

I N D E X O F P R O C E E D I N G S

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---Court proceedings in progress from 2:35 p.m.

---Judgment with reasons rendered at 3:15 p.m.

REASONS FOR JUDGMENT:

This is not a case where there is any kind of flagrant violation of the rights of the applicant, but it is one where I have to resolve, no doubt, in favour of allowing her a second chance before a visa officer who has not been involved in the file before. Part of the reason is in the affidavit of the visa officer itself.

I do not suspect anything inappropriate or improper here, but the first is of course we acknowledge that the visa officer made one mistake with respect to the need for local input, and to some extent that colours my resolution of this matter.

Counsel for the Minister has made a very able presentation at my request to say, 'Well, his is one of these cases where even assuming a mistake about the visa officer with respect to one aspect of this matter, as long as the visa officer did not make a mistake about her qualifications as a cook, then it is a self-revelating situation because, if she cannot qualify as a cook, the rest of it becomes academic.'

And the situation of her qualifications is a bit misleading to me. Much of the Minister's argument is in paragraph 22, which reads as follows:

Ms. Bhukal was then asked to clarify the discrepancy in the dates of her alleged employment in that regard...,

that is the dates on her form, 1985 to 1990:

...and the manager's verbal confirmation for employment for six years, '87 to '92...,

end at:

...verbal confirmation of employment was given by the manager to a clerk in the Canadian High Commission.

Now, I know that there is not the strict evidentiary standard here that should be observed in any kind of a hearing, but I am always worried when a central point is decided on evidence which really never has been tested. And I do not think there is anything sinister here, but when you have evidence on an important point being given by somebody over the phone to a clerk in the commission office, it simply is too easy for it to have been misstated or have been an error somewhere along the line.

If you have the employer confronted right there in the presence of the applicant, so be it. It can be a letter. It can be anything you want. But when it is third party evidence, when you couple it with the other evidence, I am afraid that it may be that -- plus, in the one paragraph the immigration

officer indicates looking for a visitor's visa. If she had simply said that she had a job to come back to, it would have been better, and in fact while she was not working at that time, she had some history or experience as a cook in the past.

Well, it cannot be both ways, can it? If she had experience as a cook, it seems, therefore, that the immigration officer's finding that she did not have experience as a cook is contradictory.

And I do not want to put too high a standard on it from the evidentiary point of view, but the contents of paragraph 22 concern me, and so do the discrepancies about whether there was experience as a cook. The immigration officer said in that source that she had five years, or six years, or even three or four years of experience, and it was not very satisfactory evidence.

JUDGMENT:

Therefore, I think the only fair way would be to send it back to an officer, another visa officer, to receive and process a fresh application according to the law and my reasons.

I will file brief reasons as soon as the transcript is prepared.

MS. SELIGRAM: Thank you, my Lord.

MR. BRENDER: Thank you, my Lord.

THE REGISTRAR: This matter is concluded, and court stands adjourned.

---Whereupon, court proceedings concluded at 3:30 p.m.

The foregoing is CERTIFIED to be a true and accurate Computer-Assisted Transcription (C.A.T.) of my shorthand notes, to the best of my skill and ability.

Patrizia Generali, Court Reporter.
Telephone: (416) 482-3277
Toronto, August 5, 1997.

Quality Control Dept.:-----