



**Date: 20131112**

**Docket: IMM-12936-12**

**Citation: 2013 FC 1147**

**Toronto, Ontario, November 12, 2013**

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

**BETWEEN:**

**DAVINDER SINGH DEOL**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] Mr. Deol's application for permanent residence under the Manitoba Provincial Nominee Program as a skilled worker was denied on the basis that he had misrepresented or withheld material facts relating to his employment that could induce an error in the administration of the *Immigration and Refugee Protection Act*, SC 2001, c 27, contrary to s. 40(1)(a).

[2] Mr. Deol says that in reaching that decision, the officer breached the duty of fairness by: (1) not granting a request for an extension of time to respond to the fairness letter, (2) not indicating in the fairness letter all of the facts that raised credibility concerns, and (3) not

adequately carrying out an investigation before determining that the applicant had misrepresented or withheld material information.

[3] In my view, the only issue requiring the Court's attention is the question of whether the officer's failure to grant an extension of time to respond to the fairness letter constituted a breach of procedural justice. In this regard, the Court drew the parties' attention to *Kaur v Canada (Minister of Citizenship and Immigration)*, 2013 FC 1023, a very recent decision of Justice Roy wherein he found that a failure to agree to an extension of time to respond to a fairness letter, in the facts therein, constituted a breach of procedural fairness.

[4] I agree with counsel for the Minister that facts are important. Not every refusal to grant an extension of time will constitute a breach of procedural fairness. However, the facts of this case are such that I must conclude that the refusal did constitute such a breach.

[5] On November 21, 2011, an officer called Mr. Deol's employer and also subsequently spoke to Mr. Deol. The officer noted several discrepancies in what they told her. For reasons unexplained, no further action was taken on the application until August 13, 2012 when a fairness letter was sent to Mr. Deol.

[6] The fairness letter raised four questions. Two related to discrepancies between what the officer was told by Mr. Deol and his employer. The third, related to Mr. Deol's failure to file an Authorized Representative Form for the "travel agent" who assisted him with the application, and the last concerned deposits into his bank account that appeared greater than his income. Mr. Deol was given 30 days to respond.

[7] Mr. Deol, or his Canadian relatives, then retained Canadian counsel to respond on his behalf. Counsel, on September 10, 2012, within the initial 30 day response period, filed a Use of Representative Form and wrote seeking a 90 extension of time to respond:

Further to your [fairness letter] we would request an additional period of 90 days to provide a comprehensive response to the concerns set out in your letter in the interests of procedural fairness as our office has just been retained. We have sent out an Access to Information request to access Mr. Deol's file and computer notes thereto, and are currently awaiting these materials that will assist in our review of his file. As you may know, it can take a minimum 45-60 days to receive these materials. [emphasis added]

[8] One must conclude from the cases referred to by the parties that it is Departmental policy not to respond to such requests, unless, perhaps, an extension is granted. If that is the Department's policy, perhaps it ought to be reviewed. Common courtesy, if not fairness should govern interactions between the Department and applicants and their counsel.

[9] The officer in the decision under review addresses the request for an extension of time as follows:

A request for an extension of an additional 90 days was received by [sic] your authorized representative; however, I do not feel that an extension to submit documents is warranted in this case. [emphasis added]

[10] Perhaps the officer is correct that an applicant ought not to require more than 30 days to "submit documents" but that is not what the fairness letter sought. The officer in the fairness letter, after setting out the concerns wrote: "I am providing you with the opportunity to comment on the above concern or provide any observation or explanation in writing" [emphasis added].

[11] Given that the officer's concerns as recited in the fairness letter related to what was said by Mr. Deol and his employer some eight months earlier, and given that counsel had just been retained, it is hardly surprising that counsel wished to see what exactly had been said to the officer. Had the fairness letter been sent a few days after the conversation, when memories were fresh, it may have been that a 90 day extension would have been unnecessary – a shorter extension would have been sufficient time for recently retained counsel to make inquiries and draft a fulsome response. I agree entirely with the observation of Justice Roy in *Kaur* at para 20:

It seems to me that if fairness commands that the applicant be advised of admittedly legitimate concerns, it follows that a fair opportunity to respond must be given. In the particular circumstances of this case the precipitation of the respondent remains unexplained, as well as the fact that it did not communicate with the applicant's representative in due course. Efficient decision-making cannot obviate the need to allow for representations to be made. In the particular circumstances of this case, I believe a proper response was not given.

[12] The failure of the officer to consent to any extension of time was procedurally unfair in the circumstances and the decision must be set aside.

[13] A different officer must review the application and in that process Mr. Deol and his counsel must be provided with an opportunity to address the concerns previously raised and any new concerns that arise from the new assessment.

[14] Mr. Deol's counsel proposed a question for certification that focused on whether it was fair to provide a set time for response based on the date of the fairness letter knowing that its recipient would not receive it for some time. I agree with counsel for the Minister that the

proposed question is not one of general importance. Further, given the basis for the disposition of this case, it would not be dispositive of an appeal.

**JUDGMENT**

**THIS COURT ORDERS AND ADJUDGES that** the application is allowed, the decision dated October 4, 2012 is set aside, Mr. Deol's application for permanent residence under the Manitoba Provincial Nominee Program as a skilled worker is to be assessed by a different officer in accordance with these Reasons, and no question is certified.

"Russel W. Zinn"

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Judge

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

**DOCKET:** IMM-12936-12

**STYLE OF CAUSE:** DAVINDER SINGH DEOL v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** Winnipeg, Manitoba

**DATE OF HEARING:** November 5, 2013

**REASONS FOR JUDGMENT  
AND JUDGMENT BY:** ZINN, J.

**DATED:** November 12, 2013

**APPEARANCES:**

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