

Federal Court



Cour fédérale

**Date: 20141028**

**Docket: T-371-14**

**Citation: 2014 FC 1020**

**Ottawa, Ontario, October 28, 2014**

**PRESENT: The Honourable Madam Justice McVeigh**

**BETWEEN:**

**HIRA SHABBIR**

**Applicant**

**and**

**ATTORNEY GENERAL OF CANADA**

**Respondent**

**JUDGMENT AND REASONS**

[1] This is an application for judicial review under section 18.1 of the *Federal Courts Act*, RSC 1985, c F-7, of the decision of the Minister of Transport (“the Minister”) dated January 23, 2013, refusing the Applicant’s request for transportation security clearance at Pearson International Airport pursuant to paragraph 4.8 of the *Aeronautics Act*, RSC 1985 c A-2.

I. Background

[2] The Applicant, Hira Shabbir, a Canadian citizen, applied for a transportation security clearance so she could continue to work at A & W by GME Grill Inc. (in some documents GME Grill Inc.), a restaurant within a restricted area at Pearson International Airport. On August 19, 2013, she was given a temporary airport entry permit until her application was processed.

[3] The Applicant's application was refused as she had a period of time (three years and ten months) in the last five years that the information she provided was not reliable and verifiable. She disagrees.

[4] The Transportation Security Clearance Program (TSCP) is administered by Transport Canada to oversee the issuance, suspension and cancellation of transportation security clearances. The purpose of the TSCP is to protect and promote the safety and security of the public, passengers, crew members and aviation facilities. The TSCP does this by granting transportation security clearances only after people have met the standards in the TSCP policy.

[5] A person requiring a transportation security clearance must provide a number of documents including government-issued identification, biographical data, fingerprints, a photograph and also adequate, reliable and verifiable information on the past five years of their work, study and residency. This information is subsequently verified with CIC, RCMP, CSIS and other law enforcement agencies. The TSCP policy at s.I.3 (c) includes a provision for a review panel to determine whether the information provided is sufficient, reliable and verifiable.

[6] The Applicant submitted her first application on August 18, 2013. Under the section entitled “What have you been doing for the last five years? – school, employment, unemployment” she provided the following information for employment and travel:

<b>Employer/School</b>	<b>Country</b>	<b>Dates</b>
Punjab College for Women	Punjab, Pakistan	August 2008-August 2011
Employed in Canada	Belleville, ON	Sept 2011 – Feb 2012
Unemployment (maternity leave)	Shakargarh, Pakistan	Feb 2012- May 2013
Employed in Canada	Brampton, ON	May 2013- present

Travel:

<b>Country</b>	<b>Purpose</b>	<b>Dates</b>
Pakistan	Visiting in-laws	August 2008- Sept 2011
Pakistan	Sister’s marriage	June 2012- April 2013

[7] On August 28, 2013, the Acting Chief of the Security Screening Program, on behalf of the Minister, wrote the Applicant to inform her that the information provided was not sufficient, reliable and verifiable enough to enable Transport Canada to assess the application. Specifically, the Applicant was out of Canada for three (3) years and ten (10) months in the five year period prior to the application. Original, supporting documentation was requested to verify the residency and education activities from August 2008 to September 2011 and from June 2012 to April 2013. In response, the Applicant provided multiple documents including:

- Character certificate from Punjab College for Women, Gujranwala (2007- June 2009);
- Commerce Diploma issued August 2009;
- Marriage certificate March 25, 2011;
- Two Police certificates from Pakistan;
  - The first dated September 10, 2013 stating that there is nothing adverse against the Applicant during her stay in Shakargarh, District Narowal from July 6, 2011 until September 10, 2013;
  - The second dated September 20, 2013 stating that there is nothing adverse against the Applicant during her stay in Gujranwala from birth (September 2, 1987) until marriage (March 25, 2011);
- Son’s birth certificate in Canada, Feb 2012;
- Pakistan National ID card;

- Invitation to sister's wedding in Pakistan, October 2012.

[8] The Security Screening Officer, Martha Lee, asked the Applicant for an email address for the college to verify that the documents were originals. After the officer sent two unanswered email requests to the college's provided email, the Applicant herself contacted the college and had the documents verified, scanned and sent back from an unidentified person who wrote from a "hotmail.com" email address and not the college's official email address.

[9] The Security Screening Officer told the Applicant that the verification must come from the college email address. As well the dates should be verified as August 2008 to August 2011, not August 2007 to 2009 which is what the college certificate stated. In response, the Applicant told the officer that she made an error and that she was only in school in Pakistan from August 2007 to June 2009 and that she was at home with her parents in Pakistan from July 2009 until her marriage in March 2011. As this now left a gap, the officer requested that the Applicant must provide full details on what she was doing while living in Pakistan from June 2009 to June 2011.

[10] The Applicant responded that she wrote final exams in June 2009, completed her school and stayed home —unemployed— with her family until she was married in March 2011. From March 2011 onwards, she stated that she lived with her husband and in-laws until she returned to Canada in September 2011. The Applicant did not provide any other documentation about her stay in Pakistan during the gap.

[11] The Director of Security Screening Programs notified the Applicant that her application for clearance was refused by the Minister based on her file and on the recommendation from the

Review Panel. The reason for refusal was that she “did not provide sufficient, verifiable and reliable information”.

## II. Standard of Review

[12] Review of whether the Minister erred when refusing the transportation security clearance pursuant to paragraph 4.8 of the *Aeronautics Act* is reviewed on a standard of reasonableness (*Thep-Outhainthany v Canada (Attorney General)*, 2013 FC 59 citing *Clue v Canada (Attorney General)*, 2011 FC 323 ).

[13] Reasonableness requires that there be “...justification, transparency and intelligibility within the decision-making process. But it is also concerned with whether the decision falls within the range of possible, acceptable outcomes which are defensible in respect of the facts and law” (*Dunsmuir v New Brunswick*, 2009 SCC 9 at para 47, *Khosa v Canada (Minister of Citizenship and Immigration)*, 2009 SCC 12 at para 59). Where the decision was one of fact, discretion or policy, deference will apply (*Dunsmuir* at para 53).

## III. Analysis

[14] The Applicant submitted that she provided sufficient documentation and that the Security Officer Martha Lee’s unexplainable errors are enough to send this matter back for reconsideration. The Applicant just wants her job back as she is the sole provider for her two and a half year old son and her sponsored husband who just arrived in Canada in September 2014. At the hearing, she said after seeing all the material that was before the Review Panel, that she

better understands the process. Because the Applicant said she now understands the process, she wants another chance to re-apply as she is confident she is able to provide the documentation needed for her transportation security certificate approval.

[15] The Transportation Clearance Program policy at section I.9 states:

A Review Panel shall, in the case of an applicant who did not meet the conditions set out in section I.3, review all the information provided by the applicant with a view of making a recommendation to the Minister as whether to grant or refuse to grant a clearance.

[16] In this case, the Applicant was refused clearance as the information provided was not adequately reliable and verifiable for the whole period of five years prior to the application being made, which is what is needed as stated in TSCP at section I.3 (3). Consequently, the matter was referred to the Review Panel.

[17] The composition of the Review Panel is described in the TSCP Part II “Standards” at section II.32:

The review panel shall consist of the Director, Security Screening Programs who is the chairperson and at least one other member selected by the Director, Security Screening Programs based on his or her familiarity with the aim and objective of the Transportation Security Clearance Program.

[18] At section II.33 of the TSCP:

The Director, Security Screening Programs shall convene the Review Panel when:

1. The director, Security Screening Programs will review information provided by an applicant to determine whether it is

sufficient, reliable and verifiable to proceed or to allow an applicant to re-apply.

[19] A Review Panel was constituted and consisted of the Chief, Security Screening Programs and Director, Security Screening Programs. On January 8, 2014, the Director General, Strategies and Programs Integration affirmed the recommendation in the Review Panel Recommendation Rationale to refuse the security clearance. The Director General signed the refusal for clearance on January 20, 2014.

[20] The Security Screening Officer, Martha Lee, made inexplicable errors in her notes of December 18, 2013 and in her "Summary of Applicant's File For Review" when referring to the information provided by the Applicant. The Officer misstated that the Applicant's birth certificate was from India instead of Pakistan and that she was unemployed in India. When Martha Lee contacted the Punjab College for Women for verification of information, she had the Applicant's wrong birth date (1987-09-08) and that the Applicant studied at the "Punjab College for Women in India". The Punjab College for Women is located at Civil Lines, Gujranwala in Pakistan and not in India. The correct date of the Applicant's birth is 1987-09-02. On the Summary provided by Martha Lee, the Applicant's birth date was correctly stated but was not correct on the request to the school for verification. The Applicant felt these errors were possibly why the college did not reply as with this incorrect information they would not have found her in their records.

[21] The resulting Review Panel Recommendation and the decision did not have these errors. But even if the errors had not been corrected they were not material to the actual decision made

though were very disrespectful and important to the Applicant. The college never did email the officer back to say they could not find the Applicant with the incorrect information as they did not respond to either of the email requests so it is unlikely this was an issue as her name was correct. The other error listing India instead of Pakistan as I said was inexcusable, but was not material to the decision.

[22] The Review Panel Record of Recommendation states that the clearance was refused because out of the 5 years of information required to make a decision, only 1 year and 2 months was deemed verifiable and reliable. The rationale stated for the refusal was the unverified time spent outside of Canada and that the Applicant did not provide sufficient information to cover the entire period. Also, the information provided could not be verified or assessed for reliability.

[23] The Minister accepted the Review Panel's assessment and issued a rejection letter to the Applicant on January 23, 2014. The Minister did not accept the Applicant's college documents that were verified by correspondence between the officer and the "hotmail.com" email address.

The Minister wrote:

... [the] information provided in your application and in the documents you submitted for a period of 3 years and 10 months while outside of Canada is insufficient. Specifically, you did not provide sufficient information pertaining to your activities to cover the entire period under review and, of the information provided, Transport Canada was unable to verify and assess its reliability.

[24] A recent Federal Court of Appeal decision on a similar provision in relation to security clearances at marine facilities and ports is analogous to this situation. In *Canada (Minister of Transport, Infrastructure and Communities) v Farwaha*, 2014 FCA 56 at paras 67 to 69, Stratas,



JA wrote regarding section 509 of the Security Regulations, that the security clearance can only be granted if the information provided is reliable and verifiable: “...there must be no doubt in the matter. This high standard is necessary to prevent the grave consequences that might ensue if the individual commits injurious or destructive acts in sensitive port areas” and “...that the person does not pose a risk to marine security.”

[25] Airport and Marine facility security cannot be taken lightly and though this young articulate woman feels she was unfairly dealt with, I find the decision maker to be reasonable and the decision supportable.

[26] Given the seriousness of airport security, the privilege of a transportation security clearance requires that the Minister exercise discretion in a manner that enhances security. The information that the Applicant provided needed to be verifiable. The Minister was reasonable on this determination.

[27] As for the Applicant's stay in Pakistan from June 2009 to September 2011, she did not submit any documentation that the officer could verify. I note that the Applicant provided police certificates for each stay in Pakistan, but it is reasonable for the Minister to view these only for the purpose of assessing criminality. Likewise, the Applicant's stay in Pakistan from February 2012 to April 2013 is equally unverifiable. The email from the “hotmail.com” account is likely not sufficiently verifiable because it did not come from the official school email.

[28] The Minister has broad discretion conferred by section 4 of the *Aeronautics Act* and by the Transportation Security Clearance Program Policy. The Court must give considerable deference on issues on policy and discretion as stated by *Dunsmuir*. The Cancellation or Refusal policy specifies that any factor that is relevant may be considered. In this case, it is reasonable for the Minister to consider the provided information to be insufficient to satisfy the requirement that the previous five years of activities of the Applicant be verified.

[29] The Court asked the Respondent about the Applicant's ability to reapply and I was directed to section II.36 regarding subsequent applications. The Applicant can only submit a new application if 5 years have elapsed or if a change has occurred in the circumstances that lead to the refusal or cancellation. It would appear on these facts that the Applicant now fully appreciating and knowing what verifiable information is needed may arguably be a sufficient change in circumstances as anticipated in section II.36 and section II.34. This Court is not making that determination as the exercise of that discretion will be left to TSCP officials should the Applicant choose to re-apply.

[30] I find this decision of the Minister to be a justified, intelligible, and transparent decision that is within a range of reasonable outcomes. This decision was reasonably arrived at when considering that the Applicant did not provide information that could be verified and reliable.

[31] The Respondent withdrew their request for costs at the hearing and none are awarded.

**JUDGMENT**

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

1. The application is dismissed;
2. No costs are awarded.

"Glennys L. McVeigh"

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Judge

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

**DOCKET:** T-371-14

**STYLE OF CAUSE:** HIRA SHABBIR v THE ATTORNEY GENERAL OF CANADA

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** OCTOBER 21, 2014

**JUDGMENT AND REASONS:** MCVEIGH J.

**DATED:** OCTOBER 27, 2014

**APPEARANCES:**

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OWN HER OWN BEHALF

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