

**Date: 20090331**

**Docket: IMM-3648-08**

**Citation: 2009 FC 330**

**Ottawa, Ontario, March 31, 2009**

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

**BETWEEN:**

**SANJIVKUMAR INDRAVADAN JANI**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] This application for judicial review challenges a decision of a Visa Officer (Officer) which refused the Applicant's application for a permanent resident visa. The Officer's decision was rendered on June 10, 2008 from the Office of the High Commission of Canada at New Delhi and was concomitant with a decision made under s. 40 of the *Immigration and Refugee Protection Act*, S.C. 2001, c.27 (IRPA) which found Mr. Jani to be inadmissible to Canada on the ground of misrepresentation. Mr. Jani attempted to challenge the s. 40 admissibility decision in a separate application for judicial review but leave was refused by Order of this Court dated December 1, 2008 (see IMM-3646-08).

## **I. Background**

[2] Mr. Jani applied for a permanent resident visa as a member of the skilled worker class on June 17, 2007. His application claimed that he had experience as a restaurant manager between 1996 and 1999 and again between 2005 and the date of his application. Mr. Jani also relied upon arranged employment in Canada as a manager of a Tim Hortons in Thornhill, Ontario.

[3] Mr. Jani's visa declaration indicated that between January 2000 and May 2005 he was employed as the manager of the family travel business. The visa declaration also stated that in May 2005 he began working as a restaurant manager with Shor Sharaba Food Court in Ahmedabad. The clear implication arising from this representation was that Mr. Jani had left his full-time position in the travel business in 2005 to take up a full-time position as a restaurant manager. Mr. Jani also relied upon a letter of reference from the Hotel Vishnu Palace which confirmed his employment there from December 1996 to December 1999 as Hotel Manager.

[4] When the Officer attempted to verify this employment history, she was told that Mr. Jani had never worked at the Hotel Vishnu Palace. The Officer was also unable to contact the Shor Sharaba Food Court at the phone number Mr. Jani had provided. The Officer obtained information that Mr. Jani was working at the family travel business and she placed a call to him there. The Officer advised Mr. Jani that she was not able to reach the Shor Sharaba Food Court and questioned why he was still working at the travel business. He replied that the restaurant had moved and that

he worked there part-time in the evening. He also said that he must have made a mistake on his visa declaration about his continued full-time employment in the family travel business.

[5] There is nothing in the Officer's file (CAIPS) notes to indicate whether Mr. Jani's employment with the Hotel Vishnu Palace was discussed during this call. However, a letter from the Respondent written nine days later confirmed Mr. Jani's s. 40 inadmissibility and stated that he "had no credible explanation to counter our concern that the employment reference letter from Hotel Vishnu Palace was fraudulent".

### *The Decision Under Review*

[6] Mr. Jani's application for a permanent resident visa was denied by a second letter signed by the Officer on June 10, 2008. The Officer awarded no points to Mr. Jani for experience, arranged employment and adaptability and, in the result, he fell well short of the minimum requirement of 67 points. The decision letter gave the following explanation for the Officer's points assessment:

Telephone enquires conducted by our office revealed that you never worked for Hotel Vishnu Palace, Mussoorie. You stated that you have been working part-time as manager for Shor Sharaba Food Court. You could not provide a credible explanation why you did not mention the part-time nature of your employment with Shor Sharaba Food Court on your application. Your reference letter dated May 23, 2007, signed by the General Manager of Shor Sharaba Food Court, also does not mention that you were working part-time for them. Given our findings, I am unable to rely on the veracity of your employment reference letters and am not satisfied that you have experience in the occupation of Restaurant and Food Service Manager NOC 0631.

You have obtained insufficient points to qualify for permanent residence in Canada, the minimum requirement being 67 points.

[...]

## **II. Issue**

[7] Did the Officer breach a duty of fairness in her investigation of the Applicant's visa application?

## **III. Analysis**

[8] The standard of review for issues of procedural fairness is correctness: see *Jin v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 1129 at para. 12.

[9] It was submitted on behalf of Mr. Jani that the Officer breached the duty of procedural fairness by failing to advise him of the clear purpose of her call, including the potential for a s. 40 inadmissibility finding, and also by failing to apprise him of her concern that he had never worked at the Hotel Vishnu Palace. Ms. Lee contends that these failings deprived Mr. Jani of a meaningful opportunity to respond and that the decision should, accordingly, be set aside.

[10] Mr. Jani clearly misrepresented his employment history when he declared that his employment with the family travel business ended in May 2005. The record before me establishes that after May 2005 Mr. Jani continued to be employed full-time in the family travel business and, at most, worked part-time as a restaurant manager. The obvious inference that would be drawn from Mr. Jani's declaration is that he had left his travel agency employment in 2005 and was thereafter working full-time in the restaurant business. When the Officer properly confronted Mr. Jani with

this contradiction, she was told only that there must have been a mistake in the declaration. The Officer's characterization of this answer as not credible was entirely justified.

[11] Mr. Jani argues that the Officer failed to confront him with her concern that he had never worked at the Hotel Vishnu Palace. He relies upon the absence of any reference in the Officer's CAIPS notes to a discussion about this point as evidence that it was never put to him.

[12] In some circumstances the failure to mention an important piece of evidence in the contemporaneous file notes may lead to an adverse inference being drawn but usually only where an evidentiary contradiction exists. In this case the Officer's contemporaneous decision letter of June 9, 2008 states very clearly that Mr. Jani "had no credible explanation to counter our concern that the employment reference letter from Hotel Vishnu Palace was fraudulent". Furthermore, Mr. Jani has not provided an affidavit of his own to support his argument that the Officer never raised the issue of his hotel employment with him. In the absence of any evidence from Mr. Jani, the only reasonable inference that can be drawn is that he was confronted by the Officer about the concern that he had never worked at the Hotel Vishnu Palace and that Mr. Jani had no explanation to offer for that contradiction.

[13] While it is apparent from the record that Mr. Jani did provide an explanation for the Officer's inability to contact the Shor Sharaba Food Plaza and that the Officer did not follow up on this, I do not think that this represents a reviewable error. The Officer seems to have been satisfied with Mr. Jani's explanation that he was working part-time with that employer but based the decision

instead on Mr. Jani's failure to provide complete and candid information about his larger employment history.

[14] I agree with Ms. Lee that the failure to advise Mr. Jani of the possibility that there could be an adverse finding made against him under s. 40 of the IRPA might, in some circumstances, constitute a breach of the duty of fairness with respect to that decision. However the s. 40 finding made against Mr. Jani was a separate decision from the decision which is the subject of this application. Mr. Jani sought judicial review of the s. 40 decision on fairness grounds and leave was denied by this Court. That is a final determination of the fairness of the process leading up to the s.40 decision and it cannot be raised collaterally in this proceeding.

[15] Finally, I do not agree that any fairness issue arises from the Officer's decision to conduct his interview with Mr. Jani over the telephone. There was also no obligation on the part of the Officer to give advance warning to Mr. Jani with respect to the issues that were to be discussed: see *Kunkel v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 920, [2008] F.C.J. No. 1133 at paras 20 and 21.

[16] This case provides an object lesson about the need for immigration applicants to be scrupulously truthful about the information they provide to the Respondent. Given the systemic demands that exist, considerable reliance must be placed on the accuracy of the declarations that are submitted by such applicants. It does not serve Canada's immigration purposes to encourage the

kind of conduct that is evident in this case. It was, accordingly, reasonable for the Officer to refuse Mr. Jani's application for permanent residency on the basis of his obvious lack of candour.

[17] Based on the foregoing, this application for judicial review is dismissed.

[18] Neither party proposed a certified question and no issue of general importance arises on this record.

**JUDGMENT**

**THIS COURT ADJUDGES that** this application for judicial review is dismissed.

“ R. L. Barnes ”

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Judge

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

**DOCKET:** IMM-3648-08

**STYLE OF CAUSE:** Jani  
v.  
MCI

**PLACE OF HEARING:** Toronto, ON

**DATE OF HEARING:** March 25, 2009

**REASONS FOR JUDGMENT  
AND JUDGMENT BY:** Mr. Justice Barnes

**DATED:** March 31, 2009

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