

Federal Court



Cour fédérale

**Date: 20120202**

**Docket: IMM-2454-11**

**Citation: 2012 FC 137**

**Ottawa, Ontario, February 2, 2012**

**PRESENT: The Honourable Mr. Justice O'Reilly**

**BETWEEN:**

**AVTAR SINGH**

**Applicant**

**and**

**MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

**I. Overview**

[1] Mr. Avtar Singh applied for a temporary work permit but was turned down because a visa officer in Chandigarh, India believed that Mr. Singh did not meet the necessary language requirements and that he would not leave Canada when his permit expired. Mr. Singh argues that the officer's decision was not supported by the evidence before him and, therefore, was

unreasonable. He also suggests that the officer treated him unfairly by failing to provide him an interview and by overlooking evidence.

## II. Factual Background

[2] In 2011, Mr. Singh submitted an application for a one-year temporary work permit to work as a long-haul truck driver in Surrey, BC. He had 11 years' experience previously working in Dubai as a heavy duty truck driver.

[3] The Labour Market Opinion (LMO) on which Mr. Singh relied stated that the position required functional English language skills. His duties would include:

- Inspecting the truck and submitting reports;
- Reading bills of lading;
- Maintaining radio or telephone contact to receive instructions; and
- Maintaining the truck log and keeping records of materials and products.

[4] To show he had the required language skills, Mr. Singh submitted:

- A transcript of his secondary school marks from 1987 showing that he had received a grade of 46 in English (25 marks constituted a pass);

- A transcript of his matriculation examination marks from 1989, showing that he had received a grade of 53 in English (33 marks constituted a pass); and
- A note from a teacher stating that Mr. Singh had studied English for five years.

[5] Mr. Singh also provided evidence that he owns a house and land in India valued at more than 11 million rupees, and that he has savings of more than 3.7 million rupees. He has a wife, a 13-year-old son, and a 10-year-old daughter who live in Dubai. His mother and father live in India, and his brother lives in Canada.

### III. The Officer's Decision

[6] The officer's notes disclose the following:

Weak ties – spouse and children in Dubai. Only brother in CDA. No relatives in EUR yet he shows some travel there. No satisfactory proof of language ability. Savings account shows large balance – no explanation for provenance of these funds. Applicant is a young single male. Weak ties. Highly mobile. Low level of education. No satisfactory evidence of any vocational skill or training shown in the application and accompanying documents. I am not satisfied applicant would have any social or economic incentive to depart Canada at the end of the period authorized for stay. Refused. (Emphasis added)

[7] By letter dated January 27, 2011, the officer refused the application because Mr. Singh did not meet the language requirement. Further, the officer was not satisfied that he would leave Canada when his permit expired, having failed to show sufficient establishment in India.

IV. Was the officer's decision unreasonable or arrived at unfairly?

[8] Mr. Singh argues that the officer made factual errors and overlooked evidence contradicting the officer's conclusion. He points to the following:

- the officer described Mr. Singh as a “young, single male” when the evidence showed he was married with two children;
- the officer found that Mr. Singh's evidence of his English language skills was unsatisfactory but he did not refer to the documentary evidence relating to Mr. Singh's language studies, nor to the fact that his working language in Dubai was English;
- the officer found that Mr. Singh had “weak ties” to India, but did not refer to the land and other assets Mr. Singh owns there, or his parents; and
- the officer found that Mr. Singh had no incentive to leave Canada, but did not refer to his family in Dubai.

[9] The Minister submits that Mr. Singh simply failed to provide sufficient evidence to support his application; any errors or oversights on the officer's part were minor and irrelevant to the result.

[10] I disagree.

[11] The officer concluded that Mr. Singh's evidence relating to his language skills and his incentives to leave Canada when his permit expired was insufficient. However, the officer made no reference to any of that evidence, and made a clear error about Mr. Singh's marital status.

Accordingly, it is not clear why the officer turned Mr. Singh down. The officer's decision is neither transparent nor intelligible.

V. Conclusion and Disposition

[12] The officer's decision was unreasonable because, without consideration of the relevant evidence, it did not represent a defensible outcome based on the facts and the law. I must, therefore, allow this application for judicial review and order another officer to reconsider Mr. Singh's application. Neither party proposed a question of general importance for me to certify, and none is stated.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that:**

1. The application for judicial review is allowed. The matter is referred back for a new hearing before a different officer;
2. No question of general importance is stated.

“James W. O’Reilly”

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Judge

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

**DOCKET:** IMM-2454-11

**STYLE OF CAUSE:** AVTAR SINGH v MCI

**PLACE OF HEARING:** Vancouver, British Columbia

**DATE OF HEARING:** November 16, 2011

**REASONS FOR JUDGMENT:** O'REILLY J.

**DATED:** February 2, 2012

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