

**Date: 20081023**

**Docket: IMM-1165-08**

**Citation: 2008 FC 1189**

**Toronto, Ontario, October 23, 2008**

**PRESENT: The Honourable Mr. Justice Russell**

**BETWEEN:**

**HARPREET KAUR**

**Applicant**

**and**

**MINISTER OF CITIZENSHIP AND IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] This is an application pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (Act) for judicial review of a decision of the Second Secretary (Immigration) at the High Commission of Canada in New Delhi (Officer), dated November 14, 2007 (Decision) refusing the Applicant's application for permanent residence in Canada under the skilled worker category in the occupation of Cook (*National Occupational Classification* (NOC) 6242).

## **BACKGROUND**

[2] The Applicant is a 34-year-old married mother of two children. She has a B.A. (Arts) and a diploma from the Amita Hoteling and Cookery Centre in Kapurthala, India. She has a brother who lives in Canada. She currently works as a cook at Shenai Place in Kapurthala, India and has an HRSDC confirmed arranged employment offer in Canada.

[3] The Applicant worked as a cook at the Mahagan Sweet and Hotel in Kapurthala, India for approximately nine years and was primarily responsible for preparing Punjabi dishes and gravies, checking hygiene, preparing vegetables and placing food orders.

[4] The Applicant is currently employed at Shenai Palace as a cook, with the primary duties of preparing north-Indian vegetarian dishes and gravies (occasionally non-vegetarian dishes), cleaning, washing dishes and cutting vegetables. She has worked at the Shenai Palace since April 2005.

[5] The Applicant was interviewed at the High Commission in New Delhi on October 10, 2007 by the Officer, who later rejected her application for permanent residence.

## **DECISION UNDER REVIEW**

[6] The Officer examined the Applicant's application both under the *Immigration Regulations 1978*, SOR/78-172 (1978 Regulations) and the *Immigration and Refugee Protection Regulations* SOR/2002-227 (2002 Regulations).

[7] The Officer identified the following negative factors in her CAIPS notes:

- 1) On the Applicant's certificate to Amita Hoteling and Cookery Centre, "cookery" was misspelled as "cookrey";
- 2) The Applicant has no mark cards from the Amita institution and had difficulty describing the courses she took there, nor did she know the address of the school or the last name of the owner or teachers of the school, or who the director was at the time of her graduation;
- 3) The Applicant reads, writes, and speaks English with difficulty;
- 4) The evidence provided by the Applicant at her interview was not credible for the following reasons:
  - i. She was unable to explain any of her functions with any level of detail;
  - ii. Her evidence concerning her duties at the banquet hall and the restaurant was unclear;
  - iii. She was unable to explain how she determined the amount of food needed to be ordered when placing food orders at Mahagan Sweets;
  - iv. She did not know the names of any of her colleagues;
  - v. She did not provide credible information about the last employee hired at the Shenai Palace;

- vi. She could not describe the physical appearance of the kitchen at Shenai Palace with any level of detail;
- vii. She indicated she had worked a wedding at Shenai Palace that, in fact, did not take place when she said it did;
- viii. The Officer was not satisfied that the Applicant would have the ability to carry out her HRSDC arranged employment offer in Canada.

[8] The Applicant was assessed under the 1978 Regulations pertaining to future economic establishment in Canada regarding her education, education and training, experience, occupational factors, arranged employment or designated occupation, demographic factors, age, knowledge of English and French and personal suitability. The Officer found that the Applicant would not be able to fulfill the requirements of her arranged employment in Canada and that she had not satisfied the Officer that she had at least one year of experience as a Cook. The Officer gave the Applicant a score of 51 out of 105 possible points.

[9] The Applicant was also assessed under the 2002 Regulations against the federal skilled worker criteria. She was evaluated on age, education, proficiency in the official languages of Canada, experience, arranged employment and adaptability. The Officer found that the Applicant had not performed a substantial number of the main duties of a Cook, including all of the essential duties for the Cook occupation as set out in the relevant NOC. The Applicant received a score of 43 out of a possible 100 points under the skilled worker criteria.

[10] Overall, the Officer did not feel the Applicant had the required skills and experience to be a Cook in Canada and that she failed to qualify under the 1978 Regulations and the 2002 Regulations.

## ISSUES

[11] The Applicant raises the following issues for review:

- 1) Did the Officer base her Decision on erroneous findings of fact made in a perverse or capricious manner?
- 2) Were the Officer's findings that the Applicant was not occupationally qualified to serve as a Cook reasonably open to her on the evidence?
- 3) Did the Officer err in ignoring the evidence she obtained from the Applicant's previous employer via a telephone call which corroborated the Applicant's job duties as a Cook in India?

## STATUTORY PROVISIONS

[12] The following provisions of the Act are relevant to this application:

### **Application before entering Canada**

**11. (1)** A foreign national must, before entering Canada, apply to an officer for a visa or for any other document required by the regulations. The visa or document shall be issued if, following an examination, the officer is satisfied that the foreign national is not

### **Visa et documents**

**11. (1)** L'étranger doit, préalablement à son entrée au Canada, demander à l'agent les visa et autres documents requis par règlement, lesquels sont délivrés sur preuve, à la suite d'un contrôle, qu'il n'est pas interdit de territoire et se conforme à la présente loi.

inadmissible and meets the requirements of this Act.

[13] The following provisions of the 1978 Regulations are also applicable:

<p>11. (1) Subject to subsections (3) and (5), a visa officer shall not issue an immigrant visa pursuant to subsection 9(1) or 10(1) or (1.1) to an immigrant who is assessed on the basis of factors listed in column I of Schedule I and is not awarded any units of assessment for the factor set out in item 3 thereof unless the immigrant</p>	<p>11(1) Sous réserve des paragraphes (3) et (5), l'agent des visas ne peut délivrer un visa d'immigrant selon les paragraphes 9(1) ou 10(1) ou (1.1) à l'immigrant qui est apprécié suivant les facteurs énumérés à la colonne I de l'annexe I et qui n'obtient aucun point d'appréciation pour le facteur visé à l'article 3 de cette annexe, à moins que l'immigrant:</p>
<p>(a) has arranged employment in Canada and has a written statement from the proposed employer verifying that he is willing to employ an inexperienced person in the position in which the person is to be employed, and the visa officer is satisfied that the person can perform the work required without experience;</p> <p>or</p>	<p>(a) n'ait un emploi réservé au Canada et ne possède une attestation écrite de l'employeur éventuel confirmant qu'il est disposé à engager une personne inexpérimentée pour occuper ce poste, et que l'agent des visas ne soit convaincu que l'intéressé accomplira le travail voulu sans avoir nécessairement de l'expérience; ou</p>
<p>(b) is qualified for and is prepared to engage in employment in a designated occupation.</p>	<p>(b) ne possède les compétences voulues pour exercer un emploi dans une profession désignée, et ne soit disposé à le faire.</p>

[14] The following provisions of the 2002 Regulations are also applicable:

**Class**

**Catégorie**

**75.** (1) For the purposes of subsection 12(2) of the Act, the federal skilled worker class is hereby prescribed as a class of persons who are skilled workers and who may become permanent residents on the basis of their ability to become economically established in Canada and who intend to reside in a province other than the Province of Quebec.

### **Skilled workers**

(2) A foreign national is a skilled worker if

(a) within the 10 years preceding the date of their application for a permanent resident visa, they have at least one year of continuous full-time employment experience, as described in subsection 80(7), or the equivalent in continuous part-time employment in one or more occupations, other than a restricted occupation, that are listed in Skill Type 0 Management Occupations or Skill Level A or B of the *National Occupational Classification* matrix;

(b) during that period of employment they performed the actions described in the

**75.** (1) Pour l'application du paragraphe 12(2) de la Loi, la catégorie des travailleurs qualifiés (fédéral) est une catégorie réglementaire de personnes qui peuvent devenir résidents permanents du fait de leur capacité à réussir leur établissement économique au Canada, qui sont des travailleurs qualifiés et qui cherchent à s'établir dans une province autre que le Québec.

### **Qualité**

(2) Est un travailleur qualifié l'étranger qui satisfait aux exigences suivantes :

a) il a accumulé au moins une année continue d'expérience de travail à temps plein au sens du paragraphe 80(7), ou l'équivalent s'il travaille à temps partiel de façon continue, au cours des dix années qui ont précédé la date de présentation de la demande de visa de résident permanent, dans au moins une des professions appartenant aux genre de compétence 0 Gestion ou niveaux de compétences A ou B de la matrice de la *Classification nationale des professions* — exception faite des professions d'accès limité;

b) pendant cette période d'emploi, il a accompli l'ensemble des tâches figurant

lead statement for the occupation as set out in the occupational descriptions of the *National Occupational Classification*; and

(c) during that period of employment they performed a substantial number of the main duties of the occupation as set out in the occupational descriptions of the *National Occupational Classification*, including all of the essential duties.

### **Minimal requirements**

(3) If the foreign national fails to meet the requirements of subsection (2), the application for a permanent resident visa shall be refused and no further assessment is required.

### **Selection Criteria**

**76.** (1) For the purpose of determining whether a skilled worker, as a member of the federal skilled worker class, will be able to become economically established in Canada, they must be assessed on the basis of the following criteria:

(a) the skilled worker must be awarded not less than the minimum number of required points referred to in subsection (2) on the basis of the following factors, namely,

dans l'énoncé principal établi pour la profession dans les descriptions des professions de cette classification;

c) pendant cette période d'emploi, il a exercé une partie appréciable des fonctions principales de la profession figurant dans les descriptions des professions de cette classification, notamment toutes les fonctions essentielles.

### **Exigences**

(3) Si l'étranger ne satisfait pas aux exigences prévues au paragraphe (2), l'agent met fin à l'examen de la demande de visa de résident permanent et la refuse.

### **Critères de sélection**

**76.** (1) Les critères ci-après indiquent que le travailleur qualifié peut réussir son établissement économique au Canada à titre de membre de la catégorie des travailleurs qualifiés (fédéral) :

a) le travailleur qualifié accumule le nombre minimum de points visé au paragraphe (2), au titre des facteurs suivants :

- |  |   |
|--|---|
| (i) education, in accordance with section 78,  | (i) les études, aux termes de l'article 78,   |
| (ii) proficiency in the official languages of Canada, in accordance with section 79,   | (ii) la compétence dans les langues officielles du Canada, aux termes de l'article 79,  |
| (iii) experience, in accordance with section 80,   | (iii) l'expérience, aux termes de l'article 80,   |
| (iv) age, in accordance with section 81,   | (iv) l'âge, aux termes de l'article 81,   |
| (v) arranged employment, in accordance with section 82, and  | (v) l'exercice d'un emploi réservé, aux termes de l'article 82,   |
| (vi) adaptability, in accordance with section 83; and  | (vi) la capacité d'adaptation, aux termes de l'article 83;  |
| <i>(b)</i> the skilled worker must   | <i>b)</i> le travailleur qualifié :   |
| (i) have in the form of transferable and available funds, unencumbered by debts or other obligations, an amount equal to half the minimum necessary income applicable in respect of the group of persons consisting of the skilled worker and their family members, or | (i) soit dispose de fonds transférables — non grevés de dettes ou d'autres obligations financières — d'un montant égal à la moitié du revenu vital minimum qui lui permettrait de subvenir à ses propres besoins et à ceux des membres de sa famille, |
| (ii) be awarded the number of points referred to in subsection 82(2) for arranged employment in Canada within the meaning of subsection 82(1).   | (ii) soit s'est vu attribuer le nombre de points prévu au paragraphe 82(2) pour un emploi réservé au Canada au sens du paragraphe 82(1).  |

**Number of points**

**Nombre de points**

(2) The Minister shall fix and make available to the public

(2) Le ministre établit le nombre minimum de points

the minimum number of points required of a skilled worker, on the basis of

que doit obtenir le travailleur qualifié en se fondant sur les éléments ci-après et en informe le public :

(a) the number of applications by skilled workers as members of the federal skilled worker class currently being processed;

a) le nombre de demandes, au titre de la catégorie des travailleurs qualifiés (fédéral), déjà en cours de traitement;

(b) the number of skilled workers projected to become permanent residents according to the report to Parliament referred to in section 94 of the Act; and

b) le nombre de travailleurs qualifiés qui devraient devenir résidents permanents selon le rapport présenté au Parlement conformément à l'article 94 de la Loi;

(c) the potential, taking into account economic and other relevant factors, for the establishment of skilled workers in Canada.

c) les perspectives d'établissement des travailleurs qualifiés au Canada, compte tenu des facteurs économiques et autres facteurs pertinents.

**Circumstances for officer's substituted evaluation**

**Substitution de l'appréciation de l'agent à la grille**

(3) Whether or not the skilled worker has been awarded the minimum number of required points referred to in subsection (2), an officer may substitute for the criteria set out in paragraph (1)(a) their evaluation of the likelihood of the ability of the skilled worker to become economically established in Canada if the number of points awarded is not a sufficient indicator of whether the skilled worker may become

(3) Si le nombre de points obtenu par un travailleur qualifié — que celui-ci obtienne ou non le nombre minimum de points visé au paragraphe (2) — ne reflète pas l'aptitude de ce travailleur qualifié à réussir son établissement économique au Canada, l'agent peut substituer son appréciation aux critères prévus à l'alinéa (1)a).

economically established in Canada.

**Concurrence**

(4) An evaluation made under subsection (3) requires the concurrence of a second officer.

**Confirmation**

(4) Toute décision de l'agent au titre du paragraphe (3) doit être confirmée par un autre agent.

**STANDARD OF REVIEW**

**Issues: Work Experience & Arranged Employment**

[15] In *Dunsmuir v. New Brunswick*, 2008 SCC 9, the Supreme Court of Canada recognized that, although the reasonableness *simpliciter* and patent unreasonableness standards are theoretically different, “the analytical problems that arise in trying to apply the different standards undercut any conceptual usefulness created by the inherently greater flexibility of having multiple standards of review” (*Dunsmuir* at para. 44). Consequently, the Court held that the two reasonableness standards should be collapsed into a single form of “reasonableness” review.

[16] The Supreme Court of Canada in *Dunsmuir* also held that a standard of review analysis need not be conducted in every instance. Instead, where the standard of review applicable to the particular question before the court is well-settled by past jurisprudence, the reviewing court may adopt that standard of review. Only where this search proves fruitless must the reviewing court undertake a consideration of the four factors comprising the standard of review analysis.

[17] Thus, in light of the Supreme Court of Canada’s decision in *Dunsmuir* and the previous jurisprudence of this Court in *Silva v. Canada (Minister of Citizenship and Immigration)*, [2007]

F.C.J. No. 981 (F.C.) which cites *Svetlana Vladimirovna Kniazeva v. Canada (Minister of Citizenship and Immigration)* 2006 FC 268 and which established that the standard of review for the issues raised by the Applicant in this kind of application is patent unreasonableness, the Court concludes that the standard of review on applications for permanent residence under the skilled worker category is reasonableness and that the Decision in this case is entitled to a higher degree of deference.. When reviewing a decision on the standard of reasonableness, the analysis will be concerned with “the existence of justification, transparency and intelligibility within the decision-making process [and also with] whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law” (*Dunsmuir* at para. 47). Put another way, the Court should only intervene if the Decision was unreasonable in the sense that it falls outside the “range of possible, acceptable outcomes which are defensible in respect of the facts and law.”

### **Issue: Not Advising the Applicant of Concerns**

[18] The issue of whether the Officer should have advised the Applicant of her concerns raises a question regarding the duty of procedural fairness to which a standard of correctness applies: *Suresh v. Canada (Minister of Citizenship and Immigration)* 2002 SCC 1.

## **ARGUMENTS**

### **The Applicant**

#### **Work Experience**

[19] The Applicant submits that the Officer's finding that she did not have at least one year of work experience as a Cook was a reviewable error because:

- 1) The Applicant provided uncontradicted credible evidence that she had been employed as a Cook for more than one year, during which time she had performed a substantial number of the main duties of the occupation of Cook as found in the relevant NOC;
- 2) The Applicant provided uncontradicted credible evidence of the kitchen layout at the establishment of her current employer and the Officer does not question the credibility of that evidence;
- 3) The Applicant's current employer confirmed by telephone that the Applicant was employed as a Cook. The Officer erred in law by not taking this evidence into account as the purpose of the call was to corroborate the Applicant's employment experience.
- 4)

[20] The Applicant also argues that the Officer exceeded her jurisdiction by not adhering to the definition of "Cook" as found in the NOC. The Applicant says that an officer cannot import his or her own criteria into the requirements for a specific position: (*Haughton v. Minister of Citizenship and Immigration*, (1995), 34 Imm. L.R. (2d) 284 (Fed. T.D.)).

[21] The criteria under the NOC definition of "Cook" are as follows:

**6242 Cooks**

Cooks prepare and cook a wide variety of foods. They are employed in restaurants, hotels, hospitals and other health care institutions, central food commissaries, educational

institutions and other establishments. Cooks are also employed aboard ships and at construction and logging campsites. Apprentice cooks are included in this unit group.

### **Example Titles**

apprentice cook  
cook  
dietary cook  
first cook  
grill cook  
hospital cook  
institutional cook  
journeyman/woman cook  
licensed cook  
line cook  
second cook  
short order cook

### **Main duties**

Cooks perform some or all of the following duties:

Prepare and cook complete meals or individual dishes and foods

Prepare and cook special meals for patients as instructed by dietitian or chef

Schedule and supervise kitchen helpers

Oversee kitchen operations

Maintain inventory and records of food, supplies and equipment

May set up and oversee buffets

May clean kitchen and work area

May plan menus, determine size of food portions, estimate food requirements and costs, and monitor and order supplies.

May hire and train kitchen staff

Cooks may specialize in preparing and cooking ethnic cuisine or special dishes.

### **Employment requirements**

Completion of secondary school is usually required.

Completion of a three-year apprenticeship program for cooks or Completion of college or other program in cooking or several years of commercial cooking experience are required.

Trade certification is available but voluntary in all provinces and Territories.

Interprovincial trade certification (Red Seal) is also available to qualified cooks.

[22] The Applicant feels that she provided evidence that satisfied the above criteria to a significant degree. However, the Officer had credibility concerns about the Applicant's evidence that led the Officer to the conclusion that the Applicant had not, in fact, had the experience she claimed to have.

### **Arranged Employment**

[23] The Applicant submits that she had an HRSDC arranged employment offer in Canada. She says that the Officer's failure to award her points based upon this offer was a reviewable error.

### **Not Advising the Applicant of Concerns**

[24] Relying upon *Fong v. Canada (Minister of Employment and Immigration)* (1990), 11 Imm. L.R. (2d) 205 (Fed.T.D.), *Dhaliwal v. Canada (Minister of Employment and Immigration)* (1992), 16 Imm. L.R. (2d) 212 (Fed. T.D.), and *Nicolae v. Canada (Secretary of State)* 29 Imm. L.R. (2d) 148 (Fed. T.D.), the Applicant submits that the Officer should have advised her of her concerns with regards to the responses that the Applicant provided to the questions posed at the interview.

## **The Respondent**

### **Work Experience**

[25] The Respondent submits that the Applicant provided the Officer with answers that were inaccurate, superficial or just not credible. The Respondent specifically points to the following examples:

1. The Applicant provided information about the last banquet held at the Shenai Palace where she described the number of people who attended and what was served. However, upon consultation with the owner of the Shenai Palace, it was discovered that no banquets had been held during the period of time referred to by the Applicant;
2. The Applicant provided information concerning her duties as a Cook, but she could not provide answers that were sufficiently substantive;
3. The lack of documentation to support the Applicant's attendance at the Amita Hoteling and Cookery Centre, as well as the lack of information the Applicant could provide in relation to the courses she had taken, the last name of the owner of the school or the director of the school, as well as the misspelled school name on the certificate.

[26] The Respondent points out that an officer is entitled to weigh an Applicant's responses at an interview with the documentary evidence provided: *Zhang v. Canada (Minister of Citizenship and Immigration)* 2003 FCT 163. The Respondent cites and relies upon paragraph 15 of *Dizon v. Canada (Minister of Citizenship and Immigration)* 2002 FCT 115 which states as follows:

Once the visa officer concluded that Ms. Dizon had not been forthcoming and had not performed the duties of a travel counselor, the two certificates from Ms. Dizon's employer carried little or no evidentiary value. Therefore, it cannot be said that there was meaningful evidence before the visa officer of relevant experience.

### **Not Advising the Applicant of Concerns**

[27] The Respondent points out that the Officer did advise the Applicant of her concerns with the responses given at the interview and the Applicant had a full opportunity to "disabuse" the Officer of any misconceptions concerning her work experience.

## **ANALYSIS**

### **Work Experience**

[28] It is well established that credibility issues and the weight to be given to evidence are matters for the officer concerned and must be given significant deference by a reviewing court: *Sarkissian v. Canada (Minister of Citizenship and Immigration)*, [2003] F.C.J. No. 489 (F.C.) at para. 9; *Oladipo v. Canada (Minister of Citizenship and Immigration)* 2008 FC 366.

[29] While I agree with the Respondent that the Court should be slow to interfere with credibility findings and that it is the Officer's role to weigh evidence, I have to find the Decision deficient and unreasonable in one crucial respect.

[30] A review of the record reveals that the Officer had justifiable concerns about the Applicant's credibility regarding her work experience and qualifications as a cook. However, the Officer took it upon herself to contact Mr. Singh, the Applicant's employer, in order to seek further evidence material to those concerns. Mr. Singh provided confirmation that the Applicant worked for him as a cook. In fact, he confirmed what the Applicant had told the Officer, except for the timing of the banquet.

[31] The Officer does not question Mr. Singh's credibility. In fact, she relies upon what Mr. Singh told her about the timing of the banquet to bolster the concerns she had concerning the Applicant's credibility.

[32] But the Officer leaves out of account the crucial fact that Mr. Singh confirmed most of what the Applicant had said. He provided reliable evidence (not questioned by the Officer) that the Applicant worked for him in the role of cook. The Officer remains silent on evidence that points away from the conclusion she came to regarding the Applicant's credibility. She took that part of Mr. Singh's evidence which she felt supported her conclusions but ignored the confirmatory evidence he gave regarding the Applicant's experience as a cook. The Officer does not explain in her Decision why she ignored evidence that was directly material to the decision she had to make and which undermined her own conclusions on credibility.

[33] In other words, on this important issue, the Officer failed to have regard for the evidence as a whole and fell into the error that *Cepeda-Gutierrez v. Canada (Minister of Citizenship and Immigration)*, [1998] F.C.J. No. 1425 warns against:

...

**14** It is well established that section 18.1(4)(d) of the *Federal Court Act* does not authorize the Court to substitute its view of the facts for that of the Board, which has the benefit not only of seeing and hearing the witnesses, but also of the expertise of its members in assessing evidence relating to facts that are within their area of specialized expertise. In addition, and more generally, considerations of the efficient allocation of decision-making resources between administrative agencies and the courts strongly indicate that the role to be played in fact-finding by the Court on an application for judicial review should be merely residual. Thus, in order to attract judicial intervention under section 18.1(4)(d), the applicant must satisfy the Court, not only that the Board made a palpably erroneous finding of material fact, but also that the finding was made “without regard to the evidence”: see, for example, *Rajapakse v. Canada (Minister of Employment and Immigration)*, [1993] F.C.J. No. 649 (F.C.T.D.); *Sivasambo v. Canada (Minister of Employment and Immigration)*, [1995] 1 F.C. 741 (F.C.T.D.).

**15** The Court may infer that the administrative agency under review made the erroneous finding of fact “without regard to the evidence” from the agency’s failure to mention in its reasons some evidence before it that was relevant to the finding, and pointed to a different conclusion from that reached by the agency. Just as a court will only defer to an agency’s interpretation of its constituent statute if it provides reasons for its conclusion, so a court will be reluctant to defer to an agency’s factual determinations in the absence of express findings, and an analysis of the evidence that shows how the agency reached its result.

**16** On the other hand, the reasons given by administrative agencies are not to be read hypercritically by a court (*Medina v. Canada (Minister of Employment and Immigration)* (1990), 12 Imm. L.R. (2d) 33 (F.C.A.)), nor are agencies required to refer to every piece of evidence that they received that is contrary to their finding, and to explain how they dealt with it (see, for example, *Hassan v. Canada (Minister of Employment and Immigration)* (1992), 147 N.R. 317

(F.C.A.). That would be far too onerous a burden to impose upon administrative decision-makers who may be struggling with a heavy case-load and inadequate resources. A statement by the agency in its reasons for decision that, in making its findings, it considered all the evidence before it, will often suffice to assure the parties, and a reviewing court, that the agency directed itself to the totality of the evidence when making its findings of fact.

**17** However, the more important the evidence that is not mentioned specifically and analyzed in the agency's reasons, the more willing a court may be to infer from the silence that the agency made an erroneous finding of fact "without regard to the evidence": *Bains v. Canada (Minister of Employment and Immigration)* (1993), a63, F.T.R. 312 (F.C.T.D.). In other words, the agency's burden of explanation increases with the relevance of the evidence in question to the disputed facts. Thus, a blanket statement that the agency has considered all the evidence will not suffice when the evidence omitted from any discussion in the reasons appears squarely to contradict the agency's finding of fact. Moreover, when the agency refers in some detail to evidence supporting its finding, but is silent on evidence pointing to the opposite conclusion, it may be easier to infer that the agency overlooked the contradictory evidence when making its finding of fact.

[34] Mr. Singh's confirmatory evidence was so important in this case that I have to infer from the Officer's silence on this matter that she made an erroneous finding of fact without regard to the evidence, which error renders the Decision as a whole unreasonable within the meaning of *Dunsmuir*. This matter requires reconsideration.

### **Arranged Employment**

[35] At page two of the Officer's letter dated November 14, 2007, she says that the Applicant did not have arranged employment in Canada. However, in the CAIPS notes, it is clear that the Officer

was aware of this arranged employment but did not feel the Applicant could fulfill the requirements needed for it.

[36] If the Applicant had received points for her work experience, as well as points for her arranged employment, she may have received sufficient points to qualify. Therefore, I find that it was unreasonable for the Officer to conclude that the Applicant could not meet the requirements of the Cook category, nor carry out her arranged employment arrangement given that there was evidence that she had in fact been working as a cook. This matter needs to be reconsidered.

#### **Not Advising the Applicant of Concerns**

[37] I agree with the Respondent on this issue. It is clear from the record that the Officer asked the Applicant many questions and gave her many opportunities to describe her work experience, job duties etc. It is also well established that an officer has no obligation to notify an applicant about concerns or to allow an applicant the opportunity to respond to those concerns: *Ahmed v. Canada (Minister of Citizenship and Immigration)*, [1997] F.C.J. No. 940 (F.C.T.D.). The onus is on an applicant to provide all of the information required for an application of this nature. The Court in *Aqeel v. Canada (Minister of Citizenship and Immigration)* 2006 FC 1498 confirmed as follows:

12. The onus is also on the applicant to set out the relevant factors that must be considered on the assessment in order for the officer to find that relevant humanitarian and compassionate grounds exist (IP 5 Manual: Immigrant Applications in Canada made on Humanitarian or Compassionate Grounds (the Manual), Citizenship and Immigration Canada, 5.29). In *Owusu v. Minister of Citizenship and Immigration*, 2004 FCA 38, Mr. Justice Evans, for the Federal Court of Appeal, wrote at paragraph 8:

... And, since applicants have the onus of establishing the facts on which their claim rests, they omit pertinent information from their written submissions at their peril.

[38] I find that by granting an interview and, as the Officer's CAIPS notes make clear, by explaining the purpose of the interview and how the application would be assessed, and as a result of the Officer's extensive questioning, the Applicant was given a full opportunity to respond and make her case before the Officer. I cannot find a reviewable error on this issue.

**JUDGMENT**

**THIS COURT ORDERS AND ADJUDGES that:**

1. The Application is allowed and the matter is referred back for reconsideration by a different officer;
2. There is no question for certification.

“James Russell”

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-1165-08

**STYLE OF CAUSE:** *HARPREET KAUR v. MCI*

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** September 9, 2008

**REASONS FOR JUDGMENT  
AND JUDGMENT:** JUSTICE RUSSELL

**DATED:** October 23, 2008

**APPEARANCES:**

Ian R.J. Wong	FOR THE APPLICANT
Michael Butterfield	FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

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