

Date: 20091015

Docket: IMM-1357-09

Citation: 2009 FC 1049

Vancouver, British Columbia, October 15, 2009

PRESENT: The Honourable Mr. Justice Zinn

BETWEEN:

AVTAR SINGH VASSAN

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[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, of a Designated Immigration Officer's decision dated January 15, 2009, rejecting the Applicant's application for a permanent resident visa as a member of the investor class. For the reasons that follow, this application is dismissed.

BACKGROUND

[2] Mr. Vassan is a citizen of India. He has degrees in mechanical and civil engineering and states that he has operated a construction business for 28 years and a farming business for 20 years.

[3] On February 29, 2008, the High Commission of Canada in New Delhi, India, received Mr. Vassan's application for a permanent resident visa as a member of the investor class.

This application was supported by three volumes of documents detailing Mr. Vassan's business activities and assets.

[4] Mr. Vassan's application was assessed and an in-person interview was held on January 15, 2009. Later that same day, the Officer wrote to Mr. Vassan informing him that his application had been rejected because he did not meet the requirements of the investor class.

[5] The term "investor" is defined in subsection 88(1) of the *Immigration and Refugee Protection Regulations*, as follows:

"investor"	« investisseur »
« <i>investisseur</i> »	"investor"
"investor" means a foreign national who	« investisseur » Étranger qui, à la fois :
(a) has business experience;	a) a de l'expérience dans l'exploitation d'une entreprise;
(b) has a legally obtained net worth of at least \$800,000; and	b) a un avoir net d'au moins 800 000 \$ qu'il a obtenu licitement;
(c) indicates in writing to an officer that they intend to make or have made an investment.	c) a indiqué par écrit à l'agent qu'il a l'intention de faire ou a fait un placement.

[6] The principal ground on which the Officer relied in reaching his decision to reject the application was his finding that “you have not satisfied me that you have a legally obtained minimum net worth of at least \$800,000.”

[7] The Officer found that the Applicant lacked credibility. The Officer noted that Mr. Vassan had failed to list his construction business on a previous application for permanent residence submitted in 2007 under the self-employed class and that he had provided no explanation for this omission. The Officer drew a negative inference from this fact particularly because the Applicant now claimed that the construction business was his primary business. The Officer also noted the lack of documentation regarding the construction business which raised questions regarding its existence.

[8] The Officer asked the Applicant about the net profit of his construction business. The Applicant responded that the net profit for the year ending March 31, 2008 was 154,000 INR. The Officer asked the Applicant what his main expenses were for this business. The Applicant replied that they were for labour in the range of 28,000-30,000 INR. The Officer pointed him to the Applicant’s income and expense account for the year, which listed net profit as nil and labour costs of 398,500 INR. The Applicant was unable to explain this inconsistency, and again the Officer drew a negative credibility inference as a result.

[9] The Officer summarized the Applicant’s submissions regarding his land holdings and agricultural business, as well as the full-time equivalent employees employed in this business.

The Officer stated that the Applicant had provided no books of accounts for the business because he did not maintain books of accounts for this business. The Officer stated that the Applicant had estimated his average annual agricultural income at 150,000 INR.

[10] The Officer noted that the Applicant stated his bank balance at 6,200,000 INR. The Officer posed to the Applicant that given his reported business profit it was difficult to see how he had accumulated such wealth. The Officer stated that the Applicant agreed with this statement but offered nothing further by way of explanation.

[11] The Officer determined that the Applicant had not provided evidence to support that he had legally obtained his net worth in excess of \$800,000. Therefore, the Officer concluded that the Applicant did not meet the definition of “investor” and he rejected the application.

ISSUE

[12] The Applicant raises only a single issue: “Did the visa officer base his decision in a perverse or capricious manner or without regard to the material before him, by ignoring evidence before him or by taking irrelevant considerations into account in reaching his decision?”

ANALYSIS

[13] The Applicant submits that it is clear on the face of the record that the Officer made the adverse credibility finding on an incorrect finding of fact. In the CAIPS notes, the Officer records the following:

I told him that on his previous SE2 appl he had stated that he was a farmer. I asked him why he didn't state at that time that he was also doing construction work which he now claims to be his main occupation. PI agreed that he didn't state on that appl that he has construction business. He, however, didn't provide any explanation for this inconsistent info.

[14] The Applicant submits that the error of fact is evident in the above statement as well in the Officer's affidavit filed in this proceeding. He submits that the record clearly shows that he did not state in that earlier application that he was only a farmer. He points to the application form at page 174 of the record where in response to the question asking the Applicant for his current occupation he writes "Agriculturist & Builder". Thus, he submits the Officer erred in the view he took that the Applicant had only stated that his occupation was farmer in that earlier application.

[15] That submission is persuasive only if one ignores the remainder of the application. As was pointed out by the Respondent, the four-page letter accompanying the application, which forms a part of the application, makes no reference at all to the Applicant's occupation as a "builder". It deals solely and exclusively with his farming operation. That document sets out the Applicant's net assets as \$1,898,986 and states that "it is evident from the above [figure] that the applicant has been successfully managing his agricultural business." In short, the only reference to any other business other than farming is the single word "builder" in response to the question as to occupation.

[16] The discrepancies between his statements in the cover letter dated February 2007 and his statements given to the Officer in January 2009 are stark. In 2007 he devotes his maximum time to

his farming business and all of his assets relate to that business. In 2009 he is principally a contractor, the farm requires very little of his time as it runs largely on its own. His evidence to the Officer concerning the major expense of the construction business misstates the cost of labour by a multiple of at least 13 and his estimate of profit is 154,000 INR more than the nil that is shown on his books! He offers no explanation for these discrepancies.

[17] The record quite simply does not support the Applicant's position that the Officer's adverse finding on credibility was based on an erroneous finding of fact or that it was in any way unreasonable given the statements of the Applicant in the two applications, taken with his further statements made at the oral hearing and especially in light of his inability to provide any explanation for the inconsistencies. This Officer's decision was not unreasonable; in my view his decision was the only one that could be drawn from the evidence before him.

[18] Neither party proposed a question for certification, nor is there one.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that:

1. This application for judicial review is dismissed; and
2. No question is certified.

“Russel W. Zinn”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-1357-09

STYLE OF CAUSE: AVTAR SINGH VASSAN v. MCI

PLACE OF HEARING: Vancouver, BC

DATE OF HEARING: October 14, 2009

**REASONS FOR JUDGMENT
AND JUDGMENT** ZINN J.

DATED: October 15, 2009

APPEARANCES:

Richard Kurland FOR THE APPLICANT

Edward Burnet FOR THE RESPONDENT

SOLICITORS OF RECORD:

Kurland Tobe FOR THE APPLICANT
Barristers & Solicitors
Vancouver, BC

John H. Sims, Q.C. FOR THE RESPONDENT
Deputy Attorney General of Canada
Vancouver, BC