

Federal Court



Cour fédérale

Date: 20101115

Docket: IMM-1637-10

Citation: 2010 FC 1143

Ottawa, Ontario, November 15, 2010

PRESENT: The Honourable Mr. Justice Phelan

BETWEEN:

RAJ RANI MINHAS

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. INTRODUCTION

[1] The Applicant, Raj Rani Minhas, was denied permanent residence status as a skilled worker because she had not earned sufficient “points” in the immigration criteria. The Applicant would have had sufficient points if the Visa Officer had accepted that she had a relative (her husband’s brother) in Canada. This is the judicial review of the Visa Officer’s decision.

II. BACKGROUND

[2] The Applicant, a citizen of India, applied for a permanent resident visa as a skilled worker based on her profession as a secondary school teacher. Her husband was included in her application.

[3] Her application was refused because she received 64 points whereas the required number was 67. She was awarded 0 points for having a relative in Canada.

[4] The Applicant claimed that her evidence of her brother-in-law's Canadian citizenship, submitted as part of her application, included copies of Mr. Ranjit Singh Minhas' (Ranjit Singh) (the alleged brother-in-law) Record of Landing, Alberta Personal Health Card, his Social Insurance Number and Canadian Passport. She also submitted as proof of the fraternal relationship with her husband Ranjit Singh's Ministry of Defence Junior Air Certificate Examination and his 1981 Matriculation Examination Certificate.

[5] The Visa Officer's affidavit in this matter attests to her having received as updated information only the Matriculation Examination Certificate as proof of fraternal relationship and only the Canadian passport as evidence of Ranjit Singh's citizenship. In addition, the Visa Officer had already received copies of Ranjit Singh's Citizenship Card and his Income Tax Return.

[6] The Visa Officer found a discrepancy between the birth dates on Ranjit Singh's Canadian passport and his 1981 Matriculation Examination Certificate. One indicated a date of birth of August 26, 1963, and the other February 6, 1964.

[7] The Visa Officer, on the basis of this discrepancy alone, concluded that there was insufficient proof that the Applicant had a relative in Canada.

[8] After the Visa Officer's decision, the Applicant submitted additional documents trying to show the relationship between her husband and Ranjit Singh. The Visa Officer attests to considering one of the new documents, an Indian land document showing Ranjit Singh owned property (it had no date of birth information) but she apparently refused to have regard to the other documents being a power of attorney to the Applicant's husband to manage Ranjit Singh's properties, a family tree showing the respective brothers' shareholdings and the mother's death certificate.

[9] The controlling issue in this judicial review is the Visa Officer's consideration of the discrepancy between Ranjit Singh's date of birth on his Canadian passport and that on his high school leaving document.

III. ANALYSIS

[10] Both parties accept reasonableness as the standard of review for the Visa Officer's decision (*Wai v. Canada (Minister of Citizenship and Immigration)*, 2009 FC 780) with the Respondent contending that considerable deference is owed.

[11] The parties are correct as to the standard of review of the decision. The attempt to elevate deference cannot be used to move the "reasonableness" standard back to the previously unmanageable "patent unreasonableness" standard under the guise of deference. The focus remains

on “justification, transparency and intelligibility within the decision making process” and in the result on a range of possible acceptable outcomes defensible in respect of the facts and law.

[12] The Applicant also raises the issue of procedural fairness in not confronting the Applicant with the date of birth discrepancy prior to the decision. To the extent that this is a live issue, it must be reviewed on a correctness standard.

[13] Assuming that fairness did not, in these unusual circumstances, dictate that the Visa Officer raise her concerns about the inconsistent documents, the question is whether this was a reasonable decision.

[14] Contrary to the Applicant’s position, this is not a case of preferring one date of birth over another. It is evident that the Matriculation Examination Certificate was the only document before the Visa Officer which was used to establish the link between the alleged brothers.

[15] If the Certificate was accurate, then the Visa Officer’s conclusion would have been reasonable. It would have meant that the Canadian citizen with a birth date of August 26, 1963 could not be the same person as the Indian citizen born February 6, 1964. The other, and less likely conclusion, is that Ranjit Singh had false documentation to secure his Canadian passport.

[16] Therefore, everything turns on the veracity of the Matriculation Examination Certificate because it flies in the face of the weight of the evidence about Ranjit Singh.

[17] Therefore, this case turns, not on the sufficiency of evidence as argued by the Respondent, but on the credibility, accuracy or genuineness of the evidence.

[18] This Court has held that visa officers are not required to advise applicants about concerns of adequacy, completeness or sufficiency of documents. However, this Court has held that where accuracy or genuineness of information is at issue, an applicant is entitled to know that a visa officer has these concerns.

[19] Justice Snider in *Baybazarov v. Canada (Minister of Citizenship and Immigration)*, 2010 FC 665, summarized the state of the law at paragraphs 11-12 as follows:

11 First and foremost, applicants have the burden to establish entitlement to a visa. Applicants bear the responsibility to produce relevant information to assist their application. There is no obligation on officers to apprise an applicant of concerns that arise directly from statutory requirements. Officers are also not required to give applicants a "running score" of weaknesses in applications. See *Rukmangathan*, above, at paragraph 23; *Nabin v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 200, [2008] F.C.J. No. 250 at paragraph 7; *Rahim v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 1252, 58 Imm. L.R. (3d) 80 at paragraph 14.

12 Second, officers have a duty to notify applicants where: a) concerns arise about credibility, accuracy or genuineness of the information submitted (see *Nabin*, above, at para. 8); or b) the officer has relied on extrinsic evidence (see *Rukmangathan*, above, at para. 22; *Nabin*, above, at para. 8; *Mekonen*, above, at para. 4). The purpose of this duty is to allow applicants a fair and reasonable opportunity to know the case against them and to respond to concerns.

[20] The Visa Officer's concerns fell within the exception to the rule that notice of evidentiary concerns need not be given. (See *Nabin*, above.)

[21] It would be profoundly unfair to decide against an applicant on the basis of a typographical or clerical error which could easily be addressed. Fairness is at the root of the Visa Officer's obligation to have given the Applicant notice that the discrepancy in dates of birth was not addressed and was highly relevant. No such notice was given.

IV. CONCLUSION

[22] Therefore, this judicial review will be granted, the decision of the Visa Officer quashed and the matter referred to a different visa officer for a new consideration including affording the Applicant an opportunity to address the matters raised in this judicial review.

[23] There is no question for certification.

JUDGMENT

THIS COURT’S JUDGMENT is that the application for judicial review is granted, the decision of the Visa Officer is quashed and the matter is to be referred to a different visa officer for a new consideration including affording the Applicant an opportunity to address the matters raised in this judicial review.

“Michael L. Phelan”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-1637-10

STYLE OF CAUSE: RAJ RANI MINHAS

and

THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

PLACE OF HEARING: Vancouver, British Columbia

DATE OF HEARING: October 21, 2010

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

DATED: November 15, 2010

APPEARANCES:

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