

Federal Court



Cour fédérale

Date: 20090811

Docket: IMM-5141-08

Citation: 2009 FC 817

Ottawa, Ontario, August 11, 2009

PRESENT: The Honourable Mr. Justice Russell

BETWEEN:

**GERHARD RONNER
INGEBORG KARIN RONNER**

Applicants

and

**THE MINISTER OF
CITIZENSHIP AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application pursuant to s. 72 (1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (Act) for judicial review of a decision of an Officer of Citizenship and Immigration Canada (Officer), dated November 10, 2008 (Decision) refusing an extension of Mr. Gerhard Ronner's work permit and refusing to extend Ms. Ingeborg Ronner's visitor record.

BACKGROUND

[2] Mr. Ronner is a citizen of Austria. After arriving in 1989, he has been in Canada for the majority of the last 21 years. Visitor records were issued to him until 1990 when he was reported for “actively engaging in employment or his business without obtaining an employment authorization.” He applied for permanent residence during this time but later withdrew his application.

[3] On October 23, 1990 Mr. Ronner was re-admitted to Canada as a visitor.

[4] On February 16, 1991, he was given a short-term visitor record.

[5] On February 20, 1992, he was authorized to enter Canada as a visitor and remained for six months.

[6] On March 9, 1992, he was again reported for working in Canada.

[7] On July 17, 1997, Mr. Ronner was issued a short-term visitor record to purchase logs for log home construction. He was not authorized to purchase logs that would be assembled in Canada.

[8] On June 12, 1998, he was issued a visitor record valid to September 17, 1998.

[9] In November 2004, he was issued a work permit until October 31, 2005, as a log home builder in Chilliwack.

[10] Mr. Ronner was not a holder of a work permit from 2000 to November 19, 2004.

[11] On April 10, 2006, Mr. Ronner was issued a work permit until April 9, 2007 as president and owner of Cedar Log Homes.

[12] Ms. Ingeborg Ronner is a citizen of Germany. She has been in Canada for eight years. She has not applied for permanent residence. She has not applied for a work permit and holds the status of visitor. During her time in Canada the Respondent alleges that she has provided unpaid assistance to her husband's business.

DECISION UNDER REVIEW

[13] The Officer refused extensions for Mr. Ronner's work permit and Ms. Ronner's visitor record.

[14] The Officer noted that any person who wishes to extend their temporary resident status in Canada must satisfy an officer that they meet the following criteria: (1) they will leave Canada by the end of the period authorized for their stay; (2) they will not contravene the conditions of entry; and (3) they do not belong in a category of persons inadmissible to Canada under the Act.

[15] In the present case, the Officer considered the following factors: the Applicants' travel and identity documents; the reasons for travel to Canada and the reasons for applying for the extensions;

the Applicants' financial means for the extended stay and return home; the Applicants' ties to their country of residence, including immigration status, employment and family ties; and whether the Applicants would be likely to leave Canada at the end of their authorized stay.

[16] The Officer found: (1) that there was no significant benefit to Canada in having Mr. Ronner remain in Canada under a C11 Labour Market Opinion exemption as an entrepreneur; and (2) that Mr. Ronner would not likely leave Canada by the end of the period authorized.

[17] The Officer found that Ms. Ronner did not warrant an extension of her visitor record since she had engaged in unauthorized work in Canada and the Officer did not believe that she would leave Canada by the end of the period authorized.

[18] The Officer noted that since he had refused the Applicants' applications, they were in Canada without status and should depart Canada immediately to avoid having a removal order issued against them.

ISSUES

[19] The Applicants submit the following issues for review:

- 1) The Officer failed to observe a principle of natural justice, procedural fairness or other procedures he was required by law to observe by:

- i. Ruling that Mr. Ronner worked in Canada without authorization in 2002, 2003, and 2004 and then considering this as a factor weighing against the extension of his work permit without having notified him that such a ruling was contemplated; and
 - ii. Ruling that Ms. Ronner had worked in Canada without authorization and then considering this as a factor weighing against the extension of her temporary residence status as a visitor without having notified her that such a ruling was contemplated;
- 2) The Officer also committed errors of law by ruling that:
 - i. The existence of reports in 1990 and 1992 alleging that Mr. Ronner had engaged in employment or worked in Canada without authorization was evidence of a violation of any enactment without there having been either: (1) an admission by Mr. Ronner; or (2) a lawful determination of the validity of either of the allegations;
 - ii. Mr. Ronner would not leave Canada within any further time for which he might be authorized when all the evidence before the Officer was that Mr. Ronner had always left Canada within the time he had been authorized to be here throughout frequent trips to Canada for the preceding 21 years;
 - iii. Ms. Ronner would not leave Canada within any further time for which she might be authorized when all the evidence was that she had always left

Canada within the time she had been authorized to be here throughout frequent trips to Canada for the preceding eight years;

- 3) The Officer made perverse or capricious findings of fact without regard to the material before him when, in rendering his Decision over three months following the interview of the Applicants, and without any reasonable explanation for the delay:
 - i. He found that the contemporaneous circumstances of a company with a name similar to Quality Log Homes Ltd. or B.C. Quality Log Homes was relevant to an assessment of the applications before him when neither application had any connection with any company with a similar name;
 - ii. He found that Mr. Ronner's management of his personal corporation within Canada prior to obtaining a work permit constituted work within the meaning of section 2 of the Act, i.e., "an activity for which wages are paid or commission is earned, or that is in direct competition with the activities of Canadian citizens or permanent residents in the Canadian labour market" without regard to the evidence of Mr. Ronner that the undertaking of his corporate personalities included exporting log homes from Canada for assembly outside of Canada;
 - iii. He found that the continued operation of Mr. Ronner's active business in Canada would not result in a significant benefit to Canada despite the evidence before him, which he accepted without question, that the business

had maintained a substantial payroll and record of purchases from independent contractors working as log home builders;

- iv. He found that the continued operation of Mr. Ronner's active business in Canada would not result in a significant benefit to Canada partly because one of the two then current employees of Mr. Ronner's business was a temporary resident of Canada with a work permit;
- v. He found that Mr. Ronner's past minor violations of the immigration laws of Canada, which had resulted in his being directed to leave Canada without further enforcement action, was evidence that he would not leave Canada within any further time he might be allowed to remain in Canada without considering his compliance with the direction to leave; and
- vi. He found that Ms. Ronner had helped her husband with his business within the meaning of section 2 of the Act; and
- vii. Such further or other grounds as may be raised in the Applicant's argument.

STATUTORY PROVISIONS

[20] The following provisions of the Act are applicable in this proceeding:

20. (1) Every foreign national, other than a foreign national referred to in section 19, who seeks to enter or remain in Canada must establish,

...

20. (1) L'étranger non visé à l'article 19 qui cherche à entrer au Canada ou à y séjourner est tenu de prouver :

...

<p>(b) to become a temporary resident, that they hold the visa or other document required under the regulations and will leave Canada by the end of the period authorized for their stay.</p>	<p>b) pour devenir un résident temporaire, qu'il détient les visa ou autres documents requis par règlement et aura quitté le Canada à la fin de la période de séjour autorisée.</p>
<p>30. (1) A foreign national may not work or study in Canada unless authorized to do so under this Act.</p>	<p>30. (1) L'étranger ne peut exercer un emploi au Canada ou y étudier que sous le régime de la présente loi.</p>
<p>...</p>	<p>...</p>
<p>47. A foreign national loses temporary resident status</p>	<p>47. Emportent perte du statut de résident temporaire les faits suivants :</p>
<p>(a) at the end of the period for which they are authorized to remain in Canada;</p>	<p>a) l'expiration de la période de séjour autorisé;</p>
<p>(b) on a determination by an officer or the Immigration Division that they have failed to comply with any other requirement of this Act; or</p>	<p>b) la décision de l'agent ou de la Section de l'immigration constatant le manquement aux autres exigences prévues par la présente loi;</p>
<p>(c) on cancellation of their temporary resident permit.</p>	<p>c) la révocation du permis de séjour temporaire.</p>

[21] The following provisions of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 (Regulations) are applicable in this proceeding:

<p>"work" means an activity for which wages are paid or commission is earned, or that is in direct competition with the activities of Canadian citizens or permanent residents in the Canadian labour</p>	<p>«travail» Activité qui donne lieu au paiement d'un salaire ou d'une commission, ou qui est en concurrence directe avec les activités des citoyens canadiens ou des résidents permanents sur le marché du</p>
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market.

travail au Canada.

200. (1) Subject to subsections (2) and (3), an officer shall issue a work permit to a foreign national if, following an examination, it is established that

200. (1) Sous réserve des paragraphes (2) et (3), l'agent délivre un permis de travail à l'étranger si, à l'issue d'un contrôle, les éléments suivants sont établis :

(a) the foreign national applied for it in accordance with Division 2;

a) l'étranger a demandé un permis de travail conformément à la section 2;

(b) the foreign national will leave Canada by the end of the period authorized for their stay under Division 2 of Part 9;

b) il quittera le Canada à la fin de la période de séjour qui lui est applicable au titre de la section 2 de la partie 9;

(c) the foreign national

c) il se trouve dans l'une des situations suivantes :

(i) is described in section 206, 207 or 208,

(i) il est visé par les articles 206, 207 ou 208,

(ii) intends to perform work described in section 204 or 205, or

(ii) il entend exercer un travail visé aux articles 204 ou 205, or

(iii) has been offered employment and an officer has determined under section 203 that the offer is genuine and that the employment is likely to result in a neutral or positive effect on the labour market in Canada; and

(iii) il s'est vu présenter une offre d'emploi et l'agent a, en application de l'article 203, conclu que cette offre est authentique et que l'exécution du travail par l'étranger est susceptible d'avoir des effets positifs ou neutres sur le marché du travail canadien;

(d) [Repealed, SOR/2004-167, s. 56]

d) [Abrogé, DORS/2004-167, art. 56]

(e) the requirements of section 30 are met.

e) il satisfait aux exigences prévues à l'article 30.

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|---|---|
| <p>(2) Paragraph (1)(b) does not apply to a foreign national who satisfies the criteria set out in section 206 or paragraph 207(c) or (d).</p> | <p>(2) L'alinéa (1)b) ne s'applique pas à l'étranger qui satisfait aux exigences prévues à l'article 206 ou aux alinéas 207c) ou d).</p> |
| <p>3) An officer shall not issue a work permit to a foreign national if</p> | <p>(3) Le permis de travail ne peut être délivré à l'étranger dans les cas suivants :</p> |
| <p>(a) there are reasonable grounds to believe that the foreign national is unable to perform the work sought;</p> | <p>a) l'agent a des motifs raisonnables de croire que l'étranger est incapable d'exercer l'emploi pour lequel le permis de travail est demandé;</p> |
| <p>(b) in the case of a foreign national who intends to work in the Province of Quebec and does not hold a <i>Certificat d'acceptation du Québec</i>, a determination under section 203 is required and the laws of that Province require that the foreign national hold a <i>Certificat d'acceptation du Québec</i>;</p> | <p>b) l'étranger qui cherche à travailler dans la province de Québec ne détient pas le certificat d'acceptation qu'exige la législation de cette province et est assujéti à la décision prévue à l'article 203;</p> |
| <p>(c) the specific work that the foreign national intends to perform is likely to adversely affect the settlement of any labour dispute in progress or the employment of any person involved in the dispute, unless all or almost all of the workers involved in the labour dispute are not Canadian citizens or permanent residents and the hiring of workers to replace the workers involved in the labour dispute is not prohibited by the Canadian law</p> | <p>c) le travail spécifique pour lequel l'étranger demande le permis est susceptible de nuire au règlement de tout conflit de travail en cours ou à l'emploi de toute personne touchée par ce conflit, à moins que la totalité ou la quasi-totalité des salariés touchés par le conflit de travail ne soient ni des citoyens canadiens ni des résidents permanents et que l'embauche de salariés pour les remplacer ne soit pas interdite par le droit canadien</p> |

applicable in the province where the workers involved in the labour dispute are employed;	applicable dans la province où travaillent les salariés visés;
(d) the foreign national seeks to enter Canada as a live-in caregiver and the foreign national does not meet the requirements of section 112; or	d) l'étranger cherche à entrer au Canada et à faire partie de la catégorie des aides familiaux, à moins qu'il ne se conforme à l'article 112;
(e) the foreign national has engaged in unauthorized study or work in Canada or has failed to comply with a condition of a previous permit or authorization unless	e) il a poursuivi des études ou exercé un emploi au Canada sans autorisation ou permis ou a enfreint les conditions de l'autorisation ou du permis qui lui a été délivré, sauf dans les cas suivants :
(i) a period of six months has elapsed since the cessation of the unauthorized work or study or failure to comply with a condition,	(i) une période de six mois s'est écoulée depuis les faits reprochés,
(ii) the study or work was unauthorized by reason only that the foreign national did not comply with conditions imposed under paragraph 185(a), any of subparagraphs 185(b)(i) to (iii) or paragraph 185(c);	(ii) ses études ou son travail n'ont pas été autorisés pour la seule raison que les conditions visées à l'alinéa 185a), aux sous-alinéas 185b)(i) à (iii) ou à l'alinéa 185c) n'ont pas été respectées,
(iii) section 206 applies to them; or	(iii) il est visé par l'article 206,
(iv) the foreign national was subsequently issued a temporary resident permit under subsection 24(1) of the Act.	(iv) il s'est subséquemment vu délivrer un permis de séjour temporaire au titre du paragraphe 24(1) de la Loi.

201. (1) A foreign national

201. (1) L'étranger peut

may apply for the renewal of their work permit if

demander le renouvellement de son permis de travail si :

(a) the application is made before their work permit expires; and

a) d'une part, il en fait la demande avant l'expiration de son permis de travail;

(b) they have complied with all conditions imposed on their entry into Canada.

b) d'autre part, il s'est conformé aux conditions qui lui ont été imposées à son entrée au Canada.

(2) An officer shall renew the foreign national's work permit if, following an examination, it is established that the foreign national continues to meet the requirements of subsection 200(1).

(2) L'agent renouvelle le permis de travail de l'étranger si, à l'issue d'un contrôle, il est établi que l'étranger satisfait toujours aux exigences prévues au paragraphe 200(1).

...

...

205. A work permit may be issued under section 200 to a foreign national who intends to perform work that

205. Un permis de travail peut être délivré à l'étranger en vertu de l'article 200 si le travail pour lequel le permis est demandé satisfait à l'une ou l'autre des conditions suivantes :

(a) would create or maintain significant social, cultural or economic benefits or opportunities for Canadian citizens or permanent residents;

a) il permet de créer ou de conserver des débouchés ou des avantages sociaux, culturels ou économiques pour les citoyens canadiens ou les résidents permanents;

(b) would create or maintain reciprocal employment of Canadian citizens or permanent residents of Canada in other countries;

b) il permet de créer ou de conserver l'emploi réciproque de citoyens canadiens ou de résidents permanents du Canada dans d'autres pays;

(c) is designated by the

c) il est désigné par le ministre

Minister as being work that can be performed by a foreign national on the basis of the following criteria, namely,	comme travail pouvant être exercé par des étrangers, sur la base des critères suivants :
(i) the work is related to a research, educational or training program, or	(i) le travail est lié à un programme de recherche, d'enseignement ou de formation,
(ii) limited access to the Canadian labour market is necessary for reasons of public policy relating to the competitiveness of Canada's academic institutions or economy; or	(ii) un accès limité au marché du travail au Canada est justifiable pour des raisons d'intérêt public en rapport avec la compétitivité des établissements universitaires ou de l'économie du Canada;
(d) is of a religious or charitable nature.	d) il est d'ordre religieux ou charitable.

STANDARD OF REVIEW

[22] Generally speaking, the standard of review for decisions of a visa officer has been, pre-*Dunsmuir*, reasonableness *simpliciter*: *Castro v. Canada (Minister of Citizenship and Immigration)* 2005 FC 659 at paragraph 6 and *Ram v. Canada (Minister of Citizenship and Immigration)*, [2003] F.C.J. No. 855. When a visa officer refuses a work permit solely on statutory interpretation, however, the standard of review is correctness: *Singh v. Canada (Minister of Citizenship and Immigration)* 2006 FC 684 at paragraph 8 and *Hamid v. Canada (Minister of Citizenship and Immigration)* 2005 FC 1632 at paragraph 4.

[23] In *Dunsmuir v. New Brunswick*, 2008 SCC 9, the Supreme Court of Canada recognized that, although the reasonableness *simpliciter* and patent unreasonableness standards are theoretically different, “the analytical problems that arise in trying to apply the different standards undercut any conceptual usefulness created by the inherently greater flexibility of having multiple standards of review”: *Dunsmuir* at paragraph 44. Consequently, the Supreme Court of Canada held that the two reasonableness standards should be collapsed into a single form of “reasonableness” review.

[24] The Supreme Court of Canada in *Dunsmuir* also held that the standard of review analysis need not be conducted in every instance. Instead, where the standard of review applicable to the particular question before the court is well-settled by past jurisprudence, the reviewing court may adopt that standard of review. Only where this search proves fruitless must the reviewing court undertake a consideration of the four factors comprising the standard of review analysis.

[25] Thus, in light of the Supreme Court of Canada’s decision in *Dunsmuir* and the previous jurisprudence of this Court, I find the standard of review applicable to the issues raised, with the exception of procedural fairness issues and errors of law, to be reasonableness. When reviewing a decision on the standard of reasonableness, the analysis will be concerned with “the existence of justification, transparency and intelligibility within the decision-making process [and also with] whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law”: *Dunsmuir* at paragraph 47. Put another way, the Court should only intervene if the Decision was unreasonable in the sense that it falls outside the “range of possible, acceptable outcomes which are defensible in respect of the facts and law.”

[26] The standard of review for procedural fairness issues is correctness: *Suresh v. Canada (Minister of Citizenship and Immigration)* 2002 SCC 1. The standard of review for errors of law is correctness. See *Uluk v. Canada (Minister of Citizenship and Immigration)*, [2009] F.C.J. No. 149 (F.C.).

ARGUMENTS

The Applicants

[27] The Applicants submit that the Officer refused Mr. Ronner a new work permit partially because of the existence of past reports made against him for working in Canada illegally. However, the Applicants submit that the Officer's consideration of each of these allegations as a factor weighing against the renewal of the work permit was a denial of administrative fairness. Mr. Ronner never had adequate notice of the allegations or a reasonable chance to respond.

[28] The Applicants state that the first instance of Mr. Ronner allegedly taking employment without authorization was when a New Westminster immigration officer contacted him and confronted him with the allegations. As a result, Mr. Ronner agreed to leave Canada. However, the legal process to obtain his departure was not clear and Mr. Ronner suggests that he was denied the legal process required by the former statute.

[29] The Applicants say that the other instance of Mr. Ronner taking employment without authorization, or working illegally in Canada, came from reports of which Mr. Ronner was not even aware at the time of the alleged violations, or when his application for a renewal of his work permit was being considered. Mr. Ronner seeks to have these reports set aside as he was unaware of any allegations against him for having violated immigration laws. There is also no record of any direction for an inquiry into these allegations.

[30] The Applicants say that the best indication of any person's future behavior is usually their past behavior and that Mr. Ronner has never overstayed the time for which he has been allowed to remain in Canada. The Applicants go on to say that it is difficult to see how the Officer could consider Mr. Ronner's past comings and goings from Canada as an indication that he would not leave within any time he was allowed to remain if he were issued a renewal of his work permit. He left very quickly when the officer in New Westminster told him in 1988, 1989, or 1990 that he had to.

[31] In relation to Ms. Ronner, the Applicants submit that the foundation for finding that she had worked in Canada without a permit was that she had helped her husband. The Applicants say that it is a "stretch" to consider this "financially unpaid work within matrimonial homes as in direct competition with the activities of Canadian citizens or permanent residences in the Canadian labour market despite the puff about Ms. Ronner being the office manager in some brochure."

[32] The Applicants also ask the Court to give no weight to Felicia Cheng's (Ms. Cheng is a legal assistant at the Department of Justice) affidavit, as it is "essentially a statement of the facts found by the [Officer] forming part of the reasons for the decision." They are the officer's summary of evidence which has not been described within reasons in the Officer's Decision.

[33] The Applicants submit that there is no apparent reason for the Officer to not make her own affidavit and that they will not have an opportunity to cross examine the Officer on the statements contained in the CAIPS notes attached to Felicia Cheng's affidavit. The Applicants submit that if the Court attributes weight to the Officer's CAIPS notes attached to Felicia Cheng's affidavit, then the notes should only be regarded evidence in support of their proposed grounds for review. The Applicants contend that the CAIPS notes do not allege that the Officer ever informed either of the Applicants that:

- a. The reports of Mr. Ronner's having worked in Canada without authorization existed or disclosed the contents of the reports;
- b. She considered these reports to be proof of the truth of the facts asserted within the reports.

[34] The Applicants contend that the Officer's reliance on the reports to find that Mr. Ronner has broken immigration laws is wrong in law, and that Mr. Ronner was given no opportunity to respond to the allegations in the reports.

[35] The Applicants also submit that the Respondent's reliance on *Juneja v. Canada (Minister of Citizenship and Immigration)* 2007 FC 301 is flawed as the case was not decided in circumstances similar to those at bar.

[36] The Applicants point out that the salient facts in the case at bar are not merely that Ms. Ronner did not receive any payment for the limited help she rendered Mr. Ronner with the business, but that she gave the help for her husband's benefit and within the matrimonial home. She also loaned a substantial amount of money to the business. Therefore, it could not reasonably be found that the work which Ms. Ronner performed was in direct competition with the activities of Canadian citizens or permanent residents in the Canadian labour market.

The Respondent

[37] The Respondent submits that the facts indicate that Ms. Ronner answers phones, takes messages, sorts e-mails and writes things down for Mr. Ronner's business. There is also a photo of Ms. Ronner on the company web-site which also states that she is the "office manager" for the business.

[38] The Respondent relies upon *Juneja*, where the Court found that a person on a student authorization who was doing unpaid work at a car dealership was in violation of the Act because, regardless of whether wages were paid, the applicant was in direct competition with the employment activities of Canadians or permanent residents. The Respondent says that Ms. Ronner

has provided business services which a Canadian or permanent resident could otherwise perform. Hence, she was working without authorization and the Officer made a reasonable conclusion that should be upheld.

[39] In relation to Mr. Ronner, the Respondent says that he was aware of his immigration history and knew that he had worked in Canada without a permit. He has been reported twice and again worked for four years without a permit after he had already been reported for the same offence. The Respondent says that Mr. Ronner has disregarded immigration laws on more than one occasion. Hence, the Officer's findings were reasonable.

ANALYSIS

[40] The Officer provided two reasons for refusing Mr. Ronner's application to extend his Work Permit:

- a. He had not satisfied the Officer that there was a significant benefit to Canada under a C11 Labour Market Opinion exemption as an entrepreneur; and
- b. Pursuant to paragraph 20(1)(b) of the Act, the Officer was not satisfied that he would leave Canada by the end of the authorized period.

[41] The Officer also provided two reasons for refusing to extend Ms. Ronner's application to extend her Visitor Record:

- a. She had engaged in unauthorized work; and

- b. Pursuant to paragraph 20(1)(b) of the Act, the Officer was not satisfied that she would leave Canada by the end of the authorized period.

[42] Although they have enumerated and elaborated a variety of issues in their written materials, I think the Applicants' complaints come down to two general grounds of concern. First of all, they say the Officer made findings and drew adverse inferences based upon materials and rulings which they did not have an opportunity to see and comment upon. Secondly, they say that the Decision was unreasonable and that the Officer made perverse and capricious findings of fact that were not based on the materials before him.

[43] As Justice Pinard pointed out in *Toor v. Canada (Minister of Citizenship and Immigration)*, [2006] F.C. 573 at paragraph 17, a visa officer is not required to bring to an applicant's attention adverse conclusions that the officer may draw from the evidence submitted by the applicant. Such an obligation would only arise when the adverse conclusions arise from material not known to the Applicants.

[44] In the present case, the Decision was based upon documents and answers provided by the Applicants, as well as reports contained in their immigration record.

[45] The Officer was subject to a duty of fairness and this includes a reasonable opportunity for the Applicants to know and respond to information on which the Officer proposes to rely in making the Decision. Whether the Applicants were denied this reasonable opportunity depends on an

analysis of the factual, administrative and legal context of the Decision. It is also well recognized that the content of the duty of procedural fairness varies according to context. See *Chiau v. Canada (Minister of Citizenship and Immigration)*, [2000] F.C.J. No. 2043 (F.C.A.) at paragraphs 35-37.

[46] In the present case, the Applicants were familiar with the documentation they had submitted with their application and they were aware of their immigration history. Mr. Ronner now says that he had no knowledge of the second 1992 report alleging that he had worked without authorization in Canada and that this was the report for which no direction of inquiry was issued. Mr. Ronner also says that neither the 1990 nor the 1992 reports had been disclosed to him previously. He acknowledges some wrongdoing when he left Canada after the first report was made in 1990 but he says he never saw that report and he simply accepted what the officer told him at the time, which was that he had to leave Canada, but that he could return immediately.

[47] He says he never admitted any wrongdoing in relation to the 1992 report which he did not know existed.

[48] In the Officer's notes, the comment is made that Mr. Ronner "has been reported twice for working without authorization and also worked during another period for which he was not authorized."

[49] The notes show that Mr. Ronner was reported in 1990 and 1992 for working in Canada without authorization. In his affidavit, Mr. Ronner says the "report of 1990 was something I have no

recollection of seeing” and the “report of 1992 was something I had no knowledge of at all until I read the report of the officer to this Court in the present proceedings.”

[50] Even on his own evidence, Mr. Ronner appears to have had some awareness of the 1990 report and the record shows that he has been cautioned about what he can do in Canada. He says that “the officer in New Westminster in 1990 only told me verbally that what I had done in Canada was considered illegal and he had to send me out of Canada” It seems to me then, that Mr. Ronner is well aware that his immigration record involves unauthorized work in Canada and that he has been told that this activity is illegal. He is also aware that, notwithstanding what he has been told about unauthorized work, he has subsequently engaged in further work in Canada without a permit. In other words, even though he now says that he never saw any reports, and he was not even aware of the 1992 report, Mr. Ronner was aware about past concerns over unauthorized work that could affect any subsequent decision that is made about his future status in Canada.

[51] Bearing in mind the minimal duty of procedural fairness owed in this context (see *Qin v. Canada (Minister of Citizenship and Immigration)*, [2002] FCT 815 at paragraph 5), Mr. Ronner’s knowledge that, in 1990 at least, what he had done was considered illegal work, the way he was cautioned concerning his activities, and that there was significant other evidence before the Officer upon which to conclude that Mr. Ronner had engaged in unauthorized work in Canada, I cannot conclude that a breach of procedural fairness occurred in this context and on these facts. Although he now says he was mistaken, Mr. Ronner indicated in his application for an extension that he had already filed an application for permanent residence. The consequences that the Officer would have

envisaged for the Applicants on the basis of what they had told him in their application must also lower the procedural fairness obligations on the Officer.

[52] In the balance of their application, the Applicants essentially take issue with the Officer's conclusions based upon the evidence before him. I have examined each issue in turn but must conclude that, based upon the evidence, I can find no error of law and nothing unreasonable in this Decision which takes it outside the range of possible acceptable outcomes which are defensible in respect of the facts and law. There are facts, and lines of analysis within the reasons that could reasonably lead the Officer from the evidence to the conclusions he reached, even if other conclusions might also have been reasonable.

[53] It is always possible to disagree and to point to evidence that could have been used to support a different outcome, and I can see that a decision in favour of the Applicants would not have been unreasonable. However, that does not make the Officer's findings and conclusions in this case unreasonable within the meaning of *Dunsmuir*. As Mr. Ronner acknowledges in his affidavit, the Applicants "have been temporary residents for an unusually long time," so I do not think this Decision can have been entirely unexpected.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that

1. This application is dismissed.
2. There is no question for certification.

“James Russell”

Judge

FEDERAL COURT

NAMES OF COUNSEL AND SOLICITORS OF RECORD

COURT FILE NO.: IMM-5141-08

STYLE OF CAUSE: *GERHARD RONNER*
INGEBORG KARIN RONNER

v.

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: Vancouver, B.C.

DATE OF HEARING: June 17, 2009

**REASONS FOR JUDGMENT
And JUDGMENT:** RUSSELL J.

DATED: August 11, 2009

WRITTEN REPRESENTATIONS BY:

Charles E.D. Groos FOR THE APPLICANTS

Charmaine de los Reyes FOR THE RESPONDENT

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