Federal Court  Cour fédérale

Date: 20160713

Docket: IMM-5101-15

Citation: 2016 FC 799

Ottawa, Ontario, July 13, 2016

PRESENT: The Honourable Mr. Justice Barnes

BETWEEN:

KAMALJEET SINGH KAHLON

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

UPON hearing this application for judicial review at Edmonton, Alberta on Monday, June 6, 2016;

AND UPON reviewing the materials filed and hearing counsel for the parties;

AND UPON determining that this application be dismissed for the following reasons:

[1] On this application the Applicant, Kamaljeet Singh Kahlon, challenges a decision of the Immigration Appeal Division [the Board] upholding an inadmissibly finding made by a visa officer.

[2] Mr. Kahlon is a citizen of the United States and, until recently, had permanent residency status in Canada. His Canadian status was conditionally revoked by a visa officer's decision dated August 8, 2013, on the following basis:

> Pursuant to subsection 28(2) of the *Act*, a permanent resident complies with the residency obligation provisions with respect to a five-year period if, for at least 730 days in that five year period, the permanent resident is:
>
> (i) physically present in Canada;
>
> (ii) is outside Canada accompanying Canadian citizen who is their spouse or common-law partner or is a child accompanying a parent [*sic*];
>
> (iii) is outside Canada employed on a full-time basis by a Canadian business or in the public service of Canada or of a province [*sic*];
>
> (iv) is an accompanying spouse, common-law partner or child of a permanent resident who is outside Canada and is employed on a full-time basis by a Canadian business or in the public service of Canada or of a province [*sic*].
>
> For the purposes of determining whether you have met the residency obligation, I have examined the five-year period immediately before August 7, 2013, the date of receipt of the application. I have also examined all of the documentation that you have provided in support of your application for a travel document. I have concluded that you have not complied with the residency obligation of at least 730 days. You joined Canrig, a US company, in 2007 and they transferred you to their Canadian affiliate in January 2012. To qualify as periods of residence in Canada, you

> must have been working outside Canada for a Canadian company that transferred you outside Canada. Based on your application, you have not resided in Canada over the past five years.
>
> You have not presented any humanitarian and compassionate considerations connected to your personal circumstances and I have not found that there are humanitarian and compassionate considerations that are sufficiently compelling as to overcome the breach of the residency obligation in your case.
>
> Your failure to comply with the residency obligation under section 28 of the *Act* renders you inadmissible to Canada, as set out in section 41(b) of the *Act*. Consequently, I am unable to issue you the document that you have applied for to enable you to return to Canada. Your application for a Travel Document to return to Canada has been refused.

[3] Mr. Kahlon appealed this decision to the Board but it, too, found he had failed to establish a period of Canadian residency sufficient to maintain his permanent residency status.

[4] Mr. Kahlon argued to the Board that he was entitled to be relieved of the strict residency requirement of a physical presence in Canada of at least 730 days in a five year period. He claimed his employment fell within the exception recognised by section 61(3) of the *Immigration and Refugee Protection Regulations*, (SOR/2002-227) [IRPA Regulations]. That provision provides:

(3) For the purposes of subparagraphs 28(2)(a)(iii) and (iv) of the Act, the expression employed on a full-time basis by a Canadian business or in the public service of Canada or of a province means, in relation to a permanent resident, that the permanent resident is an employee of, or under contract to provide services to, a Canadian	(3) Pour l'application des sous-alinéas 28(2)a)(iii) et (iv) de la Loi respectivement, les expressions travaille, hors du Canada, à temps plein pour une entreprise canadienne ou pour l'administration publique fédérale ou provinciale et travaille à temps plein pour une entreprise canadienne ou pour l'administration publique fédérale ou provinciale, à

business or the public service of Canada or of a province, and is assigned on a full-time basis as a term of the employment or contract to	l'égard d'un résident permanent, signifient qu'il est l'employé ou le fournisseur de services à contrat d'une entreprise canadienne ou de l'administration publique, fédérale ou provinciale, et est affecté à temps plein, au titre de son emploi ou du contrat de fourniture :
(a) a position outside Canada;	a) soit à un poste à l'extérieur du Canada;
(b) an affiliated enterprise outside Canada; or	b) soit à une entreprise affiliée se trouvant à l'extérieur du Canada;
(c) a client of the Canadian business or the public service outside Canada.	c) soit à un client de l'entreprise canadienne ou de l'administration publique se trouvant à l'extérieur du Canada.

[5] The Board found that, between 2007 and 2012, Mr. Kahlon was employed by Canrig Drilling Technology Ltd. [Canrig U.S.] – a United States corporation affiliated with Canrig Drilling Technology Canada Ltd. [Canrig Canada]. In 2012, Mr. Kahlon took up employment with Canrig Canada, but otherwise the nature of his work remained the same. After this change, he continued to take international assignments on behalf of his new employer. The Board held that Mr. Kahlon's employment did not fit within the exception found in section 61(3) of the IRPA Regulations for the following reasons:

> [12] At the time the appellant was hired by Canrig Drilling Technology Ltd., he was aware that it was an American company. Although he was assigned to do work all over the world, he was not reporting to any company in Canada. I do not consider that because he was working with parts that had been manufactured in Canada years beforehand that he had maintained a connection with a Canadian company to an extent that is referred by Justice Noel [*sic*] in the *Bi* decision. I would assume that there are drilling and other machine parts in many countries that were manufactured in

> Canada, but working with or repairing these parts does not qualify as a connection to Canada for the purpose of calculating residency requirements. Moreover, the appellant has failed to demonstrate that because be received remuneration in Canadian dollars as of January 2012 that he is assigned to position outside Canada on a temporary basis. He provided no evidence that he would be returning to Canada to work in a position with Canrig Drilling. Therefore, I find that the appellant has not met the onus of proof that he was assigned on a fulltime basis as a term of employment or contract by a Canadian business to a position outside of Canada for 730 days during the five-year period between August 8, 2008 and August 7, 2013. The respondent pointed out that even if the calculation for the purpose of his residency obligation included the time the appellant was being paid in Canadian dollars since January 2012, he still fails [*sic*] short of the 730-day requirement. Furthermore, the appellant did not maintain a physical presence in Canada during the relevant period and therefore, I find that he has not met the residency obligation as set out in sections 28(2)(a)(i) and (iii) and the determination of the visa officer is valid in law.

[6] After a review of Mr. Kahlon's Canadian establishment, the Board summed up his claim to humanitarian and compassionate relief in the following way:

> [23] The appellant has shown that he has some positive establishment in Canada, albeit much of it occurred after the determination by the immigration officer. However, on the balance of probabilities, in all the circumstances of the case, the appellant has failed to demonstrate sufficient humanitarian and compassionate factors to warrant special relief. As previously stated, I also find that the appellant has failed to show that he was employed on a full-time basis for a Canadian company outside of Canada during the relevant period.
>
> [24] The appellant has not met the onus of proof. I find that the determination of the visa officer is valid in law and based on the evidence before me and on a balance of probabilities, taking into account the best interests of any child directly affected by the decision, there are not sufficient humanitarian and compassionate considerations to warrant special relief in light of all the circumstances of the case. Therefore, the appeal of Kamaljeet Singh KAHLON is dismissed.

[7] Mr. Kahlon challenges both aspects of the Board's decision. He contends that the Board erred in its application of section 61(3) of the IRPA Regulations to the circumstances of his employment. He also argues that the Board erred by refusing humanitarian relief in the face of the evidentiary record. These issues are matters of mixed fact and law and must be reviewed on the standard of reasonableness: see *Bi v Canada (MCI)*, 2012 FC 293, [2012] FCJ No 366, at para 12.

[8] Counsel for Mr. Kahlon argued, with considerable conviction, that the Board erred by finding Canrig U.S. to be an American company. He points to a letter dated August 13, 2015 from Canrig Canada stating that Canrig U.S. "is a registered company in the province of Alberta, Canada and it has appropriate Canadian business licenses" (see page 104 of the Applicant's Record). According to Mr. Kahlon's Reply Memorandum of Argument, this evidence clearly shows Canrig U.S. is a Canadian business falling under section 61(1) of the IRPA Regulations or, in the alternative, is affiliated with a Canadian business as described by section 61(3)(b).

[9] The fundamental problem with the first of the above arguments is that Mr. Kahlon did not establish Canrig U.S. was "incorporated under the laws of Canada or of a province" as stipulated by section 61(1)(a). His alternative argument fails essentially for the same reason. Section 61(3) only applies where a permanent resident is employed by a Canadian business and is then assigned to work for a foreign affiliate.

[10] Having regard to the complete record of evidence and applying the standard of reasonableness, the Board's finding that Canrig U.S. is an American corporation is unassailable.

Included within the materials submitted by Mr. Kahlon was a corporate organizational chart describing Canrig U.S. as a "USA company" (see page 263 of the Certified Tribunal Record [CTR]). Of even more significance is a Certificate of Incorporation issued by the State of Delaware on July 14, 1994 for Canrig U.S. (see pages 311-313 of the CTR). This official document contradicts the letter of August 13, 2015 from Canrig Canada. When Mr. Kahlon was shown the Delaware Certificate of Incorporation and asked if Canrig U.S. was incorporated in July 1994 in Delaware, he answered: "[y]es, that's the one I got from my corporation" (see page 363 of the CTR).

[11] It is also telling that, in final argument to the Board, Mr. Kahlon's then-counsel essentially conceded that Canrig U.S. is an American corporation. Counsel's argument at that point was only that Canrig U.S. and Canrig Canada were owned by the same Canadian company and, in some unmentioned way, this common ownership satisfied section 61(3) of the IRPA Regulations. That argument was rejected by the Board and I also find it has no merit. To come within the scope of section 61(3), Mr. Kahlon was required to prove that, for the period of his employment between 2007 and 2012, Canrig U.S. was a Canadian corporation. On the face of the evidence he provided, the Board's finding to the contrary was reasonable. Having failed to make a meaningful case to the Board that Canrig U.S. is a Canadian corporation, Mr. Kahlon cannot at this late stage complain the Board failed to address the conflict in evidence he now asserts.

[12] For the foregoing reasons, the Board's finding that Mr. Kahlon could not avail himself of section 61(3) of the IRPA Regulations and, therefore, had defaulted on his residency obligation, is upheld.

[13] Mr. Kahlon's criticisms of the Board's humanitarian findings are also without merit. A very weak case for this form of relief was advanced on his behalf and it was reasonable for the Board to dismiss that claim. The Board thoroughly reviewed the evidence and took into account the following factors:

(a) He was physically present in Canada for only 47 of the minimum requirement of 730 days.

(b) He made a decision to leave Canada to work in the United States for a United States company and was frequently away from his family for lengthy periods. His employment was secure.

(c) He acquired United States citizenship, married an American, and had two American dependants, all living in the United States. His wife works in the United States.

(d) He made minimal attempts to return to Canada.

(e) He owns a condominium in British Columbia, which is used as a rental property.

(f) Along with other family members, he has an interest in a liquor store in Alberta, presumably managed by others.

(g) His mother and some other family members live in Canada. His mother travels frequently to the United States for prolonged visits.

(h) He provides financial assistance to his mother and could continue to do so from the United States.

[14] As the Board found, the record disclosed a very weak case for special relief and it was entirely reasonable to dismiss this aspect of Mr. Kahlon's appeal. The criticisms directed at this part of the Board's decision amount only to an impermissible claim to reweigh evidence. That is not an exercise this Court will undertake on judicial review.

[15] For the foregoing reasons, this application is dismissed. Neither party proposed a certified question and no issue of general importance arises on the record.

JUDGMENT

THIS COURT'S ADJUGES that this application is dismissed

"R.L. Barnes"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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