

Federal Court



Cour fédérale

Date: 20140502

Docket: IMM-346-12

Citation: 2014 FC 410

Ottawa, Ontario, May 2, 2014

PRESENT: The Honourable Mr. Justice Manson

BETWEEN:

GURPREET KAUR VIRHIA

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review of the decision of an Immigration Officer [the Officer] from the High Commission of Canada, in New Delhi, India, pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the Act]. The Officer denied the Applicant's claim for permanent residence in Canada under the Federal Skilled Worker class.

I. Issues

[2] The issues in the present application are as follows:

A. Was the Officer's decision reasonable?

B. Did the Officer breach the duty of procedural fairness owed to the Applicant?

II. Background

[3] The Applicant is a citizen of India. On August 17, 2010, she applied for permanent residence in Canada under the Federal Skilled Worker class.

[4] In her application, the Applicant claimed that her accompanying spouse, Jagdeep Sing Khangura, has an aunt or uncle who resides in Canada. In support of this claim, her application materials contain various documents relating to an individual named either Rajwant Singh or Rajwant Khangura. In particular, the Applicant submitted a photocopy of an Indian birth certificate for Rajwant Singh which states his date of birth as May 12, 1961, and a photocopy of a Canadian passport for Rajwant Khangura which states his date of birth as May 16, 1961.

[5] On May 22, 2012, the Officer wrote to the Applicant, raising concerns about her application. In particular, the Officer stated:

In assessing the eligibility you claim on the application that your spouse has an aunt or uncle in Canada. Your documentation shows that your spouse's father is Lakhvir Singh born April 2, 1959, and that he is the son of Gurbachan Singh and Surjit Kaur. You also included a school certificate for a Rajwant Singh born on May 12, 1961, and a copy of the Biodata page of a Canadian passport for a Rajwant Khangura born May 16, 1961. Based on the documents

submitted, I am not satisfied that Rajwant Singh and Rajwant Khangura, who have different dates of birth, are one and the same person.

[6] The Officer gave the Applicant 30 days to address these concerns in advance of a final decision.

[7] On June 21, 2012, the Applicant replied to the Officer's letter. This reply included an unsworn declaration from Rajwant Khangura. Included in this declaration it is stated:

-Date of Birth on my school leaving certificate and Indian Passport are same i.e.12/05/1961.

-There is a mistake of date of Birth on my Passport printed as 16 MAY/Mai 61. This is a clerical mistake from the Passport authority.

-Rajwant Singh and Rajwant Khangura are one and same person.

[8] On October 3, 2012, the Officer denied the Applicant's application for permanent residency under the Federal Skilled Worker category. In so doing, the Officer found that the Applicant had no relative in Canada, and awarded her no points under this category. In the decision, the Officer noted:

I have reviewed the response you have provided to our letter dated 22 May 2012, but the explanation that a clerical error was made on your spouse's relative's date of birth on his Canadian passport, does not appear reasonable, given the time he has spent in Canada, without asking for a correction to be made, and the fact that his record does not contain any note of this error.

[9] The Global Case Management System notes pertaining to the Officer's decision provides further insight into the Officer's reasoning on this issue:

Reply received that Rajwant Singh and Rajwant Khangura are one and the same person and that the DOB on Canadian PPT is a clerical error. Yet, when searched on Foss, this shown DOB of 16 May 1961 has been consistent since the shown entry into Canada in 1988 and is in line with shown Marriage (...). It does not appear reasonable that this person has spent more than 20 years in Canada and never asked to correct this "clerical mistake" in something as essential as his DOB. I am therefore not satisfied that Rajwant Singh (sic) DOB 12 May 1961 and Rajwant Khangura DOB 16 May 1961 are the same person, and not satisfied that spouse of PA has a qualifying relative in Canada.

[10] Because the Applicant received no adaptability points for having a relative in Canada, and her application otherwise failed to meet the points threshold for being considered an "Instructor" in the Federal Skilled Worker category, the Applicant's application for permanent residency was rejected.

III. Standard of Review

[11] The standard of review for the first issue is reasonableness (*Dunsmuir v New Brunswick*, 2008 SCC 9 at paras 45, 47-48, 53; *Roohi v Canada (Minister of Citizenship and Immigration)*, 2008 FC 1408 at paras 11-13, 33). The standard of review for the second issue is that of correctness (*Dunsmuir* at para 129).

IV. Analysis

[12] The Applicant asserts that by not accepting the Applicant's explanation in her letter of June 21, 2012, the Officer erred. Further, the Applicant argues that procedural fairness requires

the Officer to have given the Applicant an opportunity to discuss the credibility concerns that arose from the explanation provided in her June 21, 2012 letter.

[13] Notwithstanding the Applicant's arguments, the Officer noted the discrepancy in the birth dates in the evidence provided by the Applicant of her relative in Canada, and found that it was implausible that this mistake would remain uncorrected for such a long period of time. The Officer provided an opportunity for the Applicant to address this issue in the May 22, 2012 letter and was not satisfied with the explanation provided by the Applicant in her June 21, 2012 letter. The Officer was under no further obligation to solicit any additional explanations. As a result, the Officer was left unconvinced that the Applicant had a relative in Canada. This was a reasonable conclusion and it is not the role of the court to re-weigh the evidence which led to it.

JUDGMENT

THIS COURT'S JUDGMENT is that

1. This Application is dismissed;
2. No costs are awarded.

"Michael D. Manson"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-346-12

STYLE OF CAUSE: VIRHIA V MCI

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: APRIL 28, 2014

**REASONS FOR JUDGMENT
AND JUDGMENT:** MANSON J.

DATED: MAY 2, 2014

APPEARANCES:

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