Federal Court  Cour fédérale

Date: 20140311

Docket: IMM-11287-12

Citation: 2014 FC 239

Ottawa, Ontario, March 11, 2014

PRESENT: The Honourable Mr. Justice Russell

BETWEEN:

VARINDER SINGH BHAMRA

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

INTRODUCTION

[1] This is an application under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [Act] for judicial review of the decision of a Designated Immigration Officer [Officer], dated 16 October 2012 [Decision], which refused the Applicant's application for permanent residence in Canada under the Economic Class as a provincial nominee under subsection 11(1) of the Act and section 87 of the *Immigration and Refugee Protection*

Regulations, SOR/2002-227 [Regulations]. The Officer found that the Applicant was inadmissible for misrepresentation under subsection 40(1)(a).

BACKGROUND

[2] The Applicant is a 24 year old citizen of India who applied to the Saskatchewan Immigrant Nominee Program [SINP] in February 2009 as a carpenter. His application was approved by the Province of Saskatchewan on 11 January 2011, and he then submitted his application for permanent residence through the Canadian High Commission in New Delhi [Embassy] on 21 February 2011. While the Province of Saskatchewan selects successful applicants under the SINP, Citizenship and Immigration Canada [CIC], through specifically designated officers, makes the final decision on their admission to Canada, including the determination of whether they are inadmissible to Canada under the Act.

[3] As part of his SINP application, the Applicant provided a sworn statement dated 15 January 2009 from an employer, Jit Singh. This statement indicated that the Applicant was working for Mr. Singh's company, Panesar Timber Store, as a carpenter specializing in cabinet making, from 20 May 2008 "till date". The Applicant also submitted Experience Certificates signed by Mr. Singh with his permanent residence application stating that he had worked at Panesar Timber Store.

[4] On 1 August 2011, an employee from the Embassy contacted Jit Singh in an attempt to verify the Applicant's employment and experience. Two land lines listed on the letterhead for Panesar Timber Store were not in service, but the Embassy employee, who spoke Punjabi, was

successful in reaching a person who claimed to be Jit Singh at the mobile phone number listed on that letterhead. Mr. Singh stated that Panesar Timber Store was in the business of trading in wood to be used for doors and door frames, and had never been in the business of making cabinets or other furniture. He stated that they "only make door frames and doors." Mr. Singh also stated that there was no one with the Applicant's name working for him. After being informed that it was the Embassy calling, Mr. Singh again stated that no one with the Applicant's name had ever worked for him. The Embassy employee ended the call and entered the code TVE-2 (Employment confirmed fraudulent) on the Applicant's file.

[5] On 25 July 2012, the Applicant sent a letter to the Embassy stating that he had changed his employment, and attached a letter from a new employer, Devgan Wood Works, also stating that he was working as a carpenter.

[6] On 14 August 2012, a Visa Officer at the Embassy sent a "procedural fairness" letter to the Applicant informing him of the phone conversation with Mr. Singh, and stating that it was therefore reasonable to believe that the Applicant had provided fraudulent experience letters. The Visa Officer outlined the provisions of the Act dealing with inadmissibility due to misrepresentation, and gave the Applicant 30 days to respond to the concerns raised in writing, after which a decision would be made. The letter also stated that the Applicant's recent change of employers was "of no relevance," as he was nominated by the province of Saskatchewan based on his experience with Panesar Timber Store, which was now deemed to be misrepresented.

[7] The Applicant responded with a letter dated 1 September 2012 stating that the information in the procedural fairness letter was incorrect, and attaching another sworn and notarized statement from Jit Singh, dated 30 August 2012. The latter emphatically denied the facts alleged in the procedural fairness letter, reaffirmed that the Applicant had worked for Panesar Timber Store from 15 June 2007 to 15 December 2007 and again from 20 May 2008 to 3 February 2012, and stated that this work involved "manufacture of door and window frames, kitchen cupboards and cabinets in the bedrooms, to be precise and miscellaneous woodwork jobs in residential flats." Mr. Singh wrote that he did not recall receiving a phone call from the Embassy, and speculated that the call "may have been received by a person who did not know Varinder Singh Bhamra or was on inimical relations with him and happened to be then present in [Mr. Singh's] office."

[8] On 16 December 2012 a letter was sent to the Applicant informing him that he was found to be inadmissible to Canada for misrepresentation, and denying his application for permanent residence.

DECISION UNDER REVIEW

[9] The Decision consists of the 16 December 2012 letter and the notes on the Applicant's file in the Global Case Management System [GCMS notes].

[10] The letter stated that under subsection 40(1)(a) of the Act, a foreign national is inadmissible for misrepresentation for directly or indirectly misrepresenting or withholding material facts relating to a relevant matter that induces or could induce an error in the

administration of the Act, and that under subsection 40(2)(a) such inadmissibility continues for a period of two years. The letter stated that having considered all of the information submitted and collected, including the Applicant's response to the Embassy's letter of 14 August 2012, the Officer had concluded that the Applicant had misrepresented or withheld material facts related to his work experience. The further documents submitted did not overcome the concerns raised by the telephone verification as the Officer was "not satisfied that the person that our office spoke with during the phone verification was not Mr. Jit Singh, proprietor of Panesar Timber Store." The Officer found that the Applicant had misrepresented a material fact that could have induced errors in the administration of the Act, because an officer could have been led to believe that the Applicant's stated work experience was genuine and that he met the provincial nominee requirements. As a result of this finding of misrepresentation, the letter states, the Applicant is inadmissible to Canada for a period of two years from the date of the letter.

[11] The GCMS notes include further information on the processing of the Applicant's file. An entry of 21 September 2012 by a user identified as "ACO1326", following a review of the Applicant's response to the procedural fairness letter, states in part:

> … Mr. Bhamra has provided a statement from the Proprietor of Panesar Timber Store, Mr Jit Singh stating that PA is employed with his company. The statement from Mr. Singh denies ever having received a call from our office. The verification call was made to the same phone number that is listed on both the letterhead of the experience certificate and that of the new statement from employer (…). The person who conducted the verification call confirmed with the responding party at the beginning of the call that they were Jit Singh, owner of Panesar Timber Store. There was no reason or incentive for the responding party to identify himself as Jit Singh if in fact he was not. The Respondent denied on several occasions during the call that he knew or employed Varinder Singh Bhamra. The Respondent also twice confirmed that the company only makes door frames and doors. Furthermore, the

> respondent did identify his three employees, which did not include the applicant. Two of the employees that the respondent noted are also mentioned as employees in the recent written statement provided. The call ended by advising the respondent the call was coming from the High Commission of Canada and requesting a final confirmation that Varinder Singh Bhamra works or has ever worked for Mr Jit Singh, and the respondent confirmed this person has never worked for him. No indication was given by the respondent at the time of the verification call that he might not be able to provide reliable information about these facts. The respondent of the verification phone call would have had no reason or incentive to pretend to be Mr Jit Singh, proprietor of Panesar Timber Store, or to provide our office with incorrect information pertaining to Mr Bhamra. The person making the verification call identified themselves as calling from the Canadian High Commission at the end of the phone call, and the respondent did not change his answers at that time. The respondent was also able to identify the other employees of the shop while confirming Mr Bhamra was not among them. I am satisfied that the person spoken to during the verification call was Mr Jit Singh, owner for Panesar Timber Store, and that Mr. Bhamra is not, and has not ever been, an employee of Panesar Timber Store. I am not satisfied that the statement provided by Mr Jit Singh on 30 August 2012 that he never received our call is credible given the information provided in the phone verification. The further documents submitted by the applicant do not overcome the concerns raised by the telephone verification. In my opinion, on a balance of probabilities, the applicant misrepresented that he has work experience as a Carpenter by submitting an inauthentic experience certificate in support of this fact… I therefore recommend that the applicant be made inadmissible to Canada under section 40 of the Act…

[12] On 16 October 2012, the date of the Decision, another user identified as "CMO2803," who is presumably the Officer, made the following GCMS entry:

> Misrepresentation assessment: I have reviewed the documentation and information relating to Mr. Varinder Singh Bhamra's employment which have been submitted as part of his application for permanent residence in Canada under the Saskatchewan provincial nominee program. Due to concerns about the genuineness of the applicant's stated employment experience, a telephone investigation was undertaken by this office on 1 August 2011. During the course of this verification, significant discrepancies related to the employment history of Mr. Bhamra

> were identified and these have been set out in the case notes. A procedural fairness letter dated 14 August 2012 was sent to the applicant and a response, with attached documents, was received at the CHC on 6 SEP 2012. All information relating to Mr. Bhamra's employment, was reviewed in rendering this decision. In my opinion, on a balance of probabilities, the applicant misrepresented his employment history by submitting inauthentic documents and information relating to his stated employment as a carpenter at Panesar Timer [sic] Store in Jagraon. Following a review of the information, I find it reasonable to conclude that Mr. Bhamra does not have the experience claimed in his application. This information provided in support of this application is material and could have led to an error in the administration of the Act… I am therefore, of the opinion that the applicant is inadmissible to Canada under section 40 of the Act. This application is refused.

[13] The Applicant argues that the following entry of 5 March 2011, created by a user identified as "LB00260," is also relevant to these proceedings:

> … Pls confirme [sic] Applicant's [experience] at Panesar Timber Store – working as a carpenter. Seems strange that the experience letter would have a colour photo of applicant in letterhead??...

ISSUES

[14] The Applicant raises the following issues in this proceeding:

- Was the Officer's finding that he is inadmissible to Canada under subsection 40(1)(a) of the Act unreasonable?

- Did the Officer breach a duty of procedural fairness in coming to this conclusion?

STANDARD OF REVIEW

[15] The Supreme Court of Canada in *Dunsmuir v New Brunswick*, 2008 SCC 9 [*Dunsmuir*] held that a standard of review analysis need not be conducted in every instance. Instead, where the standard of review applicable to a particular question before the court is settled in a satisfactory manner by past jurisprudence, the reviewing court may adopt that standard of review. Only where this search proves fruitless, or where the relevant precedents appear to be inconsistent with new developments in the common law principles of judicial review, must the reviewing court undertake a consideration of the four factors comprising the standard of review analysis: *Agraira v Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36 at para 48.

[16] The parties agree, and the Court concurs, that the standard of review for the first issue is reasonableness (see *Dunsmuir*, above, at para 47), and the standard of review with respect to the second issue, which raises a question of procedural fairness, is correctness (see *Canadian Union of Public Employees (C.U.P.E.) v Ontario (Minister of Labour)*, 2003 SCC 29 at para 100; *Sketchley v Canada (Attorney General)*, 2005 FCA 404 at para 53).

[17] When reviewing a decision on the standard of reasonableness, the analysis will be concerned with "the existence of justification, transparency and intelligibility within the decision-making process [and also with] whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law." See *Dunsmuir*, above, at para 47, and *Canada (Minister of Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 59. Put another way, the Court should intervene only if the Decision was unreasonable in the

sense that it falls outside the "range of possible, acceptable outcomes which are defensible in respect of the facts and law."

STATUTORY PROVISIONS

[18] The following provisions of the Act are applicable in these proceedings:

Misrepresentation	**Fausses déclarations**
40. (1) A permanent resident or a foreign national is inadmissible for misrepresentation	40. (1) Emportent interdiction de territoire pour fausses déclarations les faits suivants :
(a) for directly or indirectly misrepresenting or withholding material facts relating to a relevant matter that induces or could induce an error in the administration of this Act;	a) directement ou indirectement, faire une présentation erronée sur un fait important quant à un objet pertinent, ou une réticence sur ce fait, ce qui entraîne ou risque d'entraîner une erreur dans l'application de la présente loi;
[…]	[…]
Application	**Application**
(2) The following provisions govern subsection (1):	(2) Les dispositions suivantes s'appliquent au paragraphe (1):
(a) the permanent resident or the foreign national continues to be inadmissible for misrepresentation for a period of two years following, in the case of a determination outside Canada, a final determination of inadmissibility under subsection (1) or, in the case of a determination in Canada, the date the removal order is enforced; and	a) l'interdiction de territoire court pour les deux ans suivant la décision la constatant en dernier ressort, si le résident permanent ou l'étranger n'est pas au pays, ou suivant l'exécution de la mesure de renvoi;

[…] […]

ARGUMENT

Applicant

Reasonableness of the Decision

[19] The Applicant argues that the Officer acted unreasonably and single-mindedly in finding that the Applicant had misrepresented himself, relying exclusively on the telephone call to the Applicant's purported employer and failing to address the other available evidence. He notes that the Officer reached this conclusion despite a provincial nominee program [PNP] official being satisfied as to the veracity of the Applicant's employment history, and despite being provided with a sworn letter of employment from the Applicant's employer and another sworn statement of the employer in response to the procedural fairness letter. The Applicant says that the Officer failed to consider this evidence and failed to provide adequate reasons for doubting its veracity: *Bellido v Canada (Minister of Citizenship and Immigration)*, 2005 FC 452.

[20] The Applicant says the information from the telephone call was contrary to all of the other evidence, and the Officer failed to provide any comment as to why the additional evidence was not sufficient to overcome his or her credibility concerns. He argues that the Officer's preference for the telephone call evidence is especially problematic given that the Officer did not personally make the call, and states that it cannot be ascertained whether the full transcript of the conversation is present.

[21] The Applicant says that the GCMS notes reveal that it was the Applicant's photograph, affixed to the letterhead of the employer's 15 January 2009 letter that mistakenly caused concern about his employment claims. He says no explanation was given for why this was of concern, nor was this concern ever put to the Applicant.

Procedural Fairness

[22] The Applicant argues that before departing from the decision of the PNP officials, the Officer was required to ascertain why those officials were satisfied as to the Applicant's credibility and fit for the program. The relevant CIC manuals make it clear that there is to be a dialogue between the Immigration Officer and PNP Officials when concerns arise, and the Applicant had a legitimate expectation that such a dialogue would occur. He quotes *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 at para 26 [*Baker*] for the proposition that "[i]f the claimant has a legitimate expectation that a certain procedure will be followed, this procedure will be required by the duty of fairness…" While immigration manuals are not binding authorities, they provide instructions to officers as to how they are to carry out their duties, and can give rise to a legitimate expectation regarding the procedures to be followed: *Park v Canada (Minister of Citizenship and Immigration)*, 1999 CanLII 8221, 172 FTR 152 (FC) at paras 8-9. He quotes from section 10.4 of Enforcement Manual 2 / Overseas Processing Manual 18 (ENF 2/OP 18 Evaluating Inadmissibility), which reads in relevant part [with the Applicant's emphasis included]:

> In provincial nominee cases, misrepresentation may be an issue that needs to be addressed by CIC as well as by the province. Where, in examining the application, there is persuasive evidence that the province's selection decision was based on direct or indirect misrepresentation or withholding material facts relating to

a relevant matter that induces or could induce an error in the administration of IRPA, the following should be considered.

It is CIC's responsibility to determine whether applicants are inadmissible. This includes misrepresentation. Before rendering an inadmissibility decision pursuant to A40, the officer must examine issues of relevancy and materiality. As this may be related to the selection decision made by the province, the visa officer should consult with the provincial official to gather all the information necessary regarding materiality and relevancy. This consultation process and the evidence gathered from the province should be clearly explained and recorded in the file notes for possible use as evidence in the Federal Court or before the IRB.

The procedure outlined below should be followed in cases involving misrepresentation:

1. As per normal standards of procedural fairness, the visa officer should advise the applicant of the concerns and give the applicant at least 30 days to respond to the concerns. The province should receive a copy of this letter, and the applicant should be advised that the province is being provided with the copy.

2. If the reply from the applicant provides a satisfactory explanation to meet the visa officer's concerns, case processing may continue normally without referral to the province.

3. If there is no reply, or if the reply does not provide a satisfactory explanation to meet the concerns of misrepresentation in line with normal procedural fairness standards, the visa officer should proceed as follows:

- Consult with the responsible provincial authority, asking the province to confirm the concerns regarding misrepresentation and request that they withdraw the provincial nomination certificate

- The visa office must

  a) provide the province with documentation from the file regarding their concerns;

> b) advise the province that the applicant had been provided with an opportunity to respond and the nature of that response; and
>
> c) inform them of the visa officer's conclusion that misrepresentation of a material fact relating to a relevant matter has occurred.[…]

[23] The Applicant argues that these statements in the ENF 2 / OP 18 manual show that he had a legitimate expectation that PNP officials in Saskatchewan would be consulted before his application for permanent residence was refused by CIC, and that there is no evidence that such a consultation took place. Without it, he says, CIC had no way of knowing whether PNP officials contacted the Applicant's employer, Jit Singh. The PNP officials were clearly convinced of the authenticity of the Applicant's past employment, and the Officer ought to have inquired as to the reasons for this before reaching an opposite conclusion. The Officer's failure to follow through on the procedure set out in the manual was contrary to the Applicant's legitimate expectation and a breach of natural justice: *Menon v Canada (Minister of Citizenship and Immigration)*, 2005 FC 1273 at paras 21-22.

[24] Furthermore, the Officer's preference of the verification call evidence over the employer's sworn statements shows that the Officer doubted the credibility of both the Applicant and his employer, the Applicant argues, and procedural fairness required that the Officer make follow-up inquiries or grant the Applicant an in-person interview before making a decision on that basis. He says he was placed in an untenable position: he was asked to provide a response to the Officer's allegations, but any denial of the telephone conversation was deemed to lack credibility. The employer's sworn statement was an appropriate means of responding to the Officer's credibility concerns: *Lu v Canada (Minister of Citizenship and Immigration)*, 2008 FC

625 at para 30 [*Lu*]. Beyond this statement, and without the benefit of an in-person interview, the Applicant is left wondering what more he could have done to satisfy the Officer.

[25] The Applicant argues that the Court's reasoning in *Guo v Canada (Minister of Citizenship and Immigration)*, 2006 FC 626 [*Guo*] applies to this case. In that case, a visa office called an employer to verify Ms. Guo's employment history, was provided with information that contradicted her application, and sent a procedural fairness letter. Ms. Guo's response included a letter from the employer explaining that the information provided over the phone was incorrect, but this was characterized by the visa office as a "retraction" of the telephone conversation and found not to be credible. Justice Harrington found that the visa office should have made further inquiries and was not justified in preferring the evidence from the telephone call (*Guo*, above, at paras 14-15):

> [14]… In this case, the error rested with [the employer's representative]. Ms. Guo acted sensibly and approached him immediately. The doubts the Ministry had should have been dealt with by follow-up queries (*Huang v. Canada (Minister of Citizenship and Immigration)* 2005 FC 1615, [2005] F.C.J. No. 1990).
>
> [15] Of course, it may be that Ms. Guo is lying, and that the information provided by Mr. Wang in his telephone call was true. However, there was simply no evidentiary record to allow the immigration officers to disbelieve her. Consequently, the application for judicial review shall be granted. There is no serious question of general importance to certify.

[26] In the present case, the Applicant argues that he did all he could to satisfy the Officer that the telephone call was unreliable, and the Officer failed to explain why the sworn statements were not reliable. When confronted with a sworn statement that was directly contrary to the notes from the verification call, the Officer was required as a matter of fairness to go beyond

explaining why those notes were to be preferred. The sworn statement should have raised a doubt in the mind of the Officer, and those doubts "should have been dealt with by follow-up queries" (*Guo*, above, at paras 5, 7-8, 14). The duty of fairness could have been satisfied by making a second phone call to the employer or by inviting the Applicant for an interview (see *Baker*, above, at paras 22, 24, 28), but neither of these things occurred.

[27] Greater procedural protections were required in this case both because of the serious consequences to the Applicant, who is excluded from seeking entry to Canada for two years, and also because economic class applications are made largely on objective criteria: *Haghighi v Canada (Minister of Citizenship and Immigration)*, [2000] 4 FC 407, 2000 CanLII 17143 (FCA) at para 31. While an oral hearing is not always necessary, the Applicant was owed the opportunity to meaningfully respond to concerns and have his responses fully and fairly considered: *Ghasemzadeh v Canada (Minister of Citizenship and Immigration)*, 2010 FC 716 at para 27.

Respondent

[28] The Respondent says that the Applicant's application for permanent residence was dismissed because he misrepresented his work experience. The Decision was reasonable, and the process leading up to it was fair.

[29] Contrary to the Applicant's assertions, the record shows that the Officer considered both the Applicant's acceptance through the PNP and the fact that his alleged boss, Jit Singh,

provided sworn statements verifying his employment, the Respondent argues. The Applicant simply disagrees with the assignment of greater weight to the verification phone call.

[30] Furthermore, the notion that it is problematic that the verification call was not made by the same officer who made the decision is without merit, as the Applicant fails to cite any authority or provide any explanation for why this is problematic or unfair.

[31] The Respondent also rejects the argument that it is unclear why the evidence from the verification phone call was preferred over the sworn statements of the purported employer. The GCMS notes state several reasons for this preference:

(a) The verification phone call was made to the same phone number listed on the Company's letterhead;

(b) The person who conducted the verification call confirmed with the responding party at the beginning of the call that they were Singh;

(c) There was no reason or incentive for the responding party to identify himself as Singh, if he in fact was not;

(d) The responding party denied on several occasions during the call that he knew the Applicant, or that the Applicant had worked for him;

(e) The responding party confirmed twice that the company only makes doors and door frames;

(f) The responding party named his three employees and the Applicant was not one of them. Two of these employees were also mentioned as employees in the written statement provided in response to CIC's fairness letter; and

(g) The responding party was only told at the end of the call that he was talking to the Canadian High Commission.

[32] The Respondent argues that there was no obligation on the Officer to conduct an interview with the Applicant to assess his credibility. Fairness required that the Applicant be advised of the Officer's concerns through the procedural fairness letter following the verification call, but the Officer was not required to blindly accept the Applicant's response to the fairness letter. Rather, the Officer was required to assess whether the response satisfied and alleviated his or her concerns, and that assessment is to be reviewed on a standard of reasonableness: *Chen Guo Hui v Canada (Minister of Citizenship and Immigration)*, 10 December 2010, IMM-2357-10 (FC) [*Chen*]; *Ni v Canada (Minister of Citizenship and Immigration)*, 2010 FC 162 at para 18 [*Ni*].

[33] The Respondent says that *Lu*, above, does not assist the Applicant, as Justice Zinn's comments in that case regarding the sworn affidavit that could have addressed the officer's

credibility concerns were made in *obiter* after dismissing the application. The comments were case specific and directed to the parties involved.

[34] The Respondent argues that *Guo*, above, is also distinguishable. In that case, the visa office had no evidentiary basis to disbelieve the Applicant's response to the fairness letter, whereas in the present case, the Officer clearly set out why he or she preferred the verification phone call and what specific evidence was relied upon in dismissing the application: *Guo*, above, at para 15; *Ni*, above, at para 18.

[35] The Respondent says the argument that CIC was required to find out from Saskatchewan authorities why he was nominated for their PNP before dismissing his application has already been rejected by this Court. In *Hui v Canada (Minister of Citizenship and Immigration)*, 2011 FC 1098 [*Hui*], another PNP nominee had his application for permanent residence dismissed due to misrepresentation of his work experience, and argued that CIC erred by dismissing his application before consulting with officials from Saskatchewan. Justice Barnes addressed this argument as follows:

> [12] Mr. Hui also contends that the Visa Officer breached the duty of fairness by failing to consult with officials from Saskatchewan before his claim was rejected. This argument has no merit. Article 4.10 of the Canada-Saskatchewan Immigration Agreement requires Canada to notify Saskatchewan of the reasons for a possible refusal of a provincial nominee. Here that was done when Canada copied Saskatchewan with the Visa Officer's fairness letter and Saskatchewan declined to intervene. Canada met its contractual obligations and no further duty was owed to Mr. Hui.

[36] In the present case, the Respondent says, Saskatchewan authorities were emailed a copy of the procedural fairness letter two days after it was sent to the Applicant.

ANALYSIS

[37] I can find no reviewable error in this Decision.

[38] First of all, the Decision is not unreasonable. The record shows that the Officer considered the fact that the Applicant had been accepted as a member of the Saskatchewan PNP and that letters from Mr. Singh purported to verify the Applicant's employment. The Officer simply weighed these facts against the phone call and came to the conclusion, for reasons given, that a misrepresentation had occurred.

[39] As the Respondent points out, the GCMS notes make it clear that the verification phone call outweighed all other facts, and for good reason:

a) The verification phone call was made to the same phone number listed on the Company's letterhead.

b) The person who conducted the verification phone call confirmed with the responding party at the beginning of the phone call that they were Singh.

c) There was no reason or incentive for the responding party to identify himself as Singh, if he in fact was not.

d) The responding party denied on several occasions during the call that he knew the Applicant, or that the Applicant had worked for him.

e) The responding party confirmed twice that the company only makes doors and door frames.

f) The responding party named his three employees and the Applicant was not one of them. Two of these employees were also mentioned as

employees in the written statement provided in response to CIC's fairness letter.

g) The responding party was only told at the end of the call that he was talking to the Canadian High Commission.

[40] Mr. Singh's later suggestion that the verification call "may have been received by a person who did not know Varmider Singh Bharma or was on inimical relations with him and happened to be then present in [Mr. Singh's office]" is fantasy, not evidence. It explains nothing. If such a person exists, there is no explanation as to who he might be and why he might have had access to Mr. Singh's office and his telephone at precisely the time the verification call was made. Without such a fantasy figure, there is simply no explanation as to why Mr. Singh would provide such contradictory information. There is nothing unreasonable about the Officer's conclusions on this point.

[41] There was considerably more that the Applicant could have done in response to the fairness letter, but he failed to avail himself of the opportunity it gave him. For example, he could have submitted documentation to corroborate his position at the company and letters from other employees. Instead, he left the Officer to choose between the notes on the earlier verification call and Mr. Singh's denial that he received that call.

[42] Nor was there any procedural unfairness. The Applicant was provided with a fairness letter and given every opportunity to resolve the misrepresentation issue in his own favour. What he offered was contradictory letters and an unbelievable and entirely unsubstantiated reason for the contradiction. As Justice Mandamin pointed out in *Chen*, above, quoting Justice Zinn in *Ni*, above, at para 18:

> I agree with the applicant that a high degree of fairness is required in misrepresentation determinations. This is why the officer sent the applicant a procedural fairness letter expressly raising his concerns and permitting the applicant to file a response. This is what fairness required in the circumstances and the officer met that burden. It does not require that the officer blindly accept the response to the fairness letter without question. The officer is required to assess whether the response satisfies and alleviates his concerns. That decision is reviewed, as stated, on the reasonableness standard.

It is the fairness letter that, in this context, provides the Applicant with a meaningful opportunity to respond and present his case fully in accordance with *Baker* principles. The Applicant has not shown me that he could not have presented any response he wished to the fairness letter.

[43] The Applicant was given his opportunity to explain the contradiction and demonstrate that no misrepresentation had occurred. He was the one with access to the facts. It is not up to CIC to investigate unexplained contradictions. Provided the fairness letter makes clear what the problem is, the onus is upon the Applicant to establish that no misrepresentation has occurred. See *Ni*, above, at para 18; *Banik v Canada (Minister of Citizenship and Immigration)*, 2013 FC 777 at paras 69-75; *Ikede v Canada (Minister of Citizenship and Immigration)*, 2012 FC 1354 at para 23. In this case, the Applicant did not discharge that onus and presented the Officer with an implausible explanation.

[44] The Applicant's argument that CIC was required to ascertain from Saskatchewan why he was nominated for the province's PNP before dismissing his application has been addressed by this Court. In *Hui*, above, at para 12, Justice Barnes notes:

> Mr. Hui also contends that the Visa Officer breached the duty of fairness by failing to consult with officials from Saskatchewan before

> his claim was rejected. This argument has no merit. Article 4.10 of the Canada-Saskatchewan Immigration Agreement requires Canada to notify Saskatchewan of the reasons for a possible refusal of a provincial nominee. Here that was done when Canada copied Saskatchewan with the Visa Officer's fairness letter and Saskatchewan declined to intervene. Canada met its contractual obligations and no further duty was owed to Mr. Hui.

[45] In the present case, the record shows that a copy of the procedural fairness letter was sent to Saskatchewan officials 2 days after it was sent to the Applicant and before the final decision was made. In addition, the Applicant has not demonstrated how anything that transpired between CIC and Saskatchewan, or that did not transpire, prevented him from providing a full response to the fairness letter.

[46] The Applicant's reliance on *Guo*, above, is misplaced. In *Guo*, Justice Harrington found that "there was no evidentiary record to allow the immigration officers to disbelieve her . . ." (para 15). That is not the case here. Ms. Guo provided a plausible explanation and significant details for the discrepancy in that case that warranted further investigation. The Applicant did not provide anything that warranted further investigation and he has failed to place before me any suggestion of what further investigation could have revealed that would be of assistance to him.

[47] The basis for the Officer's concerns about misrepresentation was made very clear in the fairness letter. All the Applicant did was provide a contradictory follow-up from Mr. Singh with no plausible explanation for the contradiction. He has still provided no plausible explanation to the Court. There is nothing before me to suggest that procedural unfairness occurred in this case.

[48] The parties agree that there is no question for certification and the Court concurs.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that:

1. the application is dismissed; and

2. there is no question for certification.

"James Russell"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-11287-12
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DATED:	MARCH 11, 2014

APPEARANCES:

Angela Princewill	FOR THE APPLICANT
Monmi Goswami	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Niren & Associates Toronto, Ontario	FOR THE APPLICANT
William F. Pentney Deputy Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT