

Federal Court



Cour fédérale

Date: 20140618

Docket: IMM-1100-13

Citation: 2014 FC 578

Ottawa, Ontario, June 18, 2014

PRESENT: The Honourable Mr. Justice Phelan

BETWEEN:

GURPREET SINGH KAHLON

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] This is the judicial review of a decision by a visa officer [Officer] denying the Applicant a permanent residence visa as a skilled worker. The decision was based on failure to provide satisfactory proof of funds. This judicial review is based on alleged breach of procedural fairness in the Officer's failure to give the Applicant notice of concerns about the adequacy of funds.

[2] When the Applicant submitted his application for permanent residence, he signed a statutory declaration that he had \$12,000 Canadian dollars available. The bank records he submitted at that time showed \$145 available to him.

[3] The Applicant claimed that he did not receive the refusal letter of October 15, 2012. A month later he checked the status of his application online and learned that the decision was made. He then applied for the Global Case Management System notes concerning the decision, which he received on November 17, 2012. These notes indicated that the application was rejected because the Officer was not satisfied that the Applicant had sufficient settlement funds. Three days later he sent updated bank information showing a bank balance of approximately \$16,000 to the Respondent.

On January 10, 2013, the Applicant was advised by e-mail that the decision had been made on October 15, 2012, a copy of which was attached.

[4] The only objective financial information on file was a bank statement showing a balance of \$142. The Applicant also filed a statutory declaration stating that he had \$12,000 available but there was no corroborating evidence of the funds available in that amount.

[5] The sole issue is whether the Officer had an obligation to alert the Applicant about this adverse information and afford him an opportunity to explain.

[6] A breach of procedural fairness is reviewed on a standard of correctness (*Li v Canada (Minister of Citizenship and Immigration)*, 2012 FC 484, 216 ACWS (3d) 731).

[7] It is well accepted that the onus is on an applicant to satisfy the requirements for a permanent residence visa (*Nehme v Canada (Minister of Citizenship and Immigration)*, 2004 FC 64, 245 FTR 139).

[8] This onus was known (or ought to have been known) to the Applicant. Any confusion between the bank record and the statutory declaration submitted by the Applicant is wholly the responsibility of the Applicant. The conflict between the two amounts was plainly visible. The concern was not new nor was it hidden nor did it arise from unanticipated events.

[9] The more current law in this Court is that there is no obligation on the Officer to give notice of concerns arising from the requirements of the Act. The applicable law was summarized by Dawson J (as she then was) in *Johnson v Canada (Minister of Citizenship and Immigration)*, 2008 FC 2, 163 ACWS (3d) 439, at para 34:

Second, to the extent that Mr. Johnson argues that the officer was under an obligation to advise him not of the fact of the convictions but rather of the officer's concerns as to his inadmissibility, Mr. Justice MacKay, in *Parmar v. Canada (Minister of Citizenship and Immigration)* (1997), 139 F.T.R. 203 (T.D.), wrote at paragraph 36 of his reasons that "there is no requirement for notice of an officer's concerns where these arise directly from the Act and Regulations that the officer is bound to follow in his or her assessment of the applicant." This principle has been applied in a number of decisions of this Court, including the recent decision of *Ayyalasomayajula v. Canada (Minister of Citizenship and Immigration)*, [2007] F.C.J. No. 320, and the cases cited therein. In the present case, the officer's concerns arose directly from the Act and Regulations.

[emphasis added]

[10] Therefore, there is no breach of procedural fairness and this judicial review will be dismissed.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed.

"Michael L. Phelan"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-1100-13

STYLE OF CAUSE: GURPREET SINGH KAHLON v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: CALGARY, ALBERTA

DATE OF HEARING: DECEMBER 12, 2013

JUDGMENT AND REASONS: PHELAN J.

DATED: JUNE 18, 2014

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