

Federal Court



Cour fédérale

Date: 20181010

Docket: IMM-1309-18

Citation: 2018 FC 1015

Vancouver, British Columbia, October 10, 2018

PRESENT: The Honourable Madame Justice Simpson

BETWEEN:

**GURSHER SINGH ALIAS
ANANDPREET SINGH**

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

(Reasons delivered orally in Vancouver, British Columbia on October 1, 2018)

I. PRELIMINARY MATTER

[1] On August 14, 2018, Madam Justice Roussel made an order that IMM-576-18 and IMM-1309-18 were to be heard at the same time. The relevant facts are the same in both applications for judicial review, and the Applicant relies on similar arguments in both

applications. These reasons will apply to and be filed in both files, however a separate order will be made for each file.

II. THE APPLICATION

[2] Mr. Gursher Singh [the Applicant] has applied for judicial review of decisions dated December 5th, 2017, (file IMM-1309-18) [the First Decision], and January 25th, 2018, (IMM-576-18) [the Second Decision] made by two different visa officers. Both officers refused the Applicant's applications for work permits for post-graduate employment.

[3] The Applicant is a 26-year-old citizen of India. He arrived in Canada in January 2012. He studied at Kwantlen Polytech University, [Kwantlen] in Surrey, B.C. According to a document described as the affidavit of Robin Mann, who was the Applicant's consultant [the Mann affidavit], the Applicant studied continuously from September 2012 to July 2017.

III. THE FIRST DECISION

[4] On October 8, 2017, the Applicant submitted an application for a post-graduate work permit [PGWP]. He was required to make that application within 90 days of the issuance of notification to him that he had successfully completed all the requirements of his course of study.

[5] In November 2017, the Applicant received an email from a visa officer requiring him to provide an official letter from Kwantlen stating the date on which he completed his studies [the Completion Letter.] The email stated that the Completion Letter had to be received by

December 3rd, 2017. This meant that it had to be provided in seven calendar days. The email also told the Applicant to provide Citizenship and Immigration Canada [CIC] with a written explanation if he was unable to provide the Completion Letter on time.

[6] The Applicant did not provide the Completion Letter by December 3rd, 2017, and he did not provide any explanation for his failure to do so.

[7] On December 5th, 2017, the First Decision refused the Applicant's application for a PGWP. The decision states that his application was refused because CIC did not receive the Completion Letter.

IV. THE SECOND DECISION

[8] On December 13th, 2017, the Applicant sent a Completion Letter dated July 12, 2017, together with a fresh application for a PGWP. A fresh processing fee was also included.

[9] On January 25th, 2018, the Second Decision refused the Applicant's second application for a PGWP on the basis that it had not been submitted within 90 days of the completion of his studies.

V. THE ISSUES

[10] The Applicant says that procedural fairness required CIC to give him more than seven days to provide the Completion Letter and also required CIC to alert him about his opportunity to seek judicial review in Federal Court.

[11] The Applicant also says that the seven-day period for providing the Completion Letter was unreasonable.

[12] Lastly, the Applicant says that the Second Decision is unreasonable because the visa officer reached the Second Decision without making it clear that he or she saw in the Global Case Management System [GCMS] notes that the first application had been made in a timely way.

[13] The Respondent has also raised an issue. It notes that the Applicant has not provided an affidavit, and says that the Mann Affidavit should be struck out because paragraphs 4 to 13 are statements of fact which do not disclose a source, and paragraphs 14 to 21 are argument.

VI. DISCUSSION

[14] The Applicant's failure to provide an affidavit means that the court has no evidence about the following matters:

- a) whether the Applicant had difficulty acquiring the Completion Letter;

- b) the reason why the Applicant failed to provide an explanation for his failure to supply the Completion Letter on time.

[15] Without this information I am unable to conclude that the First Decision was unfair or unreasonable. On its face, it appears to have been reasonable because the Completion Letter was already in existence (it was dated July 12, 2017) and it could easily have been emailed to the Applicant and then forwarded by him to CIC by email within the week provided.

[16] Regarding the failure to notify the Applicant about the possibility of a judicial review, CIC has no obligation to inform an applicant of his or her legal rights. While it is good practice to do so, and it is often done, the failure to notify does not make either decision unreasonable.

[17] Without stating that the facts are based on information and belief, and that the Applicant is the source, the Mann Affidavit recites numerous facts. The combination of those facts with the arguments contained in paragraphs 14 to 21 make the document inadmissible. As well, in both files the Mann Affidavit is not properly sworn. For these reasons, it will be struck out.

[18] Lastly, in my view, the fact that the first application for a PGWP appears to have been made in time, was not a relevant fact for the visa officer making the Second Decision, because the first application was incomplete without the Completion Letter.

VII. CONCLUSION

[19] For all these reasons, judgments will be made dismissing both applications for judicial review, and striking the Mann Affidavit in both files.

JUDGMENT in IMM-1309-18

UPON the Applicant's application for judicial review of a decision dated December 5, 2017 wherein a visa officer refused his application for a post-graduate work permit;

AND UPON reading the material filed and hearing the submissions of counsel for the Applicant in Vancouver, British Columbia on October 1, 2018;

AND UPON determining that it was unnecessary to hear from counsel for the Respondent;

AND UPON determining that no question was posed for certification for appeal;

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is dismissed.
2. The Mann Affidavit is hereby struck out.

"Sandra J. Simpson"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-1309-18

STYLE OF CAUSE: GURSHER SINGH ALIAS ANANDPREET SINGH v
THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

PLACE OF HEARING: VANCOUVER, BRITISH COLUMBIA

DATE OF HEARING: OCTOBER 1, 2018

JUDGMENT AND REASONS: SIMPSON J.

DATED: OCTOBER 10, 2018

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