

Federal Court



Cour fédérale

**Date: 20160907**

**Docket: IMM-2408-15**

**Citation: 2016 FC 1012**

**Ottawa, Ontario, September 7, 2016**

**PRESENT: The Honourable Mr. Justice Gleeson**

**BETWEEN:**

**JIGNABEN SHARADBHAI SHAH**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. Overview

[1] Ms. Shah is a citizen of India and a bookkeeper/accountant by profession. In September 2012, Ms. Shah submitted an application for permanent residence under the Federal Skilled Worker Class. In her application, Ms. Shah reported continuous employment with Hindustan Marble Private Limited [Hindustan Marble] from June 1992 until the submission of her application in 2012.

[1] Her application was considered by a Visa Officer [Officer] at the Canadian High Commission in New Delhi. The Officer undertook internet research and telephone verifications for the purpose of confirming Ms. Shah's reported employment. In making these calls the Officer did not speak to the employer, Mr. Arunkumar Thakur, identified in Ms. Shah's application despite having both a business and a cell phone contact number. Instead, the Officer spoke with the employer's son, Mr. Parikshit Arunkumar Thakur, the owner of the company Plenar Technologies. He advised the Officer that Ms. Shah joined his company in 2006 or 2007. The son also reported to the Officer that his father was a shareholder in Hindustan Marble and that he was involved in recruiting employees for Hindustan Marble in the past.

[2] Shortly after the verification calls, Ms. Shah provided the Officer with an affidavit sworn by the son stating that Ms. Shah was not his employee and any questions should be directed to his father.

[3] Almost one year later, in August 2014, Ms. Shah received a procedural fairness letter advising her that the employment verification calls had disclosed information that contradicted the information provided in her application.

[4] In response, Ms. Shah maintained that she had accurately reported her employment dates. The response included documentary evidence in the form of two letters from clients of Hindustan Marble, corporate documents and tax returns for Hindustan Marble, personnel tax returns and other documentation in support of her employment record.

[5] In April 2015, Ms. Shah's application was refused on the basis that she had misrepresented or withheld material facts related to her work experience and that the misrepresentation could have induced errors in the administration of the IRPA. The Officer: (1) discounted the client letters on the grounds that they were similar in structure suggesting the same person had generated the letters; (2) noted that while the son was not the employer he had claimed to know Ms. Shah well; and (3) rejected the remainder of the documentation provided in response to the procedural fairness letter on the basis that inauthentic documents are easily obtained in India.

[6] Ms. Shah seeks to quash the negative decision and have the matter returned for reconsideration by a different Officer. Ms. Shah argues that the decision is unreasonable in that the process undertaken to verify her employment was deeply flawed, and that the Officer unreasonably failed to consider third party documentation that corroborated her employment experience. She also argues that she was given inadequate notice of the Officer's concerns in the procedural fairness letter.

[7] I agree with Ms. Shah. The reasons do not reflect a transparent and intelligible line of reasoning in support of the ultimate conclusion of misrepresentation and that Ms. Shah does not have the work experience claimed. Ms. Shah also raises concerns relating to the sufficiency of the procedural fairness letter she was provided. However, the reasonableness of the Officer's decision is determinative and, as such, it is the only issue that I need to address in considering the present application.

## II. Preliminary Issue

[8] In support of her application, Ms. Shah included an affidavit sworn by Arunkumar Thakur, Ms. Shah's employer at Hindustan Marble. This affidavit was not before the Officer. The respondent submitted that this affidavit should not be admitted.

[9] As a general rule, the record placed before the Court in an application for judicial review is limited to the evidence that was before the original decision-maker (*Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22 at para 19 cited in *Mohamed v Canada (Minister of Citizenship and Immigration)*, 2015 FC 1379 at paras 18-20). In oral submissions, counsel for Ms. Shah argued that the affidavit falls within an exception to the general rule in that it responds to the alleged procedural fairness breach. Counsel also noted that the affidavit addresses what would at best be described as a peripheral matter.

[10] I have not considered this affidavit. I am not convinced it addresses an issue related to a breach of fairness as submitted by Ms. Shah's counsel, but even if it does, as noted above, the procedural fairness argument is not determinative of the outcome of this application.

## III. Standard of Review

[11] The issue engaged in this application involves a question of mixed fact and law and the exercise of discretion to which the reasonableness standard of review applies (*Taleb v Canada (Minister of Citizenship and Immigration)*, 2012 FC 384 at para 19).

IV. Analysis

[12] The respondent argues that the Officer reasonably concluded that Ms. Shah was inadmissible for misrepresentation. The Officer contacted the business number provided by Ms. Shah which was also registered to Plenar Technologies. Upon being advised that Arunkumar Thakur did not come to the office regularly, the respondent submits that it was not unreasonable for the Officer to contact his son who provided information that contradicted Ms. Shah's claims relating to her work experience. The respondent argues that the Officer reasonably preferred the evidence of the son over the documentary evidence submitted in response to the procedural fairness letter. I disagree.

[13] Ms. Shah clearly identified her employer in her application. She provided business contact numbers and a cell phone number for Arunkumar Thakur. The Computer Assisted Immigration Processing System [CAIPS] notes indicate that the Officer was advised, having contacted one of the business numbers, that Arunkumar Thakur "does not come into the office regularly". The Officer was not told that Arunkumar Thakur was unavailable or unreachable.

[14] For reasons that are not set out in the CAIPS notes the Officer then choose to contact Arunkumar Thakur's son on his cell phone. The Certified Tribunal Record [CTR] indicates that the Officer was aware that the son was not involved in Hindustan Marble but rather was the owner of Plenar Technologies. What is not evident from the CTR is why the Officer did not simply contact Arunkumar Thakur at the cell phone number Ms. Shah had provided. It was during this call with the son that the contradictory information was provided.

[15] It was reasonable for the Officer to have concerns as a result of the conversation with the son. The procedural fairness letter however was not sent until one year later. In the interim period, Ms. Shah had submitted an affidavit from the son where he stated that: (1) Ms. Shah was not his employee and (2) that questions should be directed to Arunkumar Thakur. The affidavit does not attempt to explain the information that was provided regarding Ms. Shah's employment. There is no indication in the CAIPS notes or in the procedural fairness letter that this affidavit was actively considered. It is clear that Arunkumar Thakur was not contacted.

[16] The failure to address the son's affidavit and, either contact Arunkumar Thakur or explain why he was not contacted, undermines the transparency and intelligibility of the decision (*Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, [1998] FCJ No 1425 at para 15). Ms. Shah had identified Arunkumar Thakur as her employer and the employment relationship was restated in the follow-up affidavit from Mr. Thakur's son. In light of the inconsistent employment history information provided to the Officer by Arunkumar Thakur's son the Officer had an obligation to either contact Arunkumar Thakur or set out the reasons for not doing so.

[17] It is also not apparent why the Officer preferred the evidence provided by the son in the verification phone call over the documentation advanced in response to the procedural fairness letter. The CAIPS notes state that "[t]he further documents submitted by the applicant do not overcome the concerns raised by the verification" and then notes that inauthentic documents are easily obtained and that verification will not address the concerns as the applicant has been

alerted to the possibility of telephone verifications and therefore verifying authorities may have been co-opted. The CAIPS notes provide nothing further by way of explanation.

[18] Justice Danièle Tremblay-Lamer considered a very similar explanation for rejecting documentary evidence in *Rong v Canada (Minister of Citizenship and Immigration)*, 2013 FC 364 at paras 22-33 [*Rong*]. Justice Tremblay-Lamer concludes in that case that the explanation was simply inadequate. I reach the same conclusion here.

[19] Unlike *Rong*, in this case the Officer did consider some of the documentation submitted by Ms. Shah, specifically the two client letters. However, as in *Rong*, the Officer advanced no explanation beyond the easy availability of inauthentic documents for preferring the evidence provided in the telephone verification over the other documentary evidence provided by Ms. Shah in response to the procedural fairness letter. The documents included corporate and personal tax returns corroborative of Ms. Shah's claimed work experience.

[20] In the circumstances, I agree with Ms. Shah when she states at paragraph 60 of her written submissions that the Officer appears to have concluded that she "... (a) ... falsified documents such as her income tax returns, Hindustan Marble's articles of incorporation, and her employment benefit documents, and (b)... colluded such that India's Income Tax Department, the employment benefits fund, etc. "have been co-opted to provide false verifications"". While such a conclusion might well have been open to the Officer, it would have required some active consideration of the documents. The easy availability of inauthentic documents cannot, in and of

itself, justify a failure on the part of the Officer to consider Ms. Shah's evidence (*Jiang v Canada (Minister of Citizenship and Immigration)*, 2014 FC 180 at para 16).

V. Conclusion

[21] For the reasons set out above I conclude that the decision lacks transparency and intelligibility. As such I am unable to conclude that the decision falls within the range of possible, acceptable outcomes defensible in respect of the facts and law (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47).

[22] The parties have not proposed a question for certification and none arises.



**JUDGMENT**

**THIS COURT'S JUDGMENT is that** the application is granted, the matter is returned for reconsideration by a different Officer. No question is certified.

"Patrick Gleeson"

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Judge

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

**DOCKET:** IMM-2408-15

**STYLE OF CAUSE:** JIGNABEN SHARADBHAI SHAH v THE MINISTER  
OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** AUGUST 29, 2016

**JUDGMENT AND REASONS:** GLEESON J.

**DATED:** SEPTEMBER 7, 2016

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