

Federal Court



Cour fédérale

Date: 20160506

Docket: IMM-4187-15

Citation: 2016 FC 509

Ottawa, Ontario, May 6, 2016

PRESENT: The Honourable Madam Justice Kane

BETWEEN:

GURBINDER SINGH

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The applicant, Gurbinder Singh, seeks judicial review pursuant to section 72 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the Act] of a decision of an Immigration Officer at the High Commission of Canada in London, United Kingdom [the Officer] who refused his application for a permanent resident visa as a skilled worker.

[2] The applicant submits that the Officer breached procedural fairness and that the Officer's findings, that he failed to show that he had the requisite experience to perform the duties set out in the Arranged Employment Opinion and that his job offer as a jewellery appraiser was not genuine, were not reasonable.

[3] For the reasons that follow, the application is dismissed.

I. Background

[4] The applicant is a citizen of the United Kingdom and currently resides there. He applied to become a permanent resident of Canada in October 2010 by submitting the application and an Arranged Employment Opinion.

[5] The Arranged Employment Opinion, dated November 17, 2009, was based on an offer of employment from Manny's Jewellery and Fabrics [Manny's] in Surrey, British Columbia, offering the applicant a position as a jewellery appraiser. Manny's is owned by the applicant's father-in-law. The applicant also provided copies of job offer letters from Manny's, dated August 2, 2009 and June 12, 2012.

[6] To establish his experience, the applicant provided: a copy of a two-year employment contract from Apna Jewellery House [Apna], also located in Surrey, British Columbia, dated April 30, 2009, which set out the applicant's duties as appraising gem stones and Indian-style jewellery; copies of several cheques over a four year period paid to him by Apna; and a personal letter describing his experience and qualifications.

[7] The Officer sent the applicant a procedural fairness letter on May 26, 2015, noting concerns about the applicant's experience as a jewellery appraiser and about the job offer as a means of facilitating the application for permanent residence. The Officer believed that the applicant had not provided objective or credible evidence of his experience. The Officer was also not satisfied that the job offer was genuine because of the amount of time the job had remained open and the applicant's family connections to the employer. The Officer invited the applicant to respond.

[8] The applicant responded with a brief letter asserting his qualifications as a jewellery appraiser and that the job offer was genuine. He also provided a letter from Manny's, dated June 15, 2015, which confirmed that the job remained open for him.

II. The Decision Under Review

[9] The Officer refused the application for a permanent resident visa. The GCMS notes, particularly the entry dated August 12, 2015, provide the reasons for the decision.

[10] The Officer found that the applicant's response to the procedural fairness letter did not provide any new information and did not address the concerns identified. The June 2015 offer of employment was identical to the previous offers. There was no objective evidence about what the cheques from Apna were for, whether tax had been paid on the amounts, or even if the cheques had been cashed.

[11] The Officer was not satisfied that the applicant had the knowledge to perform the duties set out in the Arranged Employment Opinion or that the job offer was genuine. The Officer noted that the applicant provided no objective evidence of his employment experience as a jewellery appraiser and that the only proof of experience was an employment contract from Apna, which “could be created in a few minutes on a computer” and was not signed by the applicant; copies of the cheques from Apna; and a six-line letter from Apna stating that the applicant works as a jewellery appraiser.

[12] The Officer added that the duties set out in the Arranged Employment Opinion were “of a complexity that appears not to be commensurate with his education and experience.”

[13] The Officer, therefore, assigned zero points to the “arranged employment” category and zero points to the “experience category”. As a result, the applicant did not meet the 57 points required for a positive decision.

III. The Issues

[14] The applicant argues that:

- The Officer breached procedural fairness by not providing him with a meaningful opportunity to respond to the Officer’s concerns, including by not interviewing him or advising him of the specific concerns about his work experience;
- The Officer unreasonably found that he had failed to demonstrate that he had the requisite work experience; and

- The Officer unreasonably found that his job offer from Manny’s was not genuine and was only for the purpose of facilitating his application for permanent residence.

IV. Standard of Review

[15] Issues of procedural fairness are reviewable on a correctness standard: *Canada (Minister of Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 43, [2009] 1 SCR 339.

[16] The Officer’s decision with respect to the applicant’s eligibility for permanent resident status requires the Officer to assess the application and exercise his discretion and is, therefore, reviewable on a reasonableness standard (*Obeta v Canada (Minister of Citizenship and Immigration)*, 2012 FC 1542 at para 14, 424 FTR 191 [*Obeta*]).

[17] Where the reasonableness standard applies the Court considers whether 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 at para 47, [2008] 1 SCR 190). Deference is owed to the decision maker, in this case, the Officer, and the Court will not re-weigh the evidence.

V. Did the Officer Breach Procedural Fairness?

[18] The applicant argues that the general nature of the Officer’s procedural fairness letter did not alert him to the concerns and did not provide him with a meaningful opportunity to address

those concerns. The applicant submits that the Officer's concerns related to the credibility of his documents and bordered on suggesting misrepresentation. He argues that the duty of fairness is invoked where an officer doubts an applicant's credibility and, in these circumstances, the Officer doubted his credibility (*Madadi v Canada (Minister of Citizenship and Immigration)*, 2013 FC 716 at para 6, [2013] FCJ No 798 (QL)).

[19] The applicant adds that the Officer was required to make the applicant aware of his specific concerns regarding the veracity of his documents and was required to make further inquiries (*Hassani v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1283 at para 24, [2006] FCJ No 1597 (QL) [*Hassani*]; *Chawla v Canada (Minister of Citizenship and Immigration)*, 2014 FC 434 at paras 12-21, [2014] FCJ No 451 (QL) [*Chawla*]).

[20] The applicant also argues that, as a result of the nature of the concerns, an interview should have been held, which would have allowed him to demonstrate his knowledge of Indian-style jewellery and to address the Officer's concerns about his experience and the offer of employment.

[21] The respondent argues that the procedural fairness letter clearly outlined the Officer's concern about the insufficiency of the evidence regarding the applicant's experience and ability to perform the duties in the Arranged Employment Opinion, as well as the concern that the arranged employment offer was not genuine. The letter provided the applicant with the opportunity to respond and to provide more evidence.

[22] The respondent notes that the content of the duty of fairness owed to visa applicants is at the low end of the spectrum (*Tahereh v Canada (Minister of Citizenship and Immigration)*, 2008 FC 90 at para 12, [2008] FCJ No 133 (QL) [*Tahereh*]).

[23] The onus remains on the applicant to demonstrate his eligibility for the permanent resident visa. There is no entitlement to an interview to correct the deficiencies in the supporting materials (*Kaur v Canada (Minister of Citizenship and Immigration)*, 2010 FC 442 at para 10, [2010] FCJ No 587 (QL) [*Kaur*]).

There was no breach of procedural fairness

[24] The applicant appears to overstate the procedural fairness requirements established in the jurisprudence and their application to his circumstances.

[25] In *Tahereh*, the Court noted that the duty of procedural fairness owed by officers determining permanent resident applications is at the lower end of the spectrum and explained the rationale:

[12] [...] In this case, the decision in question is a visa officer's decision on an application for permanent residence, and the duty of fairness has been determined to be at the relatively low end of the spectrum in this context, due to the absence of a legal right to permanent residence, the fact that the burden is on the applicant to establish her eligibility, the less serious impact on the applicant that the decision typically has, compared with the removal of a benefit, and the public interest in containing administrative costs (*Khan v. Canada (Minister of Citizenship and Immigration)*, 2001 FCA 345, [2002] 2 F.C. 413 (C.A.)).

[Emphasis added]

[26] In *Hamza v Canada (Minister of Citizenship and Immigration)*, 2013 FC 264 at paras 21-24, [2013] FCJ No 284 (QL), Justice Bédard considered the refusal of an applicant's permanent resident status as a skilled worker, extensively reviewed the applicable case law and provided a summary of the relevant principles: the onus is on the applicant to establish that he meets the requirements of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [Regulations] by providing sufficient evidence in support of his application; the duty of procedural fairness owed by visa officers is at the low end of the spectrum; there is no obligation on a visa officer to notify the applicant of the deficiencies in the application or the supporting documents; and, there is no obligation on the visa officer to provide the applicant with an opportunity to address any concerns of the officer when the supporting documents are incomplete, unclear or insufficient to satisfy the officer that the applicant meets the requirements (see also *Kamchibekov v Canada (Minister of Citizenship and Immigration)*, 2011 FC 1411 at para 26, [2011] FCJ No 1782 (QL); *Kaur* at paras 6-14). Justice Bédard added at paras 25-28 that, as determined in *Hassani* at para 24, an officer may have such a duty when the concerns arise from the credibility, veracity or authenticity of the documents, rather than from the sufficiency of the evidence.

[27] In *Hassani*, Justice Mosley reconciled some of the pre-existing jurisprudence and found at para 24:

[24] Having reviewed the factual context of the cases cited above, it is clear that where a concern arises directly from the requirements of the legislation or related regulations, a visa officer will not be under a duty to provide an opportunity for the applicant to address his or her concerns. Where however the issue is not one that arises in this context, such a duty may arise. This is often the case where the credibility, accuracy or genuine nature of information submitted by the applicant in support of their

application is the basis of the visa officer's concern, as was the case in *Rukmangathan*, and in *John and Cornea* cited by the Court in *Rukmangathan*, above.

[28] While officers are *often* required to provide an opportunity for an applicant to address concerns about the credibility, accuracy or genuine nature of the information, the use of the term "may" signals that the Court in *Hassani* did not establish an absolute obligation (*Ansari v Canada (Minister of Citizenship and Immigration)*, 2013 FC 849 at paras 17-19, [2013] FCJ No 892 (QL); *Obeta* at para 25). The facts of each case must be examined.

[29] In the present case, it is necessary to consider whether the Officer's concerns focussed on the sufficiency of the evidence or the credibility and veracity of the documents. The mere use of the term "credible" does not necessarily mean that the concerns focus on the credibility, authenticity or veracity of the supporting documents. An applicant has the onus to support his application with sufficient evidence. If the concern is about the sufficiency of evidence, given that the applicant is clearly directed to provide a complete application with supporting documents, no duty of procedural fairness arises. However, if the concerns are truly about credibility, some further assessment of the scope of the duty of procedural fairness, which as noted is at the low end of the spectrum, will be required.

[30] I do not agree with the applicant's submission that he provided evidence of his experience and that his offer of employment was genuine and, therefore, the Officer's concerns can only be characterized as about the credibility of his documents.

[31] The Officer did not find the evidence to be sufficient. The procedural fairness letter clearly conveyed this message and provided notice to the applicant of the Officer's concerns.

[32] The procedural fairness letter stated: "I am not satisfied that you have any experience as a jewellery appraiser. You provided no objective or credible evidence that you would be able to fulfill the duties of the job offered as set out in the Arranged Employment Opinion" [emphasis added].

[33] The Officer also noted that he was concerned about the genuineness of the job offer because of the amount of time that it had been open and the applicant's family connections to the employer.

[34] Although the Officer does not specifically set out his concerns about how or when the applicant obtained training as a jewellery appraiser from Apna, another Surrey, BC business, or how the cheques represent payment for services from Apna, the procedural fairness letter raises the Officer's key concerns: the applicant's lack of any objective evidence that he could fulfill the duties of a jewellery appraiser and the genuineness of the job offer, which was related to the lack of evidence of the applicant's experience and the duration of the offer.

[35] The applicant has not pointed to any case law that establishes that the Officer was required to interview him to determine if he had experience or to assess his credibility. In *Chawla* the Court stated:

[21] [...] Counsel for the Applicants submitted that the Officer should have interviewed the principal Applicant regarding the

credibility concerns after his telephone conversation with Mr. Naresh. There is no right to an interview in such circumstances, and the case law cited by the Applicants in support of their proposition goes no further than indicating that such a duty may arise where the credibility, accuracy or genuine nature of the information submitted by an applicant is the basis of a visa officer's concern: see *Ismailzada v Canada (Minister of Citizenship and Immigration)*, 2013 FC 67 at para 20, citing *Hassani v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1283 at para 24. The flexible nature of the duty of fairness recognizes that meaningful participation can occur in different ways, in different situations. As long as an applicant is provided with an opportunity to respond and present his or her submissions, natural justice will be respected: Baker v Canada (Minister of Citizenship and Immigration), [1999] 2 SCR 817 at para 33.

[Emphasis added]

[36] The applicant was clearly put on notice of the concerns and given a meaningful opportunity to respond with additional objective evidence. The applicant failed to take advantage of this opportunity. There was no requirement for the Officer to hold an interview. Nor was the Officer required, as the applicant argues, to follow up and make inquiries with Apna or Manny's about his experience and qualifications. The applicant merely submitted a brief letter re-asserting that he had the experience and that the offer was real, which the Officer reasonably found not to address his concerns.

VI. Is the Officer's finding that the applicant failed to demonstrate that he had the requisite work experience reasonable?

[37] The applicant argues that the Officer based his decision on irrelevant and extraneous considerations, including the simplicity of the contract with Apna, his relationship with the owner of Manny's and the availability of the offer after a lengthy period of time.

[38] The applicant submits that the Officer ignored his training as a jewellery appraiser which he described in his own letter and instead based the decision on speculation about the contract, the cheques from Apna and the Officer's own views about the experience required.

[39] The respondent submits that the applicant failed to meet his onus of providing sufficient evidence to demonstrate his experience and ability to complete the work required in the Arranged Employment Opinion. The applicant did not submit the type of evidence, such as training certificates or other documents that would objectively confirm his experience and skills as a jewellery appraiser. He merely stated that he had the experience and a job offer.

The Officer's finding was reasonable

[40] Visa officers have considerable experience assessing applications and deference is owed to their decisions. The GCMS notes indicate that the Officer considered the job offer, employment letter and cheques and identified several issues beyond the paper used for the contract and whether the cheques had been cashed. The Officer noted the lack of any objective evidence that Apna had trained the applicant.

[41] The Officer reasonably questioned why the applicant would be hired by Apna, another jewellery store, also located in Surrey, British Columbia, and close to Manny's, given that the applicant was working in a completely different occupation as a technical support worker in the UK. It was also reasonable for the Officer to question how the applicant met the qualifications for the job offered by Manny's, without any objective evidence of training or experience. The fact that the applicant had cheques made out to him from Apna, but without any indication of

what services the payments by cheque were for and, perhaps, without being cashed, reasonably led the Officer to find that the applicant's contract with Apna was not sufficient evidence of his experience.

VII. Did the Officer unreasonably find that the applicant's job offer was not genuine?

[42] The applicant submits that the Officer accepted that Manny's was a jewellery business, that the Arranged Employment Opinion was valid and that the applicant had disclosed the family relationship at the outset, yet the Officer unreasonably drew a negative inference.

[43] The applicant argues that the genuineness of an offer of employment must be assessed only with reference to the factors set out at subsection 200(5) of the Regulations. These criteria are mandatory (*Sydoruk v Canada (Minister of Citizenship and Immigration)*, 2015 FC 945 at paras 17-19, [2015] FCJ No 943 (QL) [*Sydoruk*]) and focus only on the integrity of the prospective employer. The applicant submits that the Officer erred by focussing on the credibility of the evidence of the applicant's work experience and his relationship to his prospective employer, neither of which are relevant factors.

[44] The respondent notes that the Officer was not bound by the Arranged Employment Opinion in his assessment of the genuineness of the job offer. The Officer must assess the Arranged Employment Opinion in the context of the full application (*Ghazeleh v Canada (Minister of Citizenship and Immigration)*, 2012 FC 1521 at paras 18-20, [2012] FCJ No 1604 (QL); *Porfirio v Canada (Minister of Citizenship and Immigration)*, 2011 FC 794 at para 33, [2011] FCJ No 997 (QL); *Sydoruk* at para 12) and in accordance with the Regulations.

[45] The respondent acknowledges that in assessing the genuineness of the job offer, the factors set out in subsection 200(5) relate to the prospective employer, but argues that the Officer still has discretion to consider whether the applicant is able to carry out the terms of the job offered. In particular, paragraph 200(5)(b) requires the Officer to consider whether the offer is consistent with the reasonable employment needs of the employer.

The finding that the offer was not genuine is reasonable

[46] As noted by the respondent, the Officer is not bound by the Arranged Employment Opinion. *Sydoruk* provides:

[12] Under s 82(2)(c) of the Regulations, applicants from outside Canada receive ten points for arranged employment provided that the visa officer approves the job offer based on an opinion provided by the Department of Human Resources and Skills Development [HRSDC]. A visa officer is not bound by the HRSDC opinion. It is for the officer to determine whether the job offer meets the requirements of s 203(1) of the Regulations, including whether it is genuine.

[Emphasis added]

[47] Paragraph 203(1)(a) of the Regulations provides:

<p>203 (1) On application under Division 2 for a work permit made by a foreign national other than a foreign national referred to in subparagraphs 200(1)(c)(i) to (ii.1), an officer must determine, on the basis of an assessment provided by the Department of Employment and Social Development, of any information provided on the officer's request by the employer making the offer and</p>	<p>203 (1) Sur présentation d'une demande de permis de travail conformément à la section 2 par tout étranger, autre que celui visé à l'un des sous-alinéas 200(1)c)(i) à (ii.1), l'agent décide, en se fondant sur l'évaluation du ministère de l'Emploi et du Développement social, sur tout renseignement fourni, à la demande de l'agent, par l'employeur qui présente</p>
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of any other relevant information, if	l'offre d'emploi et sur tout autre renseignement pertinent, si, à la fois :
(a) the job offer is genuine under subsection 200(5);	a) l'offre d'emploi est authentique conformément au paragraphe 200(5);
[...]	[...]

[48] Subsection 200(5) of the Regulations provides:

200 (5) A determination of whether an offer of employment is genuine shall be based on the following factors:	200 (5) L'évaluation de l'authenticité de l'offre d'emploi est fondée sur les facteurs suivants :
(a) whether the offer is made by an employer that is actively engaged in the business in respect of which the offer is made, unless the offer is made for employment as a live-in caregiver;	a) l'offre est présentée par un employeur véritablement actif dans l'entreprise à l'égard de laquelle elle est faite, sauf si elle vise un emploi d'aide familial;
(b) whether the offer is consistent with the reasonable employment needs of the employer;	b) l'offre correspond aux besoins légitimes en main-d'oeuvre de l'employeur;
(c) whether the terms of the offer are terms that the employer is reasonably able to fulfil; and	c) l'employeur peut raisonnablement respecter les conditions de l'offre;
(d) the past compliance of the employer, or any person who recruited the foreign national for the employer, with the federal or provincial laws that regulate employment, or the recruiting of employees, in the province in which it is intended that the foreign	d) l'employeur – ou la personne qui recrute des travailleurs étrangers en son nom – s'est conformé aux lois et aux règlements fédéraux et provinciaux régissant le travail ou le recrutement de main-d'oeuvre dans la province où il est prévu que l'étranger

national work.

travaillera.

[49] I do not accept the applicant's argument that the factors in subsection 200(5) are the only factors that can be considered to determine the genuineness of a job offer or that they should be interpreted so narrowly that the Officer's legitimate concerns about the genuineness of a job offer could not be considered. In addition, paragraph 200(5)(a), whether the offer is consistent with the reasonable employment needs of the employer, is a broad question which would include consideration of a range of relevant factors, including: the nature of the business; the nature of the particular employment offered; the size of the business; the volume of sales; and, the number of employees. In my view, it would not be consistent with the reasonable employment needs of an employer in a specialized area, such as a jewellery business, to offer employment to a person who has not provided objective evidence of their qualifications and experience and whose personal connection to the business owner appears to be a higher priority than the objective and legitimate needs of the employer and business owner for a qualified jewellery appraiser.

[50] I acknowledge the applicant's concern that the delay in processing applications could have a negative impact on job offers. If a job offer remains open for an indefinite period of time, questions may arise about the genuineness of the offer, as they did in this case. If an application is processed quickly, these concerns may not arise. In some cases, family businesses or businesses with a high staff turnover may be more willing to wait for an applicant to enter Canada. However, in the present case, the duration of the job offer was not the only concern and the reasonable employment needs of the employer must always be considered. The GCMS notes also demonstrate that there was other correspondence between 2012 and 2014 regarding the applicant's marital status, his wife's past permanent resident status in Canada and the birth of

their children which had an impact on the time needed to process the application. No undue delay can be attributed to the respondent in the processing of the application.

[51] The Officer's finding that the job offer was not genuine falls within a range of reasonable outcomes and is defensible on the facts before the Officer and the applicable law.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.
2. No question is certified.

“Catherine M. Kane”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4187-15

STYLE OF CAUSE: GURBINDER SINGH v
THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

PLACE OF HEARING: VANCOUVER, BRITISH COLUMBIA

DATE OF HEARING: APRIL 18, 2016

JUDGMENT AND REASONS: KANE J.

DATED: MAY 6, 2016

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