

Federal Court



Cour fédérale

Date: 20171213

Docket: IMM-864-17

Citation: 2017 FC 1139

Ottawa, Ontario, December 13, 2017

PRESENT: The Honourable Mr. Justice Gleeson

BETWEEN:

RANBIR SINGH SIDHU

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The applicant, Mr. Ranbir Singh Sidhu, is a citizen of India. He and his family own farmland in India and Mr. Sidhu has managed the land and the family's farming operations since 1989. In May 2013 he sought permanent residence in Canada as a member of the self-employed person class based on an intention to purchase farmland in Alberta and grow wheat.

[2] Mr. Sidhu was interviewed by a Visa Officer [Officer] in New Delhi, India on December 22, 2016. The interview was conducted in Punjabi, a language Mr. Sidhu and the Officer both spoke and understood. The Officer denied Mr. Sidhu's application and he now seeks review of that decision. Mr. Sidhu has alleged numerous errors and raised issues of fairness. I have characterized his submissions as follows: (1) the process was procedurally unfair because the Officer approached the interview with a closed mind; and (2) the Officer's decision to refuse the application was unreasonable.

[3] Having reviewed the parties' written submissions and having heard their oral arguments, I am unable to conclude that there was any breach of procedural fairness or that the Officer's decision is unreasonable. For the reasons set out in more detail below the application is denied.

II. Decision under Review

[4] The Officer's negative decision is set out in a letter dated January 31, 2017. In the letter the Officer cites subsection 88(1) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227, which define self-employed persons as follows:

<i>Self-employed person</i> means a foreign national who has relevant experience and has the intention and ability to be self-employed in Canada and to make a significant contribution to specified economic activities in Canada. (travailleur autonome)	<i>travailleur autonome</i> Étranger qui a l'expérience utile et qui a l'intention et est en mesure de créer son propre emploi au Canada et de contribuer de manière importante à des activités économiques déterminées au Canada. (self-employed person)
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[5] The decision letter notes that “specified economic activities” includes the purchase and management of a farm. The letter then concludes that Mr. Sidhu does not come within the meaning of a self-employed person because the Officer was not satisfied he intended to make a significant contribution to a specified economic activity. The Officer reaches this conclusion for the following stated reasons:

- A. Mr. Sidhu demonstrated limited knowledge of farming practices and of the location where he intended to invest in farm land;
- B. The information provided in the course of the interview led the Officer to conclude the Business Plan prepared in support of the application had been prepared merely for the purpose of the application; and
- C. The Officer was not satisfied Mr. Sidhu had the intention and ability to purchase and manage a farm in Canada.

[6] The Global Case Management System [GCMS] notes provide a more detailed summary of the interview. Those notes indicate the Officer questioned whether Mr. Sidhu was engaged in farming activities on a full time basis in India and noted that his hands did not appear to be the hands of an individual who had been farming for 25 years. The Officer also raised questions relating to the value of Mr. Sidhu’s land in India.

[7] The GCMS notes indicate the Officer then explored Mr. Sidhu’s plan to farm in Canada, including where he would farm, why, where he intended to live, the type of expenditures he would incur, his knowledge of the economy, markets, climate and demography of the area he

intended to farm, and anticipated financial returns. The Officer also expressed doubt as to Mr. Sidhu's ability to prepare the business plan based on his English language writing scores, and also noted inconsistencies between the business plan and his answers to questions about anticipated financial returns and expenses.

[8] Mr. Sidhu was provided an opportunity to address the Officer's concerns; however the Officer was not satisfied with the explanation provided. Mr. Sidhu was advised at the conclusion of the interview that the application would be refused.

III. Standard of Review

[9] The parties do not dispute that the Officer's decision is reviewable against the standard of reasonableness (*Thamotharampillai v Canada (Citizenship and Immigration)*, 2016 FC 352 at para 18; *Kandel v Canada (Citizenship and Immigration)*, 2014 FC 659 at para 17). A reviewing Court must consider whether the decision-making process reflects the elements of justification, transparency and intelligibility, and whether the outcome falls within the range of possible acceptable outcomes based on the facts and law (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47).

[10] Issues of procedural fairness are reviewable on a standard of correctness (*Mission Institution v. Khela*, 2014 SCC 24 at para 79).

IV. Fresh Evidence

[11] Both Mr. Sidhu and the Officer have sworn affidavits and been cross-examined on those affidavits. In the course of oral submissions, Mr. Sidhu's counsel argued that the affidavit evidence and the cross-examination transcripts are properly before the Court for the purpose of demonstrating a breach of fairness in that the Officer approached Mr. Sidhu's application with a closed mind.

[12] Mr. Sidhu has also argued that in considering this application the Court should prefer his affidavit evidence over the contents of the GCMS notes. He relies on *Parihar v Canada (Minister of Citizenship and Immigration)* (1991), 50 FTR 236, 16 Imm LR (2d) 144 (TD), to argue that as the person being interviewed he has a clearer memory of what took place and his affidavit was based on detailed notes he prepared immediately after the interview.

[13] I have preferred the GCMS notes. Mr. Sidhu's affidavit was not sworn until many months after the interview and he has not attached the written notes he affirms were generated immediately after the interview. On the other hand, the GCMS notes were generated contemporaneously by an officer having no personal interest in the outcome of the application. This, in my opinion, is sufficient reason to prefer the GCMS notes over Mr. Sidhu's affidavit where the two conflict (*Bashir v. Canada (Minister of Citizenship and Immigration)*, 2002 FCT 868 at para 4; *Oei v Canada (Minister of Citizenship and Immigration)*, 2002 FCT 466 at para 42).

[14] With respect to the broader question of fresh evidence, as a general rule judicial review of administrative decisions is conducted based on the record that was before the decision-maker. Fresh evidence is not considered. However, evidence relating to an alleged breach of natural justice, procedural fairness or fraud that could not have been placed before the decision-maker is a recognized exception to this general rule (*Bernard v Canada (Revenue Agency)*, 2015 FCA 263 at para 25). It is this exception that Mr. Sidhu relies upon.

[15] In reviewing the parties' written submissions it is evident that in this case the fresh evidence is relied upon by the parties to address not only the issue of fairness but also to bolster their positions in respect of the reasonableness of the decision. As noted above reasonableness is reviewed by a court based on the record that was before the decision-maker. I have therefore considered the fresh evidence in this application solely for the purpose of addressing Mr. Sidhu's argument that the Officer approached his application with a closed mind and as such the process was procedurally unfair.

V. Analysis

A. *Did the Officer approach the interview with a closed mind, rendering the process unfair?*

[16] Mr. Sidhu argues that the Officer conducted the interview with preconceived notions of farming in India and the value of land in India. He further submits that his "neat and tidy" hands fed the Officer's misconception that he was not an active and full time farmer. He submits that these misconceptions caused the Officer to approach the interview with a closed mind as evidenced by her questioning at the outset of the interview and her failure to address and cross-

reference a previous application for permanent residence where Mr. Sidhu was identified as an agriculturalist/farmer. Mr. Sidhu submits that in effect the process was procedurally unfair. I disagree.

[17] None of the issues Mr. Sidhu identifies as evidencing a closed mind and breach of fairness appear in the reasons the Officer articulates for refusing the application. The Officer was entitled to challenge Mr. Sidhu on whether his employment as a farmer was full or part time, the value of the property he held in India and to observe his hands in light of the nature and type of work his application reported. This was neither improper nor unfair. In each case the Officer raised the issue, received a response and moved on.

[18] Similarly the failure to consider the prior application for the purpose of bolstering the credibility of Mr. Sidhu's claim that he has been a full time farmer for more than 25 years does not raise an issue of fairness. Again the Officer's questions related to Mr. Sidhu's employment were not improper. The Officer did not make a negative credibility finding in regard to Mr. Sidhu's employment history. There was no need to refer to or consider the prior application.

[19] The Officer did not approach the interview with a closed mind nor was the process procedurally unfair.

B. *Was the Officer's decision to refuse the application unreasonable*

[20] Mr. Sidhu identifies a number of concerns with the Officer's decision, arguing that he adequately responded to the Officer's questions. He submits his responses demonstrated

knowledge of farming practices in Canada, of the location he intended to farm and of the business of farming and his business plan. The Officer's conclusions to the contrary, he submits, were unreasonable.

[21] Mr. Sidhu's submissions amount to a disagreement with the Officer's decision. They do not demonstrate that the decision fell outside the range of reasonable possible outcomes based on the facts and the law.

[22] The GCMS notes do reflect that Mr. Sidhu responded to each of the Officer's questions and that his answers were, in most instances, responsive to the questions posed. However, the GCMS notes also reflect answers that were perfunctory, lacking in detail and in some cases did not address all elements of the question posed. In some instances his answers were also inconsistent with the content of the business plan he presented with his application. He did not address these inconsistencies in the interview but rather argues the inconsistencies arise out of a misunderstanding on the part of the Officer.

[23] Mr. Sidhu also takes issue with the Officer stating that she did not believe he had the language skills to have personally written the business plan provided. This concern was raised with Mr. Sidhu and he was provided an opportunity to respond. It was not inappropriate for the Officer to highlight her concern and doing so does not undermine the reasonableness of the decision.

[24] The Officer having completed the interview then advised Mr. Sidhu what her concerns were (limited knowledge of his planned venture; limited knowledge of farming practices in Canada; limited knowledge of his planned place of settlement; and inconsistencies between his business plan and his answers) and she provided Mr. Sidhu an opportunity to address those concerns. In responding Mr. Sidhu noted that “he will gain knowledge after working in Canada,” but did not address the specific concerns identified.

[25] I am satisfied that in the circumstances it was reasonably open to the Officer to conclude that Mr. Sidhu had failed to address the Officer’s concerns and in turn to refuse the application for permanent residence.

[26] The parties have not identified a question of general importance for certification and I am satisfied that none arises.

JUDGMENT IN IMM-864-17

THIS COURT'S JUDGMENT is that:

1. The application is dismissed; and
2. No question is certified.

"Patrick Gleeson"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-864-17

STYLE OF CAUSE: RANBIR SINGH SIDHU v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: CALGARY, ALBERTA

DATE OF HEARING: NOVEMBER 22, 2017

JUDGMENT AND REASONS: GLEESON J.

DATED: DECEMBER 13, 2017

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