

Federal Court



Cour fédérale

**Date: 20220516**

**Docket: IMM-3000-20**

**Citation: 2022 FC 725**

**Ottawa, Ontario, May 16, 2022**

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

**BETWEEN:**

**KULWINDER KAUR JAGRUP CHAHAL**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. Overview

[1] Kulwinder Kaur Jagrup Chahal seeks judicial review of the refusal of her application for a work permit under the Temporary Foreign Worker Program. The visa officer [Officer] held that she had misrepresented her employment history in India, and found her to be inadmissible to

Canada for a period of five years pursuant to s 40(1)(a) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

[2] The Officer did not inform Ms. Chahal of the underlying concern or problem leading to the preliminary conclusion that she may have misrepresented her employment history. The Officer's decision was procedurally unfair. The application for judicial review is therefore allowed.

## II. Background

[3] Ms. Chahal is a citizen of India. She applied for a work permit after she was offered a position as an administrative assistant with a company called Safety Solutions in Mississauga, Ontario.

[4] In support of her application, Ms. Chahal submitted a letter from her employer, the Podar World School in India, confirming that she worked there as an administrative assistant. She also submitted pay stubs that described her role as an administrative officer. The letter was signed by the school principal, and confirmed that Ms. Chahal had worked as an administrative officer and a senior coordinator since April 2014.

[5] Ms. Chahal says she was initially hired in the capacity of senior coordinator. However, as of July 2018 she assumed the additional role of administrative officer when the previous incumbent resigned. She held the dual position from July 2018 until the time she applied for the

work permit. Ms. Chahal asked for a raise in salary, and for her job title to be formally changed, but these requests were refused due to an ongoing regional dispute over school fees.

[6] The Officer attempted to independently verify Ms. Chahal's employment by conducting Internet searches and contacting employees of the Podar World School. According to the Officer's notes in the Global Case Management System [GCMS], the Internet search suggested that someone other than Ms. Chahal was serving in the role of administrative officer at the school.

[7] The Officer also spoke with the following individuals:

- (a) Sampada Palkar, headmistress of the Podar World School. Ms. Palkar confirmed that Ms. Chahal worked as an administrative officer at the school.
- (b) Kalpesh Shah, administrative officer at the Podar International School. Mr. Shah explained that he was not employed at the Podar World School, and the two schools are operated by different trusts. Mr. Shah commented that there are not many Podar World Schools, and expressed the view that it is not possible for one person to be both an administrative officer and a senior coordinator.
- (c) Sandeep Pinto, a human resources officer with the Podar World School. Mr. Pinto confirmed that Ms. Chahal was employed at the school and earned the salary she declared; however, he said that her position was senior coordinator and not administrative officer.

[8] The Officer sent Ms. Chahal a Procedural Fairness Letter [PFL] on April 29, 2020. The PFL informed Ms. Chahal of the Officer's concern that the letter confirming her employment did not accurately reflect her job title and duties at the Podar World School, and may be fraudulent. Ms. Chahal was advised that if she were found to have engaged in misrepresentation, she would be inadmissible to Canada for five years pursuant to ss 40(1) and 40(2)(a) of the IRPA.

[9] Ms. Chahal responded to the Officer in writing on May 25, 2020. She explained that her duties at the Podar World School included teaching and providing support to administrative staff. She affirmed that she provided instruction, coordinated student video conferences, conducted exams, maintained office records, prepared reports, managed media relations, and replied to admission inquiries.

[10] Ms. Chahal also stated that her managers at the Podar World School were opposed to her leaving her position and working abroad. She admitted she had told her managers that she required a letter confirming her employment in order to obtain a visitor visa, rather than a work permit. If she had been honest about the purpose for which she requested the letter, she believed it might not have been provided.

[11] According to Ms. Chahal's response to the PFL, after the school was contacted by the Officer, she was asked to consider staying for another year before leaving. She declined, and she thought school officials may have insinuated they would provide negative responses to Canadian authorities regarding her employment.

[12] The Officer's GCMS notes for June 20, 2020 state: "... I am not satisfied on balance of probability that the applicant is working as an admin officer". The notes also indicate the Officer did not believe Ms. Chahal had been interviewed at length by her Canadian employer, as she claimed in her response to the PFL: "... the applicant has never declared that the employer is, in fact, her immediate relative, therefore, I do not find this statement credible".

[13] The Officer refused Ms. Chahal's application for a work permit on June 25, 2020, and declared her to be inadmissible for misrepresentation for a period of five years.

### III. Issue

[14] Ms. Chahal challenges the Officer's decision on a number of grounds. One of these is determinative. The application for judicial review must be allowed because the Officer's decision was procedurally unfair.

### IV. Analysis

[15] Procedural fairness is subject to a reviewing exercise best reflected in the correctness standard, although strictly speaking no standard of review is being applied (*Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54). The Court must determine whether the process followed by the decision-maker satisfies the level of fairness required in all of the circumstances (*Mission Institution v Khela*, 2014 SCC 24 at para 79). The

ultimate question is whether the applicant knew the case to meet, and had a full and fair chance to respond (*Siffort v Canada (Citizenship and Immigration)*, 2020 FC 351 at para 18).

[16] The Officer's GCMS notes form a part of the decision under review (*Ebrahimshani v Canada (Citizenship and Immigration)*, 2020 FC 89 at para 5).

[17] Ms. Chahal seeks to adduce new evidence regarding the nature of her duties at the Podar World School, consisting of letters and affidavits that confirm she did indeed work in the dual capacities of administrative officer and senior coordinator. She says she could not have submitted this evidence to the Officer, because the PFL did not provide sufficient detail regarding the Officer's concerns. Had she been informed that the concern pertained to her dual role at the school, she would have responded accordingly.

[18] As a general rule, the evidentiary record before the Court on judicial review is restricted to the evidentiary record that was before the decision maker. Evidence that was not before the decision maker and that goes to the merits of the matter is not admissible (*Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22 [*Access Copyright*] at para 19).

[19] There are three recognized exceptions to this general rule: (1) evidence that comprises general background in circumstances where the information might assist a court in understanding issues relevant to the proceeding; (2) evidence that brings into focus procedural defects that cannot be found in the evidentiary record; and (3) evidence that illustrates the complete absence

of evidence before the decision maker when it made a particular finding (*Access Copyright* at para 20).

[20] Ms. Chahal argues the new evidence falls within the first exception, and provides only general background information to assist the court's understanding. I disagree. However, the new evidence may be admitted in accordance with the second exception for the limited purpose of demonstrating the additional information that could have been provided if the PFL had been clearer. The evidence is relevant to the question of procedural fairness, but it cannot be relied upon to challenge the Officer's decision on its merits.

[21] The decision to issue a temporary visa typically attracts a low level of procedural fairness, as an applicant does not face detention or removal and can re-apply. However, associated findings of misrepresentation under s 40(1)(a) of the IRPA attract a higher level of procedural fairness, because a finding of misrepresentation precludes an applicant from re-applying for a five-year period. This is a harsh result, and may also reflect on an applicant's character (*Likhi v Canada (Citizenship and Immigration)*, 2020 FC 171 at paras 26-27).

[22] Where a finding of misrepresentation is contemplated, a visa officer has a duty to inform an applicant of the concerns that may give rise to such a finding and must provide the applicant with a meaningful opportunity to respond (*Bayramov v Canada (Citizenship and Immigration)*, 2019 FC 256 at para 15, citing *Lamsen v Canada (Citizenship and Immigration)*, 2016 FC 815 at para 18). This is usually done by means of a PFL. The PFL must contain enough detail to enable the applicant to know the case to meet.

[23] The PFL sent to Ms. Chahal described the nature of the Officer's concerns as follows:

I have concerns that you have submitted a fraudulent employment letter that does not accurately reflect your job title and duties at Podar World School.

[24] The Officer said nothing about the basis for the concerns, or anything about the Internet search results or communications with employees of the Podar World School and Podar International School that suggested Ms. Chahal may not hold the position of administrative officer.

[25] In *Waheed v Canada (Citizenship and Immigration)*, 2020 FC 265 [*Waheed*], members of the Anti-Fraud Unit of the High Commission of Canada in Islamabad, Pakistan visited the address of the marketing agency where the applicant said he worked. They were unable to confirm the marketing agency operated from that location. The officer sent the applicant a PFL suggesting he may have falsified or misrepresented his work experience. Justice Sandra Simpson found the PFL to be inadequate, holding as follows (*Waheed* at paras 12-13):

In my view the purpose of a Procedural Fairness Letter is to provide a recipient with information that enables him or her to, if possible, dispel an officer's concerns. My view is reinforced by the decision of the Federal Court of Appeal in *Sapru v. Canada (Minister of Citizenship & Immigration)*, 2011 FCA 35 at paragraph 31. There the Court says:

The Judge's conclusion was premised on the basis that the Fairness Letter gives an applicant "a fair opportunity" to respond to any concerns. This requires the Fairness Letter to set out clearly all of the relevant concerns so that an applicant knows the case to be met and has a true opportunity to



meaningfully respond to all of the concerns of the medical officer.

In this case the Applicant was given only the Officer's conclusion that the evidence he provided in support of his work experience had been falsified.

[26] Ms. Chahal says that, due to her fraught relationship with her managers at the Podar World School, she did not request further written clarification from them regarding her duties. She feared they may have been attempting to sabotage her application for a work permit, and so she merely provided further particulars of the duties she performed at the school.

[27] Ms. Chahal was entitled to an understanding of the underlying concern or problem leading to the Officer's preliminary conclusion that she may have misrepresented her duties at the Podar World School (*Waheed* at para 14). The PFL neglected to explain that the concern arose from conflicting accounts of whether she was an administrative officer or a senior coordinator. In fact she was performing both roles.

## V. Conclusion

[28] The application for judicial review is allowed, and the matter is remitted to a different decision maker for redetermination. 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 decision maker for redetermination.

"Simon Fothergill"

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Judge

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

**DOCKET:** IMM-3000-20

**STYLE OF CAUSE:** KULWINDER KAUR JAGRUP CHAHAL v THE  
MINISTER OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** BY VIDEOCONFERENCE BETWEEN TORONTO  
AND OTTAWA, ONTARIO

**DATE OF HEARING:** APRIL 6, 2022

**JUDGMENT AND REASONS:** FOTHERGILL J.

**DATED:** MAY 16, 2022

**APPEARANCES:**

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