

Federal Court



Cour fédérale

Date: 20210907

Docket: IMM-1901-20

Citation: 2021 FC 925

Vancouver, British Columbia, September 7, 2021

PRESENT: The Honourable Mr. Justice Barnes

BETWEEN:

MANPREET SINGH

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The Applicant, Manpreet Singh, seeks to overturn a decision by a visa officer (Officer) made on March 12, 2020 refusing his application for a temporary resident visa (TRV). This is the second time Mr. Singh has judicially challenged the refusal of a TRV to authorize a trip to Canada to explore an ostensible investment opportunity. The previous refusal decision was set aside on consent. Previous to that, Mr. Singh was refused a TRV three times. The decision now under review was based on the Officer's finding that Mr. Singh had failed to establish that he

would leave Canada in accordance with the law. The Officer made a collateral finding that Mr. Singh's stated purpose for coming to Canada was not demonstrably legitimate.

[2] For the reasons that follow, the Officer's decision is set aside.

[3] The standard of review that applies here is reasonableness. I accept the Minister's position that broad discretion applies to TRV decisions and the onus rests on an applicant to establish that they will leave Canada at the end of an authorized stay. Mr. Singh does not dispute this. At the same time, it is not open to the decision-maker to expand the framework of their inquiry to include matters irrelevant to the legislative mandate. The applicable legislative provision that applied to Mr. Singh's application was whether he would leave Canada at the end of his authorized stay: see s. 179(b) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227. It was not open to the Officer to question the business merits of Mr. Singh's proposed visit except to the extent that the stated purpose of the trip may or may not have been *bona fide*. This point was made by Justice Russel Zinn in *Agidi v Canada (Citizenship and Immigration)*, 2013 FC 691:

[7] Even if the affidavit were accepted, it is not clear to me why the officer states that he was not satisfied that the applicant's purpose of travel to Canada was "compelling" and why he considers that to be a basis to refuse an application for a TRV. An applicant for a TRV need not establish that they have a "compelling" reason to travel to Canada. On the contrary, an officer "shall" issue a TRV if the conditions in section 179 are established. The only condition in section 179 relevant in this application for judicial review is that an applicant for a TRV establishes that he or she "will leave Canada by the end of the period authorized for their stay:" paragraph 179(b).

[4] It is not at all clear to me how the Officer concluded that Mr. Singh had failed to establish “a legitimate business purpose” in Canada or that the purpose of the trip was “vague” or impractical. Indeed, the documentation provided in support of Mr. Singh’s TRV application was far from vague. Among other things, the Vancouver-based company that invited him (IXIUM Technologies or IXIUM) provided a detailed rationale and itinerary for his trip to Canada including the following:

My name is Kenneth Komenda, CEO of IXIUM Technologies (“IXIUM”). Our Company is in a newly emerging agricultural sector defined as *aquaponic vertical farming* involving the rearing of fish and the growing of produce symbiotically.

I would like to take this opportunity in extending a formal invite to Mr. Manpreet Singh to attend various IXIUM meetings of interest as our guest when in Vancouver, British Columbia.

This letter is specific to our intended meeting between myself and Graham Bolton, Senior Relationship Manager for Farm Credit Canada (“FCC”) scheduled to occur during Mr. Singh’s visit. Our respective companies have previously discussed IXIUM’S vision, technologies, operations and expansion plans. FCC has outlined various lending programs their company could potentially provide. I look forward to Mr. Singh being in attendance with our company as part of his introduction.

FCC is Canada’s leading agricultural lender and is a financially self-sustaining federal Crown corporation reporting to Parliament through the Minister of Agriculture and Agri-Food. As Canada’s national provider of financial and business services tailored exclusively to the needs and opportunities of the agriculture and agri-food industry, FCC wants to ensure that farmers, producers and businesses along the entire agriculture value chain continue to grow their businesses, adopt innovative practices and business models, pursue new markets and adopt new technology.

In closing, it will be an honour in introducing Mr. Singh to one of Canada's very significant farming support systems our agriculture sector. We look forward to his presence and our ability to share this information.

[5] Mr. Singh also explained the purpose of his trip in the following way:

I first learned of the aquaponic farming systems developed by IXIUM Technologies Corp. in late October 2018 through our family lawyer and friend, Mr. Harjeet Bedi (Law Office of Bedi & Associates located in Chandigarh, India). As Mr. Bedi was familiar with our farming operations and our desire to both diversify and expand, he approached me with the opportunity presented by IXIUM with respect to potentially investing in their Aquaponic Vertical Farming System in British Columbia, Canada. I indicated that I was interested and requested further information regarding the company and the opportunity.

In November 2018, I received an information package from IXIUM and I participated in two (2) video conferences with IXIUM (one at the law office of Mr. Bedi and the other remotely from my home in Barnala in which Mr. Bedi also participated) in the months of January and February 2019. After carefully reviewing the material provided and as a result of my discussions with the company, I decided that the Aquaponic Vertical Farming System developed by IXIUM was the best fit in terms of what I was looking for.

My interest in the IXIUM Aquaponic Vertical Farming System (AVFS) is really three-fold. Firstly, it offers a self-sustained ecosystem and controlled environment for farming not common or readily available in India. The most attractive feature of which is the ability to reduce production costs and increase yields (through vertical farming) while improving soil health and deliver positively to the environment.

Secondly, as I am seeking to develop a better understanding and access to the Canadian agricultural sector and market from a farming perspective. I am particularly interested toward acquiring a better knowledge of the farming techniques and disciplines respect to crop production grown within a self-sustained and controlled environment in Canada and to explore how a reciprocated opportunity in the future could potentially be implemented in terms of a similar set-up and operation on our farm in Barnala.

Finally, in terms of investment, I feel that the opportunity to diversify our operation internationally and to participate in an agricultural sector such as in Canada would lessen the dependency of regional conditions and factors that have limited and continue to restrict the growth of our farming operations in India to date.

While I am confident in my rationale and interest in the AVFS technology and investment opportunity with IXIUM, further meetings and consultations with the company are both required and warranted in order to provide me with further assurance in terms of the viability, validity and financial return of investing in their operations in British Columbia, Canada. It is in this regard that I would appreciate both the consideration and assistance of your office toward receiving authorization to travel to Canada for the purpose stated herein. I remain available to answer any questions you may have.

Thank you.

[6] Despite the CEO of IXIUM inviting Mr. Singh, the Officer made no direct enquiries about the authenticity of the invitation. The only concerns mentioned in the Officer's notes are in the nature of straw horses. For instance, the Officer noted that Mr. Singh did not provide any correspondence leading up to the IXIUM invitation even though this is not the kind of detail that would be reasonably anticipated as necessary in the face of what had already been provided. The Officer also questioned why Mr. Singh was apparently the only potential investor that IXIUM invited for meetings, speciously implying this was somehow suspicious. The Officer's additional concern that the IXIUM website did not disclose any interest in attracting overseas investors is not valid. Very few corporate websites would expectedly include this type of information, so its absence was irrelevant.

[7] The Officer expressed a similar reservation about Mr. Singh's family lawyer who facilitated the connection with IXIUM. Having done an internet search, he found that the lawyer was a migration specialist. The implication here is that Mr. Singh's Indian lawyer was somehow assisting him to create a false narrative. Drawing an adverse inference of this sort from an undisclosed internet search was unwarranted. It was also unreasonable for the Officer to expect

Mr. Singh to disclose particulars of his lawyer's areas of practice without the Officer first asking him to do so. The same is true for the Officer's suggestion that the photographs of Mr. Singh's declared properties and business assets appeared to have been photoshopped. Those photographs do not obviously disclose any manipulation and it was unreasonable to draw such an unfavourable inference in the absence of any supporting evidence. Even if the concern had some basis in fact – albeit not disclosed in the Officer's reasons – it was unfair not to put that concern to Mr. Singh for a response.

[8] Similarly, the Officer's inability to find online business registrations or licenses for Mr. Singh's declared holdings is not, in this context, suspicious. Mr. Singh had produced extensive documentation proving his ownership of these assets. If further records were necessary, the Officer should have requested them. The fact that the Officer could not find them online does not, on its own, raise a valid concern.

[9] There are further problems with the Officer's reasoning, most notably in their failure to account for the factors that indicated Mr. Singh would not be an overstay risk. He had extensive Indian business assets and his family remained there. These facts are so important to a proper analysis that the Officer's failure to mention them is on its own a reviewable error: see *Kheradpazhooh v Canada (Citizenship and Immigration)*, 2018 FC 1097 at para 18 and *Abdollahi v Canada (Citizenship and Immigration)*, 2017 FC 972 at para 13.

[10] This was Mr. Singh's fifth attempt to obtain a TRV for a short business-related trip to Canada. Needless to say, his application was thorough and well-documented. The Officer's

stated reasons for refusing a TRV do not justify the decision reached. Indeed, the decision is so weak that it suggests an improper motive, most likely, that the Officer was unduly influenced by the history of previous TRV refusals. That is, in fact, the first point noted in the Officer's reasons. Although the Applicant has asked for costs, I am not persuaded that these are warranted at this point because I do not know how thoroughly the first visa applications were prepared. Costs may well be seriously considered if, when this matter is redecided, a similar deficient analysis is carried out.

[11] The Officer's decision is accordingly set aside. It is to be redetermined on the merits by a different decision-maker and in accordance with these reasons.

[12] Neither party proposed a certified question and no issue of general importance arises on this record.

JUDGMENT IN IMM-1901-20

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

The matter is to be redetermined on the merits by a different decision-maker in accordance with these reasons.

"R.L. Barnes"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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