Federal Court  Cour fédérale

Date: 20140214

Docket: IMM-4008-13

Citation: 2014 FC 150

Vancouver, British Columbia, February 14, 2014

PRESENT: The Honourable Mr. Justice Barnes

BETWEEN:

GURJIT SINGH VIRK

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review by Gurjit Singh Virk challenging a decision by a Visa Officer (Officer) refusing to issue a temporary work permit. The authorization was refused on two grounds: that Mr. Virk had failed to demonstrate that he adequately met the job requirements of the proposed Canadian employment and that he had failed to satisfy the Officer that he would leave Canada at the end of the two-year authorization.

[2] The Officer's computer file notes provide the following additional particulars for the decision:

(a) Mr. Virk's application failed to disclose a previous refusal;

(b) Mr. Virk failed to disclose the presence in Canada of grandparents and uncles;

(c) the application contained no evidence of relevant educational or vocational training;

(d) Mr. Virk failed to provide satisfactory evidence of an ability to communicate in English; and

(e) Mr. Virk failed to adequately prove his income or savings.

[3] Mr. Gautam made strong arguments challenging some of the Officer's findings. He pointed out that the required application does not seek the disclosure of extended family members and it was, therefore, unreasonable to expect that information to be volunteered. The Officer's concern about the absence of satisfactory proof of Mr. Virk's educational or vocational qualifications was also said to be unfounded in the face of the Service Canada Labour Market Opinion stating that no formal education was required. It was open to the Officer to make an independent determination of Mr. Virk's ability to do the job, but in applying employment criteria that exceeded the employer's stated requirements, fairness arguably dictated that Mr. Virk, and probably the employer, be given an opportunity to respond.

[4] The Officer's bare conclusion that Mr. Virk's declared financial circumstances were insufficiently proven is also a matter of some concern. Mr. Virk tendered a considerable amount of information about his income and landholdings in India. Some analysis of that evidence is essential to understanding the basis for the adverse finding on this point and none was provided.

[5] Notwithstanding the above-noted problems with the decision, they are not determinative of this application. That is so because the Officer also found that Mr. Virk had failed to provide evidence of his ability to communicate in English. The Labour Market Opinion clearly stated that the position required basic oral and written English. This requirement is hardly surprising in the context of proposed employment as an ironworker working at various construction sites in Surrey. The Document Checklist also clearly states that an applicant must provide "proof indicating you meet the requirements of the job being offered."

[6] Mr. Virk provided nothing to the Officer to verify his English language skills. I do not accept Mr. Gautam's argument that an English language application and cover letter is any evidence of language proficiency but, even if it was, it was not unreasonable for the Officer to require something more. I also do not accept Mr. Gautam's argument that the Officer had an obligation to seek out the missing evidence. Mr. Virk was informed about the requirement and ignored it, perhaps for the reason that he could not read the instructions. This is the type of evidence that the Applicant is required to submit without being prompted or reminded. There is no breach of procedural fairness in these circumstances and the Officer's finding that an essential aspect of the proposed employment was missing was reasonable. To the extent that the unreported decision in *Mohan Singh v Canada (Minister of Citizenship and Immigration)*, IMM-852-10 suggests that a higher duty of procedural fairness is owed, I decline to follow it. Instead, I adopt the following passage by Justice Marshall Rothstein in *Qin v Canada (Minister of Citizenship and Immigration)*, 2002 FCT 815 at paras 5-6, [2002] F.C.J. No. 1098:

> [5] I think it is important first to place the procedural fairness argument in context. The concern here is with an application for a worker's visa to work in Canada for a temporary period. There is no indication that working in Canada will be important to the Applicant

> in any material way, such as enhancing his career opportunities when he returns to China. It is well accepted that the requirements of procedural fairness will vary with the circumstances. In cases of deportation, for example, when the consequences of a negative decision will be disruptive to an individual, the requirements for procedural fairness will be greater than in the case of an Applicant for a temporary worker's visa when there is no evidence that denying the Applicant the opportunity for Canadian work experience will cause him hardship. In addition, in a case of a temporary worker's visa it is open to an Applicant to reapply and provide a visa officer with further information that will help to demonstrate that his intentions are indeed temporary. I recognize that the Applicant would prefer to have his application redetermined following a successful judicial review with directions given to the visa officer. However, that is not a reason for raising the requirements of procedural fairness when there is no evidence of serious consequences to the Applicant. In such cases, the requirements for procedural fairness will be relatively minimal.
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> [6] Turning to the specific facts here, the letter from the Applicant's Chinese employer was handwritten with a handwritten letterhead that did not specify an address or telephone number. In the circumstances, I do not think it was unfair for the visa officer not to make other efforts to obtain further information from the Applicant's employer. The list of documents supplied to the Applicant by the Canadian Embassy requires that a Letter of Permission be on company letterhead. It would seem obvious that the requirement for the letter to be on company letterhead is to establish at least *prima facie* authenticity together with information that would permit the visa officer to contact the employer if necessary. Where the required information is not provided, I do not think the onus shifts to the visa officer to pursue the matter further.

[7] It is unnecessary to deal conclusively with the issue of Mr. Virk's failure to disclose his previous immigration refusal. It is sufficient to observe that scrupulous adherence to full disclosure is always essential. Although Mr. Virk's previous immigration file was disclosed with his application, it was not done with sufficient clarity that the Officer's concern could be said to be misplaced. Indeed, one could fairly conclude that the Officer overlooked the oblique reference to the prior history and only learned about the problem by other means.

[8] For the foregoing reasons, this application is dismissed.

[9] Neither party proposed a certified question and no issue of general importance arises on this record.

JUDGMENT

THIS COURT'S JUDGMENT is that this application is dismissed.

"R.L. Barnes"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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