Federal Court  Cour fédérale

Date: 20180706

Docket: IMM-4951-17

Citation: 2018 FC 700

Vancouver, British Columbia, July 6, 2018

PRESENT: The Honourable Mr. Justice Southcott

BETWEEN:

JAGSEER SING SEKHON

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] This is an application for judicial review of a decision by a visa officer in the Consulate General of Canada, in New York, USA [the Officer], dated October 2, 2017, refusing the Applicant's application for a work permit and temporary resident visa [the Decision].

[2] As explained in greater detail below, this application is dismissed, because I have concluded that the Officer did not ignore material evidence or engage in perverse or capricious reasoning, as argued by the Applicant, so as to render the Decision unreasonable.

II. Background

[3] The Applicant, Jagseer Sing Sekhon, is a citizen of India who is currently living in Canada under a temporary resident permit. He is a professional heavy truck driver and was offered employment as a long haul truck driver in Canada by a Canadian transport company, which was issued a positive Labour Market Impact Assessment by the Canadian government, allowing it to hire a number of foreign truck drivers. Mr. Sekhon applied for a temporary resident visa and work permit to undertake this employment.

[4] Mr. Sekhon lived in the United Arab Emirates [UAE] from 2008 to 2017 but, at the time of the application, was in Canada under a temporary residence permit, visiting his sister who is ill.

[5] On October 2, 2017, the Officer issued a letter refusing Mr. Sekhon's work permit application on the grounds that the Officer was not satisfied that he would leave Canada at the end of his stay. The Officer referred to Mr. Sekhon's immigration status and his family ties in Canada and in his country of residence as the basis for this conclusion. The Certified Tribunal Record filed in this judicial review application also includes the Officer's notes, dated October 2, 2017, which state the following:

> Sbj seeking wp for employment as a long-haul truck driver, with LMIA 8215378, to work for Shergill Transport Ltd. Sbj has been in Canada since May2017. Entered Canada with a TRP granted for the purpose of visiting his sister who is sick. Sbj was refused trv several times before. Prior to coming to Canada sbj had been working in the UAE since 2008. His last employment was as a Heavy Truck Driver from 2013 to 2017. Emp ref ltr in file. Sbj is not married and has no children. His parents are in India while his only sibling resides in Canada. He has strong ties to Canada. He presented no evidence of his ties to the UAE or of his significant ties to his home country. After having reviewed the file in its entirety, I am not satisfied that sbj will be a bona fide a temp res who will be compelled to depart Canada at the end of his auth stay. Appln refused.

[6] Mr. Sekhon now seeks judicial review of this negative decision.

III. Issues and Standard of Review

[7] The issue raised by the Applicant for the Court's consideration is whether the Officer's Decision is unreasonable. As indicated by this articulation of the issue, the parties agree, and I concur, that the applicable standard of review is reasonableness.

IV. Analysis

[8] Mr. Sekhon submits that the Decision is unreasonable in several respects. He argues that the Officer ignored the evidence of, and failed to consider, his excellent record of complying with immigration conditions. He points out that he has lived for many years as a temporary resident of the UAE and has recently been residing for many months in Canada, all without any breaches of the applicable immigration law. Similarly, Mr. Sekhon argues that the Officer ignored the fact that he presents with a clean criminal and civil record and yet concluded that he

was likely to breach Canadian immigration law by failing to leave Canada at the end of his authorized stay.

[9] Finally, Mr. Sekhon submits that the Decision employs perverse and capricious reasoning, in concluding that he has strong ties to Canada but has not demonstrated significant ties to India. He argues that the only connection with Canada to which the Officer refers is his sister, and he points out that his parents reside in India. He therefore submits that the Decision is unreasonable for failing to explain why the presence of his sister in Canada represents a strong tie to this country, while his parents' residence in India does not demonstrate a strong tie to his country of citizenship.

[10] Addressing this last argument first, I note the Respondent's reference to *Solopova v Canada (Minister of Citizenship and Immigration)*, 2016 FC 690 at paragraph 31, where Justice Gascon relied on *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, in explaining that the reasons of an administrative tribunal are to be read as a whole, in conjunction with the record before the tribunal, to determine whether they provide the justification, transparency, and intelligibility required of a reasonable decision. In the present case, the Officer's notes observe that Mr. Sekhon is unmarried and has no children. While the Officer recognizes that Mr. Sekhon has parents in India, the notes also observe that he has been living in the UAE since 2008. Against this record, I cannot conclude that it is outside the range of acceptable outcomes for the Officer to have found that Mr. Sekhon did not present evidence of significant ties to India.

[11] With respect to Canada, the Officer's notes record that Mr. Sekhon's only sibling resides in Canada and that he is presently visiting her because she is ill. Mr. Sekhon argues that this does not provide a sufficient basis for the conclusion that he has strong ties to Canada. Again, I cannot find that this conclusion is outside the range of acceptable outcomes, particularly when one considers the overall factual matrix of long-term temporary residence in a third country (the UAE), recent presence in Canada where Mr. Sekhon's only sibling resides, and the employment opportunity which is the subject of the underlying application.

[12] Turning to the arguments that the Officer ignored evidence, I accept that there is no express reference in the Decision or the supporting notes to Mr. Sekhon's clean immigration, criminal, or civil records. I also note Mr. Sekhon's reliance on the decision in *Singh v Canada (Minister of Citizenship and Immigration)*, 2017 FC 894 at para 24, in which Chief Justice Crampton found that the visa officer in that case had failed to consider the applicant's history of compliance with immigration law. However, the Chief Justice also explained that a failure to consider this factor alone did not provide grounds for finding a decision to be unreasonable. Rather, on the facts of that case, this omission was a shortcoming which, taken together with others, collectively rendered the decision unreasonable. In the present case, I have not found other shortcomings in the Officer's analysis and cannot conclude the absence of a reference to Mr. Sekhon's favourable immigration history to represent a reviewable error.

[13] Moreover, it is trite law that an administrative decision-maker is presumed to have considered all the evidence before it unless the contrary is shown (see, e.g., *Rahman v Canada (Minister of Citizenship and Immigration)*, 2016 FC 793 at para 17). A visa officer is under no

obligation to refer to every piece of evidence, although the more significant a piece of evidence that is inconsistent with a decision-maker's conclusion, the more willing a court may be to conclude that the absence of a reference to that evidence in the decision means that it was overlooked (*Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)* (1998), 157 FTR 35 at para 16). Mr. Sekhon's clean immigration, civil, and criminal record does not constitute evidence which contradicts a finding by the Officer, and I cannot conclude that this evidence is sufficiently significant to the determination the Officer was required to make to find that it was ignored.

[14] Having found no basis to conclude that the Decision is unreasonable, this application for judicial review must be dismissed. Neither party proposed any question for certification for appeal, and none is stated.

JUDGMENT IN IMM-4951-17

THIS COURT'S JUDGMENT is that this application for judicial review is dismissed.

No question is certified for appeal.

"Richard F. Southcott"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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