

Federal Court



Cour fédérale

Date: 20160217

Docket: IMM-3122-15

Citation: 2016 FC 210

Toronto, Ontario, February 17, 2016

PRESENT: The Honourable Mr. Justice Campbell

BETWEEN:

**RABIA MERAJ
MUHAMMAD ARSHAD CHEEMA
AAYAN ARSHAD**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] By the present Application, the Applicant, Rabia Meraj, a citizen of Pakistan, challenges the June 16, 2015 decision of a Visa Officer (Officer) refusing her application for permanent residence as a member of the provincial nominee class. The Applicants were nominated for permanent residence by the Province of Saskatchewan under the Saskatchewan Immigrant Nominee Program (SINP) in the Family Referral Category. As a result of the nomination the

Applicant submitted applications to the High Commission in London, UK, for herself and her dependents.

[2] Despite the support of the SINP, the Officer exercised substituted evaluation, allowable pursuant to s. 87(3) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227, and refused to grant permanent residence to the Applicant. As a matter of practice, the Officer's decision was referred to another visa officer for a second opinion; the second opinion was rendered in support. For the reasons that follow, I find that the decision under review is unfair.

[3] On February 17, 2015, prior to the final decision, the Officer sent the Applicant and the SINP an email outlining the concern that the Applicant is not likely to become economically established in Canada on the basis of the submitted English proficiency scores. On May 5, 2015, the SINP responded to the Officer's concerns via email and maintained strong support of her nomination.

[4] On May 19, 2015, the Applicant's Counsel responded via courier with submissions and additional evidence. The evidence included an offer of a job as a childcare worker from a friend of the Applicant's sister. Also included was a letter of support from the employer stating that the Applicant's English skills are sufficient for the job offered; she had interviewed the Applicant over the phone.

[5] The Officer's computerized notes entered 2015/06/12 constitute the reasons for the refusal. They state, in part, as follows:

Job offer to PA is also noted, as is the fact that prospective employer is a family friend & her assessment of PA's English language ability & skills to do the job do not appear to be an impartial assessment of PA's capabilities.

(Certified Tribunal Record, p. 3)

[6] I find that the Officer's statement constitutes suspicion concerning the *bona fides* of the job offer. As a result, the Officer owed a duty of fairness to the Applicant to make further concerted inquiries of the person making the job offer, 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.

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 different decision-makers 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-3122-15

STYLE OF CAUSE: RABIA MERAJ, MUHAMMAD ARSHAD CHEEMA,
AAYAN ARSHAD v THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: FEBRUARY 11, 2016

JUDGMENT AND REASONS: JUSTICE CAMPBELL

DATED: FEBRUARY 17, 2016

APPEARANCES:

Aisling Bondy FOR THE APPLICANT

Neeta Logsetty FOR THE RESPONDENT

SOLICITORS OF RECORD:

Bondy Immigration Law FOR THE APPLICANT
Barristers & Solicitors
Toronto, Ontario

William F. Pentney FOR THE RESPONDENT
Deputy Attorney General of
Canada