

Federal Court



Cour fédérale

Date: 20090703

Docket: IMM-5551-08

Citation: 2009 FC 696

Vancouver, British Columbia, July 3, 2009

PRESENT: The Honourable Madam Justice Tremblay-Lamer

BETWEEN:

GURDIP SINGH MINHAS

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

INTRODUCTION

[1] This is an application for judicial review pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the Act), of a decision by a delegate of the Minister of Citizenship and Immigration Canada, an Immigration Officer stationed at the Canadian Consulate General in Chandigarh, India (the Officer), whereby the Applicant's application for a work permit was denied.

[2] The Applicant is a 44-year-old citizen and resident of India. He is married and has two children in India.

[3] After completing his grade 12 education, he joined the Indian army in 1985. He took voluntary retirement from the Indian army 16 years later, in 2001, at which time he took over the agricultural operations on his family's farm.

[4] The Applicant's parents have executed their wills in favour of him and have appointed him trustee of their property located in Punjab, India, since the Applicant in conjunction with his family are the only individuals who care for the family farm. He has real property and other assets worth over \$400,000 in Canadian funds.

[5] Between January and March 2008, he learned of and was selected for a two-year construction helper position available with a Canadian construction company in British Columbia, which would include general labour duties such as loading and unloading construction materials, piling salvaged materials, cleaning construction sites, and assisting the company's journeymen carpenters. The construction company indicated the only skill required to do the job is the physical ability to carry heavy loads.

[6] The Applicant applied to the Consulate General of Canada for a work permit on October 14, 2008, and received the Officer's written decision form letter dated October 15, 2008, refusing the Applicant's application for a work permit.

[7] The Officer's Computer Assisted Immigration Processing System (CAIPS) notes, which form part of the reasons for the Officer's decision, state the following with respect to the Applicant's work permit application:

PA is a 43 year old male with 3 sponsorable dependants.

PA has a mother, father, and sister in Canada.

PA took a pre-university exam in 1984.

PA has not had any further education/training upgrading since that time.

PA has not submitted any documents to show his work experience.

It appears that the PA has been a farmer his whole life.

A basic level of English is a must for day to day living in Canada. A complete lack of English could also be a deterrent for the health and safety of the PA and others. It appears from the documents submitted, that the PA does not have any language ability.

There is a high family incentive for the PA to remain in Canada past his date of authorized entry.

There is a high economic incentive for the PA to remain in Canada past his date of authorized entry.

[8] The Applicant submits that it was not reasonable for the Officer to find that the Applicant was unable to perform the work sought.

[9] I agree with the Applicant that he did provide documentation supporting his ability to do the construction helper work, especially considering the skill required is the physical ability to carry heavy loads.

[10] Based on the evidence before the Officer addressing the ability of the Applicant to perform the work, it was not accurate to state that the Applicant had not submitted any documents to show his work experience.

[11] With respect to the Applicant's ability to perform the work of a construction helper based on English language ability, the only reference to English language skills before the Officer was the Applicant's own affidavit in which he attested that his intended employer informed him that knowledge of the English language is not necessary to the job, and that the Applicant can perform the job without English language skills. There was no evidence before the Officer addressing the Applicant's level of English language abilities; thus it was not reasonable to conclude, based on his English language ability, that he could not perform the work of a construction helper.

[12] The Applicant further submits that he had provided financial documentation, fixed deposit receipts, and valuation reports for his house and farmland, and the information that he is married and has two children. I agree with the Applicant that this evidence ought to have allowed the Officer to assess the Applicant's extensive establishment in and ties to India.

[13] In addition, while higher salary in Canada is alluded to with the remark "high economic incentive," no consideration is given to the difference in cost of living and living standard between Canada and India.

[14] As identified by the Applicant and argued in *Li v. Canada (Citizenship and Immigration)*, [2008] F.C.J. No. 1625, 2008 FC 1284 (F.C.) at paragraph 24, difference in salaries between India and Canada may indicate incentive to stay only when the cost of living is also considered. Standard of living in the home country is also important to determining where the Applicant may be better off, as noted at paragraph 39 of *Ogunfowora v. Canada (Citizenship and Immigration)*, [2007] F.C.J. No. 637, 2007 FC 471 (F.C.).

[15] It was not reasonable for the Officer, without a stronger method of comparison such as cost of living between the Applicant's presumed low income in India and earnings in Canada, to presume overstay based on this factor especially since the evidence before the Officer indicated that the Applicant while in India had some assets to his name.

[16] Further, while economic incentive to stay in Canada is a reasonable consideration on the part of the Officer, the majority of applicants would have some economic incentive to come work in Canada, and this incentive therefore cannot so easily correlate with overstay since it is inconsistent with the work permit scheme. I fail to see how the Officer made a serious attempt at evaluating establishment and ties given the evidence before him.

[17] In sum, I find that the Officer did not take into account the material evidence submitted, resulting in a refusal of a work permit based on a misapprehension of the facts. Therefore, the decision is unreasonable.

[18] For the above reasons, this application for judicial review is allowed, the decision of the Officer dated October 15, 2008, refusing the Applicant's work permit is set aside, and the application for a work permit is referred to another officer for re-determination.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that this application for judicial review is allowed and this matter is referred to a different visa officer for re-determination.

“Danièle Tremblay-Lamer”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-5551-08

STYLE OF CAUSE: GURDIP SINGH MINHAS v. MCI

PLACE OF HEARING: Vancouver, BC

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**REASONS FOR JUDGMENT
AND JUDGMENT:** TREMBLAY-LAMER J.

DATED: July 3, 2009

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