

Federal Court



Cour fédérale

Date: 20191220

**Dockets: IMM-5762-18
IMM-227-19**

Citation: 2019 FC 1652

Ottawa, Ontario, December 20, 2019

PRESENT: The Honourable Mr. Justice Campbell

Docket: IMM-5762-18

BETWEEN:

WABHIJOT SINGH KAHLON

Applicant

and

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

Respondent

Docket: IMM-227-19

AND BETWEEN:

WABHIJOT SINGH KAHLON

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The present decision addresses two consolidated judicial review Applications: IMM-5762-18 concerns the November 9, 2018 rejection of the Applicant's application for permanent residence under the Canadian Experience Class (Initial Decision); and IMM-227-19 concerns the December 27, 2018 rejection of an application for reconsideration of the Initial Decision (Reconsideration Decision). The same Officer denied both applications.

I. The Initial Decision

A. *Background and Decision-Making*

[2] In support of his application for permanent residence, the Applicant provided a letter of employment dated August 13, 2013, signed by Mr. Harinder Singh Kahlon on behalf of the employer company "Balbir & Co" which stated that the Applicant was an Administrative Officer for the period August 6, 2012 to August 10, 2013. On initial consideration of the letter, the Officer noted that, by the Applicant's Express Entry profile, the Applicant did not declare this employment on his work permit applications dated March 24, 2014 and April 30, 2015, nor on his temporary resident visa application dated November 16, 2015 in which he declared that he was unemployed from January 2001 to September 2013. (Decision, CTR, p. 1)

[3] As a result, the Officer requested verification of the Applicant's foreign employment through the office of the Consulate General of Canada in Chandigarh, India. A program assistant of ten years of standing engaged the following telephone conversation on July 20, 2018:

When I called cellular phone number [phone number] a man picked up the phone. In accordance with our standard procedure, I stated that I was calling from the Consulate General of Canada, in

Chandigarh, and that the purpose of the call was for verification of employment for Wabhijot Singh. I spoke in the Punjabi language.

The person who answered the telephone identified himself to me as Mr. Balbir Singh. Mr. Singh stated that his company had shut down about 4 to 5 years earlier, and that he did not remember any details or names of the employees that worked for him. He suggested that his business partner, Harinder Singh, might know this information. When I asked for Harinder Singh's contact information, he advised that he had left for England a few days earlier, and could not be reached at this time. Balbir Singh then disconnected the call.

At that point in time, I was not aware that I was speaking to the Applicant's father. At no time during this telephone call did Balbir Singh identify himself as the father of Kahlon Wabhijot Singh.

(Affidavit of Asha Madhu dated October 10, 2019, paras. 6 to 8, produced by Counsel for the Respondent at the November 21, 2019 Hearing of the Applications presently under review)

[4] On August 1, 2018, a procedural fairness letter was sent to the Applicant outlining the Officer's concerns about the genuineness of the Applicant's foreign employment:

Upon further investigation, it appears as though the employment with Balbir & Co may be fraudulent. More specifically, when we spoke with your employer, Mr. Balbir Singh, he was unable to confirm your name or any details of your employment with the company. As such, I am not satisfied that you have acquired the foreign work experience as claimed. As a result, I have concerns that you may have misrepresented your employment in order to obtain permanent resident status in Canada.

[...]

Therefore I am asking you to submit any additional information/documentation that would allay my concerns. You have 7 days from the date of this letter to submit the additional information. Please note that all submissions must be uploaded directly to your MyCIC account. If you choose not to respond with additional information or if your submission does not allay these concerns, your application may be refused.

[Emphasis added] (CTR, p. 55)

[5] By letter dated August 17, 2018 the Applicant's past representative, Farooq Shaikh, a paralegal licenced by the then Law Society of Upper Canada, responded to the fairness letter:

[Letterhead] Easy Access Consultants Inc.

This is to inform CIC that my client Mr. Wabhijot Singh Kahlon is submitting the clarification required by your office, also enclosed his employer's [sic] explanation regarding your concern.

Due to the short time my client did his best to provide you whatever was accessible but if you required more documents please do not hesitate to contact my client and my client is willing to provide with those documents.

We thank your office in advance for your kind consideration and expect the faster processing of his application.

Sincerely,

[signed]

Farooq Shaikh

[Emphasis added] (CTR, p. 49)

[6] Attached to the August 17th letter was a letter from the Applicant dated August 8, 2018:

Subject: Employment Duties Confirmation

Dear Sir/Madam:

I am writing to inform your office that I worked as Administrative Officer (NOC I221). My employer has also issued letter of employment for the same.

I inquired about the call which the IRCC has made on my company's phone number. My employer did not recognize the call. He remembers receiving a call from a lady on or around 20th of July, 2018, who asked him about his company and other details. My ex-employer presumed that it was some marketing scam call as someone from Canada or Canadian Consulate would not call randomly and he did not answer well and hung up. They were in assumption that it was someone scamming to retrieve information about the company.

My employer is willing to call and discuss my employment confirmation also he is willing to give any required document if required. Enclosed with this document is employer's clarification letter.

A new letter has been issued upon my request for Citizenship and Immigration Canada application in specific to my duties, roles and responsibilities.

I was taking care of entire Administrative department of Balbir & Co and my job duties were as follows, [...]

I urge you [sic] office if any concerns prevail please give me a prima facie interview where I can bring all my original job related documents and any further proof required by your office. I also request to please give me an opportunity to clarify all your concerns in any ways you may deem appropriate to have a positive decision in my application process.

I thank you in advance for your kind efforts.

Sincerely,

[Signed]

Kahlon Wabhijot Singh

[Emphasis added] (CTR, pp. 50-51)

[7] As indicated in the August 17th letter, the “employer’s explanation” letter dated August-16, 2018 was also attached:

[Letterhead] Balbir & Company

This is to verify that Mr. Wabhijot Singh Kahlon has been employee for Balbir & Co. Since 6 August, 2012 till 10 August, 2013. Wabhijot was an Office Administrator & helped company by coordinating communication in support of operations.

On July 2018, I received a call from an unknown number and asked about my company details. I assumed that it was someone scamming to retrieve the company details so I didn't give a proper reply as I doubted the genuineness of the person over the phone. I regret for this and apologies that I couldn't recognize the call. I would like to give any additional information or documents if needed, also I'm willing to call and discuss over the phone. Hope

with this I have clarified your concerns about Mr. Wabhijot Singh Kahlon.

Signed

Balbir Singh

[Emphasis added] (CTR, p. 52)

[8] The following notes dated November 9, 2018 in the Officer's Global Case Management System [GCMS] notes provide the Officer's evaluation of the documentary evidence supplied:

I give little weight to this explanation as Immigration employees are required to present themselves when making calls outside of the department, and I therefore find that his letter of employment lacks credibility. Upon review, I am not satisfied that the PA [Applicant] has provided sufficient credible evidence to establish on the balance of probabilities that he has acquired the declared foreign work experience in a skill level 0, A or B NOC. Futhermore [sic], upon review of all available information, it appears that the PA has misrepresented their [sic] foreign work experience by declaring work experience with BALBIR & CO as their qualifying employment and by providing fraudulent documentary evidence in support. This misrepresentation is material because if the PA did not declare this work experience, he would not have met the minimum point score for his round of invitation for Express Entry, and therefore, the PA would not have qualified as an EE Candidate as per section 11.2 of the Act. More specifically, without this work experience the PA would not have been invited to apply for permanent residence via the Express Entry system on March 26, 2018. I am therefore refusing this application for misrepresentation under section 40(1)(a) of the Immigration and Refugee Protection Act as this misrepresentation could have induced an error in administration of the Act.

[Emphasis added] (CTR, p. 2)

[9] The Officer's formal rejection decision, also dated November 9, 2018, reads as follows:

I have now completed the assessment of your application for a permanent resident visa as a member of the Canadian Experience Class and have determined that you do not meet the requirements for immigration to Canada.

I have reached this decision because I am not satisfied that your work experience at Balbir & Co., nor that your supporting evidence, are credible representations of your foreign work experience. I am therefore not satisfied that you have established on the balance of probabilities that you have acquired the foreign work experience as declared. I reached this determination based on information received from the verifications that we conducted and the information that you subsequently provided. You were advised of our concerns regarding your foreign work experience and possible misrepresentation letter dated August 1, 2018, and you were offered an opportunity to respond to them. You made a submission on August 8, 2018 including documentation: every consideration was given to both your submission and the accompanying documentation. However, your submission did not adequately address our concerns, and as such, it has been determined that you have misrepresented your foreign work experience.

[Emphasis added] (CTR, p. 46)

B. *The Issue for Determination: Fairness*

[10] In the course of oral submissions with respect to the present Applications, Counsel for the Applicant argued that it was unfair for the Officer to base the Initial Decision on a finding that the August 16, 2018 “employer explanation” letter from Mr. Balbir Singh was fraudulent without first giving the Applicant an opportunity to respond to that concern:

[...] when an Officer makes a finding that a document is fraudulent, there’s a lot of case law that says that this concern must be put to the Applicant.

[...]

This Officer should have requested further submissions after the response to the procedural fairness letter was deemed to be fraudulent by the Officer. But of course, the point still is that the explanation for why Mr. Singh was not able to verify employment over the phone was completely disregarded.

(Federal Court Digital Audio Recording System (DARS) Recording, November 21, 2019 at 9:46:18 and 9:53:06 respectively)

[11] While it is true that the Applicant's immigration record presented a conflicted body of evidence, it is also true that, on the evidence, the Officer came to a strong suspicion of fraud before considering that another explanation might exist. It is clear from the following finding that the Officer's rejection was based on a suspicion that the Applicant intentionally conducted an elaborate attempt to mislead:

Futhermore [sic], upon review of all available information, it appears that the PA has misrepresented their [sic] foreign work experience by declaring work experience with BALBIR & CO as their qualifying employment and by providing fraudulent documentary evidence in support.

[Emphasis added] (CTR, p. 2)

[12] Given this reality, I disagree with the Officer's statement that "you made a submission on August 8, 2018 including documentation; every consideration was given to both your submission and the accompanying documentation" [Emphasis added]. In my opinion, the Applicant was not given "every consideration".

[13] In particular, the Officer disregarded the Applicant's statement in the August 8th letter: "my employer is willing to call" and also the Applicant's plea: "please give me a prima facie interview where I can bring all my original job related documents". Also disregarded was Mr. Balbir Singh's August 16th request: "I'm willing to call and discuss over the phone".

[14] In my opinion, given these circumstances, the Officer breached a duty of fairness by failing to respond to the Applicant's and Mr. Balbir Singh's requests to go beyond suspicion in order to confirm the truth. Therefore, I find the Initial Decision was rendered in reviewable error.

II. The Reconsideration Decision

[15] As a result of the issuing on the Initial Decision, the Applicant's current lawyer submitted the following request for reconsideration on December 3, 2018:

As Mr. [Balbir] Singh has Parkinson's disease and suffers from associated cognitive difficulties, he was very confused during the call about who was calling him and what was being requested. As a direct result of his condition, he was unable to effectively answer questions and verify Mr. Kahlon's work experience.

We are also advised that Mr. Kahlon's previous representative, Mr. Farooq Shaikh (Mr. Shaikh) of Easy Access Consultants Inc., prepared Mr. Kahlon's application for permanent residence on his behalf. He also responded to IRCC's procedural fairness letter on or around August 15, 2018. Despite the fact that Mr. Shaikh was advised of Mr. Singh's medical condition and the ultimate reason why Mr. Singh was unable to effectively respond to the Officer's inquiries, the response was completely devoid of any information or evidence pertaining to Mr. Singh's medical condition.

[Applicant's Submissions on Reconsideration Request dated December 3, 2018, Applicant's Record, p. 94]

[16] New evidence composed of a number of documents was included in the reconsideration request:

- Copies of medical reports about Mr. Balbir Singh's Parkinson's disease;
- Confirmation of a complaint to the Law Society of Ontario about the Applicant's paralegal;
- Letters from Mr. Harinder Singh Kahlon confirming the Applicant's employment with Balbir & Co; and
- Tax information concerning Balbir & Co and Mr. Harinder Singh Kahlon.

[17] The Officer provided the following response to the request: "your request for reconsideration has been reviewed and there are insufficient reasons for re-opening your application". (CTR, p. 7)

[18] Given my finding on the Initial Decision in the Applicant's favour, there is no live controversy or concrete dispute regarding the Reconsideration Decision. As a result, I decline to exercise my discretion to decide on the Reconsideration Decision Application (see: *Borowski v. Canada (Attorney General)*, [1989] 1 S.C.R. 342, [1989] 3 W.W.R. 97).

JUDGMENT IN IMM-5762-18

THIS COURT'S JUDGMENT is that the Initial Decision is set aside and the matter is referred back for determination by a different officer, on the following direction:

Direction:

Consider the evidence produced in this, the Initial Decision Application, and the new evidence produced in the Reconsideration Decision Application, together with any other new evidence advanced by either party found to be relevant.

There is no question to certify.

JUDGMENT IN IMM-227-19

THIS COURT'S JUDGMENT is that given my judgment in IMM-5762-18, I decline to exercise my discretion to decide on this Application.

"Douglas R. Campbell"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKETS: IMM-5762-18 AND IMM-227-19

DOCKET: IMM-5762-18

STYLE OF CAUSE: WABHIJOT SINGH KAHLON v THE MINISTER OF
IMMIGRATION, REFUGEES AND CITIZENSHIP

AND DOCKET: IMM-227-19

STYLE OF CAUSE: WABHIJOT SINGH KAHLON v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: NOVEMBER 21, 2019

JUDGMENT AND REASONS: CAMPBELL J.

DATED: DECEMBER 20, 2019

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