Federal Court  Cour fédérale

Date: 20161110

Docket: IMM-876-16

Citation: 2016 FC 1256

Ottawa, Ontario, November 10, 2016

PRESENT: The Honourable Mr. Justice Barnes

BETWEEN:

MANINDER PAL SINGH SASAN

Applicant

and

THE MINISTER OF IMMIGRATION, REFUGEES AND CITIZENSHIP

Respondent

JUDGMENT AND REASONS

UPON hearing this application at Regina, Saskatchewan on Thursday, October 20, 2016;

AND UPON reviewing the materials filed with the Court and hearing counsel on behalf of the parties;

AND UPON reserving decision;

AND UPON concluding that this application should be allowed for the following reasons:

[1] This application for judicial review challenges a decision by an Immigration Officer refusing the Applicant's [Mr. Sasan] application for a permanent resident visa as a member of the Provincial Nominee Class. The basis of the refusal was Mr. Sasan's failure to provide a timely Royal Canadian Mounted Police [RCMP] criminal record check and proof of valid status in Canada.

[2] The underlying facts are not in dispute. Mr. Sasan is a citizen of India. He entered Canada on September 3, 2010 on a student visa. Upon the completion of his studies in April, 2012, Mr. Sasan obtained employment in Regina and eventually sought permanent residency under the auspices of the Saskatchewan Immigration Nominee Program.

[3] Mr. Sasan's immigration work permit was valid until August 28, 2015. Under the terms of approval as a Provincial Nominee, Mr. Sasan was required to submit an application for permanent residency on or before March 31, 2014. He was also required to meet the eligibility requirements for admission including those pertaining to criminality.

[4] Mr. Sasan made his permanent residency application as required but he failed to renew his work permit before it expired on August 28, 2015. In fact, he did not seek restoration of his temporary residency status until November 27, 2015.

[5] In the meantime, Mr. Sasan was charged with three counts of assault in October, 2014. He was issued a temporary permanent residency visa on March 3, 2015, expiring May 25, 2015. When Mr. Sasan attended at the United States-Canada border for landing on March 12, 2015, a

Canada Border Services Agency Officer seized his Confirmation of Permanent Residency document and his visa due to the recent criminal charges. On August 17, 2015 he pleaded guilty on one count of assault and received an absolute discharge. The other two charges were stayed. On October 26, 2015 Mr. Sasan was asked to update his still pending application for permanent residency by providing a fresh RCMP criminal record check and proof of valid status in Canada. The deadline for a response was December 31, 2015.

[6] Mr. Sasan was in no apparent hurry and did not apply for restoration of his temporary residency until November 27, 2015. The application was received by the Case Processing Centre in Vegreville, Alberta on November 30, 2015. Unfortunately, this was just outside of the 90-day statutory window set by subsection 182(1) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227. In the result, he did not have the benefit of an automatic restoration of status.

[7] The record also discloses that Mr. Sasan complied with the request for an updated RCMP criminal record check by providing his fingerprints on November 9, 2015. This fact has been acknowledged by the Respondent.

[8] Mr. Sasan's application for permanent residency was refused on January 27, 2016, on the basis that he had failed to provide both the RCMP criminal record information and proof of his valid immigration status by the December 31, 2015 deadline. This failure to respond was deemed by the Officer to be a breach of subsection 16(1) of the *Immigration and Refugee Protection Act*,

SC 2001, c 27 [IRPA] requiring an applicant to produce all relevant evidence and documents that are requested to process an application.

[9] It is apparent that the decision under review rested, in part, on a mistaken belief by the Officer that Mr. Sasan had failed to submit his fingerprints for an RCMP criminal record assessment. The Respondent argues that this error is immaterial because Mr. Sasan also failed to produce evidence of valid status and it was therefore inevitable that his application would fail.

[10] I am not convinced that the procedural error made by the Officer concerning the missing RCMP criminal record evidence was necessarily inconsequential to the decision or that the denial of Mr. Sasan's application was inevitable. The request for this information was most certainly based on Mr. Sasan's outstanding criminal charges which were, of course, of significant relevance to his application. Had the Officer looked, he would have seen that Mr. Sasan had applied for a restoration of his temporary status and that a decision was pending. It was, of course, open to the Officer to elect to postpone a decision on the permanent residency application until the request for restoration of Mr. Sasan's temporary status was determined. Instead, he chose to deny relief, in part, because Mr. Sasan failed to produce evidence of current status – evidence that he would or should have known was not then available. Although the request for restoration of temporary status was also later denied, that decision was made after the permanent residency application was rejected. It is not possible to know now whether the same decision would have been made had the permanent residency application been held in abeyance.

[11] It is also of significance that both decisions were subject to the remedial authority afforded by section 24 of the IRPA. Had the Officer been satisfied that Mr. Sasan was not criminally inadmissible it would have been open to him to exercise his discretion to effectively reinstate Mr. Sasan's status and then approve the application for permanent residency.

[12] Although the problem that occurred here concerning the RCMP criminal record assessment was not known to the Officer, it still constitutes a fatal breach of procedural fairness. Because I am not satisfied that the denial of Mr. Sasan's application was, notwithstanding this breach, inevitable, the decision is set aside. Mr. Sasan's application for permanent residency is to be redetermined on the merits by a different decision-maker with appropriate consideration to the discretion set out in section 24 of the IRPA.

[13] The Minister will have five days from this decision to propose a certified question and the Applicant will have three days thereafter to respond.

JUDGMENT

THIS COURT'S JUDGMENT is that this application for judicial review is allowed with the matter to be redetermined on the merits by a different decision-maker.

"R.L. Barnes"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-876-16
STYLE OF CAUSE:	MANINDER PAL SINGH SASAN v THE MINISTER OF IMMIGRATION, REFUGEES AND CITIZENSHIP
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