

Federal Court



Cour fédérale

Date: 20090703

Docket: IMM-5552-08

Citation: 2009 FC 697

Vancouver, British Columbia, July 3, 2009

PRESENT: The Honourable Madam Justice Tremblay-Lamer

BETWEEN:

DEVINDER SINGH BRAR

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

INTRODUCTION

[1] This is an application for judicial review pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the Act), of a decision by a delegate of the Minister of Citizenship and Immigration Canada, an Immigration Officer stationed at the Canadian Consulate General in Chandigarh, India (the Officer), whereby the Applicant's application for a work permit was denied.

[2] The Applicant is a 31-year-old citizen and resident of India. His family is comprised of one brother, parents, grandparents, a wife of eight years, and a 7-year-old son, all residents of India who have never resided outside of India. He has no relatives in Canada.

[3] The Applicant obtained a Bachelor of Arts degree in 1999 from the University of Punjab, India, at which time he began to work on his family's farm, and has continually done and continues to do at present.

[4] The family farm is registered in the Applicant's father's name, valued at \$294,000 in Canadian funds, and the Applicant expects to receive half as per Indian custom provided he continues to work the farmland. Should he become unable to work the farmland, title would devolve to his brother, and the Applicant and his family would only be entitled to a minimal share of the income produced by the farm, which the Applicant indicates would be sufficient to meet his family's day-to-day living expenses.

[5] The Applicant is eligible to receive an additional 20% of the family farmland should he repay an \$11,000 Canadian funds loan his father took out to invest in the family farming business.

[6] The Applicant also owns farmland in India valued at \$34,000 in Canadian funds solely in his name. In addition, he holds gold valued at \$10,000 in Canadian funds.

[7] The Applicant learned he was selected for a two-year construction helper position available with a Canadian construction company in British Columbia. Duties would include loading and unloading construction materials, assisting with framing and building walls and roofs, piling salvaged materials, cleaning construction sites, feeding machines, and other equipment use.

[8] The Applicant had intended to take the two-year construction helper position to earn enough money in a short amount of time to repay his father's \$11,000 loan, so that the Applicant could receive the additional 20% of the family farmland.

[9] The Applicant applied to the Consulate General of Canada for a work permit on October 15, 2008. The Officer denied the application because he was not satisfied that the Applicant would leave Canada upon the expiry of the work permit, and because the Officer did not find the Applicant was sufficiently established in India or had sufficient ties to India to show he would leave Canada after the two year period.

[10] Based on the CAIPS notes and the information provided by the Applicant in his application, I find that it was not reasonable for the Officer to find that the Applicant was not sufficiently established in India or did not have sufficient ties to India.

[11] With respect to the first concern cited in the CAIPS notes, the Officer erroneously noted that the Applicant had not submitted any documents showing funds in his own name. The Applicant provided the following documents and a related supporting affidavit: a valuation of his father's

ancestral land and explanation of the Applicant expecting to have half devolve to him; a valuation of land in the Applicant's name; a gold valuation; and bank documents showing loans taken out to support farming operations, with a related explanation of the Applicant receiving more of the ancestral land on the intended repayment of his father's loan.

[12] The Officer may have limited and interpreted "funds" to only mean monies saved in a bank. Whether the Applicant had monies saved in a bank is a factor open to the Officer to consider. However, in this case, the Officer should have taken into account the other assets outside of monies in a bank for which the Applicant gave evidence he possessed.

[13] With respect to the CAIPS notes on the Applicant's low income and stark contrasts in living and working conditions between India and Canada, the Applicant submits that the Officer failed to assess ties according to the guidelines set out in the Overseas Processing Manual 11, failed to consider that the Applicant had in the past been successful in saving enough money to buy more land in his name, and relied on generalizations and speculations on the economic condition of farmers in India. I agree.

[14] As identified by the Applicant and argued in *Li v. Canada (Citizenship and Immigration)*, [2008] F.C.J. No. 1625, 2008 FC 1284 (F.C.) at paragraph 24, difference in salaries between India and Canada may indicate incentive to stay only when the cost of living is also considered. Standard of living in the home country is also important to determining where the Applicant may be better

off, as noted at paragraph 39 of *Ogunfowora v. Canada (Citizenship and Immigration)*, [2007] F.C.J. No. 637, 2007 FC 471 (F.C.).

[15] Without a stronger method of comparison such as cost of living between the Applicant's presumed low income in India and earnings in Canada, the Officer should not have presumed overstay based on this factor, more particularly since the evidence before the Officer showed that the Applicant was in the past in India successful at acquiring enough wealth to purchase additional land.

[16] Further, while economic incentive to stay in Canada is a reasonable consideration on the part of the Officer, as raised by the Applicant, the majority of applicants would have some economic incentive to come work in Canada, and this incentive therefore cannot so easily correlate with overstay since it is inconsistent with the work permit scheme.

[17] In sum, the refusal of the work permit was based on erroneous findings of fact which did not take into account the material evidence presented, and therefore was unreasonable.

[18] For the above reasons, this application for judicial review is allowed, the decision of the Officer dated October 16, 2008, refusing the Applicant's work permit is set aside, and the application for a work permit is referred to another officer for re-determination.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that this application for judicial review is allowed and this matter is referred to a different visa officer for re-determination.

“Danièle Tremblay-Lamer”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-5552-08

STYLE OF CAUSE: DEVINDER SINGH BRAR v. MCI

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**REASONS FOR JUDGMENT
AND JUDGMENT:** TREMBLAY-LAMER J.

DATED: July 3, 2009

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