

Federal Court



Cour fédérale

Date: 20200123

Docket: IMM-2987-19

Citation: 2020 FC 109

Ottawa, Ontario, January 23, 2020

PRESENT: The Honourable Madam Justice Heneghan

BETWEEN:

SAHIB SINGH

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] Mr. Sahib Singh (the “Applicant”) seeks judicial review of the decision of a visa officer at the Embassy of Canada in Abu Dhabi, United Arab Emirates (the “Officer”), made on May 1, 2019, denying his application for an Open Work Permit, pursuant to subsection 200(1) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 (the “Regulations”).

[2] The Applicant, a citizen of India who currently resides in the United Arab Emirates, applied for an Open Work Permit in order to join his wife in Canada, where she is working pursuant to a Post Graduation Work Permit.

[3] The Officer refused the application on the grounds that the Applicant would not leave Canada at the end of his stay, on the basis of accumulated personal and financial assets, and his family ties to Canada, India, and the United Arab Emirates.

[4] The Applicant now submits that the Officer's decision was unreasonable because it was made without regard to the evidence.

[5] He also argues that the Officer breached his right to procedural fairness in questioning the *bona fides* of his marriage without providing an opportunity for him to respond.

[6] The Minister of Citizenship and Immigration (the "Respondent") submits that the Officer's conclusions were reasonable based on the evidence and there was no breach of procedural fairness.

[7] The Officer's decision to refuse an Open Work Permit is reviewable on the standard of reasonableness; see the decision in *Dunsmuir v. New Brunswick*, [2008] 1 S.C.R. 190.

[8] In its recent decision in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, the Supreme Court of Canada revisited the standard of review of administrative

decisions. It said that, presumptively, such decisions are reviewable on the standard of reasonableness, with two exceptions: where legislative intent or the rule of law requires otherwise. Neither exception applies in this case.

[9] The Supreme Court of Canada confirmed the content of the standard of reasonableness, as set out in *Dunsmuir, supra*.

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

[11] *Vavilov, supra* has not changed the approach to be taken on questions of procedural fairness, including a breach of natural justice, which are reviewable on a standard of correctness; see the decision in *Canada (Citizenship and Immigration) v. Khosa*, [2009] 1 S.C.R. 339.

[12] The Officer raised a concern regarding the genuineness of the Applicant's marriage but did not address it. The Officer failed to notify him of this concern and did not provide an opportunity to respond.

[13] In my opinion, this amounts to a breach of procedural fairness in this case and judicial intervention is warranted.

[14] It is not necessary for me to address the other arguments raised.

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

JUDGMENT in IMM-2987-19

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 visa officer for redetermination.

There is no question for certification arising.

"E. Heneghan"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2987-19

STYLE OF CAUSE: SAHIB SINGH v. THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: CALGARY, ALBERTA

DATE OF HEARING: JANUARY 15 , 2020

JUDGMENT AND REASONS: HENEGHAN J.

DATED: JANUARY 23, 2020

APPEARANCES:

Raj Sharma

FOR THE APPLICANT

Meenu Ahluwalia

FOR THE RESPONDENT

SOLICITORS OF RECORD:

Stewart Sharma Harsanyi
Barristers and Solicitors
Calgary, Alberta

FOR THE APPLICANT

Attorney General of Canada
Calgary, Alberta

FOR THE RESPONDENT