

Federal Court



Cour fédérale

Date: 20100721

Docket: IMM-5592-09

Citation: 2010 FC 769

Toronto, Ontario, July 21, 2010

PRESENT: The Honourable Madam Justice Mactavish

BETWEEN:

IMRAN ZAIB

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] Imran Zaib's application for a permanent resident visa as a skilled worker was refused on the basis that he had misrepresented material facts by having submitted a fraudulent Bachelor's degree certificate in support of his application.

[2] For the reasons that follow, I am satisfied that Mr. Zaib was not treated fairly in the assessment of his application, with the result that his application for judicial review will be allowed.

Background

[3] During an interview with Mr. Zaib, the visa officer became concerned with the legitimacy of Mr. Zaib's educational credentials, as the Bachelor's degree that had submitted from the University of the Punjab was in the "new style". The officer was also concerned about the fact that Mr. Zaib had difficulty answering questions about his studies. Consequently, Mr. Zaib was asked to provide documentary confirmation of his degree from the University.

[4] Very shortly thereafter, the officer received a letter purportedly from the University of the Punjab, confirming that Mr. Zaib did indeed hold a Bachelor's degree from that institution. Because of concerns with respect to this letter, the officer then contacted the University directly, providing a copy of the letter of confirmation supplied by Mr. Zaib, and asking that the authenticity of the letter be verified. The officer was subsequently advised by the University that the letter was a fake.

[5] The officer then sent out a "fairness" letter to Mr. Zaib stating that the officer had "reasonable grounds to believe that the degree you have submitted is fraudulent. Please provide evidence to the contrary within 30 days ..." In response, Mr. Zaib's immigration consultant re-submitted a further copy of the original confirmation letter purportedly from the University of the Punjab.

[6] Mr. Zaib's application was then refused on the basis of his misrepresentation.

[7] Mr. Zaib subsequently obtained additional documentation purportedly obtained from the University of the Punjab indicating that the letter advising that his confirmation letter was a fake had been sent in error, as a result of a clerical mistake. Mr. Zaib also produced a certified copy of his degree certificate, and asked the officer to reconsider the decision refusing his application. This request was denied. No response was received with respect to a second request for reconsideration submitted by Mr. Zaib's counsel.

Analysis

[8] While Mr. Zaib has raised a number of issues with respect to the officer's decision, I need only deal with the issue of fairness, as that issue is determinative of the outcome of the application.

[9] The section of Citizenship and Immigration Canada's Immigration Manual dealing with procedural fairness in the evaluation of visa applications provides that officers should accurately describe to visa applicants the documents that they are required to submit in order to address officers' concerns. The manual goes on to stipulate that:

The applicant must be made aware of the "case to be met", i.e., the information known by the officer must be made available to the applicant prior to the decision being made. For example, if an officer relies on extrinsic evidence (i.e., evidence received from sources other than the applicant), they must give the applicant an opportunity to respond to such evidence.

[10] This procedural fairness obligation is consistent with that imposed on visa officers by the jurisprudence: see for example, *Muliadi v. Canada (Minister of Employment and Immigration)*,

[1986] 2 F.C. 205, 66 N.R. 8 at para. 14 (F.C.A.); *Simmons v. Canada (Minister of Public Safety and Emergency Preparedness)*, 2006 FC 1123, 151 A.C.W.S. (3d) 503 at para. 7.

[11] The visa officer's concern with respect to the authenticity of Mr. Zaib's university degree was entirely reasonable, given the apparently unusual format of the certificate, and his inability to answer questions regarding his studies in anything but the most general of terms. The extrinsic evidence subsequently obtained from the University quite naturally led to further concerns on the part of the officer with respect to the truth of the representations made in Mr. Zaib's visa application regarding his educational qualifications.

[12] It should, however, be noted that what the officer sought from the University of the Punjab was not confirmation of the authenticity of Mr. Zaib's university degree, but rather verification of the authenticity of the confirmation letter previously provided by Mr. Zaib. The University advised the officer that the letter was a fake, but provided no information with respect to the authenticity of the degree itself. In fact, the University asked the officer to provide a copy of the degree certificate so that its legitimacy could be investigated. There is no indication in the file that the document was ever sent to the University for authentication.

[13] However, the fairness letter sent to Mr. Zaib provided no indication of any concern on the part of the officer with respect to the authenticity of the confirmation letter that he had provided. Rather, the concern expressed is with the authenticity of the degree itself. I accept that evidence that the confirmation letter was fraudulent would logically raise serious concerns with respect to the

authenticity of the degree. That said, I am nevertheless satisfied that the officer's failure to advise Mr. Zaib of the actual nature of the extrinsic evidence obtained from the University was unfair to him, as he was not properly made aware of the case that he had to meet.

[14] The fact that Mr. Zaib did not understand the concern he was being asked to address is demonstrated by his response to the fairness letter.

[15] Mr. Zaib's responded to the fairness letter by sending a further copy of the confirmation letter from the University of the Punjab to the visa officer. This might have been a reasonable course of action if what was in issue was the authenticity of the degree itself. Indeed, Mr. Zaib could have quite reasonably assumed that the earlier copy of the letter had gone astray and had not been received by the officer, leaving the officer's concerns with respect to the authenticity of the degree unanswered.

[16] Such a response would, however, have made no sense whatsoever if Mr. Zaib had been aware that the officer had information from the University indicating that the letter was a fake.

[17] In these circumstances I am satisfied that the failure of the officer to fairly describe the extrinsic evidence obtained resulted in Mr. Zaib being denied a fair opportunity to provide a meaningful response to the officer's concerns.

Conclusion

[18] Because of my finding that the process followed in relation to Mr. Zaib's visa application was unfair, this application for judicial review will be allowed and the matter remitted to a different visa officer for re-determination. It should be noted, however, that I have not made any findings with respect to the authenticity of Mr. Zaib's university degree, and any re-determination of this matter will necessarily have to include very careful scrutiny of his educational qualifications, given the very serious concerns that have been raised in this regard.

Certification

[19] Neither party has suggested a question for certification, and none arises here.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that:

1. This application for judicial review is allowed, and the matter is remitted to a different visa officer for re-determination in accordance with these reasons; and
2. No serious question of general importance is certified.

“Anne Mactavish”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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