

Federal Court



Cour fédérale

Date: 20100823

Docket: IMM-5594-09

Citation: 2010 FC 835

Toronto, Ontario, August 23, 2010

PRESENT: The Honourable Madam Justice Mactavish

BETWEEN:

ONKAR SINGH SODHI

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] Onkar Singh Sodhi seeks judicial review of the decision of a visa officer refusing his application for a student visa. Mr. Sodhi asserts that the officer erred in making findings that were not supported by the evidence. He also says that he was treated unfairly as he was not provided with an opportunity to address the visa officer's concerns prior to a decision being made in relation to his application.

[2] For the reasons that follow, I am not persuaded that the officer erred as alleged.

Consequently, the application will be dismissed.

Background

[3] Mr. Sodhi is a citizen of India. At the age of 11, he was adopted by his aunt and uncle, who are both Canadian citizens. Over the ensuing years, his new parents made several unsuccessful attempts to obtain permanent residency for him in Canada. Their sponsorship applications were refused on the basis that the parental relationship was not considered to be genuine.

[4] In 1998, 2000 and 2002, Mr. Sodhi applied for visas to allow him to study in Canada. In 2002, he was granted a temporary resident permit which allowed him to pursue studies at Algonquin College in Ottawa. He graduated from an ESL program at Algonquin College in December of 2003.

[5] Mr. Sodhi's visa expired in February of 2004, and he was refused an extension on May 18, 2004. He did not, however, leave Canada at that time, and a report on inadmissibility and an exclusion order were subsequently issued against him. Although he stated that he had no fear of returning to India, Mr. Sodhi nevertheless applied for a pre-removal risk assessment, which was negative. He left Canada on January 29, 2005.

[6] What happened after Mr. Sodhi left Canada in January of 2005 is in dispute. He says that between 2005 and 2007, he was studying in India at an institution called “Manav Rachna”, which, he says, is affiliated with Algonquin College.

[7] It is undisputed that Mr. Sodhi was in India in June of 2009, where he applied for a new Canadian student visa, as he had been accepted into a three-year advanced diploma program at Algonquin College in Ottawa.

The Visa Officer’s Decision

[8] The visa officer refused Mr. Sodhi’s application as the officer was not satisfied that he would leave Canada after the authorized period.

[9] From a review of the CAIPS notes, it appears that the officer was concerned by Mr. Sodhi’s past attempts to settle in Canada, his history of non-compliance, and his strong family ties to Canada coupled with his apparent lack of any family ties to India.

[10] The officer also observed that although Mr. Sodhi left Canada in January of 2005, an Algonquin College transcript provided by him contained marks for courses taken between January of 2005 and the spring of 2007. This led the officer to believe that Mr. Sodhi had re-entered Canada without authorization, in violation of *IRPA*.

Did the Officer Err by Making Findings that were not Supported by the Evidence?

[11] Mr. Sodhi's first argument is that the officer erred in finding that he must have re-entered Canada illegally after January of 2005, a finding that he says is not supported by the evidence.

[12] Mr. Sodhi's visa application form indicates that he was attending the "Manav Rachna" institution in India between August of 2005 and June of 2007. He states that this institution is "affiliated to Algonquin".

[13] In the course of the assessment process, Mr. Sodhi was asked to provide proof of his studies "while in Canada". It was in response to this request that Mr. Sodhi provided copies of his Algonquin College transcripts, together with diplomas that he received from Algonquin.

[14] The transcripts show Mr. Sodhi as being in attendance at Algonquin College between 2003 and 2005. There is a gap in his course record in 2005, reflecting his return to India in January of that year. The transcript resumes in the autumn of 2005, and records the results that he obtained in courses taken in 2005, 2006 and 2007. Nothing on the face of the transcript suggests that any of these courses were actually taken in India, at an entirely different institution.

[15] Similarly, the diploma provided by Mr. Sodhi is an "Ontario College Diploma" issued by Algonquin College in Ottawa in 2007. Once again, there is nothing on the face of the document to suggest that any of the course work was completed at a different institution in a different country.

[16] Furthermore, the Algonquin College transcript and diploma were provided by Mr. Sodhi in response to a request for proof of his studies *in Canada*. No explanation has been provided as to why Mr. Sodhi would provide records relating to studies in India in response to this request.

[17] In light of the evidence provided by Mr. Sodhi himself, it was reasonably open to the officer to conclude that Mr. Sodhi had resumed his studies in Canada in the autumn of 2005. Given that he did not have a visa allowing him to do so, the officer's conclusion that he must have re-entered Canada illegally was also reasonable.

Was Mr. Sodhi Treated Unfairly?

[18] Mr. Sodhi also argues that he was treated unfairly by not being provided with an opportunity to address the visa officer's concerns as to where he had attended school prior to a decision being made in relation to his application.

[19] It is well established in the jurisprudence that where a visa officer relies on evidence received from sources other than the applicant, the applicant must be made aware of the information in the possession of the officer, and must be afforded an opportunity to respond to it: see, for example, *Muliadi v. Canada (Minister of Employment and Immigration)*, [1986] 2 F.C. 205, 66 N.R. 8 at para. 14 (F.C.A.); *Simmons v. Canada (Minister of Public Safety and Emergency Preparedness)*, 2006 FC 1123, 151 A.C.W.S. (3d) 503 at para. 7. This is not, however, the situation here.

[20] In this case, all of the evidence relied upon by the officer was received from Mr. Sodhi himself. The records that he provided showed Mr. Sodhi to have been in attendance at Algonquin College in Ottawa during the period in question. The officer was entitled to take this evidence at face value.

[21] At the end of the day, the burden was on Mr. Sodhi to satisfy the officer that he would leave Canada at the end of his studies. This he failed to do.

Conclusion

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

Certification

[23] Neither party has suggested a question for certification, and none arises here.

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
SOLICITORS OF RECORD

DOCKET: IMM-5594-09

STYLE OF CAUSE: ONKAR SINGH SODHI v.
THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

PLACE OF HEARING: Ottawa, Ontario

DATE OF HEARING: August 12, 2010

**REASONS FOR JUDGMENT
AND JUDGMENT:** Mactavish J.

DATED: August 23, 2010

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