

Date: 20080305

Docket: IMM-2379-07

Citation: 2008 FC 304

University of Victoria, Victoria British Columbia, March 5, 2008

PRESENT: The Honourable Mr. Justice Hughes

BETWEEN:

TARLOCHAN SINGH BHULLAR

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The Applicant is an adult male person, a citizen of India. He has on three occasions sought to obtain a temporary resident visa and work permit to enter Canada under the Live-In Caregiver Program (LCP). His third and latest application has been refused in a written decision dated April 16, 2007 on the basis that the Applicant did not have the ability to speak, read and listen to English at a level sufficient to communicate effectively in an unsupervised situation. The Applicant sought and obtained leave to seek judicial review of that decision and asks to have it set aside and returned to a different person for redetermination. For the reasons that follow, I find that the application is to be dismissed.

[2] The Applicant applied for a visa and permit under the Live-in Caregiver Program (LCP) in 2005. His sister and brother-in-law were living in Canada and extended an offer to the Applicant to come to Canada and care for their youngest child, then aged three years. On February 7, 2005, the Applicant was interviewed by a Canadian Consular Officer in India identified as NAJ. That Officer rejected the application on the basis that the offer of employment coming from his sister was provided primarily to secure entry into Canada for the Applicant. The Officer made several entries into the CAIPS notes concerning the interview of February 7, 2005 including the following:

Interview conducted in English language on this date. No interpreter was required. Applicant is able to speak English and understand it although he has a thick accent.

Before any questions pertaining to the job as a live-in caregiver were asked, I asked the Applicant to explain his relation to the future employer in CDA. Applicant declares it is his brother-in-law who is married to this sister. His parents also live in CDA as permanent residents. His was refused in his AFL in 1998. Applicant is now married and has a 9 month old daughter which he is leaving behind to go to CDA and work as a live-in caregiver.

Given the answers, I doubt that this job offer is a genuine one. However, I continue my interview to assess whether the Applicant has truly completed his nanny training. I proceed to ask him questions pertaining to his courses and Applicant is only able to give rehearsed answers which do not appear very convincing. I asked Applicant to describe his classroom and he could only say that it was big and that there was chairs in it. Nothing else? I asked. He said no.

At this point, I stop the interview because I am convinced that Applicant has no completed a nanny training, nor that this job offer is genuine. Applicant is attempting to gain entry in to CDA.

[3] The Applicant, undeterred, submitted a revised application and attended a second interview, this time with an Officer identified as LNK, on May 4, 2006. The CAIPS notes made during that interview state, *inter alia*:

Interview – conducted in English

...

Satisfied that PA is able to meet requirements of position as stated.

[4] It appears from subsequent CAIPS notes that LNK left this post and the matter was handed over to another Officer, HC, for decision. Officer HC made notes in the CAIPS system concluding:

...with all these factors taken into consideration, I have concluded that on a balance of probabilities this job offer was made primarily for the purpose of facilitating the subjects admission to Canada. Refused.

[5] Correspondence to that effect followed with a request by the Applicant for reconsideration. Ultimately, judicial review in this court was sought and, on consent, an Order was issued, dated November 28, 2007 in file IMM-5063-06, requiring re-determination by a different officer.

[6] Thus, on April 16, 2007 the Applicant attended a further interview, the third such interview. This time with Officer SML. The interview lasted about 15 minutes. Before the Applicant left the premises he was handed a letter dated April 16, 2007 advising that his application was refused. That letter appears to be a form letter and the basis for refusal was indicated by a check mark beside a box with the following caption:

“You do not have the ability to speak, read and listen to English or French at a level sufficient to communicate efficiently in an unsupervised situation.”

[7] The Applicant again sought and received permission to seek a judicial review of that decision. This is that review.

[8] In this application the Respondent filed the affidavit of Officer SML who conducted the interview of the Applicant. She attached her CAIPS notes of the interview. She said in respect of that interview in paragraphs 12 through 16 of her affidavit:

12. *The question marks in my interview notes indicate that Mr. Bhullar's answers did not respond to the question asked or did not make sense. Mr. Bhullar appeared to be picking up key words but many of his answers were not responsive. He did not appear to understand my questions even though I spoke slowly, enunciated clearly and rephrased my questions.*
13. *As stated in my CAIPS notes, Mr. Bhullar's voice was clear and most of his pronunciation was easy to understand. Mr. Bhullar's accent did not pose a problem. His vocabulary and lack of sentence structure made his answers difficult to understand.*
14. *As indicated in my CAIPS notes, I conducted my interview with Mr. Bhullar in English up until the point where I stated that I explained my concerns to Mr. Bhullar in Punjabi. This was done with the aid of an interpreter fluent in English, Hindi and Punjabi. All of the questions and answers up to that point, including the statements followed by question marks, were in English.*
15. *I gave Mr. Bhullar an opportunity to explain why he was having difficulty communicating. The interpreter was able as Mr. Bhullar was free to respond in English, Punjabi or Hindi. Mr. Bhullar responded in English. Each time I explained or clarified my concerns, I did so in Punjabi through the interpreter, as is my standard practice. As stated in my CAIPS notes, I was not satisfied with his response.*

16. *I refused Mr. Bhullar's application because I was not satisfied that he could communicate in English sufficiently enough to work in an unsupervised setting.*

[9] Officer SML attached her CAIPS made by her during the time of the interview. They are lengthy so I reproduce only part to give a flavour of what was said:

How did you get this job offer? Through CANUSA as well as directly through my employer.

Who is your employer? Mr. Balbir Singh Mann, my brother-in-law.

Who will you be taking care of in Cda? Earlier their grandmother has been taking care of them, but due to her ill health, she has been shifted to her elder son. (???)

That's not what I asked: who will you be taking care of in Cda? I told you that earlier, her grandmother was taking care of them . (???)

That's not what I asked: who will you be taking care of in Cda? Sorry ma'am?

Who will you be caring for in Cda? Because I am applied for work permit as a LCP. When I completed by study for as a nanny, at ...(described how he studied and got this job((???)

Who are the people you will be taking care of in Cda? Designated persons?

Ma'am you are told me who are the designated persons taking care of in Cda?

Children taking care of in Cda? (???)

Yes. Response: I told you earlier their grandmother taking care of... (???)

Who are the children? There are three childrens – Guraimran Singh, Ajaypal Singh and Ria Kaur

How old are they? Gursiman is 10 yr, Ajaypal is 9 yer and Ria Kaur is 3 yr.

They are currently these ages? In my file is 10 yer, 9 yer and 3 yer. This time they are growing. (???)

I didn't ask how old they were before: how old are they now? When I submitted my file they are...(???)

How old are they now? Their parents Balbir Singh Mann and Gurmeet Kaur Mann (???)

...

Concerns:

PA did not understand many of my questions and seemed to guess at what I was asking by picking out key words, even when I spoke slowly and enunciated clearly. I rephrased my questions, several times and even then, they were not always understood. PA's answers were difficult to understand because he did not use basic English sentence structure. I am not satisfied that PA has sufficient English to work unsupervised as an LCP.

Also, although PA stated that he took an LCP course, he could not answer basic questions about what he had learned. This could have been due to his lack of English.

I am not satisfied that PA meets the requirements. I am not satisfied that PA is able to work as a LCP in a safe and effective manner.

Explained to PA my concern in Punjabi. Gave PA the chance to respond.

Response: I fulfill your reqs. I have a problem with my voice; that's why you're not able to understand me.

What's your problem with your voice? Because I am hesitation with my voice that's why some words not speaking properly that's why you not listen properly.

***Note that PA's voice is clear. And most of his pronunciation was easy to understand. It was only his lack of coherent sentence structure and vocabulary that made is difficult to understand his answers. Explained to PA.*

Response: Because ma'am last time I applied for interview as a nanny and counsellor satisfied with me and she gave me a medical and in the last moment I don't know what happened and she refused me. This time, I think jealousy (???)

Who's jealous; I don't understand, can you explain? You understand mo. I fulfill my requirements. (???)

Explained that I did not completely understand his answers and even if I had fully understood his answers, it was still obvious that PA had not understood my questions. Gave him an example of a question that he repeatedly has not understood.

Response: Yes, it is true I did not understand your question twice, that's why I asked you to repeat the question.

Considered response and am still not satisfied. Explained to PA.

REFUSED AT INTERVIEW.

ISSUES

[10] The Applicant submits the following three issues:

1. What is the standard of review applicable to Officer SML's decision?
2. Was Officer SML's decision that the Applicant did not have the ability to speak, read and listen to English at a level sufficient to communicate effectively in an unsupervised situation, unreasonable particularly since two other officers at the Visa Post interviewed the Applicant and had apparently determined that he was able to speak and understand English?
3. Did Officer SML impose a higher standard for English language ability than required by Ministerial guidelines contained in the Overseas Processing Manual Chapter 14, section 5.6?

[11] The Respondent contends that the Officer's decision was not unreasonable and should not be quashed.

STANDARD OF REVIEW

[12] The parties are in substantial agreement that the standard of review to be applied in respect of decision of a consular officer who refuses to issue a work permit to enter Canada as a live-in caregiver is that of reasonableness *simpliciter*. Justice O'Keefe gave careful consideration as to the standard to be applied in such a matter in *Jhattu v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 853 and concluded that the appropriate standard was that of reasonableness. I am in agreement with him.

WAS THE OFFICER'S DECISION REASONABLE

[13] The next two issues proposed by Applicant's counsel can be considered as one. Was the Officer's decision reasonable particularly having regard to the relevant provisions of the Overseas Processing Manual?

[14] That Manual is provided to officers by Citizenship and Immigration Canada for use in situations such as this one. Section OPI4, subsection 5.6 deals with language ability and provides as follows:

5.6 *Language ability*

Live-in caregivers must have a level of fluency in English or French that enables them to function independently in an unsupervised setting and to protect the persons in their care. They must be able to:

- . Respond to emergency situations by contacting a doctor, ambulance, police or fire department;*
- . Answer the telephone and the door;*
- . Read the labels on medication; and*
- . May be required to communicate with others outside the home, such as schools, stores, or other institutions*

A proficiency in speaking, understanding and reading will also ensure that caregivers understand their rights and obligations and are not dependent on their employers to interpret provincial labour legislation and employment standards. They will also be better equipped to seek outside assistance in the even of personal difficulties or if they find themselves in an abuse employment situation.

[15] The Manual does not have the force of law however it does establish appropriate criteria against which a visa officer can measure the suitability of an applicant (*Seghal v. Canada (Minister*

of Citizenship and Immigration), 2001 FCT 212 at paragraph 10 and *Legault v. Canada (Minister of Citizenship and Immigration)*, [2002] 4 F.C. 358, 2002 FCA 125 at paragraph 20).

[16] A review of the record, including the affidavit of Officer SML and her CAIPS notes attached as an exhibit, demonstrates that the Officer was alert and alive to the considerations to be given to proficiency in the English or French language to be shown by a person seeking a visa and permit under the Live-In Caregiver Program. The fact that previous officers did not focus on the Applicant's language proficiency or apparently found his proficiency to be acceptable is irrelevant to the present situation. The relevant consideration is whether the decision now under review was reasonable. The fact that two different officers had made notes to the effect that the Applicant apparently had ability in the English language does not mean that they applied a different test than Officer SML did in the decision under review nor does it mean that Officer SML imposed an unreasonably high standard. I find that the decision of Officer SML withstands a somewhat probing examination. It was reasonable and ought not to be set aside.

[17] No party proposed and I find that there is no question for certification. No party shall be awarded costs.

JUDGMENT

For the Reasons above:

THIS COURT ADJUDGES that:

1. The application is dismissed;
2. There is no question for certification;
3. No Order as to costs.

"Roger T. Hughes"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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STYLE OF CAUSE: **TARLOCHAN SINGH BHULLAR v. THE
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**REASONS FOR JUDGMENT
AND JUDGMENT:** Hughes, J

DATED: March 5, 2008

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