Date: 20080116

Docket: IMM-2530-07

Citation: 2008 FC 58

Toronto, Ontario, January 16, 2008

PRESENT: The Honourable Madam Justice Mactavish

BETWEEN:

AMARJEET SINGH

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] Amarjeet Singh seeks judicial review of the decision of a visa officer refusing his application for permanent residency as a skilled worker. Mr. Singh argues that the visa officer erred in finding that he did not have a work permit allowing him to work in Canada.

[2] Mr. Singh further contends that the officer erred in declining to exercise her discretion to find that he would be able to become economically established in Canada, notwithstanding the fact that he did not receive the requisite number of points when his application was assessed in accordance with the provisions of the *Immigration and Refugee Protection Regulations*.

[3] For the reasons that follow, Mr. Singh has not persuaded me that the officer erred as alleged. As a consequence, his application for judicial review will be dismissed.

Background

[4] Mr. Singh is a Sikh priest and an Indian citizen who came to Canada on a visitor's visa on December 31, 2002. His visa explicitly prohibited him from being employed while he was in Canada, but did allow him to perform religious duties in this country.

[5] Mr. Singh's visitor's visa was extended twice. However, his third request for an extension was refused.

[6] On October 1, 2004, Mr. Singh submitted an application for a permanent resident visa as a member of the skilled worker class. In support of his application, Mr. Singh produced a letter dated February 10, 2004 from the President of the Siri Guru Nanak Sikh Gurdwara in Edmonton, Alberta, which indicated that Mr. Singh had been offered a permanent position at the Gurdwara.

[7] Mr. Singh's application for a permanent resident visa was refused on May 26, 2006.

[8] In assessing Mr. Singh's application, the visa officer refused to award him any points for "arranged employment" or "adaptability".

[9] Mr. Singh sought judicial review of this decision. On January 23, 2007, Justice Blais granted his application: see *Singh v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 69.

[10] Before Justice Blais, Mr. Singh argued that he should have received 5 points for "adaptability", by virtue of his previous employment in Canada. He further argued that he should have been awarded 10 points for "arranged employment", based upon the offer of employment submitted to the visa officer.

[11] In this regard, Mr. Singh contended that religious workers do not require a work permit to be allowed to work in Canada, and that the fact that he did not have such a permit should not have precluded consideration of his job offer.

[12] Justice Blais did not accept these arguments, stating:

> [18] On the first issue of adaptability, subsection 83(4) of the Regulations clearly states that 5 points will be awarded in cases where the applicant or accompanying spouse / common-law partner engaged in at least one year of full-time work in Canada "under a work permit". On the second issue of arranged employment, section 82 of the Regulations sets out a number of scenarios for what may be considered 'arranged employment', each requiring that the applicant either hold a valid work permit or, in the situation where the skilled worker does not intend to work in Canada prior to obtaining his permanent resident visa, an offer of employment in Canada that has been validated by HRSDC.
>
> [19] The applicant is correct in noting that he was exempt from the requirement to obtain a work permit before coming to Canada to work as a Sikh priest as per subsection 186(l) of the Regulations. That being said, no further accommodations are made in the Regulations that would grant special privileges for workers that meet the requirements of section 186, when applying for a permanent

> resident visa. Given the various scenarios considered under section 82 of the Regulations to be awarded points for arranged employment, had such an exemption been contemplated by the Canadian Government, it could easily have been included in the Regulations. The applicant argues that no such accommodations were made because the occupations listed under section 186 have already been determined to have a "neutral or positive effect on the labour market in Canada", as required to issue a work permit under section 203 of the Regulations, and thus an exemption is implied from a joint reading of sections 186, 203 and 82 of the Regulations. With no evidence submitted to support such an interpretation of the Regulations, I find no merit to this argument.

[13] Justice Blais did allow Mr. Singh to introduce new evidence on his application for judicial review, namely an e-mail sent from the Ministerial Enquiries Division of the respondent to another applicant. This e-mail advised that priests were exempt from the requirement to have their job offer validated by the Department of Human Resources and Skills Development Canada (now Human Resources and Social Development Canada "HRSDC") for the purposes of obtaining points under the "adaptability" and "arranged employment" factors in a permanent resident application.

[14] Although Justice Blais acknowledged that this information was incorrect, he was concerned that it might demonstrate that other individuals in Mr. Singh's situation had been treated differentially than he had. Therefore, Justice Blais granted the judicial review application, and instructed the visa officer reconsidering Mr. Singh's application for permanent residency to consider the e-mail, and whether there had been any unequal treatment of Mr. Singh.

[15] Mr. Singh's application was then re-assessed by a different visa officer, who awarded Mr. Singh the same score as had the first visa officer.

[16] Once again, Mr. Singh received no points for either “arranged employment” or “adaptability”, as Mr. Singh’s offer of employment had not been validated by Human Resources and Skills Development Canada.

[17] The relevant portion of the CAIPS Notes indicates that in reaching this decision, the visa officer considered the e-mail referred to above, as directed by Justice Blais. In this regard the officer held that:

> This doc adds no benefit to this appln though, because information contained is not correct. In any event, PI fails to obtain sufficient units to qualify for immigration to Cda. I have reviewed docs/info on file, and with all things considered, I am satisfied that points awarded are an accurate reflection of PI’s ability to economically establish in Cda. Application must therefore be refused.

Issues

[18] As I understand the submissions of counsel for Mr. Singh, he now argues that in assessing his application, the visa officer erred in failing to recognize that Mr. Singh was already working in Canada, and that he had a “work permit” allowing him to do so.

[19] Mr. Singh also argues that the officer erred in failing to exercise her discretion under subsection 76(3) of the *Regulations*.

Standard of Review

[20] As Justice Blais noted in his decision involving Mr. Singh, decisions of visa officers are discretionary decisions, based essentially on an assessment for the facts. As such, to the extent that

this assessment "has been done in good faith, in accordance with the principles of natural justice applicable, and without relying on irrelevant or extraneous considerations, the decision of the visa officer should be reviewed on the standard of patent unreasonableness": see *Singh*, previously cited, at paras. 8 and 9.

[21] That said, Mr. Singh's argument that he in fact had a work permit involves the interpretation of the *Regulations*, and the application of these *Regulations* to the facts of this case. This is a question of mixed fact and law, and I will review this aspect of the officer's decision against the standard of reasonableness.

Analysis

[22] With respect to Mr. Singh's argument that the officer erred in failing to recognize that he had been working in Canada under a "work permit", Mr. Singh points to the fact that his visitor's visa contained the notation that he was authorized to perform religious duties for the Siri Guru Nanak Sikh Gurdwara, in Edmonton.

[23] According to Mr. Singh, this amounts to a "written authorization to work in Canada", thus meeting the definition of a "work permit" contained in section 2 of the *Regulations*.

[24] I cannot agree.

[25] First of all, Mr. Singh's argument ignores the explicit condition contained in his visitor's visa that he was "prohibited from engaging in employment in Canada". In the face of this language, the visa cannot reasonably be interpreted as amounting to "a written authorization to work in Canada".

[26] In addition, Divisions 2 and 3 of the *Regulations* contain extensive provisions governing the granting of work permits. There is no evidence that Mr. Singh has complied with the application process required by these provisions.

[27] Moreover, subsection 83(4) of the *Regulations* clearly states that 5 points will be awarded where an applicant has engaged in at least one year of *full-time work* in Canada under a work permit [emphasis added]. Mr. Singh's own visa application acknowledges that he had not worked full-time while he was in Canada.

[28] Finally, there is no suggestion that any offer of employment made to Mr. Singh was ever validated by Human Resources and Skills Development Canada prior to Mr. Singh receiving his visitor's visa.

[29] As a consequence, I can see no error in the visa officer's assessment of Mr. Singh's application, as it related to the issues of "adaptability and "arranged employment".

[30] Insofar as the e-mail considered by Justice Blais was concerned, Mr. Singh now concedes that the advice contained therein was wrong.

[31] With respect to Mr. Singh's contention that the officer erred in failing to carry out a "substituted evaluation" in accordance with subsection 76(3) of the *Regulations*, a review of the CAIPS notes discloses that even though Mr. Singh never requested that such consideration be given to his application, the officer nevertheless turned her mind to the issue of whether his points assessment properly reflected his ability to become economically established in Canada.

[32] In this regard, the officer held that the points awarded did indeed accurately reflect Mr. Singh's ability to become economically established in Canada. As a consequence, she declined to exercise her discretion to make a substituted evaluation, as contemplated by subsection 76(3) of the *Regulations*.

[33] Mr. Singh has not suggested that the officer acted other than in good faith in declining to exercise her discretion in his favour. Nor has he demonstrated that the officer relied on irrelevant or extraneous considerations in coming to this conclusion. Moreover, the jurisprudence is clear that there is a limited duty on the officer to explain why favourable consideration was not given in this regard: see *Poblano v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 1167 and *Yan v. Canada (Minister of Citizenship and Immigration)*, 2003 FCT 510.

Conclusion

[34] For these reasons, the application for judicial review is dismissed.

Certification

[35] Mr. Singh proposes two questions for certification. These are:

1. Whether a notation on a visitor's visa is a "work permit"; and

2. Whether a visa officer must consider subsection 76(3) in the case of a person applying for a permanent resident visa as a skilled worker where that person alleges that he has worked in Canada and has a job offer in Canada and that his work has been under section 186 of the *Regulations*.

[36] I am not satisfied that the first question raises a serious issue, given the explicit prohibition on employment contained in Mr. Singh's visitor's visa.

[37] Insofar as the second proposed question is concerned, it is clear from a review of the record that the visa officer did consider subsection 76(3) of the *Regulations* in assessing Mr. Singh's application. As a consequence, the question does not arise.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that:

1. This application for judicial review is dismissed; and

2. No serious question of general importance is certified.

"Anne Mactavish"
Judge

FEDERAL COURT

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	IMM-2530-07
STYLE OF CAUSE:	Amarjeet SINGH v. MCI
PLACE OF HEARING:	Edmonton, Alberta
DATE OF HEARING:	January 10, 2008
REASONS FOR JUDGMENT AND JUDGMENT:	Mactavish J.
DATED:	January 16, 2008

APPEARANCES:

Brian Doherty	FOR THE APPLICANT
Rick Garvin	FOR THE RESPONDENT

SOLICITORS OF RECORD:

DOHERTY SCHULDHAUS LLP Edmonton, Alberta	FOR THE APPLICANT
JOHN H. SIMS, Q.C. The Attorney General of Canada	FOR THE RESPONDENT