

Federal Court



Cour fédérale

Date: 20181211

Docket: IMM-2642-18

Citation: 2018 FC 1240

Vancouver, British Columbia, December 11, 2018

PRESENT: The Honourable Madam Justice Heneghan

BETWEEN:

JAGWINDER SINGH AND SARABJIT KAUR

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] Mr. Jagwinder Singh (the “Principal Applicant”) and his wife Sarabjit Kaur (collectively “the Applicants”) seek judicial review of a decision made by a Visa Officer (the “Officer”), refusing their applications for temporary resident visas.

[2] The Applicants are citizens of India. They applied for temporary resident visas for the purpose of visiting a cousin of the Principal Applicant who lives in British Columbia.

[3] The Officer refused the applications because he was not satisfied that the Applicants would leave Canada at the end of the period authorized for their stay, pursuant to subsection 179(b) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 (the “Regulations”). In the notes to file, the Officer commented upon the Applicants’ lack of travel history, insufficiency of proof of financial resources and the purpose of their visit to Canada.

[4] The Applicants now argue that the decision of the Officer fails to meet the standard of reasonableness, as discussed in *Dunsmuir v. New Brunswick*, [2008] 1 S.C.R. 190. They also submit that by failing to give them an opportunity to address concerns, the Officer breached the duty of procedural fairness.

[5] For his part, the Minister of Citizenship and Immigration (the “Respondent”) argues that the decision is reasonable, on the basis of the evidence before the Officer. He further submits that the duty of fairness arising in respect of a visa application is at the lower end of the spectrum, that the Officer was not obliged to convoke an interview and no breach of procedural fairness occurred in this case.

[6] Issues of procedural fairness are reviewable upon the standard of correctness; see the decision in *Canada (Citizenship and Immigration) v. Khosa*, [2009] 1 S.C.R. 339.

[7] According to the decision in *Dunsmuir, supra*, the standard of reasonableness requires that a decision be transparent, justifiable and intelligible, falling within a range of possible, acceptable outcomes that are defensible on the law and the facts.

[8] I agree with the submissions of the Respondent that there was no breach of procedural fairness in this case. The Applicants had the opportunity to submit the information about their personal circumstances, including their financial circumstances. They did so, by means of a lengthy affidavit that was submitted with the application for the temporary resident visa. The fact that the Officer did not invite them for an interview does not, in this case, give rise to a breach of procedural fairness.

[9] However, upon the basis of the evidence before the Officer, I am not persuaded that the decision in question meets the applicable standard of review, that is reasonableness.

[10] It is not clear to me that the Officer took into account all the evidence that was submitted, in particular the evidence concerning the financial circumstances of the Applicants.

[11] I am not satisfied that the Officer reasonably assessed the Applicants' travel history, thereby committing a reviewable error, as discussed in the decision in *Dhanoa v. Canada (Citizenship and Immigration)*, 2009 FC 729.

[12] In the result, this application for judicial review is allowed, the decision of the Officer is set aside and the matter remitted to a different officer for redetermination. There is no question for certification arising.

JUDGMENT in IMM-2642-18

THIS COURT'S JUDGMENT is that the application for judicial review is allowed, the decision of the Officer is set aside and the matter remitted to a different officer for redetermination. There is no question for certification arising.

“E. Heneghan”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2642-18

STYLE OF CAUSE: JAGWINDER SINGH AND SARABJIT KAUR v THE
MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: VANCOUVER, BRITISH COLUMBIA

DATE OF HEARING: DECEMBER 10, 2018

JUDGMENT AND REASONS HENEGHAN J.

DATED: DECEMBER 11, 2018

APPEARANCES:

Navratan Singh Fateh FOR THE APPLICANTS

Sarah A. Pearson FOR THE RESPONDENT

SOLICITORS OF RECORD:

Navratan Singh Fateh FOR THE APPLICANTS
Surrey, British Columbia

Attorney General of Canada FOR THE RESPONDENT
Vancouver, British Columbia