

Federal Court



Cour fédérale

Date: 20181123

Docket: IMM-2310-18

Citation: 2018 FC 1181

Vancouver, British Columbia, November 23, 2018

PRESENT: The Honourable Mr. Justice Harrington

BETWEEN:

DEVINDER SINGH VIRK

Applicant

and

**THE MINISTER OF CITIZENSHIP
& IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The general rule is that a foreign national may not enter Canada to study without first obtaining a study permit. One of the exceptions under Immigration and Refugee Protection Regulation 215(1)(f)(iii) is that a foreign national may apply from within Canada if a temporary resident who “has completed a course or program of study that is a prerequisite to their enrolling at a designated institution”. The University of the Fraser Valley, a designated learning institution,

admitted Mr. Virk, an Indian citizen but a Canadian temporary resident, to its Bachelors of Business Administration program.

[2] The visa officer denied his application for a study permit. He said Mr. Virk “has not submitted proof of completion of prerequisite studies or conditional letter of acceptance. Letter from u of fraser valley indicates that courses previously completed will be used to complete program requirements for current course of study”.

[3] The University’s acceptance was by way of a form letter which contained various bullets. It stated:

Intake: Bachelor of Administration

Conditional: N/A

[4] Part of the form also dealt with conditions of acceptance such as providing an official high school graduation certificate. None of the seven conditions were checked off.

[5] In a separate letter addressed to whom it may concern, the Director of the School of Business confirmed Mr. Virk’s acceptance. The letter stated: “Due to extenuating circumstances, the School of Business approves using Devinder’s previously completed courses to complete program requirements”.

[6] This decision is patently unreasonable. There was no requirement that there be a conditional letter of acceptance. The letter of acceptance was unconditional.

[7] As to the university using Mr. Virk's previously completed courses, it was satisfied that, to use the language of the regulation, Mr. Virk "had completed a course or program of study that is a prerequisite". It was the university's decision, as a designated learning institution, to make, not the visa officer's. There is no ambiguity whatsoever in the letter.

[8] The prerequisite accepted by the University was that Mr. Virk had studied for two years at the University's satellite campus in India, and then studied at the University in Canada for two semesters. It did not fall upon the visa officer to second guess a university designated as a "learning institution" within the meaning of the regulation.

[9] This is why at the close of yesterday's hearing I said I would grant this judicial review.

JUDGMENT in IMM-2310-18

For reasons given, THIS COURT'S JUDGMENT is that this judicial review is granted. The matter is referred back to another visa officer for redetermination.

There is no serious question of general importance to certify.

“Sean Harrington”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2310-18

STYLE OF CAUSE: DEVINDER SINGH v THE MINISTER OF
CITIZENSHIP & IMMIGRATION

PLACE OF HEARING: VANCOUVER, BRITISH COLUMBIA

DATE OF HEARING: NOVEMBER 22, 2018

JUDGMENT AND REASONS HARRINGTON J.

DATED: NOVEMBER 23, 2018

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