

Federal Court



Cour fédérale

Date: 20220304

Docket: IMM-454-20

Citation: 2022 FC 303

Ottawa, Ontario, March 4, 2022

PRESENT: The Honourable Mr. Justice Manson

BETWEEN:

KARANJEET SINGH

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] This is an application for judicial review brought pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [“*IRPA*”] of a decision by a visa Officer dated November 29, 2019 [“*Decision*”]. The Officer refused the Applicant’s application for a work permit under the Temporary Foreign Worker Program, finding the Applicant had not demonstrated that he met the requirements for his job in Canada.

II. Background

[2] The Applicant, Karanjeet Singh, is a 37-year-old citizen of India. On August 27, 2019, he applied for a work permit as a carpenter with a job offer from “Sunrise Kitchens Ltd.” in Surrey, British Columbia.

[3] In support of his work permit application, the Applicant provided:

secondary school certificates from the National Institute of Open Schooling;

his Bachelor of Commerce degree from the University of Delhi;

an Educational Credential Assessment showing his degree is equivalent to a Bachelor’s degree from an accredited Canadian university;

an Experience Certificate dated July 22, 2019 from Bull Doors India Limited [Bull Doors] as proof of his employment and describing his duties as an Apprentice Carpenter from July 2011 and as a Carpenter from January 2013;

Salary Certificates from Bull Doors dated July 22, 2019 showing his estimated and actual salary from April 2012 to June 2019; and

his *curriculum vitae* listing his work experience at Bull Doors as an Apprentice Carpenter from July 2011 to December 2012 and as a Carpenter since January 2013.

[4] The Applicant was interviewed by the visa Officer at the Canadian High Commission in New Delhi on November 25, 2019. The visa Officer’s Global Case Management System

[“GCMS”] notes describe the Officer’s reasons for scheduling an interview with the Applicant:

Applicant is applying under R203 for a work permit as a Carpenter. LMIA is confirmed, valid and lists applicant's name. Employment offer letter from Sunrise Kitchens Ltd. is provided. Applicant declares employment as Carpenter since July 2011 at Bull Doors

India Limited, Punjab. Applicant has submitted employment reference letter and salary certificates for the last 7 years. I note that the date of issue of these certificates are July 2019. Bank certificate submitted show balance of INR 8 lacs. Applicant completed Bachelor in Commerce and has moderate Ielts of 5.5 I note no professional certification in the trade of Carpenter is done. Applicant's mother is deceased, father is working in New Delhi and sibling is in Canada. I note applicant completed his education from University of Delhi. It is unclear why the applicant would go to Punjab to do the job of carpenter with a minimal salary of INR 8,000. Referring to interview to assess work experience in the intended occupation.

A. ***Decision under Review***

[5] The Officer provided the following reasons for rejecting the work permit application:

I am not satisfied that he meets the job requirements. PA has not done an apprenticeship program. He did not provide satisfactory evidence of the stated current employment. All the documents have been recently issued. I am not satisfied that he has the stated work experience. I am not satisfied that he meets job requirements. I gave him an opportunity to respond. He said nothing. Application refused.

III. **Issues**

[6] The issues before the Court are:

A. *Preliminary Issue: Does the Chan Affidavit contain inadmissible evidence?*

B. *Was the Decision to refuse the Applicant's work permit application reasonable?*

IV. **Standard of Review**

[7] The parties agree the applicable standard of review is reasonableness.

V. Analysis

A. *Preliminary Issue: Does the Chan Affidavit contain inadmissible evidence?*

[8] The Respondent submits Exhibits B, C, D, E, and F of the Affidavit of Nicole Chan in the Applicant's Record ["Chan Affidavit"] are inadmissible, as they were not before the visa Officer when they made the Decision. This Court should disregard those Exhibits, as well as paragraphs 21-26 of the Applicant's Memo, which rely on the Exhibits.

[9] The Exhibits at issue are the following:

Exhibit B: a copy of s. 139 of the Indian Income Tax Act;

Exhibit C: a list in income tax rates for 2019-2020/ 2020-2021 from the Indian Income Tax Department;

Exhibit D: the First Schedule to the Indian Finance Act;

Exhibit E: a *Forbes* article about India's cash economy and "demonetization" policy;

Exhibit F: an *Al Jazeera* article about India's cash economy.

[10] The Applicant submits Exhibits B, C, D, E, and F of the Chan Affidavit contain publicly available information regarding India's tax system and cash-based economy. There is a presumption that visa Officers are aware of applicants' country conditions when making decisions. An Officer's decision may be overturned on judicial review if it was made without knowledge of country conditions [*Saiffee v Canada (Citizenship and Immigration)*, 2010 FC 589 at para 30 (*Saiffee*)].

[11] The Officer should have been aware of country conditions in India and should have considered that 1) persons making the amount indicated on the Applicant's salary certificates do not have to pay income taxes, and 2) cash payments, like those the Applicant received, are common in India.

[12] In *Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22 at paragraph 20 [*Access Copyright*], Justice Stratas provides a non-exhaustive list of exceptions to the rule against reviewing courts receiving evidence that was not in the record before the decision maker. The first exception reads as follows:

Sometimes this Court will receive an affidavit that provides general background in circumstances where that information might assist it in understanding the issues relevant to the judicial review [...] Care must be taken to ensure that the affidavit does not go further and provide evidence relevant to the merits of the matter decided by the administrative decision-maker, invading the role of the latter as fact-finder and merits-decider. [citations omitted]

[13] I find that the Exhibits E and F and paragraph 23 of the Applicant inadmissible. Exhibit E (the *Forbes* article) indicates that up until November 2016 (the beginning of India's "demonetization" campaign), cash accounted for upwards of 95% of all transactions in India. Exhibit F (the *Al Jazeera* article) indicates that in 2019, 90% of transactions in India were still in cash. While these are arguably publicly available country conditions that a visa Officer at the New Delhi high consulate may be presumed to know, the articles contain in-depth discussions and analyses of Indian monetary policy. Their assessment requires weighing and parsing evidence going to the merits of the Decision.

[14] Exhibits B, C, and D contain publicly available background information helpful in understanding the issues in this application. The Exhibits only go to the merits of the Decision because the Officer erred in requiring the Applicant to provide income tax filings when he was not required to file taxes under Indian law. Knowledge of whether Indian applicants are required to, or capable of providing income tax filings, is the kind of country conditions information a visa Officer at the New Delhi high consulate should be aware of, particularly when the absence of such filings is part of the basis for rejecting an application. These Exhibits are admitted.

[15] The fact that India's income tax filing requirements are relevant to the merits of the Decision flows directly from the fact that the Officer erred in requiring information the Applicant was not required to, or capable of, providing. The Applicant, who was unrepresented in his interview, could not have provided the evidence regarding Indian income tax law in the interview, as he had no reason to anticipate the Officer would commit this error. The Officer's error flowed directly from their ignorance of country conditions they were presumed to know [*Saifee* at para 30].

[16] Exhibits B, C, and D are admissible pursuant to *Access Copyright* and *Saifee*.

B. *Was the Decision to refuse the Applicant's work permit application reasonable?*

[17] The Applicant submits the Officer's Decision is unreasonable for the following reasons:

- 1) the Officer asked no questions about the duties of his prospective carpenter position or any questions that would help assess whether the Applicant could perform these duties;

- 2) the Officer focused unduly on why the Applicant would work as a carpenter in Punjab when he had a degree from the University of Delhi, and the reasons give no indication of why this was relevant to the Applicant's ability to perform the work;
- 3) the Officer's reasons give no indication of why the fact that the Applicant's supporting evidence of work experience was recently issued supported their finding that the Applicant didn't provide satisfactory evidence of employment;
- 4) the Officer's finding that the Applicant failed to provide additional evidence of employment, such as bank statements showing salary credits and his Form 16 for income tax purposes, ignore the Applicant's country conditions and personal circumstances: the Applicant was paid in cash (as is common in India) and he was not required to file taxes under Indian law.

[18] The Respondent submits the Officer's Decision was reasonable. The Applicant could not corroborate his alleged work experience with supporting evidence. He was not able to provide any of the documents the Officer requested of him, such as employment insurance, tax slips, or bank statements. Further, he was unable to provide responses to the Officer's questions regarding the requirements of the job in Canada or demonstrate that he could adequately perform the work of a carpenter in Canada. When asked about the job in Canada, he only described his hourly wage and failed to describe the duties he was expected to perform.

[19] The Respondent argues the Applicant's claim that the Officer was fixated on his motivation for moving to Punjab and becoming a carpenter is a mischaracterization of the Officer's reasons. The Officer asked two questions about why the Applicant left Delhi for Punjab and the remaining questions were about his current employment in India and his prospective job in Canada.

[20] It is unclear from the Officer's reasons why the recent issuance of his documents was relevant to his work experience as a carpenter. The visa office's instructions for Indian work permit applicants specify that Applicants should provide, as proof they meet their job requirements: a reference letter outlining the duration and nature of their work, including duties, a contact name, address, and phone number [*Zhang v Canada (Citizenship and Immigration)*, 2022 FC 197, at para 24].

[21] The Officer's interview questions did not reasonably address his terms of employment, his job duties as a carpenter, or his ability to perform those duties. Instead, the Officer spent half the interview questioning the Applicant about his motivation for moving to Punjab and becoming a carpenter. The GCMS notes indicate this concern was the Officer's reason for scheduling the Applicant's interview. The Officer's reasons do not explain why this was relevant to his ability to perform the duties of a carpenter. His motivation for becoming a carpenter has no bearing on his qualification to perform a carpenter's duties. The Officer's failure to explain the relevance of these concerns leaves a logical gap in the reasons, rendering the Decision unreasonable.

[22] Moreover, the Officer erred in finding the Applicant had not done an apprenticeship in carpentry. The Applicant's Experience Certificate stated that he was employed as an apprentice carpenter from July 2011 to January 2013. The Officer either ignored this evidence or rejected it without explanation, rendering the Decision unreasonable.

[23] While the Respondent is correct that the Officer only asked two questions about the Applicant's move to Punjab during the interview, the Officer did not ask a single question about

the nature or duties of the Applicant's work in India. The Officer asked but one question about the Applicant's prospective job in Canada. The Officer did not follow-up with any other questions about the work in Canada. The Officer did not ask about the specific duties of the Canadian job. The Officer did not ask any questions that would test the Applicant's knowledge of, or ability to perform, carpentry work.

[24] The Officer made no adverse credibility findings and raised no issues with the *bona fides* of the Applicant's evidence. The Officer took no issue with the Applicant's claim that he was paid in cash. The Officer's reasons give no indication as to why the Applicant's Experience Certificate and Salary Certificates were insufficient evidence that he had worked in carpentry from 2011 to 2019.

[25] The application is allowed.

JUDGMENT in IMM-454-20

THIS COURT'S JUDGMENT is that:

1. The application is allowed and the matter is remitted to a different Officer for reconsideration.
2. There is no question for certification.

"Michael D. Manson"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-454-20

STYLE OF CAUSE: KARANJEET SINGH v MCI

PLACE OF HEARING: HELD BY VIDEOCONFERENCE

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