

Federal Court



Cour fédérale

Date: 20120209

Docket: IMM-4887-11

Citation: 2012 FC 192

Calgary, Alberta, February 09, 2012

PRESENT: The Honourable Mr. Justice Harrington

BETWEEN:

HARMINDER SINGH DHILLON

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR ORDER AND ORDER

[1] The application to sponsor Harminder Singh Dhillon as a permanent resident on the basis of his being a family member was dismissed as the First Secretary (Immigration) at the Canadian High Commission in New Delhi was not satisfied that as an adult of more than 22 years of age he was unable to be financially self-supporting. She accepted that he suffered from a physical disability as a result of polio, but was not satisfied, in accordance with the *Immigration and Refugee Protection Regulations*, that his physical or mental condition rendered him unable to be financially self-supporting. This is the judicial review of that decision.

[2] Following the hearing yesterday, I stated that I would be granting judicial review as I considered the decision to be unreasonable. These are my reasons.

[3] The general rule is that an adult child over 22 years of age cannot be sponsored as a dependent. There are exceptions. In section 2 of the Regulations, a dependent child includes one who: "...is 22 years of age or older and has depended substantially on the financial support of the parent since before the age of 22 and is unable to be financially self-supporting due to a physical or mental condition."

[4] Harminder is now 38 years of age. The parties are in agreement that he has never worked; that he is unmarried, and that he has always depended substantially on the financial support of his parents. He is mentally sound and completed his high school education.

[5] The only controversy is the extent of his partial disability and whether that condition prevents him from being financially self-supporting.

[6] Accompanying the application were an affidavit from Harminder, two affidavits from his father, and a statement from a village official that Harminder lived in Lama Village, Punjab, that he is unmarried, unemployed and receives no benefits from either the Central or Punjabi Government.

[7] Various statements from doctors in hospitals described his medical condition. Doctor Deepak Kumar attested Harminder's is a known case of post-polio residual paralysis in both lower

limbs. He assessed his disability at 70% and said he was unable to attend to his daily needs and requires assistance in his day-to-day activities. He uses crutches in both upper limbs to walk.

[8] In his affidavit, among others things, Harminder swore that no one wanted to give him a job, and that he cannot “board bus-etc with the crutches.” The First Secretary commissioned an Activity of Daily Living Report (ADLR) by an examining physician in India. Among other things, that doctor said that Harminder’s self-care was intact in that he could feed, drink, dress, bathe and relieve himself without assistance. He had mobility in that he could transfer to and from a bed, chair, wheelchair, toilet, bathtub and walk fifty yards without difficulty. He needed some help to go up and down stairs. He had full communication skills. He was dependent on his crutches.

[9] The reasons for the First Secretary’s decision are set out in her Computer Assisted Immigration Processing System Notes. She was of the view that the report she commissioned contradicted the findings of Dr. Kumar. She decided that although Harminder had some mobility restrictions, he could accomplish most tasks on his own, had 12 years of schooling, and so she was not satisfied that he was unable to be financially self-supporting due to a physical or mental condition.

[10] That being said, she did not deal with the uncontradicted country conditions that people with disabilities are among the most excluded in Indian society (online article *New World Bank Report Finds People with Disabilities among the Most Excluded in Indian Society*) and that the majority of Indians in Harminder’s situation, some 62%, cannot find employment. Thus, on the balance of

probabilities, he is unable to support himself because of the attitude of the society in which he lives. One must not only be willing to work, someone must be willing to hire.

[11] Furthermore, the officer refused to give any weight to the affidavits because they were generated for the purpose of supporting the submission. Of course they were! That does not mean they were untrue. All that can be said is that some opinions were expressed. Evidence cannot be rejected simply by reason of association to the applicant (*Basra v Canada (Citizenship and Immigration)*, 2009 FC 535, and *Rendon Ochoa v Canada (Citizenship and Immigration)*, 2010 FC 1105).

[12] There were no inconsistencies, and one begins with the rebuttable presumption that one is telling the truth (*Maldonado v Canada (Minister of Employment and Immigration)*, [1980] 2 FC 302).

[13] Furthermore, there was no inherent contradiction in the doctors reports. The doctor who issued the ADLR did not opine as to a percentage of partial disability.

[14] Where would Harminder work in his village? His uncontradicted evidence is that he is unable to board a bus. In addition, there was ample evidence of societal discrimination against individuals in his situation, and that no one will hire him.

[15] As pointed out by the Supreme Court in *Catalyst Paper Corp v North Cowichan (District)*, 2012 SCC 2, reasonableness must be assessed in the context of the particular type of decision

making involved, and with all relevant factors in mind (para 18). Harminder's ability to support himself financially cannot be considered in the abstract. The question is whether he is able to financially support himself where he lives, and not whether his physical condition would prevent him from becoming self-sufficient in Canada, where the federal and provincial human rights commissions would give short shrift to those who would not hire him because of his disability.

[16] Both parties agreed there was no question to certify for the Court of appeal, and I agree.

ORDER

FOR REASONS GIVEN;

THIS COURT ORDERS that:

1. The application for judicial review of the decision of the First Secretary (Immigration) of the Immigration Section of the High Commission of Canada located in New Delhi, their file number B054966483, dated 7 June 2011, is granted, the decision is quashed and the matter remitted to another decision-maker for re-determination.
2. There is no serious question of general importance to certify.

“Sean Harrington”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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