

Federal Court



Cour fédérale

Date: 20190125

Docket: IMM-1788-18

Citation: 2019 FC 109

Québec, Québec, January 25, 2019

PRESENT: The Honourable Mr. Justice Locke

BETWEEN:

SRIRAM GOPALAN

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT

UPON application for judicial review of a decision by a Visa Officer (the Officer) at the Visa Assessment Centre, Embassy of Canada in New York (the VAC) refusing the applicant's application for a temporary resident visa, and further finding the applicant inadmissible to Canada for a period of five years;

WHEREAS the basis for both decisions was a statement attributed to the applicant that his representative in relation to the visa application, VisaHQ, was uncompensated, which the Officer found to be a misrepresentation;

WHEREAS the misrepresentation in question was made in a Use of Representative form that was submitted to the VAC by VisaHQ on November 9, 2015;

WHEREAS the applicant denies any involvement with the preparation or submission of this form, though he does acknowledge preparing and forwarding to VisaHQ an earlier Use of Representative form that omitted information as to whether or not VisaHQ was compensated and which was submitted to the VAC by VisaHQ with the applicant's visa application on November 4, 2015;

WHEREAS, on November 4, 2015, the Officer noted the failure to declare whether or not VisaHQ was compensated, and determined that VisaHQ was unauthorized to act as the applicant's representative;

WHEREAS the Officer prepared a procedural fairness (PF) letter noting these concerns, and inviting the applicant to provide an explanation in view of (i) his obligation to be truthful in the visa application; and (ii) open source information indicating that VisaHQ was compensated;

WHEREAS this PF letter was sent to both the applicant and VisaHQ on November 5, 2015;

WHEREAS sending the PF letter to VisaHQ appears to go counter to the guidance in the respondent's Manual IP 9 on the Use of Representatives, and specifically section 7.7 thereof, which indicates that, in such circumstances, the VAC "must no longer conduct business with [an unauthorized representative] unless they become authorized and a new [Use of Representative form] is submitted";

WHEREAS the applicant states that he never received the November 5, 2015 PF letter, and therefore never responded to it;

WHEREAS VisaHQ apparently did receive the November 5, 2015 PF letter since, on November 9, 2015, it submitted the second Use of Representative form stating, incorrectly, that VisaHQ was uncompensated;

WHEREAS the VAC's acceptance of this second Use of Representative form from VisaHQ appears also to go counter to the guidance in Manual IP 9 – Use of Representatives;

WHEREAS the Officer then prepared a second PF letter, once again noting concerns about whether VisaHQ was compensated and whether the applicant had been truthful;

WHEREAS this second PF letter was sent to the applicant on November 19, 2015;

WHEREAS the applicant acknowledges having received this second PF letter but did not read it at the time because the manner in which he received it suggested that it could be ignored; specifically, it was sent by means of two emails, a first which stated “This is a re-sending of the letter, please read carefully,” but which did not attach the second PF letter, and a second which included the same message preceded by “Please disregard earlier letter,” and attaching the second PF letter;

WHEREAS the Officer issued the impugned decision on December 16, 2015, based on the second Use of Representative form received from VisaHQ which stated, incorrectly, that VisaHQ was uncompensated;

WHEREAS the Officer's reliance on a document that was received on the applicant's behalf from a representative that the Officer knew at the time to be unauthorized, and concerning the compensation status of that same unauthorized representative, clearly went counter to the guidance in Manual IP 9 – Use of Representatives, and was furthermore inconsistent with a key reason for having such guidelines: to protect visa applicants from unscrupulous representatives;

WHEREAS the Officer was not entitled to rely on a document received from an unauthorized representative simply because the applicant failed to respond to an opportunity to provide an explanation to allay the Officer's concerns;

WHEREAS, in the absence of any reason for having relied upon the document in question, the Officer's decision must be viewed as unreasonable;

WHEREAS the parties agree that there is no serious question of general importance to certify;

THIS COURT'S JUDGMENT is that:

1. The present application is granted and the impugned decision is set aside.
2. There is no question of general importance to certify.
3. The style of cause is amended, with immediate effect, by correctly identifying the respondent as the Minister of Citizenship and Immigration.

“George R. Locke”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-1788-18
STYLE OF CAUSE: SRIRAM GOPALAN v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING: TORONTO, ONTARIO
DATE OF HEARING: JANUARY 16, 2019
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