Federal Court  Cour fédérale

Date: 20190409

Docket: IMM-4179-18

Citation: 2019 FC 433

Ottawa, Ontario, April 9, 2019

PRESENT: The Honourable Madam Justice McVeigh

BETWEEN:

MANISH GOYAL

Applicant

and

THE MINISTER OF CITIZENSHIP & IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] In this application, Manish Goyal [the "Applicant"] seeks judicial review of a decision of the Minister's Delegate [the "Delegate"]. The Delegate denied the Applicant entry to Canada and made an exclusion order against the Applicant. The Delegate determined that, despite the Applicant's representations that he was trying to enter Canada on a visa for tourism, the Applicant was, in fact, trying to enter Canada for the purpose of work.

II. Background

[2] The Applicant was born on July 2, 1978, and is a citizen of India. The Applicant is married and has a child under the age of 18 in India.

[3] In or around 2013, the Applicant made inquiries in India about traveling to Canada. In the Applicant's narrative, he approached a family friend, Kulwant Singh Ludu ["Kulwant"], who resided in Canada. The Applicant ostensibly advised Kulwant that he wanted to travel to Canada, and wanted to bring his wife to Canada to visit as well. Therefore, the Applicant applied for a temporary resident visa ["TRV"] for his wife, which was refused in or around 2013.

[4] It is unclear from the record as to the precise dates, but at some point, the Applicant applied for a visitor visa to Canada, and he received a TRV for the purpose of visiting Canada.

[5] On August 11, 2018, the Applicant flew to the Vancouver International Airport. While passing through customs, the Applicant was examined by a Canada Border Services Agency ["CBSA"] Officer [the "Officer"].

[6] The Applicant originally expressed to the Officer that he did not know anyone in Canada, and that he was coming to Canada to visit for 8 days. The Applicant then changed his story and stated that he was visiting a friend of a friend named Kulwant Singh Ludu.

[7] When pressed, the Applicant did not have any definitive plans for what he planned to do in Canada. The only definitive thing he had was a two-day motel reservation in Surrey that had been booked the day before.

[8] Upon examination, the Officer further came to know that the Applicant had travelled without his wife and child, and that the Applicant's wife had previously been denied a TRV.

[9] As the examination was occurring, the Applicant kept being phoned by an individual named Ashish. The Applicant initially adamantly stated that Ashish was in Dubai, but eventually admitted that he lied and that Ashish was in Canada.

[10] With grounds having developed for a phone examination, the Officer discovered that Ashish is an immigration consultant. When the Officer later contacted Ashish, Ashish claimed not to know the Applicant and attempted to distance himself from the entire matter.

[11] The Officer found in the Applicant's suitcase copies of his wife's educational certificates and their marriage certificate.

[12] Kulwant, who owns a number of restaurants, was found as a contact on the Applicant's phone. When Kulwant was phoned, Kulwant offered an inconsistent story on how he and the Applicant knew each other.

[13] Finally, when the Officer called the Applicant's wife in India, the Applicant's wife stated that the Applicant was, in fact, coming to Canada to work at Kulwant's restaurant.

[14] Therefore, the Officer found that on a balance of probabilities, the Applicant was inadmissible to enter Canada as a visitor, as the Applicant was attempting to enter Canada for the purpose of working.

[15] The Officer recommended in his official report to the CBSA Officer Woo [Officer Woo], under section 44 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA], that the Applicant be given an exclusion order on the following grounds:

i. The Applicant is inadmissible to Canada for seeking entry to engage in employment without authorization; and
ii. The Applicant was aware of the work permit requirements in Canada yet attempted to deceive immigration by presenting himself as a genuine traveller.

[16] Officer Woo was designated as the Minister's Delegate on July 7, 2018, after being provided the report by the Officer. A follow-up interview between the Applicant and the Delegate, with the assistance of an interpreter, began at 12:49pm, and the interview concluded at 1:19pm. Therefore, the interview lasted for approximately 30 minutes.

[17] At the beginning of the interview, the Delegate asked to confirm that the Applicant was comfortable, and also attempted to ensure that the Applicant understood the format of the interview.

[18] The Delegate provided the Applicant with a copy of the Officer's report, noting that if the report was well-founded, she would be issuing a removal order against him.

[19] The Delegate then told the Applicant that the following led the Delegate to believe that the Applicant was not traveling for the purpose of tourism:

> Q: I have seen the officer's evidence pertaining to the fact that you are coming to Canada to and that you will be engaging in unauthorized employment while in Canada. You will have a chance to respond to this evidence as soon as I am done reading this. The officer provided the following as evidence against you: - You were seeking entry for 8 days in order to vacation;
>
> You originally stated that you did not know anyone in Canada, but later recanted and stated you are visiting a friend of a friend named Kulwant SINGH LUDU;
>
> -You stated that you only know one contact in Canada;
>
> -You have a 2 day reservation at a motel in Surrey booked one day prior to departure;
>
> -You have limited knowledge of Canada;
>
> -You are married with a minor child but am travelling alone;
>
> -Your wife was refused a visa;
>
> -During the examination, a local number named "Ashish" continuously called you;
>
> -You stated that Ashish was not in Canada and claimed you only had two contacts in Canada;
>
> -You later admitted you had lied and stated Ashish is actually here in Canada;
>
> -Your phone revealed that Ashish is an immigration consultant who provided you with a contact named Kulwant Singh LUDU who owns a restaurant;
>
> -Your phone also revealed that you had been requesting work permit application forms and Canadian permanent residency applications;

> -Numerous Canadian contacts were also found on your phone;
>
> -When Ashish and Kulwant SINGH were contacted, they made inconsistent statements regarding how you know them and distanced themselves from you;
>
> -Your wife in India was contacted and stated that you were coming to work for Kulwant's restaurant for as long as is needed to help support the family;
>
> -You denied coming to work in Canada when confronted with this evidence.

[20] The Applicant protested in response to the Delegate's recitation of the evidence that the above was completely false. The Applicant submitted that Kulwant was a friend. The Applicant said that he had a thriving business in India so he had no reason to want to migrate and work in Canada.

[21] The Delegate did not accept these explanations and issued the exclusion order.

III. Issues

[22] The issues are:

A. Was the exclusion order reasonable; and

B. Was there a breach of procedural fairness in making the exclusion order?

IV. Standard of Review

[23] The standard of review is reasonableness on the question of the merits, and correctness on the procedural fairness question (*Pompey v Canada (Citizenship and Immigration),* 2016 FC 862).

[24] A preliminary remark is that the Applicant, in his affidavit, provided evidence that was not before the Delegate. I will give no weight to any evidence that was not before the decision maker, as per paragraphs 19-20 of *Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency (Access Copyright),* 2012 FCA 22. As there are transcripts and extensive notes, it is easy to discern what was said and what is before the Officer and the Delegate.

[25] I will dismiss this application for the reasons that follow.

V. Analysis

A. *Was the exclusion order reasonable?*

[26] Section 41(a) of the IRPA provides that a person is an inadmissible foreign national if, on a balance of probabilities, there are grounds to believe they are inadmissible for failing to comply with the IRPA. In making a decision that an applicant is inadmissible, this Court has held that these types of exclusion orders are entitled to considerable deference (*Ouedraogo v Canada (Public Safety and Emergency Preparedness),* 2016 FC 810 at paras 21-23).

[27] The Applicant insists that the Delegate made a number of errors.

[28] The Applicant first makes the argument that the Delegate's decision is unreasonable as the Applicant was coming for 8 days, and it was not realistic that an individual would only work for 8 days. This misses the point. I make this finding as the Delegate did not think he was only going to work for 8 days. The fact that the Applicant had a return ticket did not outweigh the other findings and inconsistencies. It is common sense that if the Applicant was coming to work, than he would be able to change his return ticket. The Delegate found that the Applicant was coming to work and not that he was coming to work for 8 days only.

[29] The Applicant further argues that there is evidence in the record that demonstrate the family/economic ties of the Applicant back to India, which the Applicant argues the Delegate did not properly consider. However, this is simply irrelevant. The Delegate did not make the exclusion order without considering these ties. In fact, the Delegate specifically called the Applicant's wife to inquire as to the purpose of the Applicant's trip, and the Applicant's wife herself stated that the Applicant was coming to Canada to work at Kulwant's restaurant. Thus, the Delegate could not be said to base its decision on an "erroneous finding of fact". In fact, the Delegate was basing her decision on her discussions with Ashish, Kulwant, and the Applicant's wife.

[30] The argument that there is no evidence his wife even understood the questions can be refuted as there was no evidence she did not understand English, or that the questions were not appropriately translated. However, given that her certificates found in the suitcase were all in

English, and included were her results from the University of Cambridge English ESOL examinations, which show that the Applicant's wife has a good understanding of the English language, this argument too must fail.

[31] The fact the Delegate did not specifically mention that the Applicant had financial means to support himself, is not an error in this situation. It is trite law that a decision maker need not mention every piece of evidence in the record when making their decision.

[32] As well, the Applicant advanced the argument at the hearing that the Delegate should have pulled up the visa file on a computer and reviewed that material to determine the Applicant's financial situation. This argument will not be successful. There is no obligation for the Delegate to pull up the other files and consider them. While that may not always be the case in different applications under the IRPA, there is no obligation on a CBSA officer at a port of entry when someone is trying to enter on a visitor's visa to access on their system (even if they can) other related files and consider them. The Applicant offered no authority to support this argument.

[33] The Applicant argued that the Delegate had his passport and could have looked at it, as it showed that the Applicant had traveled before (including to the USA) and had returned back to India.

[34] However, when the transcript is reviewed, it is clear that the Delegate knew that the Applicant had traveled to the USA and returned to India. It is also clear from the record that the

Delegate knew that the Applicant had a work permit for the United Arab Emirates. The Delegate is not under an obligation to "find" evidence, but in this case, they were aware of all of the information. The Applicant is asking me to reweigh the evidence and that is not my role.

[35] Given that the Applicant had in his possession his wife's educational certificates, that he was being contacted by an immigration consultant who disavowed him when contacted, and that his wife provided an inconsistent story as did he regarding his relationships in Canada, I do not find any of the Applicant's arguments persuasive.

[36] In a review of the record, it is clear that the Delegate had enough evidence, as well as contradictory evidence, to make this decision a reasonable one.

B. *Was there a breach of procedural fairness in making the exclusion order?*

[37] It is abundantly clear from the record, contrary to the Applicant's submission, that the Applicant was offered access to legal counsel in accordance with the *Charter*. At page 40 of the Certified Tribunal Record, the Applicant's signature is affixed to a form whereby the Applicant waived access to legal counsel. The Applicant's rights were communicated to him via a Hindi interpreter. There can be no argument that the Applicant was not provided with access to legal counsel.

[38] The Applicant cannot assert that his right to legal counsel is triggered the moment that he is asked a question at a port of entry. Rather, I note that the right to counsel arises when there is an actual detention. In *Dehghani v Canada (Minister of Employment and Immigration),* [1993] 1

SCR 1053, the Supreme Court of Canada held that a secondary examination by an immigration officer at a port of entry does not constitute a "detention" within the meaning of section 10(b) of the *Charter*. The element of state compulsion is insufficient. Questioning in a secondary examination is a routine part of the general screening process for persons seeking entry to Canada, and does not trigger the right to legal counsel.

[39] Only once the Applicant was properly detained did the right to legal counsel arise, at which point the Applicant was offered legal counsel through an interpreter. The Applicant refused legal counsel at that point. Indeed, the Applicant was detained at approximately 1:52pm on August 11, 2018, and at 1:54pm he is noted to have declined legal counsel.

[40] Turning to the question of the Delegate being rude or combative, there is no evidence of such mannerisms in the transcript. Rather, the Delegate appeared at all times to be respectful and professional, asking on a number of occasions if the Applicant understood the proceedings.

[41] In the written materials it was alleged that the Applicant was ill and experiencing stomach problems, thus rendering him unable to properly answer the questions. Contrary to this assertion, there was evidence that the Applicant had access to and in fact took his medications when he was in detention. This is confirmed by the detailed notations of him being observed and monitored while in custody. There would have been notes if the Applicant was experiencing stomach problems. I find that this argument must fail as there no medical evidence provided to supplement such an argument. In fact, contrary evidence is supplied.

[42] Finally, I do not think that there is a reasonable apprehension of bias.

[43] In *Committee for Justice and Liberty et al v National Energy Board et al*, [1978] 1 SCR 369, at page 394, the Supreme Court of Canada held that the test for whether a reasonable apprehension of bias was as follows:

> …[T]he apprehension of bias must be a reasonable one, held by reasonable and right minded persons, applying themselves to the question and obtaining thereon the required information.... [That] test is "what would an informed person, viewing the matter realistically and practically — and having thought the matter through — conclude. Would he think that it is more likely than not that Mr. Crowe, whether consciously or unconsciously, would not decide fairly."

[44] There is no evidence in the record to suggest that there was a reasonable apprehension of bias on part of the CBSA, the Officer, or the Delegate. An informed person, in reviewing the transcript and the record, would have come to a similar decision.

[45] I will dismiss this application.

[46] No question was presented for certification and none arose from the material.

JUDGMENT in IMM-4179-18

THIS COURT'S JUDGMENT is that:

1. The application is dismissed;

2. No question is certified.

"Glennys L. McVeigh"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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