Federal Court Cour fédérale

Date: 20120328

Docket: IMM-4293-11

Citation: 2012 FC 360

Ottawa, Ontario, March 28, 2012

PRESENT: The Honourable Mr. Justice Rennie

BETWEEN:

RANJIT SINGH

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The applicant seeks judicial review of the decision of a visa officer (the Officer) at the High Commission of Canada in New Delhi, India refusing his application for a temporary work permit as a skilled worker. The decision was rendered on May 18, 2011. For the reasons that follow, the application is dismissed.

Facts

[2] The applicant seeks to work full-time as a kitchen helper at the Hotel North in Goose Bay, Labrador. He submitted a letter from his potential employer and a positive labour market opinion. The applicant also provided:

a. A supporting letter from his former employer in the Indian army indicating that the applicant had sufficient knowledge of English to work as a kitchen helper;

b. A supporting letter from his current employer confirming that the applicant understood English sufficiently well to perform his duties as a kitchen helper in Canada; and

c. A supporting letter from the applicant's prospective employer in Canada indicating that she had personally spoken to the applicant and found his language abilities to be sufficient.

[3] The applicant also noted the following facts regarding his ties to India:

a. He has no close family ties in Canada;

b. His wife, two children, parents and sibling all reside in India;

c. He and his spouse have a combined CND$55,718 in assets in India;

d. He will receive half of his father's estate upon his father's death, totalling approximately CND$53,000;

e. His current employer had written a letter confirming that he would be able to return to his job when he came back from Canada.

[4] The Officer rejected the applicant's application on the basis of two main factors:

a. He found the applicant had insufficient language skills; and

b. He found that the applicant would have no incentive to return to India given the disparity in earning power between India and Canada.

[5] The Global Case Management System (GCMS) notes in full read as follows:

> MARRIED MALE WIFE/2 CHILDREN IN INDIA NO PREVIOUS TRAVEL;
> LMO TO WORK IN CANADA AS COOK IN-NEWFOUNDLAND FOR 10.25 PER HOUR BASED ON 40 HOUR WEEK SEE PREVIOUS NOTES FOR EMPLOYMENT HISTORY. EARNS 3500 INR/MONTH (77.OOCAD) WOULD BE EARNING OVER 21K IN CANADA. GIVEN THE GREAT DISPARITY IN PA'S EARNING POWER IN CANADA VERSUS IN INDIA, AS WELL AS THE BETTER WORKING CONDITIONS AVAILABLE IN CANADA, IT APPEARS THAT PA WOULD HAVE LITTLE FINANCIAL INCENTIVE TO RETURN TO INDIA IF ADMITTED TO CANADA. HAS DECLARED THAT HE WILL INHERIT ANCESTRAL LAND. HAS LIFE INSURANCE. JEWELLERY AND CASH WORTH 9850001NR (APPROX 21800.OOCAD) LANGUAGE REQUIREMENT- ENGLISH WRITTEN AND ORAL. NO EVIDENCE SUBMITTED THAT CLIENT CAN SPEAK OR WRITE. PER SUBMISSION DATED 06MAY2011 COUNSEL STATES THAT PROSPECTIVE EMPLOYER HAS SPOKEN TO APPLICANT AND FOUND HIS ABILITIES ON BOTH SPOKEN AND WRITTEN ENGLISH SUFFICIENT. THE ONUS IS ON THE APPLICANT TO PROVE THAT HE HAS THE ABILITY HE CLAIMS. IT IS SELF-EVIDENT THAT MODERATE LANGUAGE ABILITY IS AN INHERENT OUALIFICATION FOR WORKING IN CANADA. WHILE THE JOB ITSELF MAY NOT REOUIRE THE APPLICANT TO HAVE ANY LANGUAGE ABILITY, LIVING IN CANADA DOES. A DEMONSTRATED MODERATE LANGUAGE ABILITY WILL NOT ONLY ALLOW THE APPLICANT TO BETTER UNDERSTAND THEIR DUTIES BY ALLOWING THEM TO COMMUNICATE WITH EMPLOYERS OR CO-WORKERS, BUT IT WILL ALSO PROTECT THE APPLICANTS. THEY WILL BE ABLE TO

> COMMUNICATE BETTER WITH AUTHORITIES AND UNDERSTAND MORE FULLY ISSUES OF WORKPLACE SAFETY (SAFE PRACTICES AT WORK. EMERGENCY INSTRUCTIONS. ETC.). AS IT WILL BE NECESSARY THAT A WORKER UNDERSTAND AMONG OTHER THINGS THEIR RIGHTS. MORE THAN A BASIC UNDERSTANDING IS NEEDED. WITHOUT LANGUAGE ABILITY THE APPLICANT MAY BE MORE VULNERABLE TO ABUSE FROM THE EMPLOYER OR OTHER PARTIES BASED ON DOCS SUBMITTED, I AM NOT SATISFIED THAT APPLICANT WOULD NOT STAY/WORK ILLEGALLY IN CANADA TO SUPPORT FAMILY IN INDIA. I AM NOT SATISFIED THAT HE HAS HAS [sic] DEMONSTRATED THAT HE MEETS THE BURDEN OF R200(1)B) REFUSED

[6] The decision letter sent to the applicant noted the reasons for refusal as being:

a. That the applicant was not able to demonstrate that he adequately met the job requirements of his prospective employment; and

b. That the applicant had not satisfied the decision-maker that he would leave Canada at the end of his visa period (taking into account the applicant's travel history, personal assets and financial status).

Issues and Standard of Review

[7] The applicant's principal contention is that the decision that the applicant would not leave Canada at the end of his proposed period of stay was unreasonable and that the Officer made a material error of fact in rejecting the application on the basis that the applicant had provided no evidence to demonstrate that he could speak or write English.

[8] Decisions of visa officers are entitled to considerable deference and as such will be reviewed on a standard of reasonableness: *Liu v Canada (Minister of Citizenship and Immigration)*, 2001 FCT 751, 208 FTR 99 (TD) at para 26; *Benammar c Canada (Minister of Citizenship and*

Immigration), 2001 FCT 1176, 112 ACWS (3d) 137 (TD), at para 27; *Reznitski v Canada (Minister of Citizenship and Immigration)*, 2011 FC 93 at para 11.

Analysis

[9] Two decisions frame the analysis of this decision: *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 and *Chhetri v Canada*, 2011 FC 872.

[10] In *Newfoundland and Labrador Nurses' Union*, the Supreme Court of Canada clarified the approach to be taken in the judicial review of the reasoning behind a decision. The Court noted that every reason, argument or other detail need not be contained in the reasons, nor is a "decision-maker… required to make an explicit finding on each constituent element… leading to its final conclusion." The reviewing court must simply be able to understand why the decision was made. The reasons are to "be read together with the outcome and serve the purpose of showing whether the result falls within a range of possible outcomes".

[11] The issues raised by this case are similar to those that were before me in *Chhetri*. In that case, I noted, at para 9:

> The combined effect of section 11(1) of the *Immigration and Refugee Protection Act*, 2001, c. 27 (*IRPA*) and Division 3 of Part 11 of the *Immigration and Refugee Protection Regulations* (SOR/2002-227) (the *Regulations*) is to require visa officers to be satisfied that the individuals are not inadmissible and that they will leave Canada on expiry of their visa. It is often over-looked that it must be "established" that the foreign national will leave at the end of their visa. The combined effect of the *IRPA* and the *Regulations* does not leave much room for officers to give the applicant the benefit of the

> doubt; rather there is a positive obligation that it be *established* that the foreign national will leave before the visa be issued.

[12] Similarly, the applicant must establish that he meets the requirements of the job for which he seeks to come to Canada. In this case, the applicant did not meet his burden of establishing that he met the language requirements of the job description. While there was evidence regarding his language ability, including letters from the applicant's superior, an Indian army commander, and his employer at the hotel where he worked, these letters did not confirm an ability to *speak* or *write,* but rather only an ability to understand English.

[13] The Officer's reasons do not explicitly state that the letters are deficient because they do not mention the applicant's written or oral English skills. However, it would be contrary to the guidance of the Supreme Court in *Newfoundland and Labrador Nurses' Union* to require such a statement in the reasons. The Officer considered the letters, but concluded that the applicant's English ability was insufficient to grant the work permit. Based on a review of the record, this conclusion was reasonably open to the Officer, and therefore the application must be dismissed.

[14] I reach this conclusion despite my agreement with the applicant that the Officer erred by relying solely on the disparity in earning potential between India and Canada to conclude that the applicant was not a *bona fide* temporary worker. As I previously stated in *Chhetri,* disparity in earning potential cannot be the sole reason for denying the issuance of a temporary employment visa. It is a necessary component of the decision, but is not the only part of the analysis.

[15] In this case, while the refusal letter also notes a concern regarding the applicant's travel history, that concern is found nowhere in the GCMS notes. The only consideration mentioned in the analysis of whether the applicant was a *bona fide* temporary worker was the relative economic advantage the applicant would enjoy from working in Canada. However, because the Officer reasonably found the applicant did not meet the necessary language requirements, this conclusion does not alter the outcome of the application.

[16] The application for judicial review is dismissed.

[17] No question for certification has been proposed and none arises.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review be and is hereby dismissed. No question for certification has been proposed and none arises.

"Donald J. Rennie"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-4293-11
STYLE OF CAUSE:	RANJIT SINGH v. THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	Toronto
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