

Federal Court



Cour fédérale

Date: 20120910

Docket: IMM-145-12

Citation: 2012 FC 1069

Ottawa, Ontario, September 10, 2012

PRESENT: The Honourable Mr. Justice Zinn

BETWEEN:

SHILPI SABLOK

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] For the reasons that follow, this application for judicial review must be dismissed because I find that there was no denial of procedural fairness as is alleged by the applicant.

[2] The applicant, a citizen of India, submitted an application for permanent residence in the skilled worker class. She claimed to have been employed as a faculty member of a computer college run by her husband.

[3] An officer conducted a telephone interview with Mr. Kahndelwal, the applicant's husband, at the stated place of work, and then with the applicant, as part of the verification process.

[4] Mr. Kahndelwal provided detailed responses to questions relating to the number of students enrolled, number of classrooms, number of computers, and similar questions relating to the business. The officer then asked Mr. Kahndelwal if she could speak with the applicant. He was told that she had left work to take their daughter, who had been sick for ten days, to the hospital. After two attempts to reach the applicant while still on the phone with Mr. Kahndelwal, the officer managed to connect with the applicant by phone. The officer disconnected with Mr. Kahndelwal and proceeded to interview the applicant.

[5] The applicant explained that she was at home because her daughter was not well. The officer asked the applicant a few of the same questions that she asked her husband, Mr. Kahndelwal. The officer noted discrepancies in her responses and her husband's as to the number of students enrolled – 200 rather than 50 to 60; the number of classrooms – 3 rather than 2; and the number of computers – 13 rather than 20.

[6] Immediately after these first questions, the applicant apparently took a call from someone, presumably her husband, and the officer made the following notes:

(her other phone rings & she speaks with some one & comes back saying that I shall call her up after 10 minutes) I told her that I'll appreciate if she can talk to me right now as I can not make multiple calls (she kept me on hold again & talks to the person on

the other line “she is saying that I’ll have to talk to her now – you tell me quickly”

She came back & said – my daughter was not well so I took her to the doctor

...

Where is the affiliation from? From Karnatake University (speaks out loud the question) and said again – Karnataka State open University

...

How many teachers work there? Number of teachers – ah – there are 4

Names? Jaspal, Paramjit (Ah) (seems getting corrected by some one else) & said – Jaspal used to work there before now there are Reeta & Neetu

I asked her not to repeat the questions

...

How many batches do you teach in a day? One in the morning & one in the evening

2 batches a day? Yes (X).

Call concluded.

TVE-2 (the centre is owned by the PA’s spouse – the employment dates he provided for PA does not match with that declared by PA – PA was not present at the place of stated employment – the work related information PA & the spouse provided were inconsistent).

[7] On 14 July 2011, the officer sent the applicant a “fairness letter” outlining her concerns, in particular that:

You and the owner ... provided contradictory information about number of students enrolled, number of class rooms and computers and also number of batches that you teach. Based on the above-

stated discrepancies and lack of knowledge about your stated employer, I have reasonable grounds to believe that the employment letters are not genuine and that you do not work at the stated place.

...

Before a decision is made in your case, I am providing you with the opportunity to comment on the above concern or provide any observation or explanation in writing. You have thirty (30) days from the date of this letter to reply.

[8] The applicant responded but the officer concluded that it failed to overcome her concerns.

The CAIPS notes indicate the following as the officer's rationale:

I found that the applicant's explanation as to why the information presented by her employer, who is also her husband, was inconsistent with that provided by the applicant was not credible. The applicant states, in her letter, the reasons behind the inconsistencies but has not provided satisfactory evidence to support her explanations. For instance, she states that at the time of verification when her employer stated that the institute has 25-60 students he included long-term students while she, in her response of 200 students, had included overall strength. I give the admission / withdrawal record little weight, since we received contrary information from the employer, who would have no apparent motive to provide incorrect information.

The further documents submitted by the applicant do not overcome the concerns raised by the telephone verification visit. We received contrary information from the employer during the verification. Further, the employer is the applicant's husband which means she can have easy access to the office stationery such as letter-heads and stamps. I therefore give less weight to these documents than to the information provided in the telephone verification.

Photographs, letters from clients, letters of references / appreciation, students' records do not prove applicant's experience in the stated occupation and for the stated duration.

Letter from Society for Information Technology Development and Virtual Education Trust are not satisfactory documents because there is no evidence that staff names in the letters are those working at the positions of college and other vocational instructors.

Letters from Virtual Education Trust is not even dated; not reliable.

In my opinion, on a balance of probabilities, the applicant misrepresented that she had experience in the occupation of college and other vocational instructor by submitting inauthentic employment documents.

This could have led to an error in the administration of the Act because it could have led an officer to be satisfied that the applicant met the requirements of the Act with respect to the ministerial instructions.

I therefore recommend that the applicant be made inadmissible to Canada under section 40 of the Act.

[9] The applicant submits that “the visa officer’s failure to provide the applicant with an opportunity to address concerns regarding the genuineness of the work experience constitutes a denial of procedural fairness.”

[10] It was made clear at the hearing that the applicant’s submission is that she was not given a fair opportunity to respond to a specific material concern, namely that she was married to her employer and that her responses to the fairness letter were not accepted by the officer because the documents she submitted were viewed as tainted by the marriage

[11] It is clear that the reason for the rejection was exactly the reason the officer set out in the fairness letter, which provided in relevant part, as follows:

Based on the above-stated discrepancies and lack of knowledge about your stated employer, I have reasonable grounds to believe that the employment letters are not genuine and that you do not work at the stated place [emphasis added].

In short, the officer believed that the applicant misrepresented her employment.

[12] The question of her marital relationship to her employer was considered by the officer only when weighing the evidence submitted in response to the fairness letter. It was a fact and appropriately considered by the officer. It was open to the applicant to respond to the fairness letter in whatever manner she chose. She chose to submit documents which meant that the officer was required to weigh that evidence against that already on file. She found that the employer documents were not to be given more weight than the verbal responses previously given by her husband. I can find no error made by the officer in so doing. There is no breach of procedural fairness in how the applicant was treated.

[13] Neither party proposed a question for certification.

JUDGMENT

THIS COURT'S JUDGMENT is that this application is dismissed and no question is certified.

"Russel W. Zinn"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-145-12

STYLE OF CAUSE: SHILPI SABLOK v. THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: September 4, 2012

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

DATED: September 10, 2012

APPEARANCES:

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Jocelyn Espejo Clarke FOR THE RESPONDENT

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