Federal Court  Cour fédérale

Date: 20190722

Docket: IMM-4864-18

Citation: 2019 FC 969

Ottawa, Ontario, July 22, 2019

PRESENT: Mr. Justice Boswell

BETWEEN:

ARUN KUMAR SINGH

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The Applicant, Arun Kumar Singh, is an Indian citizen who applied for a temporary resident visa to visit British Columbia. In a letter dated September 21, 2018, a visa officer in Ottawa refused the application. The Applicant has now applied under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*], for judicial review of the Officer's decision. He asks the Court, among other things, to set aside the decision and return the matter for redetermination by another officer.

I. Background

[2] The Applicant's stated purpose for visiting British Columbia was to explore business opportunities, and perhaps, settling in the province.

[3] His application for a temporary resident visa included an affidavit of his sister, a Canadian citizen residing in British Columbia, who stated that her brother wanted to make an exploratory business visit to Canada, that he would stay with her, and that she would be responsible for providing him with food, shelter, and other necessities he may require during his stay.

[4] Prior to his application for a temporary resident visa, the Applicant had visited Thailand as a tourist on three occasions. In his application, he disclosed that he had been refused a temporary resident visa to Canada in July 2013. He indicated that he had approximately $181,000 to fund his stay in Canada and that his family members would not be accompanying him. He also indicated that he had significant assets and business ventures in India which made him economically well-established there and, thus, he had strong ties to India and every intention of returning at the end of his proposed trip.

II. The Decision

[5] The Officer was not satisfied that the Applicant would leave Canada at the end of his proposed stay as a temporary resident as stipulated in paragraph 179(b) of the *Immigration and*

Refugee Protection Regulations, SOR/2002-227 [*IRPR*], based on his travel history, the purpose of his visit, and the absence of a legitimate business purpose in Canada.

[6] The Officer noted in the Global Case Management System [GCMS] notes the following reasons for not granting the visa:

> I have reviewed all the documentation provided for this application. Summary of key findings below: - Integrated Search record noted: no adverse info - PA demonstrated no international travel; see travel history on file - Client wishes to visit Canada from Sep 15th to January 31, 2019 - Invitation letter from client's sister states that the client will be coming for an 'exploratory' business visit - No business invitation provided. Client works as a self-employed real estate agent - PA does not appear to have a legitimate business purpose. Given the foregoing, I am not satisfied on balance that the proposed travel is credible. I am therefore not satisfied that the PA is a bona fide visitor to Canada who will depart at the end of the period authorized for stay. Application refused.

III. Standard of Review

[7] The standard of reasonableness applies to review of a visa officer's refusal to issue a temporary resident visa. Because visa officers have expertise in assessing applications for temporary resident visas, the Court must show deference to their decisions on judicial review (*Zhou v Canada (Citizenship and Immigration)*, 2013 FC 465 at para 8 [*Zhou*]).

[8] The reasonableness standard tasks the Court with reviewing an administrative decision for "the existence of justification, transparency and intelligibility within the decision-making process" and determining "whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir v New Brunswick*,

2008 SCC 9 at para 47). Those criteria are met if "the reasons allow the reviewing court to understand why the tribunal made its decision and permit it to determine whether the conclusion is within the range of acceptable outcomes" (*Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para 16).

[9] Whether the Officer should have notified the Applicant of any concerns about the adequacy or credibility of the documents he provided raises natural justice or procedural fairness issues. The Court must determine whether the process followed in arriving at the decision under review achieved the level of fairness required by the circumstances of the matter (*Suresh v Canada (Minister of Citizenship and Immigration)*, 2002 SCC 1 at para 115). The analytical framework is not so much one of correctness or reasonableness but, rather, one of fairness and fundamental justice.

[10] An issue of procedural fairness "requires no assessment of the appropriate standard of judicial review. Evaluating whether procedural fairness, or the duty of fairness, has been adhered to by a tribunal requires an assessment of the procedures and safeguards required in a particular situation" (*Moreau-Bérubé v New Brunswick (Judicial Council)*, 2002 SCC 11 at para 74). As the Federal Court of Appeal has observed: "even though there is awkwardness in the use of the terminology, this reviewing exercise is 'best reflected in the correctness standard' even though, strictly speaking, no standard of review is being applied" (*Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54).

IV. Was the Decision Reasonable?

A. *The Applicant's Submissions*

[11] The Applicant says the Officer committed a reviewable error by ignoring or incorrectly weighing the evidence. In the Applicant's view, it was unreasonable to require a business invitation considering his purpose in coming to Canada was to explore investment opportunities in person. According to the Applicant, the Officer failed to consider his connections to India, specifically his family ties and property.

[12] The Applicant also says the lack of travel history can only be a neutral factor in assessing an application for temporary residence, and the Officer erred by considering his travel history as a negative factor. In the Applicant's view, the Officer also erred by not considering his intention to spend time with his sister and family reunification should have been a factor in granting the temporary resident visa.

B. *The Respondent's Submissions*

[13] The Respondent says the Officer's decision was reasonable. The Respondent maintains that the GCMS notes are intelligible and adequately explain why the application for a temporary resident visa was refused. According to the Respondent, nothing in the Applicant's evidence pointed to any specific business opportunities or potential investments he would be investigating in Canada.

[14] In response to the Applicant's allegation that the Officer unreasonably ignored his family and business ties to India, the Respondent says the Officer was not required to explicitly discuss every factor and it is presumed that the Officer weighed and considered all the evidence. The Respondent further says, even if the Officer may have treated the Applicant's lack of travel history as a negative factor, this alone is insufficient to render the decision as a whole unreasonable because the Officer based the decision on other factors.

[15] The Respondent contends the Applicant is misguided in his view that the Officer should have considered family reunification as a purpose of his visit. In the Respondent's view, nowhere in the Applicant's visa application does he mention family reunification as a purpose of his visit. According to the Respondent, the onus was on the Applicant to provide complete reasons for his proposed visit and he did not list family reunification as a purpose of his visit.

C. *Analysis*

[16] The Applicant's only stated purpose for his visit was that he wanted to visit British Columbia to explore various opportunities and be better informed about doing business and perhaps settling in BC. His sister's affidavit provided no further information about the reasons for the visit. Although an applicant for a temporary residence visa need not have a compelling reason to visit Canada, there must be some information supporting their reason for the visit. As the Court observed in *Kheradpazhooh v Canada (Citizenship and Immigration)*, 2018 FC 1097:

> [5] In itself, the existence of a legitimate business purpose, supported by objective evidence, is certainly a valid reason to apply for a temporary resident visa for a short stay in Canada. The foreign national is not required to provide a complete itinerary of the expected trip. He or she is not required to show a "compelling

> reason" to visit Canada either [citations omitted]. However, reasons that are abstract, vague or not founded on objective evidence may constitute a factor, among others, that will lead the officer to conclude that the foreign national has not met the burden of demonstrating that he or she will leave Canada at the end of the authorized period of stay [citations omitted].

[17] In view of the Applicant's vague reasons for the visit, it was reasonable for the Officer to conclude that he had not met the burden of demonstrating that he would leave Canada at the end of the authorized period of stay.

[18] The Applicant's complaint that the Officer failed to consider his connections to India is without merit. An officer is presumed to have considered all the evidence before him or her unless the contrary is shown (*Rahman v Canada (Citizenship and Immigration)*, 2016 FC 793 at para 17). As such, the lack of GCMS notes about the Applicant's financial stability or ties to India do not make the Officer's decision unreasonable.

[19] It is true that the Officer erred by stating in the GCMS notes that the Applicant had demonstrated no international travel; he had travelled to Thailand three times. However, this one error does not render the Officer's decision unreasonable when it is reviewed as an "organic whole" (*Communications, Energy and Paperworkers Union of Canada, Local 30 v Irving Pulp & Paper, Ltd*, 2013 SCC 34 at para 54). The Officer relied upon other factors, including the purpose of the visit and the absence of a legitimate business purpose, in concluding that the Applicant had not shown he would leave Canada at the end of the authorized period of stay.

V. Was there a Breach of Procedural Fairness?

[20] The Applicant contends that the Officer breached procedural fairness by not providing him with an opportunity to address any concerns the Officer had or to provide clarification on the documentation he submitted.

[21] The Respondent says a visa officer has no legal obligation to seek to clarify a deficient application or to convoke an oral interview. According to the Respondent, the onus rested with the Applicant to provide sufficient documentation to satisfy the Officer that he met the requirements of paragraph 179(b) of the *IRPR*.

[22] The Respondent further says the duty of procedural fairness owed by an officer on a visa application is low. In the Respondent's view, the duty of fairness simply obliged the Officer to provide sufficiently clear and intelligible reasons for the decision to refuse the Applicant's application.

[23] The level of procedural fairness required when determining an application for a temporary residence visa is at the lower end of the procedural fairness spectrum (*Clement v Canada (Citizenship and Immigration)*, 2019 FC 703 at para 11). The jurisprudence is clear that a visa applicant must put their best foot forward - a visa officer is not required to ask for further information if an applicant has not met their burden to prove they will leave Canada at the end of the authorized stay.

[24] As Justice Roy stated in *De La Cruz Garcia v Canada (Citizenship and Immigration)*, 2016 FC 784:

> [8] Thus the applicant has a fundamental duty to prove that he will return to his country. The decision-maker, in this case, held that the evidence was insufficient. It is the applicant's duty to present sufficient evidence when filing his or her visa or permit application so as to substantiate that he or she satisfies the requirements of the IRPA. The decision-maker was not required to specify in what way the application was insufficient, as the applicant seems to suggest. In my view, this is not a question of whether the evidence is credible or that a particular piece of evidence is believed not to be genuine, but rather it is a question of the evidence being sufficient, since the decision taken was only based on the insufficiency of the evidence.

[25] Similarly, in *Zhou*, Justice Scott observed that:

> [28] The case law of this Court is clear in establishing that an officer is under no obligation to alert an applicant to his or her concerns regarding an application because of the unsatisfactory nature of the evidence provided. The "onus is on the Applicant to provide all relevant supporting documentation and sufficient credible evidence in support of his application" [citations omitted]. Furthermore, an officer need not notify an applicant of his or her concern where it "arises directly from the requirements of the legislation or related regulations" [citation omitted]. In this case, the Officer's concerns regarding the Applicant's funds and assets arose directly from the requirements of the *IRPR* (see paragraphs 179(*b*) and (*d*)).

[26] In this case, the Officer did not breach procedural fairness. The Applicant's complaint, that the Officer should have provided him with an opportunity to address any concerns the Officer had or to provide clarification on the documentation he submitted, lacks merit. The duty of fairness simply obliged the Officer to provide sufficiently clear and intelligible reasons for the decision to refuse the Applicant's application. This was done.

VI. Conclusion

[27] The Officer's decision in this case was reasonable. The Applicant's application for judicial review is, therefore, dismissed.

[28] Neither party proposed a serious question of general importance to be certified under paragraph 74(d) of the *IRPA*; so, no such question is certified.

JUDGMENT in IMM-4864-18

THIS COURT'S JUDGMENT is that: the application for judicial review is dismissed; and no question of general importance is certified.

"Keith M. Boswell"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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