

Federal Court



Cour fédérale

Date: 20210610

Docket: IMM-7737-19

Citation: 2021 FC 590

Ottawa, Ontario, June 10, 2021

PRESENT: The Honourable Mr. Justice Fothergill

BETWEEN:

AMANDEEP KAUR

Applicant

and

**MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Amandeep Kaur seeks judicial review of a decision by a visa officer [Officer] in New Delhi, India to refuse her application for a work permit as a live-in caregiver under the Temporary Foreign Worker Program [TFWP]. The Officer was not satisfied that Ms. Kaur's offer of employment was genuine.

[2] The Officer's decision was procedurally unfair. The application for judicial review is therefore allowed, and the matter is remitted to a different visa officer for redetermination.

II. Background

[3] Ms. Kaur is a citizen of India. She holds qualifications as a nurse and a live-in caregiver from various schools in Punjab, India. She has a brother who lives in Surrey, British Columbia.

[4] Ms. Kaur applied for a work permit under the TFWP as a live-in caregiver based on an offer of employment from Jatinderpal Singh Khunkhun and his wife Gurinderjit Khunkhun. Mr. and Mrs. Khunkhun live in Surrey, British Columbia with their two teenaged children, and Mr. Khunkhun's elderly mother. Ms. Kaur's duties were to include providing physical assistance, personal care, meals and companionship to Mr. Khunkhun's mother.

[5] Ms. Kaur was to receive a salary of \$18.50 per hour, which would amount to a yearly salary of around \$38,480. Her contract also specified that she would be entitled to overtime at a rate of \$27.75 per hour.

[6] The Officer noted that Ms. Kaur had twice been refused temporary resident visas for tourism in Canada, that her brother lived in close proximity to her prospective employer, that the employer may in fact be a relative, and that the proposed salary was higher than average for a live-in caregiver. The Officer therefore doubted that the offer of employment was genuine, and wrote in the Global Case Management System: "Interview required."

[7] Ms. Kaur was sent a letter inviting her to an interview on November 21, 2019. The letter said nothing about the nature of the Officer's concerns. These were explained to Ms. Kaur only during the interview, which took place on December 5, 2019.

[8] Ms. Kaur admitted that she had twice been denied tourist visas. She denied that she was going to live with her brother, and said that she had never met her prospective employers in person. She was able to describe her duties in detail, and was aware of the conditions of her employment contract.

[9] The Officer questioned Ms. Kaur regarding her high salary relative to her employers' financial means, especially considering that she would be living under their roof and would benefit from meals and accommodation. The Officer noted that the Khunghuns' household income was \$92,001 in 2018. After paying Ms. Kaur's salary, this would leave the Khunghuns with only \$53,521 per year, for a family of five.

[10] The Officer noted that the minimum income for a family of five seeking a live-in caregiver, also known as the Low Income Cut-Off [LICO], was \$52,583 per year. If the Khunghuns hired Ms. Kaur, their remaining household income would barely exceed the LICO (without accounting for any overtime that might be paid to Ms. Kaur during the year).

[11] The Officer gave Ms. Kaur an opportunity to respond. She said simply "they have the money". This concluded the interview.

[12] Ms. Kaur's application was refused on December 6, 2019.

III. Issues

[13] Ms. Kaur challenges both the procedural fairness and the reasonableness of the Officer's decision. One of these issues is determinative. The application for judicial review must be allowed on the ground that the Officer's decision was procedurally unfair.

IV. Analysis

[14] Questions of procedural fairness are not decided according to any particular standard of review. Rather, the Court must be satisfied that procedural fairness has been met (*Lipskaia v Canada (Attorney General)*, 2019 FCA 267 at para 14, citing *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at paras 54-55).

[15] The level of procedural fairness owed to a person who applies for a temporary work permit is at the low end of the spectrum. Applicants are not generally afforded an opportunity to address concerns that may arise regarding compliance with the requirements of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] or the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [IRPR] (*Kumar v Canada (Citizenship and Immigration)*, 2020 FC 935 at para 19).

[16] However, there may be an exception when an officer has concerns regarding the genuineness or credibility of the information provided in the application (*Iyiola v Canada (Citizenship and Immigration)*, 2020 FC 324 at para 15, citing *Hassani v Canada (Citizenship and Immigration)*, 2006 FC 1283 at para 24). In these circumstances, an officer may owe a duty to the applicant to request further information. Where this duty arises, the applicant must be given a meaningful opportunity to put forward their views and have them considered (*Baker v Canada (Minister of Citizenship and Immigration)*, 1999 SCC 699 at para 22).

[17] In this case, the Officer recognized that it was necessary for Ms. Kaur to be given an opportunity to address whether her offer of employment was genuine: “Interview required”. However, the Officer did not inform Ms. Kaur of the nature of the concern until she appeared for her interview.

[18] The Officer speculated that it would be unreasonable for Ms. Kaur’s prospective employers to offer her such a high salary in light of their limited financial resources. This was not a concern that Ms. Kaur could meaningfully address during the interview without prior notice, or an opportunity to consult her prospective employers.

[19] The Officer’s concern did not relate to compliance with the formal requirements of the IRPA or IRPR, but arose from a subjective opinion that it would be unreasonable for the Khunkhuns to incur the expense of hiring Ms. Kaur. However, as Justice Manson held in *Liu v Canada (Citizenship and Immigration)*, 2018 FC 866 at paragraph 21:

[...] the Officer cannot, without a reasonable basis, impugn evidence of financial ability to pay the Applicant’s salary given

what appears to be clear evidence to the contrary, and give no opportunity, in writing or otherwise, for the Applicant or the prospective employer to address whatever concerns the Officer had on this front, when the result is a refusal on that basis alone. At best, the Officer made adverse inferences on the financial front based on mere speculation. The decision lacks both procedural fairness and is unreasonable (*Morillo de Ocampo v Canada (Minister of Citizenship and Immigration)*, 2014 FC 447 at para 14).

[20] I therefore conclude that Ms. Kaur was not given adequate notice of the Officer's concern regarding whether her offer of employment was genuine, or a meaningful opportunity to respond.

V. Conclusion

[21] The application for judicial review is allowed, and the matter is remitted to a different visa officer for redetermination in accordance with these reasons. Neither party proposed that a question be certified for appeal.

JUDGMENT

THIS COURT'S JUDGMENT IS that the application for judicial review is allowed, and the matter is remitted to a different visa officer for redetermination in accordance with these reasons.

"Simon Fothergill"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-7737-19

STYLE OF CAUSE: AMANDEEP KAUR v MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: BY VIDEOCONFERENCE BETWEEN SURREY AND
VANCOUVER, BRITISH COLUMBIA, AND
OTTAWA, ONTARIO

DATE OF HEARING: JUNE 8, 2021

JUDGMENT AND REASONS: FOTHERGILL J.

DATED: JUNE 10, 2021

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