

Date: 20080215

Docket: IMM-659-07

Citation: 2008 FC 197

Ottawa, Ontario, February 15, 2008

PRESENT: The Honourable Mr. Justice Phelan

BETWEEN:

BHUPINDER SINGH KHUN KHUN

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. INTRODUCTION

[1] This is the second judicial review of the attempts by the Applicant to obtain a favourable H&C decision.

II. BACKGROUND

[2] The Applicant is a citizen of India and is of the Sikh faith. He made a refugee claim in the U.K. which was rejected. He then came to Canada in 1997 where he made another refugee claim which was rejected. He then submitted an H&C application. This H&C application was rejected in January 2006 but was quashed in October 2006.

[3] When the Applicant came to Canada, he set up a transportation company with a business partner. The business has survived and the Applicant divides his time between Ontario and Quebec – he has ties to the Sikh community in both provinces.

[4] In assessing the H&C application, the Officer considered the Applicant's efforts to integrate and to be self-sufficient. These efforts were described as "very commendable" and were "expected and not extraordinary". The Officer concluded that there was no evidence that the business would fail if the Applicant left and the Officer recognized that the Applicant had opened the business when his immigration status was uncertain.

[5] The Officer noted that the Applicant had tried to circumvent removal by providing contradictory answers to questions about his primary documents, thereby lengthening the process. The Officer also reviewed these documents and explained why they were considered deficient.

[6] In the end, the Officer concluded that the Applicant's establishment in Canada was not strong and that he had deliberately prolonged his stay by circumventing the removal process. From

this the Officer concluded that the Applicant would not face unusual, undeserved or disproportionate hardship if he had to apply for permanent residence from outside Canada.

III. ANALYSIS

[7] The Applicant takes umbrage at the Officer's use of the words "expected and not extraordinary" in the context of his financial independence. The Applicant suggests that the Officer imposed a new standard on H&C applications.

[8] There is no merit in this suggestion. The Officer was simply acknowledging that it would be expected that a person living in Canada would try to earn a living. Justice Blais in the first decision noted that this behaviour is what anyone would do. Justice Blais did not find that the Applicant had proven "establishment" or otherwise qualified for an H&C exemption. He held that the official in that case had not examined the file adequately – a criticism which cannot be levelled in this case.

[9] The Applicant also complained that there had been a breach of natural justice, particularly with respect to not having an opportunity to address concerns about his identity documents. There is no basis for this argument.

[10] The issues concerning the identity documents were well-known to the Applicant and he must have (or ought to have) anticipated that the Officer would examine this issue. It was the Applicant's obligation to address these concerns; he had an opportunity to address the issues which he did not do satisfactorily.

[11] Therefore, on the issue of “establishment”, the Officer’s decision is in accordance with the applicable standard of review of reasonableness. As to the matter of procedural fairness, the Officer’s actions were correct.

IV. CONCLUSION

[12] Therefore, this judicial review is dismissed. There is no question for certification.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that this application for judicial review is dismissed.

“Michael L. Phelan”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-659-07

STYLE OF CAUSE: BHUPINDER SINGH KHUN KHUN

and

THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: December 12, 2007

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

DATED: February 15, 2008

APPEARANCES:

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Ms. Leanne Briscoe FOR THE RESPONDENT

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