Federal Court  Cour fédérale

Date: 20100423

Docket: IMM-3475-09

Citation: 2010 FC 442

Ottawa, Ontario, April 23, 2010

PRESENT: The Honourable Madam Justice Tremblay-Lamer

BETWEEN:

BALJINDER KAUR
ARVINDER SINGH
PARAMJIT KAUR

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application by Baljinder Kaur (the Applicant), pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27, (*IRPA*) for judicial review of a decision dated June 15, 2009, by the Second Secretary (Immigration) of the Canadian High Commission in Delhi (the visa officer), denying the Applicant's application for a skilled worker visa.

[2] The Applicant is a citizen of India. She applied for permanent residence in Canada as a skilled worker. She indicated that she was a cook, and had been employed in this trade for three and a half years.

[3] In support of her application she provided a copy of a letter from an employer, stating that she was a good worker and had learned to cook many types of Indian meals. She also provided a brief description of her duties on a form submitted with her application.

[4] The visa officer found these supporting documents to be insufficient. Therefore, he denied her application.

[5] The visa officer never contacted the Applicant or her employer regarding his concerns. The Applicant only learned of them upon receiving the letter informing her of the rejection of her application.

[6] The sole issue raised by the Applicant relates to procedural fairness. If the visa officer breached his duty of fairness, no deference will be owed to his decision, and it will be set aside, because "[i]t is for the courts … to provide the legal answer to procedural fairness questions" (*C.U.P.E. v. Ontario (Minister of Labour)*, 2003 SCC 29, [2003] 1 S.C.R. 539, at par. 100).

[7] The Applicant submits that she provided a "detailed letter" stating that she performed the duties of a cook for three years and a half in India. The visa officer's concern that it was insufficient

could easily have been addressed had he notified the Applicant. Indeed, the officer had a duty to do so. While the Applicant recognizes that she must present sufficient evidence in support of her claim, she argues that she did in fact submit sufficient *prima facie* evidence to impose on the visa officer a duty to address any outstanding concerns with her. She adds that she could not have anticipated the visa officer's doubts as to the sufficiency of her supporting materials.

[8] The Minister submits that the Applicant's employer's letter was not detailed and indeed failed to include information, such as the Applicant's responsibilities at her workplace and her remuneration, which she was required to provide. Furthermore, it does not corroborate the list of duties submitted by the Applicant with her application.

[9] The Applicant bears, and failed to discharge, the onus of submitting sufficient evidence in support of her application. Fairness did not require the visa officer to advise the Applicant of the inadequacy of her materials. The Applicant was not entitled to an interview to correct her own failings.

[10] I agree with the Minister. The Applicant failed to discharge her burden to present adequate evidence in support of her obligation, and the visa officer had no duty to assist her in doing so. As Justice Marshall Rothstein, then of the Federal Court, Trial Division, held in *Lam v. Canada (Minister of Citizenship and Immigration)*, [1998] F.C.J. No. 1239 (F.C.T.D.) at par. 3-4, the argument that an applicant might present *prima facie* evidence which, though insufficient to support his or her application will nevertheless trigger a duty to seek clarifications of this evidence :

> gives an advantage to applicants for permanent residence who file ambiguous applications. This cannot be correct.
> A visa officer may inquire further if he or she considers a further enquiry is warranted. Obviously, a visa officer cannot be wilfully blind in assessing an application and must act in good faith. However, there is no general obligation on a visa officer to make further inquiries when an application is ambiguous. The onus is on an applicant to file a clear application together with such supporting documentation as he or she considers advisable. The onus does not shift to the visa officer and there is no entitlement to a personal interview if the application is ambiguous or supporting material is not included.

[11] It is true that in some cases a visa officer will indeed have a duty to put his concerns to an applicant. However, having reviewed the cases where such a duty was found to exist, justice Richard Mosley explained, in *Hassani* v. *Canada (Minister of Citizenship and Immigration)* 2006 FC 1283, [2007] 3 F.C.R. 501, at par. 24, that "it is clear that where a concern arises directly from the requirements of the legislation or related regulations, a visa officer will not be under a duty to provide an opportunity for the Applicant to address his or her concerns." (See also, e.g., *Roberts v. Canada (Citizenship and Immigration)*, 2009 FC 518 at par. 20 and the cases cited there for applications of that principle).

[12] The question whether an applicant has the relevant experience as required by the regulations and is thus qualified for the trade or profession in which he or she claims to be a skilled worker is "based directly on the requirements of the legislation and regulations" (*Hassani*, above, at par. 26). Therefore it was up to the Applicant to submit sufficient evidence on this question, and the visa officer was not under a duty to apprise her of his concerns.

[13] Besides, as the Minister points out, the Applicant was provided with a checklist to help her prepare her application. That checklist stipulated that letters of reference from employers "must include," inter alia, the Applicant's "main responsibilities in each position" which she held and her "total annual salary plus benefits." Yet the only independent evidence submitted was a letter by a former employer which failed to provide the required information.

[14] The visa officer could be reasonably concerned at the utter lack of detail in the Applicant's employer's letter. It did not help that the Applicant's own description of her duties appeared to be copied from the National Occupational Classification. Thus, it was open to the visa officer, on the basis of the scant evidence before him, to find that the Applicant had not established that she had sufficient work experience in her stated occupation, and to reject her application on that basis.

[15] For these reasons, the application for judicial review is dismissed.

JUDGMENT

THIS COURT ORDERS that:

For these reasons, the application for judicial review is dismissed.

"Danièle Tremblay-Lamer"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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