

Federal Court



Cour fédérale

Date: 20201222

Docket: IMM-5699-19

Citation: 2020 FC 1182

Vancouver, British Columbia, December 22, 2020

PRESENT: The Honourable Madam Justice Heneghan

BETWEEN:

SATNAM SINGH SIDHU

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] Mr. Satnam Singh Sidhu (the “Applicant”) seeks judicial review of the decision dated August 19, 2019, made by a Visa Officer (the “Officer”) working in the High Commission of Canada in New Delhi, India, refusing his application for a work permit. That application was made pursuant to the *Immigration and Refugee Protection Regulations*, S.O.R. 2002-227 (the “Regulations”).

[2] The Applicant is a citizen of India. He applied for a work permit to allow him to work in Canada as a companion for a Senior person. In support of his application, he submitted a reference letter from Dr. Neeraj Bansal who was employed at Kalra Multispecialty Hospital.

[3] According to the Global Case Management System (“GCMS”) Notes, a Visa Officer, identified by the initials “GS”, contacted the Kalra Multispecialty Hospital to inquire about the reference letter. The GCMS Notes record that this officer spoke with a Dr. Ripudaman Jit Singh Kalra who advised that there was no record of an employee named “Satnam Sidhu” shown in the Hospital’s records. Dr. Bansal suggested that the Officer contact Dr. Bansal, the author of the reference letter.

[4] The officer did not speak with Dr. Bansal, but a procedural fairness letter, dated June 20, 2019 was sent to the Applicant, provided, in part, as follows:

Upon review of your application and after conducting a verification, I have reasonable grounds to believe that your letter of reference from KALRA MULTISPECIALTY HOSPITAL stating you work as a CAREGIVER earning 5,000 INR per month since May 01, 2017 is fraudulent. Because this document form (*sic*) a key part of your application to enter Canada as a worker, I am concerned that this misrepresentation was liable to induce an error in the administration of the Immigration and Refugee Protection Act.

[5] The Applicant responded to the procedural fairness letter by sending an affidavit to the High Commission of Canada in New Delhi, India. In that affidavit, declared on July 1, 2019, the Applicant asked for the documents supporting the concerns about his reference letter.

[6] In the negative decision, the Officer found that the Applicant had made a misrepresentation and was inadmissible to Canada pursuant to paragraph 40(1)(a) of the Act.

[7] Among other things, the Applicant argues that the Officer breached his right to procedural fairness by failing to disclose to him, in the procedural fairness letter, the information about the telephone call to the Kalra Hospital.

[8] The Applicant also submits that the decision is unreasonable.

[9] The Minister of Citizenship and Immigration (the “Respondent”) argues that there was no breach of procedural fairness and that the decision meets the applicable standard of review, that is reasonableness.

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

[11] The merits of the decision are reviewable on the standard of reasonableness, pursuant to the decision in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 441 D.L.R. (4th) 1.

[12] In my opinion, there was a breach of procedural fairness in the manner in which the Officer dealt with the Applicant’s application.

[13] The author of the procedural fairness letter did not provide sufficient information about the basis of his concerns with the Applicant's reference letter. He did not clearly say why there were credibility concerns. The Officer who denied the Applicant's work permit application made a negative credibility finding, which led to the misrepresentation finding, without ensuring that the basis of the credibility concerns was made clear to the Applicant.

[14] The consequences of a misrepresentation finding are significant for an applicant. While no person seeking a benefit under the Act is entitled to a positive outcome, he or she is entitled to fair treatment. Nothing in section 16 of the Act displaces this obligation.

[15] It is not necessary for me to address the arguments about the reasonableness of the decision in detail. A decision made in breach of procedural fairness cannot meet the standard of reasonableness.

[16] In the result, the application for judicial review is allowed, the decision of the Officer is set aside and the matter is remitted to another officer for determination. There is no question for certification arising.

JUDGMENT in IMM-5699-19

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

“E. Heneghan”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-5699-19

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

**HEARING HELD BY ZOOM VIDEOCONFERENCE ON DECEMBER 1, 2020
FROM ST. JOHN'S, NEWFOUNDLAND AND LABRADOR (COURT) AND
VANCOUVER, BRITISH COLUMBIA (PARTIES)**

JUDGMENT AND REASONS: HENEGHAN J.

DATED: DECEMBER 22, 2020

APPEARANCES:

Puneet Khaira FOR THE APPLICANT

Nima Omid FOR THE RESPONDENT

SOLICITORS OF RECORD:

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