

Federal Court



Cour fédérale

**Date: 20110224**

**Docket: IMM-1449-10**

**Citation: 2011 FC 219**

**Ottawa, Ontario, February 24, 2011**

**PRESENT: The Honourable Mr. Justice O'Keefe**

**BETWEEN:**

**HARJIT KAUR**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP &  
IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] This is an application pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the Act) for judicial review of a decision of an officer of the Citizenship and Immigration Canada Case Processing Centre (the officer), dated February 10, 2010, wherein the officer refused to restore the applicant's temporary resident status, work permit and study permit.

[2] The applicant requests that the decision of the officer be set aside and the claim remitted for redetermination by a different officer.

### **Background**

[3] Harjit Kaur (the applicant) is a citizen of India born October 3, 1986.

[4] The applicant came to Canada on April 18, 2007 to study fashion design full-time at Fanshawe College in London, Ontario.

[5] The applicant renewed her study permit in November 2008. Her new study permit was valid until July 2009.

[6] The applicant was expected to graduate from Fanshawe College on April 30, 2009. However, on May 8, 2009, she was informed that due to her unsatisfactory academic standing she was not eligible to graduate as her grade point average was below the program requirements.

[7] The applicant was able to upgrade her marks in four courses by submitting additional assignments over the summer of 2009. She was supposed to complete these assignments by July 24, 2009. However, as several teachers were absent for the summer, she was given until August 22, 2009.

[8] The applicant was informed on August 27, 2009 that she had successfully upgraded her courses and would receive her official transcripts. The applicant was provided with her diploma and transcripts on September 4, 2009.

[9] The applicant submitted her application for a work permit on September 4, 2009. This application was returned for insufficient fees. She reapplied for restoration of her temporary resident status and a further work and study permit on November 10, 2009. This application was refused on February 10, 2010 and is the basis for this judicial review.

### **Officer's Decision**

[10] The officer found that the applicant's application was not mailed within the prescribed 90 day period and therefore determined that she is not eligible for a work permit for post-graduation employment. The officer determined that the 90 day period began from the date on the applicant's diploma, April 30, 2009.

[11] The officer found that the applicant did not meet the requirements of a study permit. The officer was not convinced that the applicant was a genuine student. The officer had concerns about the credibility of the documents received as several letters from officers at Fanshawe College conflicted as to the applicant's official graduation date. One letter indicated July 24, 2009, the other August 22, 2009. These letters further conflicted with the diploma from the Registrar of the college which indicated that the graduation date was April 30, 2009.

[12] Finally, the officer was not convinced that the applicant met the requirements of the Act or the *Immigration and Refugee Protection Regulations*, SOR/2002-227, and refused to extend the applicant's temporary resident status.

### **Issues**

[13] The applicant submitted the following issues for consideration:

1. What is the appropriate standard of review?
2. Did the officer err in finding that the applicant passed the 90 day time limit for the application of a post-graduation work permit?
3. Did the officer err in finding that the applicant was not a *bona fide* student?
4. Did the officer breach the requirement of procedural fairness in making his decision?

### **Applicant's Written Submissions**

[14] The applicant submits that the 90 day period in which her application for a post-graduation work permit had to be submitted should have commenced on the day the applicant actually received her official transcripts, September 4, 2009, as the applicant was not eligible to graduate on April 30, 2009. The applicant submits that the college has a policy of not changing the date marked on students' diplomas, which is why the diploma indicates that she graduated on April 30, 2009. Further, there is no evidence the officer considered the date that the applicant received her final marks in determining that the application was out of time.

[15] The applicant also submits that the officer erred in finding that the applicant was not a *bona fide* student. This was an unreasonable finding given the totality of the documents submitted by the applicant, including letters from the college.

[16] Finally, the applicant submits that the officer breached the requirement of procedural fairness by not informing the applicant of any doubts or concerns that the officer had regarding the credibility of the applicant's documents.

### **Respondent's Written Submissions**

[17] The respondent submits that there was no breach of procedural fairness. The level of procedural fairness afforded to foreign nationals who are temporary residents is low.

[18] The respondent submits that the applicant has not provided sufficient evidence to show that the first formal written notification concerning her ability to graduate was provided to her on August 27, 2009, as she alleges. The date on the applicant's diploma is April 30, 2009. Given the conflicting letters indicating that the applicant may have graduated on July 24, 2009 or August 22, 2009, it was not unreasonable for the officer to use the date on the applicant's diploma to determine when the 90 day period began.

[19] Finally, the respondent submits that the failure of an officer to bring to the attention of an applicant the adverse conclusions that he or she may be drawing from the documents submitted does not amount to a reviewable error.

## **Analysis and Decision**

### [20] **Issue 1**

#### What is the appropriate standard of review?

Where previous jurisprudence has determined the standard of review applicable to a particular issue, the reviewing court may adopt that standard (see *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190 at paragraph 57).

[21] The standard of review which applies to the findings of fact made by an immigration officer is that of reasonableness (see *Dunsmuir* above, at paragraphs 47 and 53; *De Luna v. Canada (Minister of Citizenship and Immigration)*, 2010 FC 726, 90 Imm. L.R. (3d) 67 at paragraph 12). However, any issues of procedural fairness, including the right to be heard, will be reviewed on the correctness standard (see *Khosa v. Canada (Minister of Citizenship and Immigration)*, 2009 SCC 12, [2009] 1 S.C.R. 339 at paragraph 43).

[22] I will address Issue 4 first.

### [23] **Issue 4**

#### Did the officer breach the requirement of procedural fairness in making his decision?

The applicant submits that the officer was required to apprise her of any concerns regarding her application so that she could respond to those concerns. The respondent submits that there was no such obligation.

[24] An officer is not under a duty to inform the applicant about any concerns regarding the application which arise directly from the requirements of the legislation or regulations (see *Hassani v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 1283, [2007] 3 F.C.R. 501 at paragraphs 23 and 24).

[25] The onus was on the applicant to satisfy the officer of all parts of her application and the officer was under no obligation to ask for additional information where the applicant's material was insufficient (see *Madan v. Canada (Minister of Citizenship and Immigration)* (1999), 172 F.T.R. 262 (F.C.T.D.), [1999] F.C.J. No. 1198 (QL) at paragraph 6).

[26] However, the officer was obligated to inform the applicant of any concerns related to the veracity of documents that formed part of the application and the officer was required to make further inquiries in such a situation (see *Hassani* above, at paragraph 24).

[27] The officer was not convinced that the applicant was a genuine student. This was because the applicant "submitted documentation which lacks credibility" as part of her application. Specifically, the officer was concerned that the letters from the college conflict with each other and with the document signed by the Registrar, regarding the applicant's graduation date.

[28] By viewing the letter as not credible or fraudulent, the officer ought to have convoked an interview with the applicant to provide her with an opportunity to respond to those concerns.

[29] By not doing so, the officer denied the applicant procedural fairness and the judicial review is therefore allowed.

[30] I need not address the remainder of the issues.

[31] Neither party wished to submit a proposed serious question of general importance to me for my consideration for certification.



**JUDGMENT**

[32] **IT IS ORDERED that** the application for judicial review is allowed and the matter is referred to a different officer for redetermination.

“John A. O’Keefe”  
\_\_\_\_\_  
Judge

**ANNEX**

**Relevant Statutory Provisions**

*Immigration and Refugee Protection Act, S.C. 2001, c. 27*

72.(1) Judicial review by the Federal Court with respect to any matter — a decision, determination or order made, a measure taken or a question raised — under this Act is commenced by making an application for leave to the Court.

72.(1) Le contrôle judiciaire par la Cour fédérale de toute mesure — décision, ordonnance, question ou affaire — prise dans le cadre de la présente loi est subordonné au dépôt d'une demande d'autorisation.

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

**DOCKET:** IMM-1449-10

**STYLE OF CAUSE:** HARJIT KAUR  
- and -  
THE MINISTER OF CITIZENSHIP  
& IMMIGRATION

**PLACE OF HEARING:** Toronto, Ontario

**DATE OF HEARING:** February 9, 2011

**REASONS FOR JUDGMENT  
AND JUDGMENT OF:** O'KEEFE J.

**DATED:** February 24, 2011

**APPEARANCES:**

Katherine Yang

FOR THE APPLICANT

Michael Butterfield

FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Niren & Associates  
Toronto, Ontario

FOR THE APPLICANT

Myles J. Kirvan  
Deputy Attorney General of Canada  
Toronto, Ontario

FOR THE RESPONDENT