Federal Court  Cour fédérale

Date: 20180125

Dockets: IMM-2117-17
IMM-2118-17
IMM-2119-17

Citation: 2018 FC 72

Ottawa, Ontario, January 25, 2018

PRESENT: The Honourable Mr. Justice Gleeson

IMM-2117-17

BETWEEN:

KAMALPREET SINGH

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

IMM-2118-17

BETWEEN

GURJIT SINGH GILL

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

IMM-2119-17

BETWEEN

AMRIT PAL SINGH GILL

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] This matter involves three Applications for permanent residency under the Canadian Experience Class [CEC]. Each Application was refused. The refusal decisions were all dated April 27, 2017 and rendered by the same Immigration Officer [Officer]. The applicants have filed separate Applications for Leave and for Judicial Review (IMM-2117-17, IMM-2118-17, and IMM-2119-17). The three separate Applications were consolidated under docket number IMM-2119-17 by order of Justice Susan Elliot, dated July 13, 2017.

[2] In considering the Applications the Officer concluded that the Labour Market Impact Assessments [LMIAs] submitted in support of each of the three Applications were fraudulent and may have led to incorrect decisions. The Officer found that the applicants did not meet the

requirements of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] and *Immigration and Refugee Protection Regulations*, SOR/2002-227, and refused their Applications. The reasonableness of this conclusion is not disputed.

[3] The Officer further concluded that as a result of the misrepresentations and the operation of paragraph 40(2)(a) of the IRPA the applicants were inadmissible to Canada for five years. It is this determination that the applicants ask the Court to review. In seeking judicial review the applicants assert that the Officer breached their procedural fairness rights, ignored, misapprehended or misunderstood evidence and reached an unreasonable conclusion based on the evidence in light of the consequences.

[4] Although there are some factual differences between the three Applications, these differences do not impact upon the issues raised or the analysis undertaken in addressing the Applications.

[5] For the reasons set out below the Applications are denied. There was no breach of procedural fairness in the consideration of the Applications. Evidence was not, in my opinion, ignored, misapprehended or misunderstood, and the decision reached was reasonably available to the Officer.

II. Background

[6] The applicants, Amrit Pal Singh Gill, Gurjit Singh Gill and Kamalpreet Singh are Indian citizens. They came to Canada to study. All three attended Algonquin College and, after

completing the Electromechanical Technician – Robotics Technician program, remained in Canada on post-graduation work permits.

[7] The applicants, having entered their names into the pool for permanent resident status in Canada as members of the CEC, all submitted LMIAs along with job offers as hotel managers at the Howard Johnson Inn in Yorkton, Saskatchewan. Without these LMIA-supported job offers the applicants would not have been invited to apply for permanent residence because they did not meet the minimum threshold requirements.

[8] The LMIAs and job offers were obtained from an unlicensed immigration representative, Karnail Singh Ghadial. The applicants had retained Mr Ghadial and each had agreed to pay him, in installments, $30,000 for a LMIA and job offer.

[9] Procedural fairness letters [PFL] were sent to each applicant advising that the LMIAs were fraudulent and allowing them 30 days to provide further information for consideration by the Officer. In response, the applicants retained a criminal lawyer and filed complaints against Mr. Ghadial with the Toronto Police Service [TPS]. They also retained immigration counsel to represent them regarding their CEC applications. They made submissions to the respondent in December 2016 advising of the criminal complaints against Mr. Ghadial, and providing contact information for the TPS officer they had spoken to.

[10] After reviewing the material provided in response to the PFL, the Officer did not find it credible that the applicants assumed they were being offered employment as hotel managers

when their field of study and prior work experience were completely unrelated to hotel management. The Officer noted the applicants had not contacted the employer to determine the genuniness of the documents provided by the immigration consultant and found it unlikely that they intended to relocate to Saskatchewan to work in a field unrelated to their studies when they already had jobs in their field in Ottawa. The Officer also noted that email correspondence between the applicants and the immigration consultant contained references to hidden text and found that this suggested some correspondence had been removed. The Officer further found there was insufficient information to conclude the applicants had not colluded with the immigration consultant to submit fraudulent documentation.

III. Style of Cause

[11] The Applicants have named the Minister of Immigration, Refugees and Citizenship as the Respondent in these matters. The correct Respondent is the Minister of Citizenship and Immigration (*Federal Courts Citizenship, Immigration and Refugee Protection Rules*, SOR/93-22, s 5(2) and *Immigration and Refugee Protection Act*, SC 2001, c 27, s4(1)). Accordingly, the Respondent in the styles of cause is amended to the Minister of Citizenship and Immigration

IV. Issues and Standard of Review

[12] Having considered the written and oral submissions of the parties I have identified the Applications as raising the following issues:

A. Should the applicants' new evidence be allowed?

B. Did the Officer commit a breach of procedural fairness by:

1. failing to contact the police or applicants' counsel regarding the police investigation into the applicants' immigration consultant;

2. failing to give the applicants an opportunity to address concerns over missing email content?

C. Did the Officer misapprehend, misunderstand or ignore evidence?

D. Did the Officer unreasonably conclude the applicants were inadmissible to Canada for five years?

[13] The parties submit and I agree, the procedural fairness issue is reviewable against a standard of correctness (*Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 43; *Gugliotti v Canada (Citizenship and Immigration)*, 2017 FC 71 at para 23).

[14] The two remaining issues engage questions of mixed fact and law to be reviewed against a standard of reasonableness (*Dunsmuir v New Brunswick*, 2008 SCC 9 at paras 51, 53).

V. Analysis

A. *New Evidence*

[15] The applicants seek to introduce evidence that was not before the Officer when the decisions were rendered, in the form of: (1) a police report summarizing the outcome of the investigation into the criminal complaints initiated against Mr. Ghadial; (2) statements of claim that each applicant has filed against Mr. Ghadial in Ontario's small claims court; and (3) complaints against Mr. Ghadial that the applicants submitted to the Immigration Consultants of Canada Regulatory Council.

[16] The applicants acknowledge that as a general rule the evidentiary record on judicial review is limited to the evidentiary record that was before the decision-maker. They submit their new evidence falls within a recognized exception to that rule because it is relevant to demonstrating a breach of procedural fairness.

[17] New evidence may be admitted on judicial review to identify procedural defects that cannot be found in the record as it existed before the decision-maker (*Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22 at para 20; *Bernard v Canada (Revenue Agency)*, 2015 FCA 263 [*Bernard*] at paras 25 to 27). While the applicants seek to admit three pieces of new evidence their written submissions only refer to the police report in advancing the argument that the Officer had a duty to obtain an update on the status of the police investigation by contacting the police or their counsel or allowing the police to complete their investigation.

[18] Determining whether the Officer had a duty to await the outcome of the investigation or actively seek information in respect of the investigation does not, in my opinion, require consideration of the police report summarizing the investigation's outcome. Had I found a breach of fairness this information might be relevant for the purpose of assessing whether the outcome might have been different but for the breach. However as set out later in these reasons I have not been convinced that there was a breach of procedural fairness as alleged.

[19] The statements of claim and complaints against Mr. Ghadial are simply not relevant to the question of procedural fairness.

[20] The new evidence is not required for the purpose of determining if there has been a breach of fairness, as alleged, and is therefore not admissible.

B. *Did the Officer commit a breach of procedural fairness?*

(1) Was there a duty to contact the police or applicants' counsel regarding the police investigation into the applicants' immigration consultant?

[21] The applicants submit that due to the seriousness of the issues at stake and having provided the Officer with police contact information and updates through counsel regarding the police investigation, the Officer had a duty to obtain more information or an update on the status of the investigation prior to rendering a final decision. According to the applicants, reaching a decision without such updates was procedurally unfair because the Officer did not have the benefit of all of the details and facts relevant to the decision. I disagree.

[22] The applicants have pointed to no statutory or judicial authority suggesting that procedural fairness required the Officer to contact the police regarding their complaint or to obtain an update as to the status of their complaint prior to rendering a decision. It is trite to state that an applicant bears the onus of both establishing they satisfy the requirements for permanent residence and to maintain applications that are complete and up to date. This burden cannot be shifted to a decision-maker through the unilateral actions of an applicant. Providing contact information or even requesting notice prior to a decision being made to allow an applicant to provide further updates will not, without more, impose a duty on a decision-maker to consult or provide notice.

(2) Was there a duty to give the applicants an opportunity to address concerns over missing email content?

[23] In responding to the PFL the applicants provided email correspondence between themselves and the immigration consultant. The email correspondence contains references to hidden text which the Officer concluded suggested some correspondence had been removed. The applicants submit that the Officer had a duty to issue a second PFL to provide them with an opportunity to respond to this concern and the failure to do so was a breach of fairness. Again I disagree.

[24] A decision-maker is under no obligation "to make further inquiries if the applicant's response to the Fairness Letter was deficient" (*Hosseini Sedeh v Canada (Citizenship and Immigration)*, 2012 FC 424 at para 46; *Ramezanpour v Canada (Citizenship and Immigration)*, 2016 FC 751 at para 21). In this case the Officer highlighted the concerns in a PFL and received

representations from applicants' counsel in response to those concerns. To require an officer to seek further clarification in these circumstances would create an unacceptable burden on decision–makers. This Court has repeatedly held that applicants have no entitlement to a "running score" of deficiencies in an application for permanent residence (See, for example, *Baybazarov v Canada (Citizenship and Immigration)*, 2010 FC 665 at para 11; *Kong v Canada (Citizenship and Immigration)*, 2017 FC 1183 at para 29; *Kumarasekaram v Canada (Citizenship and Immigration)*, 2010 FC 1311 at para 15). The process was fair and the applicants were provided with an opportunity to respond to concerns relating to the genuiness of the job offers and the LMIAs.

[25] I will address the reasonableness of the Officer's consideration of the emails and the conclusions reached below in my discussion of the Officer's finding that there was insufficient information to conclude there was no collusion.

C. *Did the Officer misapprehend, misunderstand or ignore evidence?*

[26] The applicants submit that the Officer ignored, misapprehended, or misunderstood evidence in finding that there was collusion between them and the immigration consultant and in relying on the email correspondence as proof of collusion. Again I am unpersuaded.

[27] The Officer did not, as the applicants submit, find collusion. Rather, the Officer found the evidence insufficient to find there was no collusion.

[28] The Officer did not find the email as proof of collusion. Rather the Officer found the email suggests some correspondence had been removed.

[29] Having reviewed the evidence and the Officer's decision I am simply unable to find any basis upon which I might conclude the Officer failed to engage with the "evidence and information submitted in a meaningful way and only paid it lip service." A review of the Officer's decision demonstrates an awareness of and engagement with the evidence.

D. *Did the Officer unreasonably conclude the applicants were to be inadmissible to Canada for five years?*

[30] The applicants acknowledge that in finding them inadmissible for misrepresentation the Officer did not need to be satisfied that they had intended the misrepresentation. But they argue that in the circumstances the Officer's failure to consider the possibility of innocent misrepresentation was unreasonable. They further argue that the Officer's reliance on the hidden text references in the email correspondence was unreasonable.

[31] The applicants submit that the Officer should have recognized (1) their compliance with all of the immigration rules up to the point that the fraudulent documentation was submitted and (2) their immediate initiation of a complaint to the police when advised of the fraudulent documentation, and found that a simple refusal of their applications "would have been a more reasonable conclusion." They rely on *Patel v Canada (Citizenship and Immigration)*, 2017 FC 401 [*Patel*] to argue that the Officer should have applied a narrowly recognized exception to an

inadmissibility finding under section 40, because the applicants honestly and reasonably believed they were not misrepresenting a material fact.

[32] I note that the extract from *Patel* the applicants rely on is a summary of the position advanced by the applicant in that case. It is not an expression of the Court's view of, or application of, the narrow exception the applicants argue should have been applied here. I further note that the exception is described in *Patel* as being "truly exceptional" and not available in most cases (*Patel* para 25).

[33] I need not consider the exception in any detail however as I am satisfied that the applicants are essentially taking issue with the Officer's assessment and weighing of the evidence. The applicants' disagreement in this regard quite simply does not render the Officer's determination unreasonable. The Officer canvassed all of the applicants' evidence, noted the fraudulent documentation, and found the circumstances—the nature and location of employment, the monies paid, the failure to contact the proposed employer and the hidden text concerns in the email correspondence—prevented the Officer from concluding that there had been an absence of collusion. In other words the Officer concluded there was insufficient evidence to establish an innocent misrepresentation. This finding was not unreasonable.

[34] In respect of the Officer's concerns regarding the hidden text the respondent pointed out in oral submissions that the hidden text references appear to fall into two groupings: (1) text that appears from the context of the correspondence to be innocuous identifying information that would not have raised a concern for the Officer; and (2) text that within the context of the email

correspondence appears to have included substantive information. I have reviewed these portions of the record and am in agreement with respondent's counsel. The hidden text references that suggest substantive portions of communications between the applicants and the immigration consultant were not provided and allowed the Officer to reasonably conclude that correspondence was removed. It was not unreasonable for the Officer to then rely upon this factor to find insufficient evidence to establish an absence of collusion.

VI. Conclusion

[35] The applicants' new evidence has not been admitted. There was no breach of procedural fairness in considering the Applications. The decision reflects the elements of transparency, intelligibility and justifiability and is within the range of reasonable possible outcomes based on the facts and the law. The applications are dismissed.

[36] The parties have not identified a question of general importance for certification and none arises.

JUDGMENT IN IMM-2117-17, IMM-2118-17 AND IMM-2119-17

THIS COURT'S JUDGMENT is that:

1. The Applications are dismissed.
2. The Respondent in the styles of cause is amended to the Minister of Citizenship and Immigration.
3. No question is certified.

"Patrick K. Gleeson"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKETS:	IMM-2117-17, IMM-2118-17, IMM-2119-17
STYLES OF CAUSE:	KAMALPREET SINGH v THE MINISTER OF CITIZENSHIP AND IMMIGRATION GURJIT SINGH GILL v THE MINISTER OF CITIZENSHIP AND IMMIGRATION AMRIT PAL SINGH GILL v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	OTTAWA, ONTARIO
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