Federal Court  Cour fédérale

Date: 20171026

Docket: IMM-695-17

Citation: 2017 FC 955

Ottawa, Ontario, October 26, 2017

PRESENT: The Honourable Madam Justice Kane

BETWEEN:

JASVINDER SINGH GREWAL

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The Applicant, Jasvinder Singh Grewal, seeks judicial review pursuant to section 72 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the Act] of the January 17, 2017 decision of an Immigration Officer at the High Commission of Canada in Colombo, Sri Lanka [the Officer]. The Officer refused his application for a permanent resident visa submitted under the Manitoba Provincial Nominee Program. The Officer found that the Applicant had misrepresented or withheld material facts regarding his employment as a food service supervisor.

As a result of the finding of misrepresentation, the Applicant is ineligible to reapply for a period of five years in accordance with section 40 of the Act.

[2] The Respondent clarified that the style of cause should refer to the Minister of Citizenship and Immigration as this remains the proper title of the responsible Minister of the Crown. As a result, the style of cause has been changed.

[3] For the reasons that follow, the application is allowed.

I. Background

[4] The Applicant successfully applied to the Manitoba Provincial Nominee Program in 2013, receiving a certificate of nomination from Manitoba under the National Occupation Classification Code 6212 – Food Service Supervisor. Following his nomination, he applied for a permanent resident visa and submitted supporting documentation. He set out his education and employment history in India including his employment as a food service supervisor at the Mohini Resort from January to November 2014. The Global Case Management System (GCMS) notes, which provide a chronology of the processing of his application, and which form part of the reasons for the decision, indicate that another officer was tasked with verifying the information. That officer contacted the Mohini Resort in February 2016 and spoke with the receptionist due to the unavailability of the General Manager. The receptionist stated that the Applicant had worked at the Mohini Resort for three or four years as a cook and had left this employment six months previously (i.e., August 2015). The GCMS notes indicate that a procedural fairness letter was sent to the Applicant nine months later, in November 2016, noting

concerns about the Applicant's employment history and indicating that, upon verification, it appeared that the Applicant had not worked in the capacity of a food service supervisor at the Mohini Resort.

[5] The Applicant provided a letter with attachments in response to the procedural fairness letter in December 2016. He explained that he was surprised by this information and that the receptionist with whom the other officer had spoken was not in a position to provide the information and was misinformed. The Applicant attached a letter from the General Manager of the Mohini Resort which stated that the Applicant had worked as a food service supervisor from January to November 2014 along with monthly payslips for that same period.

[6] The Officer considered the Applicant's response but found that he preferred the "spontaneous and verified" information provided by the receptionist. The Officer noted that the receptionist stated that he or she had checked the records before responding, had worked at the Mohini Resort for 15 years, knew the names of the two food service managers and had spoken with confidence in advising the officer who called that the Applicant had been a cook. The Officer further noted that the letter from the Applicant in response to the procedural fairness letter was undated and found that the pay slips provided were all written in the same ink, which suggested that they were prepared all at the same time.

[7] The Officer found that he was satisfied on a balance of probabilities that the Applicant had deliberately misrepresented his employment experience, which was a material fact relevant to the ability of the Officer to assess the Applicant's likelihood of economic establishment in

Canada. The Officer further found that this misrepresentation could have foreclosed an avenue of investigation under the Act and induced an error in the administration of justice. The Officer concluded that this met the requirements for a finding of misrepresentation pursuant to section 40.

II. The Issues

[8] The Applicant submits that the Officer breached procedural fairness by not identifying the concerns regarding his employment history with more particularity, including the source of the information relied on by the Officer, and by not providing an opportunity for the Applicant to respond to the Officer's concerns about the veracity of the information provided by the General Manager of the Mohini Resort. The Applicant also submits that the Officer's decision is unreasonable because it is not transparent or justified; the Applicant provided documentary evidence to support his application and his employment as a food service supervisor yet the Officer relied almost exclusively on the misinformation provided by a receptionist rather than the General Manager of the Resort and without sufficient explanation and without assessing the totality of the evidence.

III. The Standard of review

[9] Issues of procedural fairness are reviewable on a correctness standard (*Canada* (*Minister of Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 43, [2009] 1 SCR 339). Where a breach of procedural fairness is found, no deference is owed to the decision maker.

[10] The Officer's decision with respect to the Applicant's eligibility for permanent resident status requires the Officer to assess the application and exercise his discretion and is, therefore, reviewable on a reasonableness standard (*Obeta v Canada (Minister of Citizenship and Immigration*), 2012 FC 1542 at para 14, 424 FTR 191 [*Obeta*]).

[11] Where the reasonableness standard applies the Court considers whether the decision "falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47, [2008] 1 SCR 190). Deference is owed to the decision maker, in this case, the Officer, and the Court will not re-weigh the evidence.

IV. The Officer breached the duty of procedural fairness owed to the Applicant in the circumstances

[12] The Applicant submits that the Officer's procedural fairness letter should have disclosed the source of the information which led the Officer to question the Applicant's employment so that the Applicant could provide a more focussed response. Although the Applicant found out on his own that an officer had called the receptionist, rather than the General Manager, and that the receptionist told the officer that the Applicant was a cook, the Applicant submits that these details should have been set out in the procedural fairness letter. The Applicant also submits that the Officer should have provided a subsequent opportunity to respond to the Officer's concerns about the veracity of the letters and payslips (*Toki v Canada (Minister of Immigration, Refugees and Citizenship)*, 2017 FC 606 at para 25, [2017] FCJ No 614 [*Toki*])**.**

[13] As noted by Justice Gagné in *Asl v Canada (Citizenship and Immigration)*, 2016 FC 1006 at para 23, [2016] FCJ No 985:

> [23] First of all, I would note that the procedural fairness owed by visa officers is on the low end of the spectrum (*Hamza v Canada (Citizenship and Immigration)*, 2013 FC 264 at para 23). Of course, the duty of fairness in this context still "require[s] visa officers to inform applicants of their concerns so that an applicant may have an opportunity to disabuse an officer of such concerns." (*Talpur v Canada (Citizenship and Immigration)*, 2012 FC 25 at para 21).

[14] In the present case, the Officer alerted the Applicant to the concern that he was in possession of information that the Applicant had not worked in the capacity of a food service supervisor at the Mohini Resort as he had stated. Based on this information, the Applicant would have been sufficiently aware of the "case to meet" in order to respond. The Officer was not required to point him to the source of the information. The record shows that the Applicant became aware of the source of the information, had sufficient information to respond to the concerns noted and did respond.

[15] The related issue is whether the Officer should have provided a further opportunity to address the concerns arising from the Applicant's response to the procedural fairness letter.

[16] The jurisprudence has established that the duty of procedural fairness varies with the context. The jurisprudence has also established that there is no obligation on an Officer to provide a "running score" to an applicant. However, the duty of procedural fairness owed by visa officers, which as noted, is at the low end of the spectrum still depends on the context.

[17] In *Hamza v Canada (Minister of Citizenship and Immigration*), 2013 FC 264 at paras 21-24, [2013] FCJ No 284, Justice Bédard considered the refusal of an applicant's permanent resident status as a skilled worker, extensively reviewed the applicable case law and provided a helpful summary of the relevant principles: the onus is on the applicant to establish that he meets the requirements of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [Regulations] by providing sufficient evidence in support of his application; the duty of procedural fairness owed by visa officers is at the low end of the spectrum; there is no obligation on a visa officer to notify the applicant of the deficiencies in the application or the supporting documents; and, there is no obligation on the visa officer to provide the applicant with an opportunity to address any concerns of the officer when the supporting documents are incomplete, unclear or insufficient to satisfy the officer that the applicant meets the requirements. Justice Bédard added at paras 25-28 that, as determined in *Hassani v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1283 at para 24, 302 FTR 39 [*Hassani*], an officer *may* have such a duty when the concerns arise from the credibility, veracity or authenticity of the documents, rather than from the sufficiency of the evidence.

[18] In *Hassani*, Justice Mosley reconciled some of the pre-existing jurisprudence and found at para 24 (internal citations omitted):

> [24] Having reviewed the factual context of the cases cited above, it is clear that where a concern arises directly from the requirements of the legislation or related regulations, a visa officer will not be under a duty to provide an opportunity for the applicant to address his or her concerns. Where however the issue is not one that arises in this context, such a duty *may* arise. *This is often the case where the credibility, accuracy or genuine nature of information submitted by the applicant in support of their application is the basis of the visa officer's concern,* as was the

> case in *Rukmangathan*, and in *John*… and *Cornea*…cited by the Court in *Rukmangathan*, above.
>
> [Emphasis added]

[19] While the principles from the jurisprudence have generally been applied to address the duty on the visa officer when assessing the supporting documents and evidence in the initial application, the same principles have guided my assessment of the scope of the duty of procedural fairness owed in the present case. The GCMS entries indicate that the Officer questioned the lack of a date on the Applicant's letter of explanation, doubted the veracity of the letter from the General Manager and doubted the veracity or authenticity of the pay slips, noting that the use of the same ink suggested that the pay slips were all prepared at once, rather than monthly. The Respondent also submits that these documents had indicia of unreliability. Clearly, the credibility, veracity and/or the authenticity of the documents was at issue.

[20] In the particular circumstances of this case, including those noted in my observations below, the Officer should have provided an opportunity for the Applicant to address the new concerns.

V. The Reasonableness of the decision need not be addressed

[21] Given the finding that there was a breach of procedural fairness, it is not necessary to determine whether the decision was reasonable. The Officer's role is to assess all the relevant evidence and attach the appropriate weight to it. Had the Officer provided an opportunity for the Applicant to address the Officer's concerns regarding the General Manager's letter and payslips, the assessment and weight attached to the relevant evidence may have been different.

[22] I observe that the Officer found the information provided by the receptionist to be "verified" without stating how it was verified and without probing its reliability despite some red flags. The Officer accepted the receptionist's oral information based on a cold call made by another officer. The receptionist first indicated that he or she did not have the information and that the General Manager should be contacted. The officer who made the call did not wait until the General Manager was available, but called back 10 minutes later and, in that brief period, the receptionist had apparently gained access to all the employee records. It is commonly understood that a receptionist is the person who directs calls to the appropriate individual in an organisation and that receives visitors or clients and directs them to others, which in this case, should have been the General Manager. The Officer had no knowledge of the scope of the receptionist's duties or of the receptionist's access to records. The Officer's notes do not explain how the Officer reconciled the receptionist's statement that the Applicant worked at the Mohini Resort for three or four years, and later said that maybe it was only three years. If the receptionist had the records, there would be no uncertainty. Nor did the Officer acknowledge that the receptionist's statement that the Applicant left the Mohini Resort six months earlier was not consistent with the Applicant's other employment information; in particular, that the Applicant submitted documents to demonstrate that he worked elsewhere until 2014, that he worked at the Mohini Resort from January to November 2014 and left in November 2014, not August 2015, and that he subsequently worked elsewhere. This should have raised questions about the accuracy of the information from the receptionist and the need to probe further.

[23] In conclusion, the permanent resident visa application must be assessed by a different Officer, with an opportunity provided to the Applicant to respond to the concerns raised

regarding the documents provided by the Applicant in December 2016 in response to the November 2016 procedural fairness letter.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is allowed.

2. No question is proposed for certification.

"Catherine M. Kane"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-695-17
STYLE OF CAUSE:	JASVINDER SINGH GREWAL v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	OCTOBER 11, 2017
JUDGMENT AND REASONS:	KANE J.
DATED:	OCTOBER 26, 2017

APPEARANCES:

Ms. Christina Guida	FOR THE APPLICANT
Mr. David Joseph	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Green and Spiegel LLP Barristers and Solicitors Toronto, Ontario	FOR THE APPLICANT
Nathalie G. Drouin Deputy Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT