

**Date: 20080208**

**Docket: IMM-705-07**

**Citation: 2008 FC 170**

**Ottawa, Ontario, this 8<sup>th</sup> day of February, 2008**

**PRESENT: The Honourable Barry Strayer, Deputy Judge**

**BETWEEN:**

**TARUN CHADHA**

**Applicant**

**and**

**MINISTER OF CITIZENSHIP AND IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

**INTRODUCTION**

[1] This is an application for judicial review of a decision of a visa officer conveyed to the Applicant by a letter of December 12, 2007 wherein the Applicant's application for a permanent resident visa was refused.

**FACTS**

[2] The Applicant is a citizen of India. On January 2, 2004, his Immigration Consultant in Toronto sent a letter on his behalf to the Canadian Consulate General in Buffalo applying for a permanent resident visa. Presumably application was made there because he couldn't apply within Canada. The letter described the Applicant as "currently working in Canada and acquiring valuable Canadian experience . . . ." On October 5, 2004, the Canadian Consulate General in Buffalo replied saying that it had completed the initial assessment of the application and "expect to finalize your application without a personal interview". That letter requested further documentation from the Applicant. On August 10, 2005, the Consulate General sent a further letter requesting more information. On September 8, 2005, the Applicant's new counsel sent further information. On March 6, 2006, the Consulate General advised the Applicant that an interview would be required and the date was set for December 5, 2006. On March 28, 2006, counsel sent more information and asked that the interview be waived. However, on August 10, 2006, the Consulate General sent the Applicant formal notice of the date and place of the interview in Buffalo, as previously fixed. According to the Applicant's Record in this proceeding, a further letter was sent by Applicant's counsel to the Consulate General on August 17, 2006 referring to the interview notice. He advised that the Applicant and his wife had previously been refused U.S. visitor visas and it was therefore unlikely that the Applicant could attend an interview in Buffalo. He requested that instead the file be transferred to New Delhi as the Applicant and his wife were returning there. This letter is not in the Tribunal Record nor do the CAIP's notes record receipt by the Consulate General. On August 22, 2006 the Consulate General wrote to counsel making no reference to the missing letter and advising

that the Applicant still had his interview scheduled for December 5, 2006. It indicated to him that he could choose either to attend the scheduled interview, or withdraw the application from the office in Buffalo and re-apply at another office. It warned him that failure to attend the interview might result in the refusal of the application. On November 23, 2006, some two months after the last letter from the Consulate General stating the two options of attending the interview or withdrawing the application and applying elsewhere, counsel sent the Consulate General an e-mail once again asking that the interview be waived and giving various reasons why he thought the visa application should be approved. No mention was made of having the file transferred. On November 27, 2006, the Consulate General replied to that e-mail stating that a selection interview continued to be warranted and saying that they could not intercede with the U.S. authorities to assist the Applicant in coming to Buffalo. The Applicant did not attend the scheduled interview. On December 12, 2006, the visa officer wrote to him saying that she was not satisfied that he met the requirements of section 75(2) of the *Immigration and Refugee Protection Act* and that his application for a permanent residence visa was therefore refused.

[3] The Applicant now seeks judicial review of that decision. The ground alleged for judicial review is that of denial of fairness, it being argued that fairness was denied by the visa officer insisting on an interview in Buffalo when she knew that the Applicant could not attend at that visa post.

## **ISSUES**

[4] The issues then are:

1. Was it unfair for the visa officer to insist on an interview when she knew the Applicant could not attend in Buffalo?
2. Was there an unfair refusal of an application to have the file transferred to an office elsewhere?

## **ANALYSIS**

### *Standard of Review*

[5] I am not being asked to review the decision to refuse the visa but rather the fairness of the procedure followed by the visa officer. As this is a question of fairness, the usual pragmatic and functional analysis need not be made: *Canadian Union of Public Employees (C.U.P.E.) v. Ontario (Minister of Labour)*, [2003] 1 S.C.R. 539 at paras. 101-03. In matters of fairness, while courts must recognize the basic right of tribunals to choose their own procedure, a court owes little deference to a tribunal in its judgment of whether the procedure in a particular case was fair.

***Was there a denial of fairness in convoking the Buffalo interview?***

[6] It has been variously said that a decision by a visa officer as to the place of the interview is not of itself judicially reviewable: *Dotsenko v. Canada (Minister of Citizenship & Immigration)*, [2000] F.C.J. No. 789, and that the place of an interview is at the discretion of the visa officer: *Ponomarenko v. Canada (Minister of Citizenship & Immigration)*, [2003] F.C.J. No. 374, para. 11 (and authorities referred to therein). In the particular circumstances of this case, however, I think it is open to the court to intervene if the exercise of that discretion in the circumstances created unfairness. The Applicant here argues that it was inherently unfair for the visa officer to insist on having an interview in Buffalo when she knew the Applicant could not attend.

[7] Looking at the sequence of events I am not satisfied that the visa officer acted unfairly. In the first place, the Applicant chose to make his application in Buffalo by mail from Canada. He was, of course, obliged to make his permanent residence visa application from outside of Canada. He could have made it in India, a country of which he is a citizen, but he did not. Instead, he made the application in the United States, a country to which he had no right of entry and without knowing whether he could obtain a visa to visit there. As early as March, 2006, he was alerted that an interview had been set for December 5, 2006, some nine months later. His counsel that same month started requesting that the interview be waived, but the appointment for the interview was confirmed by the Consulate by letter on August 10, 2006, and it was confirmed again by a further letter of August 22, 2006 that the interview would still be required but giving him the option of withdrawing his application before it was refused and applying at another office. The only response to this came

two months later in a letter from the Applicant's lawyer once again asking that the interview be waived. Once more, on November 27, 2006, the visa officer confirmed that the interview would be required on December 5, 2006. So the Applicant had ample warning that his failure to attend the interview at the Buffalo office – at which he had chosen to make his application – could result in its dismissal. The option of withdrawing his application before refusal and applying elsewhere was put to him over three months before the scheduled interview. Subject to what I will say below concerning the possible transfer of the file, I do not think there was much more that the visa officer could have done in the circumstances once she concluded, as she was entitled to do, that an interview was needed.

***Was non-transfer of the file unfair?***

[8] Clearly, a visa officer is not obliged to take the initiative to transfer a file where such is not requested. Normally files are processed at the office where the application is made. The key question here is whether there was a clear request for the transfer of this file to New Delhi as the Applicant states. The only evidence that such a request was made rests in a copy of a letter bearing the date August 17, 2006 from the Applicant's counsel to the Consulate General, included in the Applicant's appeal book. It is the position of the Respondent that such a letter was never received by the Consulate General. The letter does not appear in the Tribunal Record nor is there any affidavit on file as to its having been sent. Nor did Applicant's counsel ever repeat the request or inquire as to what the Consulate was going to do in response to his alleged request of August 17, 2006. In his next communication of November 23, 2006, nothing further was said about the Applicant going to

India (the original rationale for the alleged request of a file transfer). I am therefore not satisfied that such a request was ever made and the visa officer cannot be faulted for refusing a request which was never received by her office.

[9] I remain somewhat disturbed by this case because while the conduct of officials met the requirements of the law, they seemed to show little initiative in trying to find a reasonable solution to the impasse created by the interview being scheduled in a country the proposed interviewee could not enter. It is apparent from some of the decided cases in this Court that visa officers do arrange for interviews to be held in offices other than where the application is originally filed. Had the Applicant made a clear and reasoned request for the interview to be held in the Applicant's own country, for example, this might well have been done. No such request was made and the visa officer was not obliged to take the initiative and propose it. However, she did propose one option – the withdrawal of the application and the submission of a new application elsewhere – and it is not clear to me why if that suggestion could be made (a suggestion which if followed would have resulted in further years of delay for the Applicant) the possibility of simply arranging an interview at a different office could not have been suggested.

### **DISPOSITION**

[10] I will therefore dismiss the application for judicial review. Counsel had no suggested questions for certification and none will be certified.

**JUDGMENT**

**THIS COURT ORDERS AND ADJUDGES that**

1. The application for judicial review of the visa officer's decision of December 12, 2006, refusing a permanent residence visa for the Applicant be dismissed.

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"Barry L. Strayer"

Deputy Judge



**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-705-07

**STYLE OF CAUSE:** **TARUN CHADHA**

**and**

**MINISTER OF CITIZENSHIP AND IMMIGRATION**

**PLACE OF HEARING:** Toronto

**DATE OF HEARING:** January 29, 2008

**REASONS FOR JUDGMENT  
AND JUDGMENT:** STRAYER, J.

**DATED:** February 8, 2008

**APPEARANCES:**

Ms. Wennie Lee  
Mr. Gordon Lee

FOR THE APPLICANT  
FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Lee & Company  
Barrister and Solicitor  
John H. Sims, Q.C.  
Deputy Attorney General of Canada

FOR THE APPLICANT  
  
FOR THE RESPONDENT