



Court File No. IMM-984-97

**FEDERAL COURT OF CANADA**  
**TRIAL DIVISION**

**B E T W E E N:**

**GULU SUNDER ALWANI**

**Applicant**

**- and -**

**MINISTER OF CITIZENSHIP AND IMMIGRATION**

**Respondent**

**BEFORE:** THE HONOURABLE MR. JUSTICE JEROME, A.C.J.

**HELD AT:** The Federal Court, 330 University Avenue,  
Toronto, Ontario.

**DATE:** August 20th, 1997.

**REGISTRAR:** C. CHIOCCHIO

**ORAL REASONS FOR DECISION**

**A P P E A R A N C E S:**

**D. GARSON, ESQ.** for the Applicant

**MS. C. li RICHE** for the Respondent

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HIS LORDSHIP: Ms. li Riche, I can't agree with your submissions. I am not going to call on the Applicant for a response. Bearing in mind that all I am doing here is choosing between this officer's treatment of the Applicant and the requirement perhaps that another officer review it freshly, simple justice and fairness I think says to me clearly that the Muliadi case sets the standard in matters of this sort.

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It may very well have been that the officer could have said, "I see your documentation here. I don't want to see any more, and I find that you don't qualify for the definition of entrepreneur." But instead of that what she did was say that the documents here aren't good enough, and then added something which I take to be that, even if you brought other documents back I don't suppose that it would affect my decision.

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That's the impression that was left and indeed the impression that counsel raised before me today, While Counsel for the Minister says she is just being candid, it creates the perception surely that she has made up her mind, and the Muliadi case says that if she is not satisfied that the documentation presented meets all the requirements and has some concerns, she owes it to the Claimant to say, "I want you to come back and address these concerns." That's clear from the Muliadi decision in the Court of Appeal which



binds me even if I didn't agree with it, but I do agree with it.

So that clearly there is another aspect of it and when there is a perception here that this Visa Officer had made up her mind in the first interview and created the impression that no matter what was brought back that she wasn't going to change her mind, and indeed she didn't change her mind, she made an adverse decision in the interim. That creates a perception of unfairness and in these kinds of proceedings perception is as important as reality.

Therefore this matter will be sent back. The adverse decision of the officer will be set aside. It will be returned to be dealt with by a different Visa Officer and be reprocessed in accordance with the law and my reasons in such a way as to respect the duty of fairness in the circumstances set out in Muliadi.

I will make the endorsement in a few minutes and I will reduce it to brief written reasons for the benefit of the Visa Officer who will be hearing the matter by editing the transcript of my reasons this morning and filing them as soon as it is available. I don't think it will take too long.

Thank you.



CERTIFIED CORRECT,

*Lennox T. Brown*  
Lennox T. Brown, F.I.P.S.  
Verbatim Reporter