

Federal Court



Cour fédérale

Date: 20240618

Docket: IMM-6143-23

Citation: 2024 FC 943

Vancouver, British Columbia, June 18, 2024

PRESENT: Mr. Justice Sébastien Grammond

BETWEEN:

**MANMEEN KAUR
BALVINDER SINGH
TEERATH KAUR**

Applicants

and

**MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] Ms. Kaur, a citizen of India, came to Canada on a visitor visa with her spouse and child. Soon afterwards, she received an offer of employment and applied for a work permit. Her application was refused. The officer found that Ms. Kaur was not a genuine temporary resident and had the intention to reside in Canada permanently. From my reading of the decision, there were four reasons for this finding: (1) Ms. Kaur applied for a visa to visit family in Ontario, but

moved to British Columbia within a month, where she received an offer of employment; (2) the employer is a small business and it is difficult to understand why it would need Ms. Kaur in an administrative position; (3) prior to coming to Canada, Ms. Kaur's spouse opened a bank account in British Columbia, using his relative's address in Ontario; (4) Ms. Kaur failed to give evidence of strong ties to her home country.

[2] Ms. Kaur is now seeking judicial review of this decision.

[3] Ms. Kaur first argues that the officer breached procedural fairness by making credibility findings without giving her notice and an opportunity to provide further submissions. She says that the officer's concerns regarding her conduct while in Canada, in particular the family's move to British Columbia and the opening of bank accounts, amount to a finding that her intention to remain in Canada temporarily is not credible. She highlights the officer's statement, when dealing with the bank account issue, that "this information lacks authenticity of the reason to come to Canada", as proof that credibility was the real concern.

[4] Certain principles must be kept in mind when assessing Ms. Kaur's submission. Applicants for temporary resident visas must satisfy the visa officer that they "will leave Canada by the end of the period authorized for their stay": *Immigration and Refugee Protection Regulations*, SOR/2002-227, s 179(b). The onus is on applicants to provide sufficient evidence for the officer to make such a finding. The requirements of procedural fairness with respect to visa applications are minimal: *Yuzer v Canada (Citizenship and Immigration)*, 2019 FC 781 at paragraph 16. In particular, the officer is not required to give notice to applicants of concerns

related to the insufficiency of the evidence: *Singh v Canada (Citizenship and Immigration)*, 2021 FC 790 at paragraph 9.

[5] Nevertheless, officers should give notice where they are concerned about “the credibility, accuracy or genuine nature of information submitted by the applicant”: *Hassani v Canada (Citizenship and Immigration)*, 2006 FC 1283 at paragraph 24, [2007] 3 FCR 501. It may therefore be tempting to recast a finding that the applicant will not leave Canada as a credibility finding, simply because the officer does not believe the applicant’s statement that they undertake do so. This, however, would require that notice be given in a very large number of study permit applications and is at odds with this Court’s case law. It is firmly established that in such cases, the negative decision results from the applicant’s failure to discharge their onus to show that they meet the legal test rather than a credibility finding.

[6] Thus, the fact that the officer reviewed several aspects of Ms. Kaur’s conduct after arriving in Canada to find that she was not a genuine temporary resident does not amount to a credibility finding. The officer did not disbelieve any particular piece of information provided by Ms. Kaur. Rather, based on that information, the officer found that she had not met the legal test of showing her intention to leave Canada at the end of her authorized stay.

[7] Likewise, despite the unfortunate choice of words, the statement quoted above regarding the authenticity of Ms. Kaur’s motivations is not indicative of a credibility finding. The officer did not doubt the authenticity of the bank statements that Ms. Kaur provided. Rather, when read in context, this is a conclusion, based on the evidence before the officer, that Ms. Kaur had an

intention to remain in Canada indefinitely. It is the officer's role to make such a determination and a negative conclusion does not trigger a duty to give notice. There was no breach of procedural fairness.

[8] Turning to the merits of the decision, Ms. Kaur argues that the decision is unreasonable because it is based exclusively on the officer's speculation about the motivation behind her conduct after arriving in Canada. In this regard, however, the officer's task is to assess whether Ms. Kaur will leave Canada at the end of her authorized stay. This is a finding about a future event, which of necessity involves a certain degree of uncertainty. To call this process speculative does not make it unreasonable. Rather, on judicial review the Court's task is to ascertain whether the officer's findings were reasonably based on the evidence, bearing in mind the inherent uncertainty involved in predicting future events. In this case, I am of the view that it was reasonable for the officer to doubt Ms. Kaur's willingness to leave Canada given the evidence before them.

[9] Ms. Kaur also faults the decision for not addressing explicitly her travel history, her employment in the family business in India and her friends and family in British Columbia. The officer, however, was not required to mention explicitly every piece of evidence: *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at paragraph 16, [2011] 3 SCR 708; *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paragraph 128, [2019] 4 SCR 653. Here, the reasons enable me to understand why the officer made the decision.

[10] In her written submissions, Ms. Kaur also argues that the officer overlooked evidence regarding the employer's financial situation and made unreasonable or unintelligible findings regarding the employer's capacity to hire her. Again, the reasons may be poorly worded, but when one reads them holistically and generously, it appears that the officer's concern was that an employer of this size would not need an administrative position such as the one proposed for Ms. Kaur. I am not persuaded that this finding is unreasonable.

[11] Likewise, Ms. Kaur challenges the officer's reliance on the opening of a bank account in British Columbia before the applicants came to Canada. She suggests that there was a legitimate explanation for the existence of this bank account. However, this was not in evidence before the officer, and in my view, it does not affect the officer's logic. What the officer is really saying is that the manner in which the stay in Canada unfolded is incompatible with the stated purpose, which was a family visit. The existence of bank accounts was but one element of the story and I am not persuaded that the precise date the first of these was opened fundamentally changes the story.

[12] For these reasons, Ms. Kaur's application for judicial review will be dismissed.

JUDGMENT in IMM-6143-23

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.
2. No question is certified.

"Sébastien Grammond"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-6143-23

STYLE OF CAUSE: MANMEEN KAUR, BALVINDER SINGH, TEERATH
KAUR v MINISTER OF CITIZENSHIP AND
IMMIGRATION

PLACE OF HEARING: VANCOUVER, BRITISH COLUMBIA

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