

Federal Court



Cour fédérale

**Date: 20170202**

**Docket: IMM-2122-16**

**Citation: 2017 FC 132**

**Ottawa, Ontario, February 2, 2017**

**PRESENT: The Honourable Mr. Justice Barnes**

**BETWEEN:**

**JASDEEP SINGH**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] This is an application by Jasdeep Singh challenging the reasonableness of a decision by an Immigration Officer [Officer] rejecting an application for permanent residency under the Federal Skilled Worker Express Entry Program.

[2] The Officer found Mr. Singh ineligible based on a concern about his prior work experience under the National Occupation Classification of financial auditors and accountants.

At issue was the reliability of Mr. Singh's declaration of skilled employment in India as an auditor with the chartered accounting firm M. Singh & Co. between December 1, 2011 and August 14, 2013.

[3] The Officer's concern arose from Mr. Singh's failure to disclose this employment history in his previous applications for student and temporary work visas. The discrepancy was sufficiently troubling that the Officer elected to write a procedural fairness letter to Mr. Singh seeking clarification and corroboration.<sup>1</sup>

[4] The Officer's fairness letter expressed only one concern: that Mr. Singh's assertion of work experience as an auditor with M. Singh & Co. was in doubt. The Officer's concern was based on the absence of corroborating evidence of employment (e.g. pay stubs, tax documents, contracts, corporate registration), the failure to declare his employment with M. Singh & Co. in earlier temporary visa applications and an apparent overlap in declared employment with the Institute of Chartered Accountants of India.

[5] Mr. Singh was invited to allay the Officer's concerns and he attempted to do so. His legal counsel replied to the Officer's procedural fairness letter, stating that Mr. Singh never claimed to have been employed by the Institute of Chartered Accountants. Rather, he was a student of the Institute pursuing accreditation. This was accompanied by Mr. Singh's statutory declaration attesting to his co-op placement (internship) during his accountancy studies at the Institute. He also attached several corroborating documents verifying his subsequent

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<sup>1</sup> Unfortunately the certified tribunal record does not include copies of Mr. Singh's previous visa applications and the Court, therefore, does not have the full factual context to ascertain the significance of the admitted omission.

employment with M. Singh & Co. Mr. Singh's explanation for the failure to declare his employment with M. Singh & Co. on earlier visa applications was set out in his statutory declaration in the following way:

12. I regret that I did not advise of my work experience with M. Singh & Co. on my previous applications as I misunderstood the sections on the TRV applications; I assumed that it referred to my work experience in Canada and my studies/co-op or internship in India;
13. This was an inadvertent error on my part and I now enclose additional evidence as to my work experience with that firm (M. Singh & Co.);
14. I would not have omitted my work experience with M. Singh & Co. advertently as I valued this work experience and would have assumed that same would have assisted me in my applications to enter or remain in Canada;

[6] The Officer declined to accept Mr. Singh's evidence and rejected the application. The decision letter offered the following rationale for refusing Mr. Singh's application:

In your Express Entry profile you indicated that you had foreign work experience. You were given the opportunity to reply to a letter outlining concerns with this experience. You replied with further information and documents which were fully reviewed and assessed. However based on balance of probabilities and the evidence provided I am not satisfied that you acquired foreign work experience you have declared.

[7] The Officer's notes contain the following additional justification for doubting Mr. Singh's claimed employment with M. Singh & Co.:

OFFICER REVIEW E000431385 FOSS CHECK COMPLETED:  
no adverse information EXPERIENCE At ITA PA awarded CRS pts for foreign work experience under NOC1111 Senior Auditor for M.Singh & co. Chartered accountants from 2011/12-2013/08; LOE dated 2013/08/14, along with supporting docs submitted and reviewed. PA provided opportunity to reply to PFL dated 2016-

03-29 giving 30 days, to discrepancy in past declarations regarding work history. In SP and TRV application: Student from 2007/08 to 2010/04 doing BA in Commerce ARYA COLLEGE (PU) Student from 2007/09 to 2012/11 student at THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA In this APR PA declared from 2011/12 to 2013/08 working as Senior Auditor with M. Singh & Co.; PA has stated in response letter dated 2016-04-25 that his SP and TRV was a mistake and that he had no intention of omitting this information at that time. PA states he would have not have failed to advise of work experience that was relevant and of assistance to his SP application; however, this is precisely what PA did at the time of his SP application and in the other subsequent applications. The fact that PA has confirmed that this experience was not declared in any previous application and only did declare this experience when PA required it to obtain CRS points brings into doubt the credibility of PA. Furthermore, PA did not provide an explanation about how he was working and studying both on full time basis from 2011/12 to 2012-11, even though he mentions it in his response letter. Because PA was working and studying at the same time for a period of at least one year while he declared working for M.Singh & Co. Despite having a BA in Commerce and a Cdn post-sec degree, PA has not been able to obtain employment in his field in Canada and further brings into doubt his past foreign experience under NOC1111. Based on the information and evidence before me and on balance of probabilities, I am not satisfied that he has the full time foreign work experience declared and therefore not satisfied that PA meets foreign work experience requirement as per A11.2 - refused

[8] Mr. Sharma contends that the Officer paid lip service to Mr. Singh's response to the procedural fairness letter and that he failed to engage in a meaningful way with the evidence supporting his employment with M. Singh & Co. I agree with that submission. The Officer's failure to refer to this evidence or to explain why it was insufficient to overcome the initial concern about Mr. Singh's work experience renders the decision unreasonable.

[9] On its face, the evidence supplied by Mr. Singh was probative and corroborative of Mr. Singh's declaration of prior work experience with M. Singh & Co. The evidence included a

copy of the relevant employment contract, numerous pay stubs, the professional status of the firm, and, under company seal, Indian income tax records. These were the very things the Officer had requested to address his initial concern, and yet Mr. Singh was left to wonder why they were rejected as unreliable. Indeed, these documents carried all of the expected indicia of reliability and, therefore, required careful consideration.

[10] The Officer's lingering concern about an overlap between Mr. Singh's accounting studies and his employment was also misplaced. If the Officer had taken care to examine the relevant records, he could only have concluded that Mr. Singh's accreditation studies required corresponding internship employment. The fact that he was studying and working at the same time was not suspicious – it was expected.

[11] The Officer's final credibility concern about Mr. Singh's inability to obtain related Canadian employment is a clear non sequitur. The fact that, notwithstanding Mr. Singh's undisputed educational qualifications, he could not find relevant Canadian employment says absolutely nothing about his credibility or whether he had the declared employment experience in India.

[12] The rejection of Mr. Singh's permanent residency application appears to have been based on the Officer's after-the-fact assessment of the merits of Mr. Singh's previous temporary visa applications. Whether or not those earlier visa applications ought to have been accepted was not before the Officer. The Officer's failure to engage with the evidence presented in support of the

application before him is fatal to the decision and the decision is, accordingly, set aside. The matter is to be redetermined on the merits by a different decision-maker.

[13] Neither party proposed a certified question and no issue of general importance arises on this record.

**JUDGMENT**

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

"R.L. Barnes"

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-2122-16

**STYLE OF CAUSE:** JASDEEP SINGH v MCI

**PLACE OF HEARING:** CALGARY, ALBERTA

**DATE OF HEARING:** JANUARY 18, 2017

**JUDGMENT AND REASONS :** BARNES J.

**DATED:** FEBRUARY 2, 2017

**APPEARANCES:**

Mr. Raj Sharma

FOR THE APPLICANT

Ms. Gwen MacIsaac

FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Stewart Sharma Harsanyi  
Barristers and Solicitors  
Calgary, AB

FOR THE APPLICANT

William F. Pentney  
Deputy Attorney General of Canada  
Saskatoon, SK

FOR THE RESPONDENT