

Federal Court



Cour fédérale

**Date: 20120606**

**Docket: IMM-4657-11**

**Citation: 2012 FC 700**

**Ottawa, Ontario, June 6, 2012**

**PRESENT: The Honourable Mr. Justice O'Reilly**

**BETWEEN:**

**SARABJIT SINGH SEKHON**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

**I. Overview**

[1] In 2009, Mr. Sarabjit Singh Sekhon, a citizen of India, sought permanent residence in Canada as a skilled worker. He had been working at a school in Brampton teaching Punjabi on a temporary work permit, and had an offer for continued employment. An immigration officer in Buffalo concluded that Mr. Sekhon did not meet the required threshold of 67 points.

[2] When the officer received Mr. Sekhon's application, she asked for additional information, including tax documents, financial statements for his employer, and pay slips. Mr. Sekhon supplied the requested information and an updated job offer. However, the officer was not satisfied that the offer was genuine or that Mr. Sekhon's employer was conducting business at the address provided. Mr. Sekhon then provided additional documents – letters from the employer, the employer's accountant and parents at the school, as well as some photographs. Still, the officer's concerns remained and she rejected his application.

[3] Mr. Sekhon argues that the officer treated him unfairly by relying on concerns she did not disclose to him. In addition, Mr. Sekhon submits that the officer's decision was unreasonable because she discounted the documents on which his application relied without justification.

[4] I agree with Mr. Sekhon that he was treated unfairly in the circumstances and will grant his application for judicial review on that basis. I need not, therefore, consider whether the officer's decision was unreasonable.

[5] Accordingly, the sole issue is whether Mr. Sekhon was treated unfairly.

## II. The Officer's Decision

[6] The officer granted Mr. Sekhon points for his work experience, education and English language skills. However, the officer gave him no points for his arranged employment because she was not satisfied that his job offer was genuine. The employer's documents did not show Mr.

Sekhon was on the payroll until October 2010, after he was asked to provide proof of employment. Further, his tax statement showed an annual income of \$33,523, which amounted to an average of 24 hours a week – not a full-time work load.

[7] After the officer raised these concerns, Mr. Sekhon provided documentary evidence showing that his income was reduced because of time off for illness and renovations at the school, and that payroll deductions had not been made for him because of an accounting error. He also provided corroborative letters from parents and photographs of the school.

[8] However, the officer was not satisfied with this evidence. She concluded that the accountant's explanations were implausible, and that the evidence did not prove that parents had paid tuition or that students had received instruction in a real classroom. She noted that the school's address was in a residential neighbourhood.

### III. Did the officer treat Mr. Sekhon unfairly?

[9] The Minister argues that the officer gave Mr. Sekhon a chance to respond to her concerns about the genuineness of his job offer. Accordingly, she treated him fairly. I disagree.

[10] In her correspondence with Mr. Sekhon, the officer stated that she was not satisfied that the offer of employment was genuine or that the school was actively conducting business at the address provided. Mr. Sekhon provided further documents but these did not satisfy the officer's concerns.

[11] However, from the officer's notes, it appears that the officer had more specific concerns of which Mr. Sekhon would have been unaware. For example, the officer was sceptical about the location of the school and its ability to pay Mr. Sekhon's salary. She was also concerned about the school's late tax remittances, the lack of a business registration for the school, and the absence of a further updated job offer.

[12] Mr. Sekhon's submissions were directed to the officer's concerns about whether the school was carrying on business at the stated address. The parents' letters and photographs were aimed at meeting those concerns, and further documentation was provided regarding the school's finances. But Mr. Sekhon could not have met the officer's other unstated concerns because he was not made aware of them.

[13] Accordingly, I find that Mr. Sekhon was not given a fair opportunity to meet the officer's concerns about the shortcomings of his application.

#### IV. Conclusion and Disposition

[14] The officer did not give Mr. Sekhon a chance to meet her real concerns about his application. Therefore, he was not treated fairly. Accordingly, I must allow this application for judicial review and order a reassessment of Mr. Sekhon's application by another officer. Neither party proposed a question of general importance for me to certify, and none is stated.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that:**

1. The application for judicial review is allowed. The matter is referred back to another officer for a reassessment.
2. No question of general importance is stated.

“James W. O’Reilly”

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Judge

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

**DOCKET:** IMM-4657-11

**STYLE OF CAUSE:** SARABJIT SINGH SEKHON  
v  
MCI

**PLACE OF HEARING:** Toronto, Ontario

**DATE OF HEARING:** February 14, 2012

**REASONS FOR JUDGMENT  
AND JUDGMENT:** O'REILLY J.

**DATED:** June 6, 2012

**APPEARANCES:**

Krassina Kostadinov

FOR THE APPLICANT

Kristina Dragaitis

FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Waldman & Associates  
Barristers & Solicitors  
Toronto, Ontario

FOR THE APPLICANT

Myles J. Kirvan  
Deputy Attorney General of Canada  
Toronto, Ontario

FOR THE RESPONDENT