

Federal Court



Cour fédérale

Date: 20171006

Docket: IMM-1670-17

Citation: 2017 FC 894

Vancouver, British Columbia, October 6, 2017

PRESENT: THE CHIEF JUSTICE

BETWEEN:

LAMBER SINGH

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] The Applicant, Mr. Singh, seeks judicial review of a decision by a visa officer rejecting his application for a two-year work permit and a temporary resident visa. The officer's decision was based on his conclusion that he was not satisfied that Mr. Singh would leave Canada at the end of the two year period.

[2] Mr. Singh submits that the officer's decision was not reasonable, because it was not appropriately justified or intelligible, having regard to the evidence that was before the officer.

Mr. Singh also submits that the officer unreasonably discounted important evidence. I agree.

[3] For the reasons that follow, this application will be granted.

II. Background

[4] Mr. Singh is a 34 year-old citizen of India. He is currently employed as a construction worker in Singapore, where he has been working legally since 2009. Prior to that, he worked for five years in India in the agricultural sector.

[5] In November 2016, Mr. Singh received an offer of employment from J. Gill Enterprises Ltd. to work as a general farm worker in Chilliwack, British Columbia, for a term of two years. That offer was supported by labour market impact assessment.

[6] The following month, Mr. Singh submitted an application for a work permit and a temporary resident visa at the Canadian High Commission in Singapore.

III. The Decision

[7] In February 2017, the officer rejected Mr. Singh's application on the basis that he was not satisfied that Mr. Singh would leave Canada by the end of the two year period for which he had requested authorization to stay in this country.

[8] It is common ground between the parties that the Global Case Management System [GCMS] notes that were made by the officer form part of the decision that is under review in this Application [the Decision].

[9] In reaching the Decision, the officer relied primarily on Mr. Singh's long absence from his family in India while he has been working in Singapore; the fact that he would be switching from his current work in the construction field to employment as a general farm labourer; and his poor employment prospects in India.

[10] After being informed of the Decision, Mr. Singh submitted additional documentation in support of a request for reconsideration of the officer's decision. This included:

- i. a list of his annual visits to his family in India over the period 2012 – 2016, as well as in 2010;
- ii. a breakdown of the duration of those visits, which ranged from 1 month to 4.5 months, except for 2016, when his visit was for only two weeks;
- iii. support for his position that he had been employed as a farm field supervisor in India from June 2003 to January 2009; and
- iv. an explanation for why he was seeking employment as a farm labourer.

[11] After acknowledging the supplementary information with respect to Mr. Singh's annual visits to India and his prior farm employment in that country, the officer maintained his original decision to give limited weight to the fact that Mr. Singh's family is located in India. On that basis, he stated: "Original decision of refusal remains."

[12] Given that the parties have treated the officer's initial decision and the response he gave to the request for reconsideration as a single decision, I will do the same.

IV. Relevant legislation

[13] Pursuant to paragraph 20(1)(b) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 [IRPA], foreign nationals who seek to enter or remain in Canada, and to become a temporary resident, must establish two things. The first is that they hold the visa or other document required under the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [Regulations]. The second is that they will leave Canada by the end of the period authorized for their stay.

[14] The latter obligation is reinforced by paragraph 200(1)(b) of Regulations, which states as follows:

Work permits

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

Permis de travail — demande préalable à l'entrée au Canada

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

examination, it is established that	établis :
...	...
(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;
...	...

V. Standard of Review

[15] A visa officer's assessment of an application for a temporary work permit is highly factual in nature and involves the exercise of significant discretion in balancing multiple considerations. Such decisions are reviewable by this Court on a standard of reasonableness (*Dunsmuir v New Brunswick*, 2008 SCC 9, at para 53 [*Dunsmuir*]; *Choi v Canada (Minister of Citizenship and Immigration)*, 2008 FC 577, at para 12); *Momi v Canada ((Minister of Citizenship and Immigration)*, 2013 FC 162, at para 14 [*Momi*]).

[16] The Court's task is therefore to assess whether the Decision falls "within a range of possible, acceptable outcomes which are defensible in respect of the facts and the law." In performing that assessment, the Court must consider whether the Decision is appropriately justified, transparent and intelligible (*Dunsmuir*, above, at para 47).

VI. Analysis

[17] Mr. Singh submits that the Decision was not sufficiently justified or intelligible to fall within a range of outcomes that are acceptable in fact and law. I agree.

[18] The core finding made by the officer in reaching the Decision was stated in the following single sentence: “Though [Mr. Singh] has family and property [in India], I am not satisfied as to the establishment and ties [in that country].”

[19] In support of that finding, the officer’s GCMS notes state that he gave little weight to Mr. Singh’s statement that he would return to India at the end of his two year stay in this country, because he had already been away from India and his family for eight years. However, the officer did not appear to give any weight or significant consideration to the following facts:

- i. Mr. Singh had consistently visited his spouse and three daughters each year since 2010 (with the exception of 2011), and those visits were typically for extended periods of time;
- ii. he had several other family members in India, and none whatsoever in Canada;
- iii. his father had recently transferred land in India to him; and
- iv. he had significant other assets there, including substantial savings, a family home, a car and a farm tractor.

[20] In aggregate, the foregoing considerations were of such significance that they should have been explicitly addressed in the officer’s assessment of the relative strength of Mr. Singh’s establishment ties to India and Canada, respectively. The officer’s failure to explain why these

factors did not, collectively, give rise to a significant degree of establishment in India made his Decision difficult to understand and insufficiently justified.

[21] The Respondent asserts that the officer was entitled to examine the totality of the circumstances relating to Mr. Singh's case, and that the weight assigned to the relevant considerations was a matter for his discretion. I agree, provided that the officer's process of articulating reasons and the overall outcome fit comfortably within the principles of justification, transparency and intelligibility. However, the Decision fell short in both of these respects.

[22] The Respondent relies on *Sadiq v Canada (Minister of Citizenship and Immigration)*, 2015 FC 955 [*Sadiq*], in support of the position that the presence of family in an applicant's country of origin cannot be relied upon to demonstrate that the applicant will return there before the expiry of a temporary work permit. However, the facts in that case are distinguishable from those in the present Application. In particular, the Court in that case found that there was nothing to suggest that Mr. Sadiq had any ongoing relationship with his father and four siblings who lived in Pakistan (*Sadiq*, above, at para 22). In contrast, the evidence in this case is that Mr. Singh has a significant ongoing relationship with his spouse and three daughters in India, as well as other significant ties to India.

[23] In addition to the shortcomings in the officer's assessment of the strength of Mr. Singh's establishment in India, the officer unreasonably discounted the evidence of the land transfer from Mr. Singh's father. In this regard, he observed, earlier in his notes, that it was "unclear if [Mr. Singh] is the sole owner of this property, as I note that [he] has three siblings in India (two of

which farm [sic]), and given inheritance laws it would be unusual for only one child to inherit property.” However, the deed in the certified tribunal record very clearly states that the land was transferred to Mr. Singh alone, and that as a result of such transfer, neither his father nor his “heirs” have any further concern or connection with the land.

[24] Moreover, in finding that Mr. Singh was unlikely to return to India at the end of his two year stay in Canada, the officer failed to consider the significance of the fact that there was nothing to suggest that he had ever failed to comply with Singapore’s immigration laws, since he moved to that country in 2009 (*Momi*, above, at paras 20 and 25). I do not mean to suggest that a failure to consider this factor alone should provide grounds for finding a decision to be unreasonable. However, on the particular facts of this case, this omission was another shortcoming which, taken together with others, collectively, rendered the Decision unreasonable.

[25] The officer also stated in his notes that “it does not make sense that [Mr. Singh] would now switch from construction to farm laborer for a salary that is comparable to the one that he is already earning in Singapore.” However, given the evidence that Mr. Singh had previously worked in the agricultural field in India from mid-2003 to early 2009, this was not difficult to understand at all. This is particularly so given the additional evidence that there are very limited jobs in the agricultural field in Singapore, which explained why he had taken a position there as a construction worker. As Mr. Singh stated in his letter requesting a reconsideration of the officer’s initial rejection of his application, he was “in essence returning to his original industry of work experience.” This fact, which explained something that troubled the officer, was not addressed in any way in his response to Mr. Singh’s request for a reconsideration of the Decision.

VII. Conclusion

[26] For the reasons set forth above, I find that the Decision was unreasonable. In brief, it did not fall “within a range of possible, acceptable outcomes which are defensible in respect of the facts and the law” (Dunsmuir, above, at para 47). This is because it was not appropriately justified, and it unreasonably discounted evidence, including with respect to a land transfer to Mr. Singh and the reason he gave for wanting to switch occupations.

[27] I agree with the parties that no serious question of general importance arises on the facts of this application. Accordingly, no such question will be certified pursuant to paragraph 74(d) of the IRPA.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. This Application is granted.
2. The visa officer's decision dated February 7, 2017, as confirmed in the officer's response, dated March 16, 2017, to Mr. Singh's request for reconsideration is set aside and remitted to another visa officer for reconsideration in accordance with these reasons.
3. There is no question for certification.

"Paul S. Crampton"

Chief Justice

APPENDIX 1 — Relevant Legislation

Immigration and Refugee Protection Act, S.C. 2001, c. 27

Obligation on entry

20 (1) Every foreign national, other than a foreign national referred to in section 19, who seeks to enter or remain in Canada must establish,

(a) to become a permanent resident, that they hold the visa or other document required under the regulations and have come to Canada in order to establish permanent residence; and

(b) to become a temporary resident, that they hold the visa or other document required under the regulations and will leave Canada by the end of the period authorized for their stay.

Immigration and Refugee Protection Regulations, SOR/2002-227

Work permits

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

(a) the foreign national applied for it in accordance with Division 2;

(b) the foreign national will leave Canada by the end of the period authorized for their stay under Division 2 of Part 9;

(c) the foreign national

Loi sur l'immigration et la protection des réfugiés, L.C. 2001, ch. 27

Obligation à l'entrée au Canada

20 (1) L'étranger non visé à l'article 19 qui cherche à entrer au Canada ou à y séjourner est tenu de prouver :

a) pour devenir un résident permanent, qu'il détient les visa ou autres documents réglementaires et vient s'y établir en permanence;

b) pour devenir un résident temporaire, qu'il détient les visa ou autres documents requis par règlement et aura quitté le Canada à la fin de la période de séjour autorisée.

Règlement sur l'immigration et la protection des réfugiés, DORS/2002-227

Permis de travail — demande préalable à l'entrée au Canada

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) l'étranger a demandé un permis de travail conformément à la section 2;

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) 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 employment to perform that work or is described in section 207 but does not have an offer of employment, (ii) il entend exercer un travail visé aux articles 204 ou 205 pour lequel aucune offre 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 (II) peut justifier le non-respect des critères prévus à la sous-division (I) au titre du paragraphe 203(1.1),
- (iii) has been offered employment, and an officer has made a positive determination under paragraphs 203(1)(a) to (e); and (iii) il a reçu une offre d'emploi et l'agent a rendu une décision positive conformément aux 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 (e) s'il est tenu de se soumettre à une visite médicale en application du paragraphe 16(2)

examination under paragraph 16(2)(b) of the Act.

de la Loi, il satisfait aux exigences prévues aux paragraphes 30(2) et (3).

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-1670-17

STYLE OF CAUSE: LAMBER SINGH V. THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: VANCOUVER, BRITISH COLUMBIA

DATE OF HEARING: OCTOBER 5, 2017

ORDER AND REASONS: CRAMPTON C.J.

DATED: OCTOBER 6, 2017

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