

Federal Court



Cour fédérale

Date: 20170222

Docket: IMM-3668-16

Citation: 2017 FC 209

Toronto, Ontario, February 22, 2017

PRESENT: The Honourable Madam Justice Simpson

BETWEEN:

JAGDEEP SINGH RANA

Applicant

and

**THE MINISTER OF IMMIGRATION,
REFUGEES AND CITIZENSHIP**

Respondent

JUDGMENT AND REASONS

[1] The Applicant has applied for judicial review of a decision by a visa officer dated July 7, 2016 [the Decision] refusing the Applicant's application for permanent residence as a Federal Skilled Worker on the basis that his employment history was not genuine. The Decision also finds him inadmissible for 5 years because of misrepresentation.

I. Background

[2] In October 2014, the Applicant submitted an application for permanent residence under the Federal Skilled Worker Program. He claimed that he had been working as an electrical technician for an Indian company called NBH Controls & Automation [NBH] since September 2010. To support his application, the Applicant submitted a letter dated September 3, 2014 from his employer [the Employment Letter]. It stated that he had been working as an electrical engineer since September 2010 and that his monthly income was 11,000 Rupees. It was signed by KP Singh [Mr. Singh] as the proprietor of NBH.

[3] On May 18, 2016 an officer called NBH to verify the Applicant's employment history (the Call). A woman answered the phone. She identified herself as having worked in NBH's accounts department for a year and a half. When asked about the Applicant, she said that NBH did not employ anyone by that name. The Call was then transferred to Mr. Singh. He gave the officer the following information:

- a) The woman who worked in the accounts department did not recognize the Applicant's name because he works in the field;
- b) The Applicant joined the company sometime in 2014;
- c) The Applicant's current salary is \$8,500 Rupees per month;
- d) He wrote an employment letter for the Applicant no more than six months earlier. (That would mean November 2015 at the earliest).

[4] The officer advised Mr. Singh that the information he was providing in the Call differed from what was included in the Employment Letter he had signed. Mr. Singh told the officer that the written information was incorrect and that what he said on the phone was the truth.

[5] A procedural fairness letter dated May 25, 2016 was sent to the Applicant. The letter indicated that the staff member who answered the officer's Call was unable to confirm his employment and that Mr. Singh gave conflicting information about his length of employment, his salary and about when the Employment Letter was written.

[6] The Applicant responded to the fairness letter with declarations signed by himself, by a client of NBH, and by Mr. Singh. He also provided a salary certificate signed by Mr. Singh outlining his wages since he began working with NBH in 2010. Mr. Singh declared that he may have given inaccurate information to the officer over the phone because he was in a business meeting at the time. The officer did not believe this explanation because Mr. Singh's answers on the phone were spontaneous and clear and he did not mention a meeting. The Applicant said that the woman who answered the Call didn't know him because she is a receptionist and he worked away from the office in the workshop.

II. Discussion and Conclusions

[7] The Applicant acknowledges that it was perhaps reasonable to deny the application for permanent residence on the basis that the employment history was not genuine. However, the Applicant says it was not reasonable to make a finding of inadmissibility based on

misrepresentation because the officer did not have clear and convincing evidence to allow him to conclude on a balance of probabilities that misrepresentation had occurred.

[8] The Applicant also argues that the Decision lacked analysis, that further investigations should have been undertaken before the fairness letter, that the officer should have kept notes in transcript form so that nuances in his conversation with Mr. Singh could have been captured, that the fairness letter did not provide details of the officer's concerns and that the Decision lacked details of the discrepancies between the Call and the Employment Letter.

[9] I have concluded that the officer's Decision was reasonable. In my view, the clear and convincing evidence included:

- the fact that the officer spoke to 2 people at NBH, neither of whom confirmed the information in the Employment Letter;
- the fact that, when confronted with the inconsistencies between the information he provided on the phone and the information found in the Employment Letter, Mr. Singh said that the information he was giving on the phone was correct;
- the fact that the discrepancies were significant;
- the fact that Mr. Singh denied having written the Employment Letter;
- the fact that Mr. Singh's declaration included additional incorrect information. He declared that during the Call he gave the officer the Applicant's correct salary and told the officer the Applicant started with NBH two or three years ago. Neither statement was correct. The start date he gave the officer in the Call was 2014 and

the salary was 8,500 Rupees per month, not 11,000 which the Applicant says is the correct amount;

- the fact that there was no response to the Fairness Letter from the woman in accounting who answered the Call and denied knowing the Applicant;
- the fact that Mr. Singh's explanation for the allegedly incorrect information he provided on the phone was not credible given his forthright responses during the Call.

[10] In these circumstances a finding of misrepresentation was within the range of acceptable outcomes. It was therefore reasonable for the officer to conclude that the employment history was misrepresented.

[11] It is also my view that the GCMS notes did not need to be in transcript form and there was no need for further investigation following the Call. Further, the officer's concerns were clearly stated in the fairness letter and the Decision (which includes the GCMS notes) was sufficient to inform the Applicant of the officer's reasoning. The discrepancies were 11,000 versus 8,700 rupees per month and start dates of either 2010 or 2014. These problems were obvious and an analysis setting them out was therefore not required.

III. Certification

[12] There were no questions posed for certification for appeal.

JUDGMENT

THIS COURT'S JUDGMENT is that this application is dismissed.

“Sandra J. Simpson”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3668-16

STYLE OF CAUSE: JAGDEEP SINGH RANA V THE MINISTER OF
IMMIGRATION, REFUGEES AND CITIZENSHIP

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