

Federal Court



Cour fédérale

Date: 20151209

Docket: IMM-2190-15

Citation: 2015 FC 1373

Edmonton, Alberta, December 9, 2015

PRESENT: The Honourable Mr. Justice Campbell

BETWEEN:

FARHAN SARDAR

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] By the present Application, the Applicant, a citizen of Pakistan, challenges the March 16, 2015 decision of a Visa Officer (Officer) refusing his application for permanent residence. The process leading to the refusal is as follows: in April 2010 the Applicant's sister, a resident of Alberta, acting as the Applicant's sponsor, submitted an application to the Alberta Immigrant Nominee Program (AINP) under what was then the provincial Family Stream; Alberta approved the application on July 3, 2012; and, as a result, the Applicant's sister

submitted the Applicant's application for permanent residence to the Respondent under the Provincial Nominee Category.

[2] Despite Alberta's approval, the Officer refused to grant permanent residence to the Applicant on an exercise of s. 87(3) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227:

If the fact that the foreign national is named in a certificate referred to in paragraph (2)(a) [Alberta's approval] is not a sufficient indicator of whether they may become economically established in Canada and an officer has consulted the government that issued the certificate, the officer may substitute for the criteria set out in subsection (2) their evaluation of the likelihood of the ability of the foreign national to become economically established in Canada.

In the decision under review, the Officer provided the following statement:

I am not satisfied that the fact that you are named in a certificate issued by Alberta is a sufficient indicator that you are likely to become economically established in Canada. I have reached this conclusion because I am not satisfied that you have the language skills or experience in order to become economically established in Canada.

[3] It is agreed that the Officer's computerized notes entered February 4, 2015 constitute the reasons for the refusal. Counsel for the Applicant relies upon the following passage from the notes to argue that that the Officer unfairly addressed the evidence that the Applicant submitted in support of his permanent residence application:

Rep also notes that PA has 5 job offers: -job offer ltr (05May13 & copy dated 05Jan14) fr Maharaja Sweets, Restaurant Catering, Banquet & Conference Centre for p/t bookkeeper/accounting clerk. The prospective employer, Naxia Chaudhry, is PA's sister, - another job offer ltr (undated) fr Maharaja Sweets for "supervisor of our hall." Offer states training to be provided & "fluency in English is not required" because "Majority of our customers are from Indians [sic] and Pakistan." Offer also states "Fluency in

Urdu and Punjabi will be an asset to us, as there are many new immigrant families that are becoming our customers.” -job offer ltr (undated) fr Spice Centre in Edmonton for asst store mgr. Offer states training to be provided & “fluency in English is not required” because “Majority of our customers are from India and Pakistan.” Offer also states “Fluency in Urdu and Punjabi will be an asset to us, as there are many new immigrant families that are becoming our customers.” -job offer ltr (10Oct14) fr Whitemud Esso for asst store mgr. Offer states “For this job we need only minimum English Language requirement. We know your’s [sic] ability to communicate in English is not very good. That’s why you have offered this job for General work that requires very minimum English Language.” -job offer ltr (03May13) fr Millwoods Suzuki for customer services rep already noted previously. Job offers do not appear credible. Three are fr PA’s sister & appear self-serving & the others indicate that PA wld require training, thereby acknowledging that he does not have required skills & exp. Offers also acknowledge that PA’s English is poor but indicate it to not be an issue, which does not appear credible in a community where the vast majority of people have knowledge of only English, according to most recent census data. The same wording appearing in both the job offer fr Spice Centre and PA’s sister’s company also appear to indicate a connection for facilitating PA’s PR appl’n rather than genuine empl prospects for PA. Even if the job offers are genuine, PA has not demonstrated having the skills to be able to perform them. Nominating province continues to support appl’n, stating that PA met AB’s eligibility criteria for nomination. Note that PA’s relatives’ willingness and capacity to support him do not demonstrate his ability to become economically established, and nor does PA’s possession of financial resources.

[Emphasis added]

[4] Counsel for the Applicant’s detailed argument is as follows:

Regarding the *bona fides* of various job offers, the fact remains that the visa officer accepted the personal credibility of the applicant as conceded by the crown at paragraph 25 of its argument. Once the officer accepted to credibility of the applicant it was illogical to question the credibility of potential employers. To the extent that potential employers were his sponsor and family members, the offers were entirely legitimate and consistent with the goals of the Family Stream of the AINP. The Province reasonably expected family members to support applicants in

becoming economically established. In this case his family members have businesses in Canada and were able to provide him employment as well as other support. There was and remains nothing nefarious in the job offers.

Further, if the visa officer had had further issues about the job offers, then he had a duty to put those squarely to the applicant in an interview, or otherwise ask counsel.

(Reply Argument, July 31, 2015, paras 10 and 11)

[5] It is clear from the reasons that the Officer formed a suspicion that the job offers were not *bona fide*, and, as a result, excluded cogent evidence in support of the likelihood of the Applicant's ability to become economically established in Canada. I find that, in fairness, once the suspicion arose, the Officer owed a duty of fairness to the Applicant to make further concerted inquiries of the persons making the job offers, to either confirm the suspicion or negate the suspicion. Since the Officer made no effort to do so, I find that the decision under review was rendered in breach of a duty of fairness owed to the Applicant.

[6] As the successful party, the Applicant requests a costs order in his favour. In immigration matters, Rule 22 of the *Federal Courts Citizenship, Immigration and Refugee Protection Rules* SOR/93-22 imposes a restriction on judicial discretion to only allow a costs award to be made where "special reasons" exist. The Applicant provides three reasons in support of a costs award: delay in processing the Applicant's application due to the Respondent's intervention into the decision-making process after Alberta's approval had already been given; the Respondent's conduct in taking the present Application to hearing rather than consenting to an order setting aside the decision; and inability to pay the costs of advancing the present Application to its successful conclusion.

[7] I cannot find that any of the Applicant's reasons for requesting a costs award constitute "special reasons". The Respondent had a right to intervene in the decision-making process and there is no evidence that the intervention caused an inordinate delay; the outcome of the present Application was certainly arguable from both the Applicant's and the Respondent's perspective; and, even though it does produce a hardship for the Applicant to pay his own costs of advancing the present Application to its successful conclusion, Rule 22 permits this hardship to arise.

JUDGMENT

THIS COURT'S JUDGMENT is that:

For the reasons provided, the decision under review is set aside and the matter is referred back for redetermination by a different decision-maker on the following directions:

1. Should an issue arise regarding the *bona fides* of a job offer, the decision-maker shall provide the person making the job offer an opportunity to be interviewed, either in person, by teleconference, or by videoconference, in the presence of a representative of the Applicant; and
2. Should an interview be conducted, the interview shall be recorded and a transcript of the interview shall be made available on the Tribunal Record.

There is no question to certify.

“Douglas R. Campbell”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2190-15

STYLE OF CAUSE: FARHAN SARDAR v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: EDMONTON, ALBERTA

DATE OF HEARING: NOVEMBER 10, 2015

JUDGMENT AND REASONS: CAMPBELL J.

DATED: DECEMBER 9, 2015

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