Federal Court  Cour fédérale

Date: 200090522

Docket: IMM-2270-08

Citation: 2009 FC 536

BETWEEN:

JIHAD DOKALI MEGHARIEF

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT

LUTFY C.J.

[1] The applicant sought permanent residence in Canada under the skilled worker category. The immigration officer was not satisfied, absent verifiable third party documentation, that the applicant's statements concerning the positions he held in family-owned corporations established that the businesses were in fact operational and that the applicant performed the role he asserted. In my view, it was open to the immigration officer on the material made available to her to conclude that the applicant did not meet the requirements of s. 75(2) of the *Immigration and Refugee Protection Regulations*.

[2] During the hearing in this application for judicial review, the principal issue was whether the immigration officer's failure to disclose extrinsic evidence to the applicant warranted this Court's intervention. Some background information is required.

[3] The applicant's brother also sought permanent residence under the skilled worker category. The two applications were filed simultaneously.

[4] According to counsel, the respondent's officials determined for administrative reasons to process the applicant's application from the Canadian consulate in Buffalo, New York and his brother's from the consulate in Detroit, Michigan.

[5] Both brothers were involved in the business of related family corporations. Their stated place of employment in Canada was from within the same premises in Mississauga, Ontario.

[6] On March 19, 2008, the immigration official in Detroit wrote to her colleague in the Buffalo consulate disclosing the negative impression she formed concerning the applicant's brother and advising that she had refused his application for permanent residence.

[7] The applicant's interview with the immigration officer took place on April 1, 2009. It is acknowledged that at least some days prior to his interview, the applicant knew of the refusal of his brother's application for permanent residence.

[8] I agree that the communication between the two immigration officers processing different files should have been brought to the applicant's attention prior to or during his interview. In the circumstances of this case, however, I am satisfied that this error is not one which justifies the intervention of the Court.

[9] First, the applicant knew prior to his interview that his brother, with whom he was closely associated, had received a negative decision concerning his application for permanent residence. As both brothers were purportedly engaged in related business activities, the applicant should have known that his own request for permanent residence may well be in jeopardy.

[10] Second, the applicant acknowledged during his interview that he was aware that his brother's separate application for a temporary work permit had also been refused some time previously. I accept the immigration officer's evidence on this issue.

[11] The two refusals concerning the brother's file should have constituted sufficient notice to the applicant to better the documentary evidence to support his status as a skilled worker. It is trite law that applicants have the burden of establishing the merits of their request for permanent residence. This applicant's burden is not diminished because the respondent's letter of January 28, 2008, confirming the interview of April 1, 2008, did not request the production of any additional documents under the heading "other".

[12] The information in the applicant's affidavit evidence of March 11, 2009, concerning the refusal to extend his work permit in November 2008 and the issuance of a new work permit in January 2009, is of little assistance in this proceeding where the issue is his eligibility as a skilled worker under s. 75(2) of the Regulations. This evidence is not in the certified tribunal record and arguably should not have been filed in this proceeding. The same is true of Exhibit 2 of his affidavit of September 10, 2008. Exhibit 2 is his letter of October 17, 2005 for an inter-corporate executive transferee work permit, which is other information not placed before the immigration officer in this case.

[13] In summary, it was wrong for the visa officer in Buffalo not to disclose to the applicant that she had received information from her colleague in Detroit concerning the applicant's brother. However, I am satisfied that the applicant knew of the negative outcome of his brother's application for a temporary work permit and his attempt to qualify as a skilled worker. This was sufficient, in my view, for the applicant to be better prepared for his own interview. I endorse the immigration officer's statement in her affidavit:

> This Applicant was highly educated, had had family members successfully complete applications for permanent residence, and confirmed that he knew the reason why his brother's temporary work permit was refused. Despite these facts, he chose not to come to his interview with documentation to support his work experience.

[14] For theses reasons, this application for judicial review will be dismissed. As he requested, the applicant will have five days from the date of these reasons to suggest the certification of a

serious question. The respondent may file submissions in response within a further period of five days.

"Allan Lutfy"
Chief Justice

Federal Court  Cour fédérale

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-2270-08
STYLE OF CAUSE:	JIHAD DOKALI MEGHARIEF v. MCI
PLACE OF HEARING:	Toronto, Ontario
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