Federal Court  Cour fédérale

Date: 20160906

Docket: IMM-935-16

Citation: 2016 FC 1005

Ottawa, Ontario, September 6, 2016

PRESENT: The Honourable Madam Justice Gagné

BETWEEN:

HARBIR KAUR

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Nature of the Matter

[1] Ms. Harbir Kaur is seeking judicial review of a visa officer's decision refusing her permanent residence application as a member of the Canadian Experience Class [CEC]. The visa officer found that part of the Applicant's working experience in Canada did not fit under the category she applied for. Therefore, as she had been working in Canada without the proper work permit, she was issued a departure notice and left Canada voluntarily.

II. Background

[2] The Applicant is a citizen of India who practices the Sikh religion. She had valid temporary resident status in Canada from October 20, 2011 to April 15, 2013. She applied for extensions of her visitor visa in February 2013 and April 2013, but these were refused as it was determined that she performed the work of a "religious teacher" at Satnam Education Society of British Columbia [Satnam], without the proper work permit. The Applicant was subsequently reported under subsection 44(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA], was issued a departure notice on December 2, 2013, and voluntarily left Canada one month later.

[3] The Applicant later submitted an application for permanent residence under the CEC as a "religious worker", which is under National Occupational Classification [NOC] code 4217. In her application, she states that during the relevant three-year period prior to her application, she was a religious worker in Canada for two separate periods of employment: i) Sri Guru Singh Sabha from October 20, 2011 to March 10, 2012 (approximately 5 months), and ii) Satnam from March 15, 2012 to December 2, 2013 (approximately 21 months). She also includes an employment letter from Satnam dated December 12, 2013, which lists her duties.

[4] In reviewing the file, the visa officer counts the Applicant's 5-month period at Sri Guru Singh Sabha as being under the work permit exemption in subsection 186(l) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [*Regulations*]. However, the visa officer

had concerns about whether her work at Satnam fell under that exemption, echoing concerns held by the previous officers who reviewed her temporary visa extension applications.

[5] The visa officer sent the Applicant a procedural fairness letter outlining concerns that the Applicant was actually working as a "religious teacher" at Satnam from September 1, 2012 until she departed Canada. The letter notes that i) Satnam is a registered charitable organization under the category of teaching institution/institution of learning, and that it runs schools in Vancouver and Surrey, as well as a pre-school/daycare in Surrey, BC; ii) the BC Ministry of Education recognizes Satnam schools as teaching religious education in addition to the regular provincial curriculum; and iii) the Applicant has a teaching certificate from that Ministry.

[6] The Applicant's counsel at the time wrote a reply letter stating that the Applicant had indeed been a "religious teacher" at Satnam since September 1, 2012, but that she had also been a "religious preacher" from October 2011 to November 2013, which exceeds the minimum of 12 months required for a CEC application.

III. Impugned Decision

[7] The visa officer, in his decision, refuses the application for a permanent resident visa under the CEC, finding that the Applicant lacks the experience requirement: she has not acquired 12 months of full-time Canadian skilled work experience in one or more NOC 0, A, or B occupations in the three years before her application. The officer states that the Applicant was confirmed as a full-time "religious teacher" at Satnam since September 1, 2012, and that she had a teaching certificate from the BC Ministry of Education. Thus, her work does not fall under the

work permit exemption in subsection 186(l) of the *Regulations*; this exemption only applies to a person whose main duties consist of preaching doctrine, presiding at liturgical functions, or providing spiritual counselling, either as an ordained minister, a lay person, or a member of a religious order.

[8] Since the duties listed by the Applicant in her application were identical before and after September 1, 2012, the officer concluded she had been a religious teacher throughout her employment at Satnam, meaning the work was unauthorized all along. This triggered the application of paragraph 87.1(3)(*b*) of the *Regulations*, which precludes any period of unauthorized work from being calculated in a period of work experience.

[9] The Global Case Management System [GCMS] notes, forming part of the decision, include previous officers' reviews of the Applicant's file. One such review includes a previous officer's assessment of the Applicant's letter of employment from Satnam, which confirmed that she had worked as an assistant priest to their head priest from March 15, 2012 to December 2, 2013. However, since the letter purportedly listed duties in the masculine gender, the previous officer concluded that the duties had been copied and pasted from another letter, and had not been specifically written for the Applicant. Accordingly, that officer gave the letter little weight. The GCMS notes also include the previous officer's determination that the Applicant was working as a religious teacher without authorization – rather than as a religious preacher – since September 1, 2012.

IV. Issues and standard of review

[10] I am of the view that the determinative issues on this application for judicial review are as follows:

A. *Preliminary issue: Is the Applicant's affidavit improper?*

B. *Did the visa officer err in refusing the Applicant's application for permanent residence?*

[11] The Applicant does not discuss the applicable standard of review but five of the issues she raises point to a breach of procedural fairness.

[12] I agree with the Respondent that the Applicant, in raising her issues, has misconstrued the duty of fairness with the reasonableness of the decision (*Jiang v Canada (Citizenship and Immigration)*, 2012 FC 1512 at paras 40-41).

[13] With respect to the only issue that the Respondent concedes could trigger procedural fairness – whether the officer should have contacted Satnam to make further inquiries – I agree with the Respondent that the level of procedural fairness owed in this case is low (*Ansari v Canada (Citizenship and Immigration)*, 2013 FC 849, at para 23). The visa officer's concerns regarding the employment letter related to sufficiency of evidence, and not credibility, thus he did not need to contact Satnam – or the Applicant herself, for that matter (*Ansari*, above at paras 13-14, 36; *Bighashi v Canada (Citizenship and Immigration)*, 2013 FC 1110 at paras 13-14; *Kamchibekov v Canada (Citizenship and Immigration)*, 2011 FC 1411 at para 26). In his

affidavit, the officer states: “I gave this letter significant weight, but did not consider it in isolation of other documents, FOSS history, and analysis.” Thus, he did not question whether she performed the duties listed in the letter, but rather concluded, on the basis of all the evidence before him, that the Applicant’s duties did not fit within the “religious worker” job description. It should also be noted that a previous officer gave the Applicant the opportunity to respond to “serious concern(s)” about her application in the procedural fairness letter of April 27, 2015, and the Applicant did reply through her counsel on May 12, 2015.

[14] Therefore, the standard of review applicable to the officer’s assessment of the evidence, and to the interpretation of his home statute, is that of reasonableness (*Parssian v Canada (Citizenship and Immigration)*, 2016 FC 304 at paras 17-18, 21; *Khan v Canada (Citizenship and Immigration)*, 2009 FC 302 at paras 9-10; *Dunsmuir v New Brunswick*, 2008 SCC 9 at paras 47, 54).

V. Analysis

A. *Preliminary issue: Is the Applicant’s affidavit improper?*

[15] I agree with the Respondent that portions of the Applicant’s affidavit are argumentative, contrary to subsection 12(1) of the *Federal Courts Citizenship, Immigration and Refugee Protection Rules*, SOR/93-22. I also agree that the affidavit contains inadmissible hearsay evidence without an explanation as to why the information could not be sworn. However, rather than striking the affidavit, I prefer to give it no weight and to move on to the merits of this application (*Samuel v Canada (Citizenship and Immigration)*, 2010 FC 223 at para 21; *Montoya*

Martinez v Canada (Citizenship and Immigration), 2011 FC 13 at para 57; *Ziaei v (Citizenship and Immigration)*, 2007 FC 1169 at paras 13-15; *Dhillon v Canada (Citizenship and Immigration)*, 2009 FC 614 at para 10).

B. *Did the visa officer err in refusing the Applicant's application for permanent residence?*

[16] I find that the visa officer's decision was reasonable. Decision-makers are presumed to have considered all of the evidence before them (*Florea v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 598 (FCA) at para 1; *Herrera Andrade v Canada (Citizenship and Immigration)*, 2012 FC 1490 at para 11). I cannot agree with the Applicant that the visa officer ignored the contents of the Satnam employment letter. Even if I leave the statements made by the officer in his affidavit aside, the Applicant has not rebutted the presumption that the officer has considered all of the evidence. Indeed, the officer considered the Applicant's duties at Satnam in order to conclude that they had been the same before and after September 1, 2012, meaning she had been working without authorization as a "religious teacher" since the beginning of her employment there.

[17] Since I find that the officer considered all of the evidence before him, I agree with the Respondent that the visa officer could look at previous officers' determinations on the Applicant's temporary visa extension applications, and that he did not fetter his discretion in doing so (*Jie v Canada (Minister Citizenship and Immigration)* (1998), 158 FTR 253, [1998] FCJ No 1733 (FCTD) at para 7; *Xin v Canada (Citizenship and Immigration)*, 2016 FC 194 at para 20). In fact, the GCMS notes indicate that a previous officer gave little weight to the Satnam

employment letter, while the officer states that he gave it considerable weight, and that he considered it within the context of the rest of the evidence.

[18] With respect to the distinction drawn by the officer between the terms "religious worker" and "religious teacher", I agree with the Respondent that it was material. It meant the difference between the Applicant being covered under the exemption in subsection 186(l) of the *Regulations*, or working without authorization, i.e. without the required work permit. The Applicant has not convinced me that the distinction is arbitrary or artificial.

[19] The Applicant submitted her application under the category of "religious worker" (NOC 4217), which can entail an exemption under subsection 186(l) of the *Regulations* if the person is "… responsible for assisting a congregation or group in the achievement of its spiritual goals and whose main duties are to preach doctrine, perform functions related to gatherings of the congregation or group or provide spiritual counselling". She had the onus of demonstrating that her work was, in fact, that of a religious worker, and to anticipate possible adverse inferences that could arise from her evidence (*Singh v Canada (Citizenship and Immigration)*, 2012 FC 526 at para 52). However, she failed to convince the officer on this point, since the evidence led the officer to conclude that she was a "religious teacher" (NOC 4032 for elementary school and kindergarten teachers, and NOC 4031 for high school teachers). This evidence included her teaching certificate, her duties at Satnam, and the description of Satnam as being a teaching institution that runs schools and a pre-school daycare responsible for teaching religious education in addition to the regular provincial curriculum.

[20] Not only was the visa officer's assessment of the evidence reasonable, but so too was his interpretation of his home statute. Essentially, the officer found that the Applicant's work duties at Satnam went beyond the duties listed in the exemption under subsection 186(l) of the *Regulations*. As a result, he concluded that her occupation at Satnam was that of a religious teacher all along, thus falling under NOCs 4031 or 4032 which required her to obtain a work permit. In *Duraisami v Canada (Minister of Citizenship and Immigration)*, 2005 FC 1008 at para 19, this Court held that "[t]here are rational limitations based on the specific facts as to the scope of the provision. Not every person who assists at a place of worship (ushers, singers, teachers of children's religious studies) *per se*, fall within the scope of s. 186(l)." I agree.

VI. Conclusion

[21] For the reasons discussed above, this application for judicial review is dismissed. The parties have not proposed a question of general importance for certification and none arises from this case.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is dismissed;
2. No question of general importance is certified; and
3. No costs are granted.

"Jocelyne Gagné"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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