Federal Court  Cour fédérale

Date: 20101020

Docket: IMM-150-10

Citation: 2010 FC 1027

Toronto, Ontario, October 20, 2010

PRESENT: The Honourable Madam Justice Snider

BETWEEN:

KARAMJIT SINGH KHATRA

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The Applicant, Mr. Karamjit Singh Khatra, is a citizen of India who, in 2004, applied for permanent residence in Canada under the skilled worker class. In his application, the Applicant claimed that he had ten years of experience as a marketing manager with two different employers. In a decision dated September 23, 2009, a Visa Officer refused his application on the basis that the Applicant had not met the requirements of s. 75(2)(a)(b)(c) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 (the *Regulations*). Briefly stated, the Visa Officer was not

satisfied that the Applicant had met the minimum requirements for employment in his claimed field of skill as a marketing manager. The Applicant seeks judicial review of that decision.

[2] The sole issue for determination is whether the Visa Officer erred by failing to have regard to a job letter that specifically set out his duties as a marketing manager while employed by M.P. Engineering Works.

[3] The Officer's decision is reviewable on the standard of reasonableness. On this standard, the Court should not intervene where the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law (*Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190 at para. 47). In addition, the Court may grant relief if it is satisfied that the Officer made her decision without regard for the material before her (*Federal Courts Act*, R.S.C. 1985, c. F-7, s. 18.1(4)(d); see also *Kaur v. Canada (Minister of Citizenship and Immigration)* [2008] F.C.J. No. 1468 at para. 33)).

[4] The letter in question is dated September 8, 2002 and is typed on letterhead of M.P. Engineering Works. The letter certifies that the Applicant "is working as a Marketing Manager in our firm since Dec '94" and lists his main job responsibilities. In the Applicant's submission, the list of duties set out in the letter closely correspond to the National Occupation Classification (NOC) duties for a marketing manager (NOC 0611 – Sales and Marketing Managers). The Applicant is correct that the Visa Officer's decision does not make any reference to this letter. However, I also note that the September 8, 2002 letter is not contained within the Certified Tribunal Record (CTR),

raising the threshold issue of whether the letter was, in fact, sent with the documentation package to the Visa Officer.

[5] The onus is on the Applicant to provide all of the relevant information and documentation to satisfy the Visa Officer that the application meets the statutory requirements of the *Immigration and Refugee Protection Ac*t, S.C. 2001, c. 27 (*IRPA*) and the *Regulations*. The burden is also on the Applicant to prove his case in an Application for Leave and Judicial Review.

[6] Where, as here, the CTR does not contain a document or make any reference to such a document, a bare assertion by the Applicant that the document was sent will not generally suffice to meet that burden (see, for example, *Miranda v. Canada (Minister of Citizenship and Immigration)*, 2010 FC 424 at para. 15; *Adewale v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 1190 at para. 11).

[7] This raises serious doubt as to whether the letter was actually included in his application. The only reference that I have to this letter is contained in the affidavit of the Applicant. Beyond this bare assertion that the letter was provided, the Applicant has presented no evidence (such as a copy of a cover letter, fax confirmation or registered mail receipt) to support his claim that this letter was in fact sent with the other documents that were received by the Visa Officer. The Applicant does not even explain when or how the letters were sent.

[8] The Applicant argues that, without a sworn affidavit from the Visa Officer, I must prefer the uncontradicted, sworn evidence of the Applicant (*Kiyana v. Canada (MCI)*, [2003] F.C.J. No. 193 at para. 17 and 20) *(Kiyana)* The Applicant further argues that, in the absence of an affidavit from the Visa Officer, the Computer Assisted Immigration Processing System (CAIPS) notes are not available as evidence on the application for judicial review (*Shahi v. Canada (MCI)*, (2001) [2000] F.C.J. No. 1867 at para 9).

[9] I agree that an affidavit from the Visa Officer may be required in certain situations. An affidavit is required to prove the contents of the CAIPS notes because they are not admissible as business records. In order to accept the CAIPS notes as evidence of the facts to which they refer, they must be adopted as the evidence of the Visa Officer in an affidavit (*Kiyana*, citing *Tajgardoon v. Canada (M.C.I.)*, [2001] 1 F.C. 591 (Fed. T. D.) at para. 20).

[10] However, in this case, the contents of the CAIPS notes are not in question. In *Kiyana*, there was a discrepancy between what was in the CAIPS notes regarding a conversation the applicant had with the visa officer, and what the applicant's version of the conversation was. This is not the situation in the case at bar. There is no discrepancy between the contents of the CAIPS notes and what the Applicant has said.

[11] The case of *Shahi*, a case where there was a discrepancy between the contents of the CAIPS notes and what was said by the Officer to the applicant during the interview, is not relevant to the facts before me. In the case at bar, the Visa Officer did not receive the letter, the CAIPS notes make

no reference to the letter, and there is no copy of the letter in the CTR. There is no discrepancy to clear up.

[12] The issue before me is simply whether the Applicant has persuaded me that the letter was in fact provided to the Visa Officer for consideration. On the facts before me, I am not persuaded that it was.

[13] In conclusion, for the foregoing reasons, the Application for Judicial Review will be dismissed. There is no question for certification.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that:

1. The application for judicial review is dismissed; and

2. No question of general importance is certified.

"Judith A. Snider"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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