

Federal Court



Cour fédérale

**Date: 20180126**

**Docket: IMM-861-17**

**Citation: 2018 FC 84**

**Ottawa, Ontario, January 26, 2018**

**PRESENT: The Honourable Mr. Justice Manson**

**BETWEEN:**

**RANDEEP SINGH**

**Applicant**

**and**

**THE MINISTER OF IMMIGRATION,  
REFUGEE AND CITIZENSHIP**

**Respondent**

**JUDGMENT AND REASONS**

I. Introduction

[1] This is an application for judicial review pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] of a decision made by a visa officer (the “Officer”) refusing the Applicant’s application for permanent residency in the economic class as a self-employed person.

## II. Background

[2] The Applicant is a citizen of India. He is married and has one child. He leases land in India from his father and has farmed there for several years.

[3] In April 2014, the Applicant applied for permanent residency in Canada as a member of the economic class. More specifically, he applied as a self-employed person with plans to purchase and manage a farm, per subsection 88(1) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [IRPA Regulations]. His submissions included, among other things, financial information and a sworn statement from his father.

[4] On January 30, 2017, the Officer conducted an interview of the Applicant in New Delhi. The interview lasted 20 minutes and was conducted in Punjabi. The Officer's interview notes contain the following information:

- The Applicant said his uncle lived in Brampton and was a real estate agent;
- He said he had farmed since 2003. He cultivated 24 acres of land out of which 11 acres belonged to his father and the rest he took on a lease. He cultivated wheat, rice and sugar beet;
- He said he planned to farm in Canada but had not identified a location. His uncle suggested he could find a place near Brampton;
- He said he would buy 8-10 acres. When asked what that would cost, he responded that rates varied;
- When asked what was the average farm size in Canada, he said that it varied between 10-70 acres;
- When asked what he would cultivate, he said he was not sure and it depended on weather conditions and profitability;
- When asked what grew in that region, he said wheat, barley and soybean. He was not aware what varieties of wheat were grown there or the wholesale price of those crops;
- He said he would invest \$200,000 from the sale of half his father's property;
- He was not aware which part of Canada Brampton is located in;
- He was not aware of the capital of Canada;

- He was not aware of the provinces bordering Ontario;
- When asked what the average temperature of that region was in January, he said he was not aware but it was cool;
- When asked what expenditure was required apart from the purchase of land, he said machinery. He didn't know the price but estimated it would cost \$50,000 total;
- He said he had some knowledge of computers and the internet. He was unable to state any websites he referred to but said he had searched through Google;
- When asked what research he had done about the economy, markets, climate and demography in Ontario, he said he learned about climate and crops. When asked to be more specific, he said the time they grew;
- When asked about distribution channels available to farmers in Canada, he said items were sold to supermarkets, farmers markets, etc.;
- When asked if any government agencies helped farmers in that region, he said the Ontario Federation of Agriculture provided seeds, pest control, etc. He did not know where its office was located;
- When asked what research he had done regarding the rate of return from his investment in farming, he said 2.5% in the first year but could not explain how he arrived at that figure;
- He said that English and French were spoken in Ontario. He said he could speak a little English but no French.
- When asked a question in English, he said "sorry, I cannot understand you"; and
- The Officer explained her concerns and gave him an opportunity to respond. He said his uncle would support him. This did not satisfy the Officer's concerns.

[5] On January 31, 2017, the Officer rejected the application. She found that the Applicant was not a "self-employed person" as defined in subsection 88(1) of the IRPA Regulations.

[6] In her written reasons, the Officer states she was not satisfied that the Applicant had the intention and ability to purchase a farm in Canada. She reasoned that the Applicant knew nothing about Canadian farming practices, had not conducted any research into the proposed farming enterprise, knew nothing about his intended destination and did not have the financial resources to purchase a farm in Canada.

[7] On February 24, 2017, the Applicant applied for judicial review of the Officer's decision.

[8] At a hearing before this Court on October 25, 2017, both parties acknowledged that the Applicant's business plan, police clearances and supporting financial documents (the "Missing Documents") were not contained in the Certified Tribunal Record (the "CTR"). The matter was adjourned to allow for further investigation by both parties.

[9] On November 15, 2017, the Officer submitted an affidavit stating that the Missing Documents were not contained in her file and her notes made no mention of those documents being provided to her at the interview. Furthermore, if the Applicant had presented those documents to her at the interview, she would have recorded as such in her interview notes and she would have reviewed those documents before rendering a decision.

[10] On November 22, 2017, the Applicant submitted an affidavit stating that he presented the Missing Documents to the Officer at the interview, but she returned them to him without having read or asked questions about them. He explained that he expended a significant amount of funds on the business plan and that it would have had a determinative effect on his application.

[11] On January 9, 2018, the Applicant and the Officer were cross-examined on their affidavits.

[12] On January 22, 2018, the day before the hearing, the Applicant submitted an affidavit of an immigration consultant, who stated that his office had prepared a business plan for the Applicant in advance of the interview.

### III. Preliminary Issues

[13] The affidavits and cross-examinations of the Officer and the Applicant are admissible. On judicial review, additional evidence may be admitted to address issues of procedural fairness (*Pompey v Canada (Minister of Citizenship and Immigration)*, 2016 FC 862 at para 26).

[14] The affidavit of the immigration consultant is not properly before this Court and was not considered. It was submitted the day before the hearing, without any opportunity for cross-examination, despite the Applicant having had sufficient time to obtain and submit this information sooner.

### IV. Issues

[15] The issues are:

A. Did the Officer breach procedural fairness by:

- i. not considering the Missing Documents; or
- ii. not providing the Applicant an opportunity to respond to her concerns?

B. Was the Officer's decision reasonable?

### V. Standard of Review

[16] The standard of review is correctness for procedural fairness and otherwise is reasonableness (*Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 43).

## VI. Analysis

### A. *Procedural Fairness*

#### (1) The Missing Documents

[17] If there is opposing evidence as to what happened at an interview, this Court has held that the Officer's notes should be preferred (*Oei v Canada (Minister of Citizenship and Immigration)*, 2002 FCT 466 at para 42). Officers make their notes contemporaneously with each interview and have no vested interest in any particular outcome of an application.

[18] That reasoning applies to this case. The Officer is an experienced professional who interviews applicants on a regular basis. She consistently stated in her affidavit and during cross-examination that her standard procedure is to note any documents that are submitted during an interview, to accept and review those documents, to put to the Applicant any questions related to those documents and to keep those documents on file, before rendering a decision. The Missing Documents are not referenced in her notes nor are they contained in her file.

[19] The Officer's explanation is corroborated by the notes she made at the time of the interview and she has no vested interest in the outcome of the Applicant's application for permanent residence. In contrast, nearly ten months passed before the Applicant recollected the interview in his written affidavit.

[20] Furthermore, it was not until approximately nine months after the interview took place, that the Applicant first identified the issue of the Missing Documents. If the Applicant knew that those documents were critical to his application but were not considered by the Officer or contained in the CTR, it is only prudent and reasonable that this issue would have been raised immediately.

[21] Finally, the Applicant had the responsibility to put before the Officer all the material necessary for a favourable decision to be made; visa officers are under no legal duty to ask for clarification or for additional information before rejecting a visa application on the ground that the material submitted was insufficient to satisfy them that the relevant selection criteria were met (*Madan v Canada (Minister of Citizenship and Immigration)*, [1999] FCJ No 1198 at para 6).

[22] If the Applicant did bring these documents to the interview, either he should have properly brought them to the attention of the Officer, or he should have identified this issue and submitted evidence in support of his position in a timelier manner, such that the Court would not be asked to speculate and disregard the Officer's notes nearly a year later.

(2) The Applicant's Opportunity to Respond

[23] The Applicant submits that the Officer did not give him an opportunity to respond to her concerns regarding: financial resources and ability to sustain himself in Canada; knowledge of the English language; and challenges of farming in Canada.

[24] The Respondent submits that the Officer's concerns were considered and put to the Applicant during the interview. The Applicant simply failed to correct or contradict those concerns.

[25] The content of the duty of fairness owed to visa applicants is at the low end of the spectrum (*Trivedi v Canada (Minister of Citizenship and Immigration)*, 2010 FC 422 at para 39). Where a visa officer has concerns arising directly from requirements of legislation or regulations, she has no duty to provide the applicant an opportunity to address those concerns (*Hassani v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1283 [*Hassani*] at para 24).

[26] However, a visa officer must give the applicant an opportunity to address his or her concerns arising from the credibility, accuracy or genuine nature of information submitted (*Hassani* at para 24).

[27] In my opinion, there was no breach of procedural fairness. The Applicant's credibility was not an issue and the Officer was not required to provide him an opportunity to address her concerns with respect to the requirements of the legislation. Regardless, the Applicant was asked many questions that gave him the opportunity to disabuse the Officer of her concerns.

[28] The Officer's concerns were related to the Applicant's ability to purchase and manage a farm in Canada. She found that the Applicant knew nothing about Canadian farming practices, had not conducted any research, knew nothing about his intended destination and did not have sufficient financial resources.



[29] The Officer had no duty to provide the Applicant an opportunity to address her concerns with respect to the requirements of the IRPA and its regulations. The onus was on the Applicant to show he had the ability to be self-employed and make a significant contribution to Canada through the purchase and management of a farm, pursuant to subsection 88(1) of the IRPA Regulations.

[30] Nevertheless, the Applicant was asked many questions that gave him the opportunity to disabuse the Officer of her concerns. For example, the Officer asked: what he would cultivate; where Brampton was located; what grew in that region; what the temperature was in January; what research he had done regarding the economy, markets, climate and demography in Ontario; what types of wheat were grown; what crop prices were; what he knew about distribution channels; how he would finance the purchase of a farm; what he expected land and machinery to cost; and what his expected rate of return was.

[31] Despite her statement that the Applicant did not have the “intention and ability” to purchase and manage a farm, the nature of her questions shows she was focused on his knowledge and capabilities. Given the Applicant takes issue with the Officer’s assessment of his answers to her questions as well as the rest of his application, the issue is not one of procedural fairness, but the reasonableness of the decision.

#### B. *Reasonableness of the Decision*

[32] The Applicant submits that he provided reasonable explanations and answers to the Officer’s questions about farming practices in Canada. Furthermore, the Officer did not ask

questions about his previous experience as a farmer, even though that experience is relevant to his eligibility.

[33] The Respondent submits that the Applicant failed to discharge his onus to provide sufficient information to support his application. Based on his answers to her questions, the Officer reasonably found he did not meet the eligibility requirements.

[34] Considering the Applicant's vague plans, lack of research and the rigorous requirements set out in the Officer's Operation Manual, it was reasonable for the Officer to have concerns and find the Applicant did not have the intention or ability to purchase and manage a farm in Canada.

[35] It is well-established that the onus is on an applicant to provide sufficient information to a visa officer to support his or her application (*Guryeva v Canada (Minister of Citizenship and Immigration)*, 2015 FC 1103 at para 5).

[36] If an applicant's plans are excessively vague or unrealistic, it is unlikely that he can meet eligibility requirements. Similarly, a lack of research with respect to a proposed venture could justify a finding that the plan was not viable (*Shehada v Canada (Minister of Citizenship and Immigration)*, 2004 FC 11 at para 7).

[37] This Court dealt with a similar scenario in *Sahota v Canada (Minister of Citizenship and Immigration)*, 2005 FC 856 and stated:

[10] The Visa Officer was not satisfied that Mr. Sahota had the intention and ability to be self-employed in Canada. Although he

had what she deemed to be a comprehensive business plan, he did not know what it meant. The notes of interview indicate that he did not know what crops were suitable to be grown in Ontario, where he intended to locate, and was not aware of geography and climactic conditions. Furthermore, his prior experience had been in growing wheat and rice and he now intended to grow fruit and vegetables. His only experience in that regard was growing vegetables for his own consumption. There are parts of her letter decision, and notes, which are questionable. Although Mr. Sahota appeared to have sufficient assets, she was concerned that most of them were fixed assets, i.e. his farm in India which would have to be sold. She was also concerned that he had not previously visited Canada to assess the situation first-hand.

[11] [...] even on a reasonableness *simpliciter* standard of review, it cannot be said that the overall decision was unreasonable. [...]

[38] Here, the Applicant's plans were excessively vague. He could not explain what he would cultivate, what crop prices were, what machinery cost, what land cost, the specifics of distribution channels or how he would achieve his expected rate of return. When asked about any research he had done, he only referred to the time of year in which crops grew and could not refer to any websites he had visited. The Applicant admits in his affidavit, "[a]ll I knew is that I wanted to settle in Ontario, close to the Greater Toronto Area."

[39] The onus was on the Applicant to satisfy the Officer that he had the intention and ability to be self-employed in Canada and to make a significant contribution to Canada through the purchase and management of a farm. Although not binding on this Court, the Officer's Operation Manual refers to the "rigorous threshold" that an applicant must satisfy with respect to this "highly skilled and capital-intensive industry":

It is important, when determining an applicant's intent and ability to purchase and manage a farm, to be aware that farming is a highly skilled and capital-intensive industry with real estate making up 54% of an average farmer's assets. The Canadian

Federation of Agriculture (CFA) reports that in Canada the average value of farmland varies significantly from province to province but ranges from \$330 to \$4,600 per acre. Farmland closest to urban centres has a higher market price. Average farm size varies from province to province with Newfoundland reporting an average farm size of 146 acres while Saskatchewan reports an average farm size of 1,152 acres. [...]

In the 1996 census, 98% of farms are family-operated businesses. The CFA advises that “more than ever before, the successful Canadian farmer must be adaptable to the different requirements of running a farm business. The farmer must be able to recognise an animal that is ill, fix a malfunctioning combine and finish off the day by hooking up to the Internet to check the state of the world markets.”

Farming has become a business that requires, in addition to more traditional agricultural skills, a working knowledge of computers and other high-tech equipment. According to the 1996 census, more than 21% of Canadian farm households own one or more computers. There is also a trend to higher education in the farm community.

In other words, the successful applicant must meet a rigorous threshold: sufficient capital, appropriate experience and appropriate skills.

(Immigration, Refugees and Citizenship Canada, *OP 8: Entrepreneur and Self-Employed*, Ottawa: 23 February 2016 at s 11.3).

[40] Notwithstanding the Applicant’s previous experience as a farmer in India, which was briefly mentioned in the Officer’s notes, given that farming practices in India are likely different than in Canada, it was reasonable for the Officer to give little weight to this factor.

**JUDGMENT in IMM-861-17**

**THIS COURT'S JUDGMENT is that:**

1. The application is dismissed;
2. There is no question for certification.

"Michael D. Manson"

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-861-17

**STYLE OF CAUSE:** RANDEEP SINGH v THE MINISTER OF  
IMMIGRATION, REFUGEES AND CITIZENSHIP

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** JANUARY 23, 2018

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**DATED:** JANUARY 26, 2018

**APPEARANCES:**

Ms. Sumeya Mulla FOR THE APPLICANT

Ms. Tessa Cheer FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Waldman and Associates FOR THE APPLICANT  
Toronto, Ontario

Attorney General of Canada FOR THE RESPONDENT  
Toronto, Ontario