had no training in the education field and no experience teaching at the college or vocational school level; the school at which the Applicant was employed in India had only a general email account and no letterhead or website; and, the Applicant had low to moderate English language proficiency. The Officer noted that the Applicant's low to moderate language proficiency coupled with his lack of teaching qualifications limited the Applicant's ability to work in a related occupation, and raised serious concerns about his ability to become economically established. The Officer also noted the qualifications of the Applicant's spouse in nursing and her limited English proficiency. The entries also note that the Officer obtained the concurrence of a second Officer given that he was not satisfied that the provincial certificate was a sufficient indicator. The Officer then sent the November, 2015 procedural fairness letter.

[19] The Officer's GCMS entries dated November 3, 2016 reflect that the Officer considered the documents sent by the Applicant in response to the procedural fairness letter, including the offer of employment from Sood Brothers Travel and Tours as a Data Entry Operator at a wage of \$11 per hour, which the Officer noted in parenthesis is below the LICO for one person. The GCMS entries note that the Applicant's submissions had not resolved the Officer's concerns about the Applicant's likelihood to become economically established in Canada based on the Applicant's ability to be employed in the field in which he was nominated or a similar field due

to his educational background and his official language proficiency, including the impact of his language proficiency on his employment.

[20] The decision letter and the GCMS entries clearly convey that the Officer was not satisfied that the Applicant had the education or English language proficiency to work in the nominated field as a Vocational Computer Training Instructor. The Officer noted the impact of the Applicant's lack of language proficiency on his ability to be employed in that field. The GCMS notes reflect that the Officer did not ignore any evidence. The Officer acknowledged the Applicant's job offer which, as the Respondent notes, is not in the nominated field, and the Applicant's spouse's willingness to work in a related health care field, if not as a nurse. The Officer's decision clearly reflects that all the evidence, taken as a whole, did not resolve the Officer's concerns about the Applicant's likelihood to become economically established.

[21] The Officer did not ignore evidence, overlook a relevant consideration or rely on any irrelevant considerations. The decision was not based on a single factor, such as the wage offered to the Applicant. The Officer mentioned that the \$11 per hour wage was below the LICO for one person, but this brief notation in the GCMS entries does not suggest that this was the basis for his decision. Rather, it was mentioned in parenthesis following several other notations regarding the evidence submitted. Nor does the reference to LICO suggest that the Officer ignored that the Applicant's spouse was willing to work. The Officer specifically noted the spouse's qualifications and willingness to work in a health related field.

[22] While the Applicant would prefer that the Officer weigh the evidence in a different manner, determining the weight to be given to the evidence and the relevant considerations is within the Officer's knowledge and expertise. The role of the Court is not to re- weigh the evidence.

[23] The Officer's decision is reasonable; the Officer considered all the evidence, applied the provisions of the Act, and provided clear reasons for his decision which are transparent and justified.

JUDGMENT

THIS COURT'S JUDGMENT is that:

The Application for Judicial Review is dismissed.

No question is certified.

"Catherine M. Kane"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-5404-16

STYLE OF CAUSE: CHARANJIT SINGH v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: WINNIPEG, MANITOBA

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