Federal Court  Cour fédérale

Date: 20120626

Docket: IMM-7196-11

Citation: 2012 FC 814

Ottawa, Ontario, June 26, 2012

PRESENT: The Honourable Madam Justice Snider

BETWEEN:

GURPINDER SINGH

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The Applicant, Mr. Gurpinder Singh, is a citizen of India who wishes to immigrate to Canada. On July 20, 2009, he applied for a permanent resident visa under the "federal skilled worker class" as described in the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [*Regulations*].

[2] The Applicant is trained as a diesel mechanic and applied on the basis that he could become economically established in Canada as someone who meets the criteria of the National

Occupational Classification (NOC) category 7321 (Automotive Service Technicians, Truck and Bus Mechanics and Mechanical Repairers). The Applicant had a job offer in Canada, which had been confirmed by Service Canada in a positive Arranged Employment Opinion (AEO).

[3] The application was assessed by an immigration officer (Officer) of the Canadian High Commission in New Delhi, India. The Applicant was awarded the following points:

	POINTS	**MAXIMUM**
AGE	10	10
EDUCATION	12	25
LANGUAGE PROFICIENCY	05	24
EXPERIENCE	21	21
ARRANGED EMPLOYMENT	00	10
ADAPTABILITY Spouse's Education	 04	10
TOTAL	**52**	**100**

[4] In a decision dated August 25, 2011, the Officer refused the Applicant's application because he had failed to earn the minimum 67 points needed to qualify for a permanent resident visa as a skilled worker.

[5] The Applicant seeks judicial review of the Officer's decision. During his oral submissions, the Applicant focussed on one issue. Specifically, did the Officer err in assessing the Applicant's Offer of Arranged Employment, thereby under-assessing the points in both the Adaptability and Arranged Employment categories?

[6] The Officer's decision is reviewable on a standard of reasonableness. As taught by the Supreme Court, in *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47, [2008] 1 SCR 190,

"reasonableness is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process", as well as with "whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law". In this case, I believe that the decision does not meet this standard and will overturn it.

[7] The Officer's decision and reasons, as reflected in the Computer Assisted Immigration Processing System notes, show a link between the Applicant's language skills and the arranged employment. Specifically, the Officer concluded that "I am not satisfied that the applicant meets the language requirement that will allow him to perform and carry out the duties as per the employment offer". In my view, this conclusion is not supported by the evidence.

[8] The initial employment offer does not specify any language requirement. The job description states as follows:

> 3. THE EMPLOYEE agrees to carry out the following tasks **as a Diesel Mechanic.** Install, maintain, diagnose faults and repair faults in cars, trucks, caravans, trailers. Specifically, Adjust, repair or replace parts and components of commercial transport truck system, including engine and drive train, fuel, air brakes, steering and hydraulic, electric and electronic systems.
>
> [Emphasis in original]

[9] The AEO, in spite of this offer, specifies that the Applicant must meet the language requirements of oral and written English, although I observe that no particular level of language skill was identified. In a letter dated February 16, 2011 (the Fairness Letter), the Applicant was advised as follows:

> In support of your application for permanent residence in Canada, you submitted a letter of employment offer from . . . . This job

> requires you to speak and write English at work. Your IELTS [language test] results show that you only have a basic command of the English language. Your overall band score indicates a result of 4.5 and I note your result for speaking is 5.5 and result for writing is 3.5. I have concerns regarding your ability to fulfill the responsibilities as required by your job offer.

[10] The Fairness Letter reflects two important things. First, the language test results, while low, do acknowledge that the Applicant has demonstrated "a basic command of the English language". Secondly, the Fairness Letter incorrectly states that the job requires the Applicant to speak and write English at work; the job offer said nothing of the sort. The only reference to language skills is contained in the AEO; and, this was not mentioned in the Fairness Letter at all.

[11] The Applicant addressed the concerns raised in the Fairness Letter through a letter from his prospective employer who stated that most of the employees at the work place speak Punjabi and that "our technicians have little interaction with customers and are required to communicate mainly with other employees".

[12] I cannot see how this evidence supports the Officer's conclusion that the Applicant did not meet the language requirements that would allow him to perform the job duties. The Officer appears to have effectively ignored this response letter. The Officer's finding is not, in my view, one that falls within the range of possible, acceptable outcomes which are defensible in respect of the facts and law.

[13] A different outcome for Arranged Employment could have resulted in an additional 10 points under that assessment category and an additional 5 points for Adaptability. Accordingly, it

appears that the outcome could have been different if the Officer had carried out a reasonable assessment of the employment offer and subsequent communications.

[14] I will, accordingly, allow this application for judicial review. I point out that I am in no way directing any particular outcome for the Applicant. A different immigration officer may, in conducting his or her assessment, reject or accept the application based on the evidence before that officer.

[15] Neither party proposes a question for certification. None will be certified.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that:

1. the application for judicial review is allowed, the decision quashed and the matter sent back for re-determination by a different immigration officer; and

2. no question of general importance is certified.

"Judith A. Snider"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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