Date: 20100223

Docket: IMM-4542-09

Citation: 2010 FC 212

Vancouver, British Columbia, February 23, 2010

PRESENT: The Honourable Mr. Justice Simon Noël

BETWEEN:

KANCHAN SINGH

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review pursuant to section 72 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 ("IRPA") of a decision of a Visa Officer (the "Officer") dated July 8, 2009, wherein the Officer rejected the Applicant's application for a two-year temporary work permit.

I. The Facts

[2] The Applicant, Mr. Kanchan SINGH, born in 1980, is a citizen of the Republic of India. He is married and has three children.

[3] On April 6, 2009, the Applicant made a first temporary work permit application that was denied for the reason that he had not demonstrated that he had sufficient ties to India, that he was sufficiently well established in his country and that he would leave Canada after his authorized stay.

[4] The Applicant again applied for a two-year temporary work permit in June 2009. By letter dated July 8, 2009, the Officer denied the application. Again, according to the Officer, the Applicant had not demonstrated that he was sufficiently well established in India or that his ties to India were sufficiently strong.

[5] The Applicant filed an application for leave and for judicial review with respect to the July 8, 2009 Officer's decision on September 11, 2009. Leave was granted by Justice Heneghan on December 10, 2009.

II. Points in Issue

[6] The Applicant is raising the following questions:

a. Did the Visa Officer breach the duty of procedural fairness by not providing any reasons for the denial and by not advising the Applicant of his concerns before making the decision?

b. Was the decision of the Visa Officer reasonable?

III. Analysis

A. *Standard of Review*

[7] The jurisprudence has demonstrated that a visa officer's decision to deny a temporary work permit application is reviewable under the standard of reasonableness (see *Choi v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 577 at paras. 10-12). As stated by Justice DeMontigny in *Baylon v. Canada (Minister of Citizenship and Immigration)*, 2009 FC 938 at para. 24, "[a]ccordingly, the Court ought to defer to a visa officer's decision if his or her findings are justified, transparent and intelligible, and fall within the range of possible outcomes given the evidence as a whole: *Dunsmuir v. New Brunswick*, 2008 SCC 9, at para. 47". The decision of a visa officer is discretionary and is therefore entitled to a high level of deference.

[8] When there is a question of procedural fairness, the standard of review is correctness (see *Barnash v. Canada (Minister of Citizenship and Immigration)* 2009 FC 842 at para. 21).

B. *Procedural Fairness*

[9] The Applicant raises two issues concerning procedural fairness. First, he states that the Officer did not provide any reasons for her denial of the application. Second, he argues that the Officer did not advise him of any concerns with his application.

[10] The Applicant has received the Decision Letter dated July 8, 2009, as well as the CAIPS notes of the Officer. Accordingly, these are sufficient reasons as they give the Applicant the statutory criteria he has failed to meet as well as the process by which the Officer made her decision (see *Singh v. Canada (Minister of Citizenship and Immigration)* 2006 FC 315 at para. 24). The Officer clearly states where the Applicant has failed to demonstrate his intention to leave Canada once his temporary work permit comes to term in his CAIPS notes. The notes also demonstrate that she has taken into account documents that were sent with Mr. Singh's application.

[11] As for the second argument of the Applicant, the burden of proof is on him and not on the Officer to put all the relevant evidence forward for his case to be met. "The onus is on the Applicant to file an application together with any relevant supporting documentation. There is no duty for the visa officer to try to bolster an incomplete application" (*Tahir v. Canada (Minister of Citizenship and Immigration)*, [1998] F.C.J. 1354). The Officer did not have the obligation to advise the Applicant of the lack of documentation provided to support his case.

[12] The duty of procedural fairness owed to the Applicant has not been breached by the Officer in this present case.

C. *Officer's Decision is Reasonable*

[13] The Applicant argues that the Officer's decision was unreasonable as she ignored the evidence before her. As stated at paragraph 7 above, the standard of review of the Officer's decision is reasonableness. What is important to highlight in cases where the reasonableness standard applies

is that "there is more than one reasonable outcome" (*Canada (Citizenship and Immigration) v. Khosa*, 2009 SCC 12 at para. 59). A Court reviewing a decision on reasonableness is "concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir* at para. 47). For the reasons stated below, we believe the Officer's decision was reasonable.

[14] To apply for a temporary work permit, the Applicant must establish that he meets all of the requirements as set out in Part 11 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 (the "Regulations"). Section 200(1)(b) states that:

Work permits	Permis de travail
200. (1) Subject to subsections (2) and (3), an officer shall issue a work permit to a foreign national if, following an examination, it is established that (…) (*b*) the foreign national will leave Canada by the end of the period authorized for their stay under Division 2 of Part 9;	**200.** (1) Sous réserve des paragraphes (2) et (3), l'agent délivre un permis de travail à l'étranger si, à l'issue d'un contrôle, les éléments suivants sont établis : (…) b) il quittera le Canada à la fin de la période de séjour qui lui est applicable au titre de la section 2 de la partie 9;

[15] After studying the Applicant's application for a temporary work permit, the Officer needed to determine if the Applicant would leave Canada after his visa comes to term. In doing so, she reviewed the new information provided. The Officer noted that the Applicant had not provided any evidence of English abilities which would give him an understanding of the job and knowledge of his rights as a temporary worker in Canada. Furthermore, no documentation was submitted as

required to show his income in India. It was also noted that given the socio-economic benefits in Canada and the fact he was married with three sponsorable children, that there was little incentive to return to India at the end of the Canadian employment period. It was also indicated that his documentation concerning his assets in India was not corroborated. Overall, the Officer was not satisfied that the Applicant had demonstrated he had a high level of personal establishment in India and that he had a genuine purpose to travel to Canada.

[16] This is a reasonable decision and the Court will not intervene.

[17] Counsel was asked if a certified question would be presented and they both said no.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that:

1) This application for judicial review is dismissed; and

2) No question will be certified.

"Simon Nöel"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-4542-09
STYLE OF CAUSE:	KANCHAN SINGH v. MCI
PLACE OF HEARING:	Vancouver, BC
DATE OF HEARING:	February 23, 2010
REASONS FOR JUDGMENT AND JUDGMENT:	NOËL J.
DATED:	February 23, 2010

APPEARANCES:

Mr. Mir Huculak	FOR THE APPLICANT
Ms. Jennifer Dagsvik	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Mir Huculak Barrister & Solicitor Vancouver, BC	FOR THE APPLICANT
John H. Sims, Q.C. Deputy Attorney General of Canada Vancouver, BC	FOR THE RESPONDENT