

Federal Court



Cour fédérale

Date: 20231117

Docket: IMM-8384-22

Citation: 2023 FC 1530

Ottawa, Ontario, November 17, 2023

PRESENT: Madam Justice Azmudeh

BETWEEN:

HARDEEP SINGH SANGHA

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Hardeep Singh Sangha [**the “Applicant”**], is seeking a Judicial Review under section 72(1) of the Immigration and Refugee Protection Act [**IRPA**] concerning the rejection of his Work Permit application for Canada. The Judicial Review is dismissed for the following reasons.

[2] The Applicant is an Indian citizen married to a foreign national residing in Canada. The Applicant applied for an open work permit based on the fact that his spouse, Ms. Harmanjeet Kaur

Brar [the “Spouse”] was residing in Canada with a work permit in a high-skilled occupation. Following his application, the Applicant was interviewed by a visa officer from the Canadian High Commission in Delhi, India [the “Officer”]. One of the factors the Officer had to assess was the genuineness of the marriage to the Spouse.

[3] The Applicant alleges that he and his spouse had prepared a substantial package of documents totalling 2121 pages to prove the genuineness of their relationship. This included photos, record of text messages, letters and receipts. Both of them provided affidavits stating that when the Applicant attended the interview on June 13, 2022, he attempted to provide the package but that the Officer refused to accept it because he could not corroborate the genuineness of the documents. The Officer then proceeded to conduct the interview without the benefit of reviewing the documents in the package. The Applicant’s wife attached the package as Exhibit A of her affidavit and the Applicant confirmed that the documents in the exhibit were indeed the package he had brought with him to the interview but that the Officer refused to accept it.

[4] The Officer has also filed an affidavit to provide his evidence. Even though the Officer does not appear to have a recollection of the particular interview with the Applicant, he pointed to his practice as an immigration officer in the usual and ordinary course of business. The Officer stated that it was their standard practice to review all of the documents that an applicant presents during an interview, and they normally do not decline to consider them. When the applicants present themselves with pages of documents during the interview, the Officer’s standard practice would state that fact in the Global Case Management System (“GCMS”).

[5] The Officer went on to conclude that if the Applicant had asked them to consider more documents, at the very least, there would have been a reference to them in GCMS notes.

[6] In this case, there is no reference to the said package in the Officer's GCMS notes which constitute their reasons.

II. Judicial Review Issues and Standard Review

[7] The only issue the Applicant raised at this Judicial Review is whether the Officer's failure to consider material and probative evidence contained in the package amounts to a breach of procedural fairness. The Respondent submits that there is no breach of procedural fairness because the Applicant never attempted to file the package at the interview on June 13, 2022.

[8] As the parties appreciated in this Judicial Review application, there is a factual dispute on whether on a balance of probabilities, there was a package of evidence the Applicant brought with him to the interview and tried to present to the Officer for their review.

III. Standard of Review

[9] If a procedural fairness question arises on an application for judicial review, the Court determines whether the procedure used by the decision-maker was fair, having regard to all of the circumstances including the nature of the substantive rights involved and the consequences for the individual(s) affected. The issue of procedural fairness is to be reviewed on the correctness standard (*Mission Institution v Khela*, 2014 SCC 24 at para 79; *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 [*Canadian Pacific Railway Company*] at paras 37-56; *Canadian Association of Refugee Lawyers v Canada (Immigration, Refugees and Citizenship)*, 2020 FCA 196 at para 35)). The central question for issues of procedural fairness is whether the procedure was fair having regard to all of the circumstances, including the factors

enumerated in *Baker v Canada (Minister of Citizenship and Immigration)*, 1999 CanLII 699 (SCC), [1999] 2 SCR 817 at paragraphs 21-28, *Canadian Pacific Railway Company* at para 54.

IV. Analysis

[10] To engage with whether the Officer's decision to dismiss the alleged documents was fair, the Court must first decide whether it accepts the Applicant's version of the facts; i.e. whether the Applicant had the package with him and attempted to present it to the Officer for their consideration during the June 13, 2022, interview. For the reasons explained below, on a balance of probabilities, I cannot accept this to be true.

[11] Both the Applicant and the Spouse provided affidavits where they stated they had put together the very package in Exhibit A in preparation for the interview. The Applicant, who attended the interview, attempted to provide the Officer with that package, but the Officer refused to accept it. As counsel for the Respondent has pointed out, there are multiple pages in Exhibit A (specifically, pages 1012 to 1036 of the Applicant's Record) that could not have reasonably existed on June 13, 2022. These include many text messages and references to missed calls generated after the interview with the dates ranging from August to October 2022.

[12] I agree with the Respondent that the package marked as Exhibit A simply could not have existed in time to be before the Officer on June 13, 2022, because it contained documents generated after this date.

[13] In addition, the Respondent has provided the Court with the Officer's affidavit. In it, the Officer, who has been an immigration officer since 2006 refers to their normal practices and how they would have at least referred to the fact that an applicant presented documents in their notes.

The Applicant's version of the facts clearly contradicts how the Officer, who has no stake in the case, would have likely behaved during the interview. There is nothing in this case to suggest that the Officer would not apply his normal practices to the interview in question.

[14] The Applicant's counsel argued that the Officer's affidavit does not refer to their particular interaction with the Applicant and that I should not accept their evidence of how they might have normally conducted their business as evidence of what took place during the interview. In light of clear contradiction on the face of the alleged documents with the Applicant's version of the facts, I do not accept this argument.

[15] I also agree with the Respondent that *Singh v Canada (Immigration, Refugees and Citizenship)*, 2018 FC 84 paras. 17-20 [**Singh**] apply in this case. In *Singh*, the Court relied on *Oei v Canada (Minister of Citizenship and Immigration)*, 2002 FCT 466 at para 42 to prefer the Officer's notes to the Applicants'. In *Singh*, this Court found that officers make their notes contemporaneously with each interview and have no vested interest in the particular outcome of an application. While in *Singh*, there were allegations of missing notes, there was no positive evidence of non-existing documents.

[16] In *Fares v Canada (MCI)*, 2020 FC 373 at para 59, Justice Russel also held that GCMS notes are presumed to be accurate "because they are a contemporaneous (or near contemporaneous) record of what transpired at the interview and officers are highly trained and have no personal interest in the outcome of an application."

[17] In light of the Applicant's inaccurate version of the facts in this case, there is even more reason to prefer the Officer's version of the facts.

[18] I therefore find that the Applicant could not have taken the corroborating package in question with them to the interview to trigger a potential procedural fairness issue.

[19] The Applicant is not challenging the reasonableness of the Officer's decision.

[20] I find that there was no breach of procedural issue in this case and I therefore dismiss the judicial review.

[21] Neither party proposed a question for certification and I agree that none arises in this matter.

V. Conclusion

[22] The application for judicial review is dismissed.

JUDGMENT IN IMM-8384-22

THIS COURT'S JUDGMENT is that

1. The application for judicial review is dismissed.

"Negar Azmudeh"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-8384-22

STYLE OF CAUSE: HARDEEP SINGH SANGHA v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: HELD BY VIDEOCONFERENCE

DATE OF HEARING: NOVEMBER 9, 2023

**REASONS FOR JUDGMENT
AND JUDGMENT:** AZMUDEH J.

DATED: NOVEMBER 17, 2023

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