

Federal Court



Cour fédérale

Date: 20151026

Docket: IMM-208-15

Citation: 2015 FC 1210

Ottawa, Ontario, October 26, 2015

PRESENT: The Honourable Madam Justice Tremblay-Lamer

BETWEEN:

MOHINDER SINGH

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] This is an application for judicial review under s.72 (1) of the *Immigration and Refugee Protection Act* [IRPA] of a decision by an officer of Citizenship and Immigration Canada [CIC] at the High Commission of Canada in New Delhi, India, rejecting an application for a Temporary Resident Visa [TRV].

I. Facts

[2] Mr. Mohinder Singh is a citizen of India, where he lives with his wife and son. He is a business owner.

[3] In June 2014, he applied for a TRV to visit Canada for one month to attend his niece's son's Dastar Bandi ceremony. Dastar Bandi is the Sikh ceremony in which the first turban is tied on by an elder relation or another Sikh elder.

[4] This trip held special significance to the applicant, as he had acted as the principal father figure in his niece's life since the death of her father when she was eight years old. He had not seen his niece or her family since they had moved to Canada seven or eight years prior.

[5] Mr. Singh's application was denied. His niece and her husband decided to postpone the ceremony. The applicant reapplied, and was once again denied a visa on June 23, 2014. The applicant brought an application for judicial review of that decision. The case was discontinued when the Minister consented to have the file re-examined on October 2, 2014.

[6] On November 26, 2014, the applicant's TRV was refused for a third time. The officer rejected the visa application on the grounds that he was not satisfied that the applicant would leave Canada at the end of his visit and that he was not satisfied that the applicant had sufficient funds to carry out his stated purpose in going to Canada and to maintain himself in Canada and effect his departure.

[7] The officer's main concern related to the applicant's assets. The officer found that the applicant's revenue hovered between \$4,000 CAD and \$5,000 CAD in the past three years and that one of his business accounts had a negative balance, while the other had a low balance. He concluded that the applicant did not have the financial means to support his family in India and take care of his expenses in Canada.

II. Issues

[8] This matter raises the following issues:

1. Did the officer err in failing to consider relevant material?
2. Did the officer violate the rules of procedural fairness by not giving the applicant an opportunity to address his concerns regarding his application?

III. Analysis

[9] The applicant submits that that the CIC officer failed to consider relevant material in assessing the visa application. First, the officer noted that it was not clear as to whether the ceremony had passed. However, the submission letter clearly indicated that it had been postponed to an undetermined date. The officer also failed to consider the applicant's assets. Moreover, it was a mistake for the officer to dismiss the accountant's report as self-serving as all documents favourable to an applicant would be self-serving (*Taborda v Canada (Minister of Citizenship and Immigration)*, 2013 FC 957. I agree with the applicant for the following reasons.

[10] Together, ss. 20(1)(b) of *IRPA* and s.179 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 impose one main obligation on a foreign national seeking to enter Canada: to establish, on a balance of probabilities, that they will leave Canada at the end of the authorized period. If this is established to the satisfaction of the visa officer, then he shall issue a TRV.

[11] Although the visa officer also indicates the purpose of the visit and the lack of travel history as reasons for denying the applicant's TRV, it is clear that his main concern resides in the applicant's financial situation. In arriving at his conclusion, the officer refers to the applicant's business his Income Tax Returns from 2011-2014, his bank accounts for his business and the establishment of his family in Canada. He also notes the report on the applicant's total assets/net worth, but gives it little weight because it is self-serving and the information is not verifiable. The officer does not take into account the personal bank account of the applicant, which clearly indicates significant personal savings.

[12] Jurisprudence has repeatedly informed CIC officers that they may not disregard evidence or give it a low probative value merely because the evidence is found to be self-serving (*LOTM v Canada (Minister of Citizenship & Immigration)*, 2013 FC 957, at para.27-29, citing *SMD v Canada (Minister of Citizenship & Immigration)*, 2010 FC 319, *Ugalde v Canada (Minister of Public Safety & Emergency Preparedness)*, 2011 FC 458, and *Ahmed v Canada (Minister of Citizenship & Immigration)*, 2004 FC 226). An applicant will necessarily produce evidence that is beneficial to their case. In all the cases cited by the respondent to refute this point, there were

significant other reasons to dismiss the evidence. In the case at bar, the officer simply notes that it is “self-serving and unverifiable” without further explanation.

[13] I find the characterization of the report as “unverifiable” problematic. The report was prepared by a reliable, independent third party, a firm of chartered accountants, which stamped and initialed each page. It appears that the information contained within the report had in fact been verified by various government officials in India. The officer had no reason to doubt the legitimacy of the information, and erred in dismissing the report.

[14] This error is compounded by the absence of reference to the applicant’s personal bank statements. The applicant’s personal bank account statement lists a balance of 2 512 743, 06 rupees, which converts to approximately \$50,707.15 CAD (Bank of Canada Currency Converter, 22-09-2015). This squarely contradicts the officer’s assertions that the applicant does not have enough money to travel to Canada for one month and still support a family of three in India. It is therefore my opinion that the officer made a finding regarding the applicant’s finances without regard to the material at hand.

[15] Further, the officer was concerned that the purpose for the visit had passed, and that the applicant had no prior travel history outside India. However, in *Agidi v Canada (Minister of Citizenship and Immigration)*, 2013 FC 691, a (compelling) reason to visit Canada is not required in order to issue a TRV. The purpose of the visit is one of several factors that will be considered by the officer in reaching its decision.

[16] As to the travel history, the officer does not indicate in his reasons as to why this brings a negative inference that the applicant will not leave Canada at the end of his authorized stay. However, in *Lacchar v Canada (Minister of Citizenship & Immigration)* (January 9, 2012), IMM-3042-11(F.C.) the Court found that a lack of travel history as a negative factor was unreasonable. While previous travel history may be a good indicator as to the likelihood of compliance to immigration laws, an absence of travel is at best a neutral indicator (*Momi v Canada (Minister of Citizenship & Immigration)* 2013 FC 162).

[17] I find that the officer erred in failing to consider relevant material, and made erroneous finding of facts with regards to the applicant's financial ties to India. These errors are sufficient to determine the outcome of this judicial review.

[18] Consequently, the application for judicial review is allowed and the matter is referred back for redetermination before a differently constituted panel in accordance with these reasons.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is allowed and the matter is referred back for redetermination before a differently constituted panel in accordance with these reasons.

"Danièle Tremblay-Lamer"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-208-15

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