Federal Court  Cour fédérale

**Date: 20110728**

**Docket: IMM-6924-10**

**Citation: 2011 FC 956**

**Ottawa, Ontario, July 28, 2011**

**PRESENT: The Honourable Mr. Justice Harrington**

**BETWEEN:**

**SINGH, NAVJOT**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION**

**Respondent**

## REASONS FOR ORDER AND ORDER

[1] This is the judicial review of a decision of a visa officer who held that Mr. Singh did not have the minimum number of points required in order to qualify for immigration to Canada as a member of the skilled worker class. It raises a very narrow issue. He required 67 points. He was assessed 62. The fact is, however, that he has a close relative living here, which would have earned him an additional five points had the visa officer been satisfied with the evidence proffered.

[2] Two questions arise:

a. was the decision reasonable? and

b. should the visa officer have given Mr. Singh an opportunity (a fairness letter) to make good on the missing evidence?

[3] The starting point is the *Immigration and Refugee Protection Regulations*, SOR/2002-227, which identify various classes of persons who may apply for permanent resident status. Skilled workers fall within the economic class. Such persons may become permanent residents on the basis of their ability to become economically established, taking into account their employment history within one or more occupations listed in the *National Occupational Classification Matrix*. Section 76 sets out the selection criteria, namely education, proficiency in the official languages of Canada, experience, age, arranged employment and adaptability. Up to 10 points may be awarded for adaptability in accordance with regulation 83, five of which are based on family relationships. The relationship was with Mr. Singh's wife's sister, who is a Canadian permanent resident currently living here.

[4] The instructions relating to an application to be filed with the High Commission in New Delhi are quite complex. The consultant Mr. Singh hired navigated his way through them, except for proof of the family relationship.

[5] If the relative is a permanent resident, rather than a Canadian citizen, the form required:

a. "proof of relationship to your close relative in Canada, such as birth, marriage or adoption certificates";

b. “record of landing, confirmation of permanent residence or permanent resident card”; and

c. documents proving the relative’s residency in Canada such as income tax assessments, telephone bills, credit card invoices, employment documents “and/or” bank statements.

[6] Satisfactory proof was provided with respect to the second and third requirements.

[7] His application was rejected because, to use the words of the visa officer:

> While copies of a PR card, visa bank card, Ontario Driver’s Licence, HBC card, and IMM 5617 were submitted for a Mrs. Kuldeep Kaur Hayer, these documents did not include the name of Mrs. Hayer’s father and/or mother to support the relationship. Civil documents that include names of father and/or mother, such as birth certificates and marriage certificates, are recommended to support proof of relationship. Although the documents established Mrs. Hayer’s status in Canada, they did not support relationship to your spouse, therefore no points awarded for having a relative in Canada.

[8] The forms signed by Mr. Singh and his wife, who was to accompany him, specifically identify her sister. The sister’s permanent residence card provided her identity number with Canada Immigration. According to the consultant, that was the best evidence to compare Mr. Singh and his wife’s biodata with that of her sister.

[9] The consultant was not cross-examined on his affidavit, and indeed no issue has been taken with his statement. Had the visa officer gone into those records, she would have realized that Mr. Singh indeed had a qualified relative living in Canada, and would have awarded him five more points.

[10] I must conclude, however, that given the high volume of visa applications, there was no obligation on the part of the visa officer to go beyond the face of the application. The time and effort involved, if this had to be done in literally hundreds of thousands of permanent resident visa applications annually, to say nothing of temporary visa applications, would be intolerable.

**A Fairness Letter**

[11] There was nothing preventing the visa officer from writing a letter to Mr. Singh pointing out that the documents provided did not establish his relationship with his sister-in-law. Indeed, it might well have been the right thing to do. However, she was under no legal obligation to do so.

[12] There are situations which require a visa officer to send a fairness letter before making a final decision. In medical inadmissibility cases, the officer may be relaying on extrinsic evidence and so must give, in accordance with natural justice, the applicant an opportunity to respond. Credibility may raise concerns which deserve comment (see *Baybazarov v Canada (Minister of Citizenship and Immigration)*, 2010 FC 665, [2010] FCJ No 930 (QL)).

[13] The applicant submits that there was a breach procedural fairness; more particularly, the visa officer should have sent a fairness letter in order to express her concerns and to give Mr. Singh an opportunity to respond. In my opinion, there was no breach of procedural fairness. Counsel for the Minister submits there are two recent controlling cases on point: *Malik v Canada (Minister of Citizenship and Immigration)*, 2009 FC 1283, [2009] FCJ No 1643 (QL), a decision of Mr. Justice

Mainville, as he then was, and *Luongo v Canada (Citizenship and Immigration)*, 2011 FC 618, [2011] FCJ No 770, a decision of Madam Justice Gauthier. Both cases dealt with visa applications.

[14] As Madam Justice Gauthier stated in *Luongo*, above, at paragraph 18:

> When an applicant produces insufficient evidence to meet the requirements set out in the Regulations, there is no further duty on the officer to communicate with the applicant. In that respect, it is sufficient to refer to the decision of Justice Robert Mainville (then with this Court) in *Malik*, above. In that case, an applicant for a permanent resident's visa as a skilled worker had submitted his own affidavit to establish that he had a brother residing in Canada, despite the fact that he had been warned in a form letter, similar to the one in the present case, that this type of evidence would not be satisfactory evidence and that the officer would not request further documentation to support his application. Justice Mainville first noted that although this approach appears to be, at first glance, harsh on visa applicants, "it is necessary to ensure the administrative efficiency of a burdened system and to ensure finality of the decision-making process related to visa applications." He further said at paragraph 19:
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> > Fairness to all visa applicants requires that all applicants conform to the instructions they receive as to the type and quality of documentation required in support of their applications, thus ensuring a minimum of efficiency and equity in the system.

[15] Counsel for Mr. Singh points out, correctly, that the language of the forms in both *Malik* and *Luongo*, above, differ somewhat from the present case, and also relies upon the decision of the Federal Court of Appeal in *Choi v Canada (Minister of Employment and Immigration)*, [1992] 1 FC 763, 15 Imm LR (2d) 265, where it was held that fairness demands that visa applicants be provided with all relevant information. However, I am satisfied that in this case Mr. Singh was provided with all relevant information. Unfortunately, his consultant misinterpreted some of it. What was required

was set out in the particular forms. There is no suggestion that what was required was, in any way, influenced by what appeared in other forms in other cases.

[16] I appreciate that Mr. Singh's future ability to immigrate to Canada may be prejudiced. He may have to wait a considerable period of time before a fresh application is processed. The age factor will work against him. Job requirements may change, perhaps to his detriment, perhaps to his advantage.

[17] Even if I were minded, without the benefit of jurisprudence on point, to have come to a different conclusion, the decisions in *Malik* and *Luongo*, above, are reasonable and judicial comity requires that I follow them.

[18] In *Baron v. Canada (Minister of Public Safety and Emergency Preparedness)*, 2008 FC 341, 324 FTR 133, Madam Justice Dawson set out circumstances which would justify a refusal to follow a prior decision of the same court:

> [52] A judge of this Court, as a matter of judicial comity, should follow a prior decision made by another judge of this Court unless satisfied that: (a) subsequent decisions have affected the validity of the prior decision; (b) the prior decision failed to consider some binding precedent or relevant statute; or (c) the prior decision was unconsidered; that is, made without an opportunity to fully consult authority. If any of those circumstances are found to exist, a judge may depart from the prior decision, provided that clear reasons are given for the departure and, in the immigration context, an opportunity to settle the law is afforded to the Federal Court of Appeal by way of a certified question. See: *Re Hansard Spruce Mills Ltd.*, [1954] 4 D.L.R. 590 at page 591 (B.C.C.A.), and *Ziyadah v. Canada (Minister of Citizenship and Immigration)*, [1999] 4 F.C. 152 (T.D.).
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**ORDER**

**THIS COURT ORDERS that** the application for judicial review is dismissed. There is no serious question of general importance to certify.

"Sean Harrington"
Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

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| **DOCKET:** | IMM-6924-10 |
| **STYLE OF CAUSE:** | SINGH v MCI |
| **PLACE OF HEARING:** | Montreal, Quebec |
| **DATE OF HEARING:** | July 21, 2011 |
| **REASONS FOR ORDER AND ORDER:** | HARRINGTON J. |
| **DATED:** | July 28, 2011 |

**APPEARANCES:**

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| Gretchen Timmins | FOR THE RESPONDENT |

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