

Federal Court



Cour fédérale

Date: 20241025

Docket: IMM-3470-23

Citation: 2024 FC 1696

Toronto, Ontario, October 25, 2024

PRESENT: Mr. Justice Pentney

BETWEEN:

SURJEET SINGH

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The Applicant, Surjeet Singh, seeks judicial review of the refusal of his application for permanent residence under the Parents and Grandparents Sponsorship Program, as well as the subsequent refusal of his reconsideration request. He is a citizen of India, who was being sponsored by his son, Ranjeet Singh Virk (“the Sponsor”), a Canadian citizen.

[2] The application was denied because it was found to be incomplete. Two procedural fairness letters were sent to the Sponsor advising that the application was incomplete, but no response was received by the Respondent. Both the Sponsor and the Applicant were represented by legal counsel in completing and submitting these forms.

[3] When the Sponsor received the negative decision, he applied – through his counsel – for reconsideration, saying that he had never received the procedural fairness letters, and providing the missing information. This reconsideration request was also denied.

[4] The Applicant argues that the decision to deny his application and request for reconsideration was made in a procedurally unfair manner and also unreasonable on the merits.

[5] I am not persuaded by either argument.

[6] The Applicant says that he never received the letters, and was thus denied the opportunity to respond to the concerns about the missing information in his original application. The evidence in the record shows that the letters were sent to the same address as the refusal letter. The Applicant's counsel's letter asking for reconsideration states that the Applicant received the refusal letter. Although the Applicant's sworn affidavit states that neither he nor his counsel received the procedural fairness letters, the Respondent's evidence shows that the letters were indeed sent.

[7] The law has long held that once it is established that a communication was correctly sent by a visa officer to an address that has been provided by an applicant, the risk of non-delivery of correspondence between the Respondent and the applicant seeking immigration status in Canada lies with the person applying: see the discussion in *Chandrakantbhai Patel v Canada (Citizenship and Immigration)*, 2015 FC 900 at paras 18-42; and see *Cruz v Canada (Citizenship and Immigration)*, 2016 FC 1114. Once the Respondent has established that the letter was sent, there is no further obligation on the Minister to prove that the applicant received the letter: *Wijayansinghe v Canada (Citizenship and Immigration)*, 2015 FC 811 [*Wijayansinghe*] at para 39. While this may seem harsh, the Court has previously noted that “it would impose an impossible burden on the Canadian immigration authorities to require proof that correspondence are received in all cases given the volume of applications dealt with by various visa offices” (*Wijayansinghe* at para 44).

[8] In this case, the Respondent provided a sworn affidavit from a Program Assistant who regularly deals with these types of applications, indicating the procedure for preparing and mailing letters and then uploading them into the Global Case Management System (“GCMS”) used to manage immigration files. The documents show that the procedural fairness letters were sent to the residential address of the Sponsor, and that the refusal letter was sent to that same address. While the Applicant and Sponsor acknowledge that they received the refusal letter (as evidenced by their request for reconsideration), they deny that the procedural fairness letters were ever received.

[9] The Applicant points out that in the GCMS notes about the procedural fairness letters there is no mention of the address to which the letters were sent. He contrasts that with the entry about the refusal letter, which does refer to the specific mailing address. In addition, the Applicant points out that the Respondent's affiant is a Program Officer who was not involved in processing his case, and that no declaration or statement was provided by anyone who dealt with his case. He says that the Respondent has failed to meet its burden of demonstrating that the letters were actually sent, citing *Ghaloghlyan v Canada (Citizenship and Immigration)*, 2011 FC 1252 at para 10.

[10] I have no basis to question the statements by the Sponsor that neither he nor his representative received the procedural fairness letters, but that is not enough to make the procedure unfair in light of the case-law on who bears the risk of non-delivery in these circumstances. On the evidence, I am satisfied that the Respondent's evidence is sufficient to establish that the letters were sent to the Sponsor's address. I note that the case-law confirms that the type of proof that is needed to establish that the correspondence was sent is fact-specific. In this case, the Respondent's affiant set out the normal practice in sending correspondence, and I agree with the Respondent that the GCMS notes for both procedural fairness letters match the substance of the letters that were actually sent. I am satisfied that the Respondent has demonstrated that the letters were sent to the Sponsor, even if he did not actually receive them. In this circumstance, the Sponsor and the Applicant bear the risk of non-delivery, as harsh as that may seem.

[11] While I can empathize with the situation the Applicant and Sponsor find themselves in, the law requires me to find against their procedural fairness claim.

[12] The Applicant also challenges the refusal to reconsider his application, noting that all of the missing information was provided when he asked for reconsideration. He argues that the decision is unreasonable because there is no indication in the GCMS notes that the Officer considered any of the new information. I cannot accept his argument on this point. The record is clear that the Officer refused to re-open the case and therefore did not consider the request on its merits. In the circumstances, I can find no basis to question the Officer's refusal to reconsider the matter.

[13] There is no basis to find the original refusal decision to be unreasonable on its merits, given the statements indicating that the application was not denied on its merits, but rather because the Applicant and Sponsor failed to meet their burden of submitting a full and complete application. The procedural fairness letters set out in some detail the information that was missing, and gave the Applicant and Sponsor time to provide it. They did not do so, and so the application was not processed. The reconsideration request was rejected because the application had been found to be incomplete. These are reasonable conclusions, on the facts of this case.

[14] For all of these reasons, the application for judicial review is dismissed.

[15] There is no question of general importance for certification.

[16] One final housekeeping note. In the Notice of Application, the Applicant's name was spelled "Surjit Singh," but the style of cause will be amended with immediate effect, and on consent of the parties, to reflect his legal name, which is "Surjeet Singh."

JUDGMENT in IMM-3470-23

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.
2. There is no question of general importance for certification.
3. The style of cause is amended to reflect the legal name of the Applicant, Surjeet Singh.

"William F. Pentney"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

Docket: IMM-3470-23

STYLE OF CAUSE: SURJEET SINGH v THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: October 21, 2024

**REASONS FOR JUDGMENT
AND JUDGMENT:** PENTNEY J.

DATED: OCTOBER 25, 2024

APPEARANCES:

Vivek Rattan FOR THE APPLICANT
Gursukhman Singh

Teresa Ramnarine FOR THE RESPONDENT

SOLICITORS OF RECORD:

Rattan Law Professional FOR THE APPLICANT
Corporation
Brampton, Ontario

Attorney General of Canada FOR THE RESPONDENT
Toronto, Ontario