

Federal Court



Cour fédérale

Date: 20131119

Docket: IMM-3349-13

Citation: 2013 FC 1176

Ottawa, Ontario, November 19, 2013

PRESENT: The Honourable Mr. Justice Phelan

BETWEEN:

MANAV JALOTA

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. INTRODUCTION

[1] This is the judicial review of a decision refusing Mr. Jalota's application to restore his temporary resident status as a student.

The restoration application was denied because the Officer was not satisfied that (a) the Applicant was a genuine temporary resident and student; (b) the Applicant had sufficient funds; (c) he would leave Canada at the end of the authorized study; and (d) the co-op component of his studies met some specified criteria.

II. BACKGROUND

[2] The Applicant is from India and obtained a study permit valid until December 31, 2012.

[3] Having arrived in Canada in January 2011, the Applicant started at one college, transferred to another and finally to a third. All of these transfers are permitted under his permit.

[4] In September 2012 the Applicant applied for an extension of his permit which was refused. The reason for refusal was the officer's belief that he was not a genuine student, which was stated in the following strong terms:

You have submitted documentation which lacks credibility as part of your application. This has diminished the overall credibility of your submission.

[5] This is a critical aspect of this whole matter because the refusal does not say in what manner the documents lack credibility; however, the credibility finding is part of the overall restoration file (it was contained in the Tribunal Record as part of the material before the Officer on the restoration matter).

[6] In January 2013 the Applicant made an application to restore status. In so doing, the Applicant followed the Document Checklist – Student issued by Citizenship and Immigration Canada [CIC]. That document is divided into three parts: the first part applies to “All Applicants”, the second applies to a “Study Permit” and the third applies to “Restoration of Temporary Status”.

[7] Under the Restoration part of the Checklist, CIC asks for:

1. photocopies of passport pages (also requested under Study Permit);
2. copy of current immigration document; and
3. documents related to loss of status.

[8] In the covering letter for the application to restore, the Applicant enclosed transcripts and attendance records. He went on to note that he had funds to carry him through the school semester and offered to supply evidence if required.

[9] The application for restoration was denied for the reasons earlier described.

[10] The Global Case Management System [GCMS] identified the Officer's concerns:

- failure to submit proof of funds;
- failure to submit transcripts from previous studies;
- absence of studies from August 2011 to January 2012; and
- failure in a college letter of acceptance to give certain details of co-op program's importance.

There is nothing in those Notes concerning the failure to leave Canada at the end of the study permit.

[11] The Respondent concedes that there was a breach of procedural fairness when the Officer failed to request prior transcripts but based the decision on the failure to produce those transcripts.

[12] The Respondent contends that despite the breach of procedural fairness, the decision is reasonable based on the absence of financial information. The Respondent seeks to carve out financial information as a discrete ground for the decision which can breathe life into an otherwise infirm decision.

III. ANALYSIS

[13] It is well accepted that a breach of natural justice in decision making is an error of law and jurisdiction which results in the whole decision being quashed. There are very limited and exceptional circumstances where a breach will not have that result – such as where the breach could not have affected the result (*Lahocsinszky v Canada (Minister of Citizenship and Immigration)*, 2004 FC 275, 129 ACWS (3d) 769).

[14] In the present instance the breach is the grounds for one of the findings against the Applicant. It cannot be said that the breach did not affect the result. This is not a case where it is futile to send the matter back for redetermination because the result is inevitable (*Mobil Oil Canada Ltd v Canada-Newfoundland Offshore Petroleum Board*, [1994] 1 SCR 202).

[15] Therefore, on that ground alone, this judicial review will be granted.

[16] However, it is important to address the Respondent's claim that the absence of financial information was fatal to the restoration application and therefore the decision should be sustained.

[17] The Respondent's own checklist does not ask for any financial information *per se* as part of a restoration application, although it is listed as a requirement for study permit applications. For restoration applications, the key requirement is production of the documents related to loss of status. If the Respondent wished to have financial or other documents, it should have asked for them either in the Checklist or by additional request. Any confusion in the Checklist lies at the feet of the Respondent and it is a further breach of procedural fairness to have a misleading document supplied to the public (*Lim v Canada (Minister of Citizenship and Immigration)*, 2005 FC 657, 272 FTR 293).

[18] This breach is particularly so where the Applicant confirmed his financial situation and informed the Respondent that he was prepared to provide evidence if asked. It is no answer to say that section 182 of the *Immigration and Refugee Regulations*, SOR/2002-227, requires, on a restoration application, that an applicant meet the initial requirements for their stay. The Applicant met the initial requirements at the time of his first application, the evidence was in the file and there was nothing to suggest that anything had changed.

[19] The core problem with this matter is the requirement to produce documents related to the loss of status – as specified in the Checklist. It requires one to determine the cause of the loss of status.

[20] It is not clear from the decision denying the extension of the permit – the cause of the loss of status – what the real problem was with the Applicant's documents. It is unfair to leave a party with

questions as to what was incredulous about his documents. Unfortunately, in this case, the Applicant never asked.

[21] However, since the stated reason for refusal was concern about the Applicant being a genuine student, not that he lacked sufficient funds, it is reasonable to conclude that the loss of status related to academic matters not financial. It was therefore reasonable for the Applicant to address those issues in his restoration application – which he did.

[22] It is incumbent on the Respondent to state the reasons for loss of status in sufficient terms that an applicant can address those reasons in any further relief he may claim.

[23] The Respondent acknowledges that on this issue, it breached procedural fairness in respect to not requesting earlier transcripts. The problem is deeper than that. The core unfairness lay in the reasons for denying the extension which then led to the problems in addressing the restoration application.

[24] The Respondent's reliance on financial issues is a new-found basis; not the basis for the original loss of status.

[25] It is a breach of procedural fairness to rely on a grounds not cited in the original decision without giving the Applicant notice that this ground of financial sustainability is now at issue – just as it was a breach of procedural fairness to not give notice that earlier transcripts were required (a point the Respondent properly concedes).

[26] These breaches of procedural fairness are further grounds for quashing the decision denying restoration.

[27] Lastly, the Respondent has put forward no basis for concluding that the Applicant would not leave Canada. It is not sufficient to just run through the various grounds for denial of the application, as if checking off a list, without giving reasons for the conclusion.

[28] As an overall conclusion, the allegation of lack of credibility of the Applicant because of problems with his documents seems to have permeated this file. If the Respondent had problems with the documents, it was obliged to state what those problems were. Conclusionary statements are not “reasons”.

IV. CONCLUSION

[29] This judicial review will be granted, the decision will be quashed, and the matter referred back to a different officer for a fresh determination.

[30] There are no questions for certification.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is granted, the decision is quashed and the matter is to be referred back to a different officer for a fresh determination.

"Michael L. Phelan"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: IMM-3349-13

STYLE OF CAUSE: MANAV JALOTA v THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: VANCOUVER, BRITISH COLUMBIA

DATE OF HEARING: NOVEMBER 14, 2013

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

DATED: NOVEMBER 19, 2013

APPEARANCES:

Laura Best FOR THE APPLICANT

Adam Taylor FOR THE RESPONDENT

SOLICITORS OF RECORD:

Embarkation Law Group FOR THE APPLICANT
Barristers and Solicitors
Vancouver, British Columbia

William F. Pentney FOR THE RESPONDENT
Deputy Attorney General of Canada
Vancouver, British Columbia