Federal Court		Cour fédérale

Date: 20090716

Docket: IMM-433-09

Citation: 2009 FC 729

Vancouver, British Columbia, July 16, 2009

PRESENT: The Honourable Mr. Justice Harrington

BETWEEN:

JAGPAL SINGH DHANOA

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] Mr. Dhanoa, a citizen of India, was offered a two-year term of employment with Paradise Roofing Ltd. of Surrey, B.C. The job was described as the loading and unloading and transportation of construction material, assisting in building roofs, levelling earth, removing debris from construction sites and tending and feeding machines used in roofing. His application for a Canadian Temporary Resident Visa Work Permit was refused on the grounds that he had failed to satisfy the visa officer that he would leave Canada at the end of the authorized period. This is a judicial review of that decision.

[2] In the spring of last year, the government initiated a Pilot Project for occupations requiring lower levels of formal training. According to the "FW 1 Temporary Foreign Worker Guidelines" this:

> …Low-Skilled Pilot Project is a labour-market-driven risk-management strategy aimed at filling this void by permitting the hiring of low-skilled workers from overseas. When assessing LSP applications, officers are to be mindful of the compelling policy objectives addressed by this pilot project and to balance potential risks against the very real benefits to the Canadian economy.

[3] Mr. Dhanoa is 37 years of age, married with two children. He works the family's farm which is valued at $150,000. In due course, half of it may devolve to him.

[4] His perspective employment would pay $18 an hour plus overtime after 40 hours. He hopes to earn enough so that with the assistance of a loan from a friend he would be able to put down a sufficient deposit on a dairy farm, so as to obtain a mortgage.

[5] A Canadian Labour Market Opinion is in place.

[6] The visa officer was not satisfied that he would leave Canada at the end of his two-year employment because he had not demonstrated that he was sufficiently well-established in India, and that he was not a *bona fide* foreign worker but rather would use the program in order to facilitate his entry here.

[7] The officer's notes read:

> PA has no previous travel. As per info in application form his current income in India is low. Is working as a farmer n India. I note that proposed employment in Canada is unrelated to PA's work experience. Given PA's greater earning power in Canada versus India, combined with better living and working conditions in Canada, I find that PA would have a strong socio-economic incentive to stay in Canada by any means after the end of his authorized stay. I am cognizant that PA has a wife and kids in India. However, on a balance of probabilities, I am not satisfied that PA would not bear the hardship of being separated from his family in order to take advantage of better socio-economic opportunities in Canada. Not satisfied PA meets the requirements of R200(1)(b).
>
> Refused.

[8] The reference to R. 200(1)(b) is to the *Immigration and Refugee Protection Regulations* which provide that an officer shall issue a work permit if it is established that the foreign national will leave Canada at the end of the authorized period.

[9] While it is true that a person coming here is initially presumed to be an immigrant, that there is therefore an onus upon him to disabuse the visa officer of that notion, and that the decision under review is a highly discretionary one, it must be kept in mind as stated in *Roncarelli v. Duplessis* [1959] S.C.R. 121 "… there is no such thing as absolute and untrammelled 'discretion' … there is always a perspective within which a statute is intended to operate…".

[10] The guidelines, which of course are only that, are nevertheless helpful. They state that the assessment requires answering two basic questions: Does the applicant intend to do the job and does he have the ability to do the job? Although there are risks involved, the decision-maker is called upon to be mindful of Canada's economic needs.

[11] The standard of review is reasonableness (*Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190, *Canada (Citizenship and Immigration) v. Khosa*, 2009 SCC 12, 304 D.L.R. (4th) 1). This decision does not meet that standard.

[12] Lack of previous travel can only at most be a neutral factor. If one had travelled and always returned, the visa officer's concerns might be lessened. If one came to Canada, claimed refugee status and was not permitted to stay here on humanitarian and compassionate grounds, an application for a temporary work permit would obviously heighten suspicions.

[13] The remark that the employment is unrelated to Mr. Dhanoa's work experience as a farmer did not serve as an indication that he was unable to do the job, as that box was not checked off in the decision form. I do not see how it would be indicative of his intention not to do the job and not to leave Canada at the end of his employment.

[14] The references to greater earning power in Canada and better living and working conditions are somewhat sterile as no analysis was done of his living conditions in India, whether his declared intention to purchase a farm was feasible, and what his standard of living would be in India compared to Canada after he earned some money here.

[15] Indeed, the very basis of the pilot project is these workers will only come here if they are going to be paid more than in their home country.

[16] The thought that he would abandon his wife and children in order to take advantage of better socio-economic opportunities here is distasteful. It is rather sanctimonious to suggest that our society is more of a draw for him than India, where he would be in the bosom of his family, simply because he would have 30 pieces of silver in his pocket. As per *Timothy 6:10* "for the love of money is the root of all evil."

[17] As noted by Madam Justice Tremblay-Lamer in *Minhas v. Canada (Minister of Citizenship and Immigration)* 2009 FC 696 at paragraph 16, the majority of applicants under programs such as this would have an economic incentive to come to work here "…and this incentive therefore cannot so easily correlate with overstay since it is inconsistent with the work permit scheme." She also pointed out that a cost of living analysis is important.

[18] The decision was unreasonable not simply because it was stereotypical, but also because it relied on the very factor which would induce someone to come here temporarily in the first place as the main reason for keeping that person out.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that the application for judicial review is granted. The matter is referred to a different officer for a fresh redetermination. There is no question to certify.

"Sean Harrington"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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