

Federal Court



Cour fédérale

Date: 20170623

Docket: IMM-5232-16

Citation: 2017 FC 618

St. John's, Newfoundland and Labrador, June 23, 2017

PRESENT: The Honourable Madam Justice Heneghan

BETWEEN:

SHIKHA PUNIANI

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] Ms. Shikha Puniani (the “Applicant”) seeks judicial review of the decision of the Immigration and Refugee Board, Immigration Appeal Division (the “IAD”) dismissing her appeal from the decision of an Immigration Officer, finding that she had failed to respect the residency requirements for permanent residency. The Applicant admitted that she did not meet the minimum requirement of days spent in Canada and made her appeal on the basis of humanitarian and compassionate (“H & C”) grounds.

[2] The Applicant is a citizen of India. She came to Canada in June 2008. She applied to Ryerson University to pursue a program of study in nutrition and dietetics. She was not accepted into that program and decided to return to India to complete her studies for a Bachelor's degree in nutrition.

[3] Following completion of her Bachelor's studies in India in 2010, the Applicant applied to several Canadian educational institutions to pursue a Master's degree in nutrition. She was not accepted since those institutions required a minimum 4 year degree and the Applicant held a 3 year degree. She decided to take her graduate courses in India.

[4] The Applicant completed her Master's degree in India and returned to Canada in July 2012. She worked at Tim Horton's for 6 months in 2013 and went back to India in May 2014. She stayed there for 6 months, participating in an internship which ended in October 2014. Her application for a permanent resident travel document was denied but a Permanent Resident card, valid for one year, was issued to her.

[5] The Applicant received that card from her brother in November 2014 and re-entered Canada in December 2014. She began working at a Real Canadian Superstore in March 2015.

[6] The Applicant applied for a permanent resident travel document to return to Canada. Her application was refused by an Immigration Officer in New Delhi on June 2, 2014. In appealing to the IAD, the Applicant relied on H & C considerations, including the Applicant's establishment in Canada and her continuing intention to live in Canada.

[7] The IAD determined that the Applicant had failed to show significant establishment in Canada or a reasonable effort to return to Canada at the earliest opportunity.

[8] The Applicant now argues that the IAD fettered its discretion by focusing solely on the fact that the Applicant had spent only 629 days in Canada. She also submits that the IAD ignored the evidence as to why she was not accepted at Ryerson University, leading to an unreasonable conclusion as to why she returned to India to continue her studies.

[9] Finally, the Applicant argues that the IAD unreasonably limited consideration of her establishment in Canada by focussing on the low paying jobs she had taken, without considering all the evidence of her social and family ties in Canada.

[10] The Minister of Citizenship and Immigration (the “Respondent”) submits that the IAD did not fetter its discretion and reasonably considered the evidence submitted. It argues that the decision meets the standard of reasonableness.

[11] The decision of the IAD, on its merits, involves weighing of evidence and is reviewable on the standard of reasonableness; see the decision in *Canada (Minister of Citizenship and Immigration) v. Khosa*, [2009] 1 S.C.R. 339 at paragraph 58.

[12] According to the decision in *Dunsmuir v. New Brunswick*, [2008] 1 S.C.R. 190 at paragraph 47, the standard of reasonableness requires that the decision be justifiable, intelligible and transparent, and fall within a range of acceptable outcomes.

[13] I see no merit in the arguments about fettering of discretion. The IAD considered relevant factors including the length of the Applicant's absence from Canada and her explanation for that absence. The comment about the "generosity" of the statutory requirement for a minimum presence in Canada of 730 days was gratuitous and unnecessary but standing alone, does not support a finding that the IAD improperly fettered its discretion.

[14] The IAD reasonably considered the Applicant's personal circumstances in Canada, that is her past and current employment and whether she would suffer hardship if required to leave Canada.

[15] The Applicant herself testified that she would not suffer hardship if she had to return to India.

[16] Overall, the decision meets the standard of reasonableness as set out in *Dunsmuir, supra*. No reviewable error has been shown.

[17] In the result, the application for judicial review is dismissed, there is no question for certification arising.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed,
there is no question for certification arising.

"E. Heneghan"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-5232-16

STYLE OF CAUSE: SHIKHA PUNIANI v. MCI

PLACE OF HEARING: TORONTO

DATE OF HEARING: MAY 29, 2017

JUDGMENT AND REASONS: HENEGHAN J.

DATED: JUNE 23, 2017

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