

Date: 20070924

Docket: IMM-1423-07

Citation: 2007 FC 953

Ottawa, Ontario, September 24, 2007

PRESENT: The Honourable Mr. Justice Barnes

BETWEEN:

BALWINDER SINGH CHAHAL

Applicant(s)

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent(s)

REASONS FOR JUDGMENT AND JUDGMENT

[1] On September 23, 2004, Mr. Chahal applied to sponsor his parents for the granting of permanent resident visas as members of the family class. Mr. Chahal's application was denied by letter dated February 26, 2007 on the basis that he did not qualify as a sponsor because his earnings did not meet the minimum income threshold required under the *Immigration and Refugee Protection Regulations*, SOR/2002-227 (Regulations). The rationale for this decision was stated as follows:

Your income for the assessment period is less than the Low Income Cutoff required for sponsorship purposes.

Our calculations for the period of assessment from September 23, 2003 to September 23, 2004 are as follows:

<u>INCOME</u> <u>ASSESSMENT</u>	<u>COMMENTS</u>	<u>INCOME</u>
Sponsor	Employer/Source: TRUCKING REVENUE For Period: January 1, 2003 to December 31, 2003 Amount Earned: \$18809 Based upon: Computerized Notice of Assessment Eligible Period: September 23, 2003 to December 31, 2003 equals 100 days	\$5153.15
Sponsor	Employer/Source: TRUCKING REVENUE For Period: January 1, 2004 to December 31, 2004 Amount Earned: \$43972.00 Based upon: Computerized Notice of Assessment Eligible Period: January 1, 2004 to September 23, 2004 equals 267 days	\$32077.93
	TOTAL AVAILABLE INCOME	\$37231.08

Under the Immigration Regulations that came into effect on June 28, 2002 all sponsors residing outside of Quebec are assessed using the same Low Income Cut-off (LICO) requirement. This means that regardless of the size of the population base in which a sponsor resides the minimum income requirement is the same. In this case, the required income for a family of 5 persons is \$40,518

To determine if the minimum necessary income (MNI) requirement has been met, consideration is first given to the amount indicated on Line 150 of your Notice of Assessment/Option C-Print for the most recent tax year prior to the submission of your sponsorship

application. If this amount is not equal to or greater than the MNI, consideration is then given to income earned in the 12 month period immediately preceding the date in which the application was submitted.

As the amount listed on the Notice of Assessment/Option C Print for you and/or your co-signer (as applicable) was less than the MNI, your income was assessed on the 12 month period preceding the date your complete sponsorship application was received by this office.

[Quoted from original text]

[2] Mr. Chahal challenges this decision on two principal grounds. He says that the decision-maker overlooked important evidence that established a level of personal income higher than the regulatory threshold. He says, further, that the decision-maker erred by adopting an incorrect methodology for the calculation of his income which led to a material error. He argues that, had the decision-maker applied the evidence correctly, his level of income would have been sufficient to support his sponsorship application.

[3] Set out below are the pertinent passages from Regulation 134(1) containing the rules for determining a sponsor's income:

134. (1) For the purpose of subparagraph 133(1)(j)(i), the total income of the sponsor shall be determined in accordance with the following rules:

(a) the sponsor's income shall be calculated on the basis of the last notice of assessment, or an equivalent document,

134. (1) Pour l'application du sous-alinéa 133(1)(j)(i), le revenu total du répondant est déterminé selon les règles suivantes :

a) le calcul du revenu se fait sur la base du dernier avis de cotisation qui lui a été délivré par le ministre du Revenu national avant la date de dépôt de la

issued by the Minister of National Revenue in respect of the most recent taxation year preceding the date of filing of the sponsorship application;

(b) if the sponsor produces a document referred to in paragraph (a), the sponsor's income is the income earned as reported in that document less the amounts referred to in subparagraphs (c)(i) to (v);

(c) if the sponsor does not produce a document referred to in paragraph (a), or if the sponsor's income as calculated under paragraph (b) is less than their minimum necessary income, the sponsor's Canadian income for the 12-month period preceding the date of filing of the sponsorship application is the income earned by the sponsor not including

(i) any provincial allowance received by the sponsor for a program of instruction or training,

(ii) any social assistance received by the sponsor from a province,

demande de parrainage, à l'égard de l'année d'imposition la plus récente, ou tout document équivalent délivré par celui-ci;

b) si le répondant produit un document visé à l'alinéa a), son revenu équivaut à la différence entre la somme indiquée sur ce document et les sommes visées aux sous-alinéas c)(i) à (v);

c) si le répondant ne produit pas de document visé à l'alinéa a) ou si son revenu calculé conformément à l'alinéa b) est inférieur à son revenu vital minimum, son revenu correspond à l'ensemble de ses revenus canadiens gagnés au cours des douze mois précédant la date du dépôt de la demande de parrainage, exclusion faite de ce qui suit :

(i) les allocations provinciales reçues au titre de tout programme d'éducation ou de formation,

(ii) toute somme reçue d'une province au titre de l'assistance sociale,

(iii) toute somme reçue du gouvernement du

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| <p>(iii) any financial assistance received by the sponsor from the Government of Canada under a resettlement assistance program,</p> <p>(iv) any amounts paid to the sponsor under the Employment Insurance Act, other than special benefits,</p> <p>(v) any monthly guaranteed income supplement paid to the sponsor under the Old Age Security Act, and</p> <p>(vi) any Canada child tax benefit paid to the sponsor under the Income Tax Act; and</p> <p>(d) if there is a co-signer, the income of the co-signer, as calculated in accordance with paragraphs (a) to (c), with any modifications that the circumstances require, shall be included in the calculation of the sponsor's income.</p> | <p>Canada dans le cadre d'un programme d'aide pour la réinstallation,</p> <p>(iv) les sommes, autres que les prestations spéciales, reçues au titre de la Loi sur l'assurance-emploi,</p> <p>(v) tout supplément de revenu mensuel garanti reçu au titre de la Loi sur la sécurité de la vieillesse,</p> <p>(vi) les prestations fiscales canadiennes pour enfants reçues au titre de la Loi de l'impôt sur le revenu;</p> <p>d) le revenu du cosignataire, calculé conformément aux alinéas a) à c), avec les adaptations nécessaires, est, le cas échéant, inclus dans le calcul du revenu du répondant.</p> |
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[non souligné dans l'original]

[Emphasis added]

[4] It is agreed by the parties that Mr. Chahal's last Notice of Assessment for the taxation year immediately preceding his sponsorship application (ie. 2003) disclosed less than the minimum

necessary income. The decision-maker was thus required to calculate Mr. Chahal's income for the 12 months immediately preceding the filing of the sponsorship application (September 23, 2003 to September 22, 2004) and, to do this, it was necessary to prorate his income from each of those years. She performed that calculation by relying upon the annual income figures stated in Mr. Chahal's Notices of Assessment for the 2003 and 2004 tax years and assumed, in doing so, that his income in those years was evenly earned. Mr. Chahal asserts, however, that all of his 2003 income was earned in the last 6 months of that year and that the proration of his income after September 23, 2003 should have been weighted accordingly.

[5] Although the income calculation rules require the decision-maker to rely initially upon a sponsor's last Notice of Assessment (or equivalent document) for the most recent taxation year, that is not the case where such a document is not produced or where the document discloses insufficient income to meet the minimum threshold. In such circumstances, the decision-maker is directed to calculate "the sponsor's Canadian income for the 12-month period preceding the date of filing of the sponsorship application". This contemplates an assessment of actual income earned where the period in question spans a portion of two tax years. It is at least implicit in this statutory language that such a calculation can be performed using any reliable financial information produced by the sponsor. This could, of course, include Notices of Assessment or their equivalent but it need not be limited to such evidence. Any other interpretation would defeat the drafter's stated intention of providing for situations where Notices of Assessment are not available or produced. This might also include evidence showing that income was not evenly earned in a given tax year.

[6] This case is complicated somewhat by a dispute between the parties as to what evidence was actually placed before the decision-maker in proof of Mr. Chahal's income. He has deposed that he submitted a Statement of Business Activities (CCRA Form T2124) which disclosed net income from self-employment between July 1, 2003 and December 31, 2003 of \$18,989.07. The Respondent contends that that document was not received and, indeed, it was nowhere to be found within the Certified Tribunal Record. In an affidavit deposed by the decision-maker (Karen Blackburn), the following evidence was adduced:

3. I have reviewed the CIC file in this case, although I do not remember this particular case. From my review of the file material and my knowledge of my own decision making process, I state that the statement does not appear on the imaged file kept at CIC. The Statement was not included in the Certified Tribunal Record in this case because it was not present in the CIC file. If the Statement had been considered in making the decision, it would definitely have been preserved in the CIC file in accordance with our standard practice.

4. I further state that, to the best of my knowledge and belief, this Statement was not among the Applicant's materials which were present when making the decision. I state this because I would definitely have considered the Statement and referred to it in making my decision, if I had seen it. The statement would have been considered because it might have changed the result in the Applicant's favour. The Statement would not necessarily have changed the result because it implies that the Applicant had no income for a large part of 2003 and also because the Statement contains a notation that it is not reliable, however it would have been given consideration.

5. I made no reference to this Statement in the decision or the computerized entries regarding this case. Further, my supervisor reviewed the decision and the file and agreed with my result before the decision was sent out to the Applicant. I believe that, if the Statement had been in the Applicant's materials, either my supervisor or myself would have noticed it and considered it. If it had been present, it would have been mentioned in the decision letter or the computerized notes.

[7] The potential significance of the Statement of Business Activities arises from its attribution of all of Mr. Chahal's 2003 earnings to the final 6 months of that year. Instead of prorating this income over a period of 6 months, the decision-maker assumed that it was earned over 12 months. This approach resulted in a much lower level of monthly income to be used in the proration of Mr. Chahal's income for the period between September 23, 2003 and the end of that year. The income attributed to Mr. Chahal for those 100 days was only \$5,153.15 whereas he asserts that it should have led to an attribution of income of \$10,334.61. The higher figure, when added to his undisputed income from January 1, 2004 to September 22, 2004 of \$32,077.93, results in an income exceeding the minimum regulatory threshold.

Conclusion

[8] By any standard, the financial aspects of Mr. Chahal's sponsorship application were very poorly presented and documented. It is obvious from what he submitted that his income levels were at the margins of the minimum requirements. Part II of the sponsorship application requires that all periods of unemployment, paid employment and self employment be detailed; however, Mr. Chahal failed to provide that information. Instead, he declared only that his total 2003 income, as verified by line 150 of his Notice of Assessment, came to \$18,809.00. He then went on to declare total personal income for the preceding 12 months in the amount of \$50,000.00. Nothing was provided to explain how that figure was obtained.

[9] The only other documents that were indisputably submitted by Mr. Chahal to verify his income were an unsubstantiated Statement of Income for the 6 months ending June 30, 2004, showing net business income of \$38,750.00 and his Notice of Assessment for the 2004 tax year disclosing total income of \$43,972.00. It is difficult to reconcile those two documents in the absence of an explanation and it seems doubtful that Mr. Chahal earned less than \$6,000.00 for the period between July 1, 2004 and December 31, 2004. In the absence of an explanation, it was not unreasonable to ignore the Statement of Income.

[10] I am not satisfied that the Statement of Business Activities was submitted by Mr. Chahal along with his sponsorship application given that that document was not contained in the Certified Tribunal Record and is nowhere referenced in that material. Ms. Blackbourn has deposed that she would have considered and duly noted such a document had it been before her. It is apparent that that document was sent by Mr. Chahal's Member of Parliament to the Department on March 14, 2007 which then brought the following response:

Our imaged file was checked. Sponsor submitted Notice of Assessment for 2003. Total Income as per Notice of Assessment 2003 is \$18809. That is the figure we used in our calculations. Perhaps he was not employed as a Trucker at that time but the income we used is correct & is supported by the Notice of Assessment that was provided.

Given the paucity of information provided by Mr. Chahal in support of his sponsorship application, I think it more likely that he did not produce the Statement of Business Activities until it was sent to the Department by his Member of Parliament.

[11] In the absence of Mr. Chahal's Statement of Business Activities, the decision-maker had no basis for calculating his income for the preceding 12 months other than by prorating the income declared on his Notices of Assessment for 2003 and 2004. Indeed, even if the decision-maker had seen a copy of that Statement, it would not be unreasonable for her to have carried out the income calculation by the methodology she used. The applicable legislation does not dictate how such a calculation ought to be performed. Given the stated preference in section 134(1) of the Regulations for using Notices of Assessment (or their equivalent) from the Canada Revenue Agency (CRA) to calculate the minimum income level of a sponsor, it is not necessarily unreasonable to carry out the calculation solely from those source documents. Such an approach cannot be faulted in this case where Mr. Chahal provided no explanation as to the significance of the supplementary financial information he claims to have submitted and where he made no request to the decision-maker to prorate his income in the manner he now urges upon the Court. If Mr. Chahal expected the decision-maker to prorate his annual income in the manner he now proposes, he would have been well advised to fully document and explain his proposal to her. It would not have been an undue burden upon him to supply his complete tax returns for 2003 and 2004 along with a covering letter from his accountant to verify that his 2003 self-employed income was earned entirely after July 1 of that year. His application in that respect was grossly deficient and he cannot complain that the decision-maker erred by failing to divine what was intended to be conveyed by the incomplete submission he made.

[12] If a sponsor is proposing a different methodology and seeks to rely upon source documents other than Notices of Assessment issued by the CRA, he carries the burden of establishing the

reliability of that evidence and for explaining how it ought to be applied to the calculation. In this case, Mr. Chahal failed to meet that burden. It is not a legal obligation of the Department to make further enquiries where it is faced with a clearly deficient application such as this one: see *Tahir v. Canada (Minister of Citizenship and Immigration)*, 159 F.C.R. 109, [1998] F.C.J. 1354 at paragraph 8.

[13] This application is dismissed. The Applicant has proposed the following two questions for certification:

If the sponsor's income is less than the minimum necessary income as per the last notice of assessment, should immigration officer consider the income based on other documents such as pay stubs received from the employer or statement of business activities prepared by the account?

Or alternatively the officer should stop the processing of the application and wait for next year notice of assessment and then calculate the income by prorating the two years of Notice of Assessments to come up with the 12 months income?

Inasmuch as the first of these questions would not be determinative, it is not appropriate for certification. The second question is inconsistent with the clear language of the applicable Regulations and, furthermore, it was not identified as an issue in the leave submissions. For those reasons, it is not an appropriate question for certification. In the result, no question is certified.

JUDGMENT

THIS COURT ADJUDGES that this application for judicial review is dismissed.

“ R. L. Barnes ”

Judge

FEDERAL COURT

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: IMM-1423-07

STYLE OF CAUSE: BALWINDER SINGH CHAHAL v. MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: Calgary, Alberta

DATE OF HEARING: September 4, 2007

**REASONS FOR JUDGMENT
AND JUDGMENT:** The Honourable Mr. Justice Barnes

DATED: September 24, 2007

APPEARANCES:

Mr. Dalwinder Hayer FOR THE APPLICANT

Mr. Brad Hardstaff FOR THE RESPONDENT

SOLICITORS OF RECORD:

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