Federal Court  Cour fédérale

**Date: 20140512**

**Docket: IMM-1458-13**

**Citation: 2014 FC 454**

**Ottawa, Ontario, May 12, 2014**

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

**BETWEEN:**

**DALJIT SINGH GREWAL**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION**

**Respondent**

# JUDGMENT AND REASONS

## I. INTRODUCTION

[1] This judicial review application is based almost exclusively on the Applicant's claim that the Respondent breached procedural fairness by violating a legitimate expectation created by the Respondent that it would not process an H&C application until an immigration arrest warrant had been executed.

[2] The events which surround this matter are both bizarre and disturbing in that the immigration authorities have an arrest warrant for the Applicant, know where he is and have known since January 2001 and have failed to execute the warrant, arrest the Applicant and proceed to deport him. This inaction flies in the face of numerous submissions by the Respondent or other agencies of the federal government in cases before this Court that failed refugees must be deported with all due dispatch. The Respondent has argued in many other cases that spouses be separated from each other, children be separated from parents and taken out of school, all in the name of efficiency.

[3] Unfortunately for the Applicant, the Respondent's failings do not provide justification for the Applicant's claim of breach of procedural fairness.

## II. BACKGROUND

[4] The Applicant is an Indian Sikh male in his sixties. He entered Canada in 1996 and his refugee claim was rejected. He then made two H&C applications, both of which were denied and about which leave for judicial review was denied.

In 2001 the Applicant declined to report for removal proceedings and he has, since that time, been the subject of an unexecuted immigration warrant of arrest.

[5] In 2005 the Applicant made another H&C application based on integration into Canadian society and risk of hardship due to his religious beliefs.

[6] That application was denied; however, the Applicant does not challenge the merits of the decision. The sole challenge is that of breach of legitimate expectation. The claim is that the Officer indicated that because of the unexecuted arrest warrant, the H&C application would not be processed and then proceeded to decide the H&C without executing the warrant.

[7] The Applicant alleges that because he thought his H&C was stalled, he did not file updated information to support the H&C and therefore the decision was made on less than current information.

## III. ANALYSIS

[8] The issue is one of procedural fairness for which the standard of review is correctness (*Khosa v Canada (Minister of Citizenship & Immigration)*, 2009 SCC 12, [2009] 1 SCR 339).

[9] The sequence of events around the "creation" of the legitimate expectation are important:

- On August 15, 2011, CIC wrote to the Applicant's counsel:

> "Your client has an active warrant since the 24 [*sic*] January 2001 for failing to report to the Pre-removal interview at the Greater Toronto Enforcement Center. Unfortunately we are unable to process his application until the warrant is executed."

- On August 26, 2011, counsel responded:

> "May I know on which section of the Act, Regulation or Manual you are relying in refusing to exercise your s 25 jurisdiction and decide the case?"

- On September 1, 2011, CIC responded citing s 55(1) of the *Immigration and Refugee Protection Act* and s 233 of its Regulations.

- On March 20, 2012, counsel proposed to CBSA that the Applicant was willing to report to CBSA if CBSA was prepared to accept a bond.
- Finally, on May 17, 2012, CIC wrote that there was still an outstanding warrant, recommended that the Applicant contact CBSA and concluded:

> "Failure to contact the CBSA may negatively impact your application for permanent residence. You must contact them no later than June 7, 2012."

[10] On June 14, 2012, the Respondent informed the Applicant that the H&C application was denied.

[11] The principles of legitimate expectation were set out at paragraphs 93-97 of *Agraira v Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36, [2013] 2 SCR 559:

- the legitimate expectation may arise from some conduct of the decision-maker or some other relevant actor.
- the practice or conduct said to give rise to the reasonable expectation must be clear, unambiguous and unqualified, meaning to the level that had they been made in the context of a private law contract, they would be sufficiently certain to be capable of enforcement.
- a legitimate expectation may arise where a public authority or agency:
  - has made representations about the procedure it will follow in making a particular decision;
  - has consistently adhered to certain procedural practices in the past in making such a decision;
  - has made representations with respect to a substantive result to an individual; or

- has created administrative rules of procedure or a procedure on which the agency had voluntarily embarked in a particular instance.

- legitimate expectations cannot give rise to substantive rights, only procedural remedies.

[12] The Respondent conceded, in argument, that the August 15 letter was a commitment that the H&C would not be dealt with until the warrant was executed. The timing of the execution of the warrant was entirely in the hands of the Respondent.

[13] However, the Applicant challenged the authority of the Respondent to defer processing the H&C.

[14] The unusual aspect of this judicial review is that the Applicant complains that the Respondent did what the Applicant wanted – processed the H&C.

[15] There are two aspects which undermine the Applicant's judicial review:

1. Central to the principle of legitimate expectation is that there must be an "expectation" – a known reliance on the representation. The Applicant's challenge to the Respondent's authority to defer the H&C decision is inconsistent with any reliance on the representation. Rather than reliance, there was resistance.
2. The Applicant had precluded any notion of reliance on the unexecuted warrant when he began to negotiate the terms under which he would surrender to authorities. Having done so, the Applicant had reasonable notice on May 17, 2012

> that failure to contact CBSA would negatively impact the H&C application and that any reliance on past representations were terminated.

As such, the doctrine of legitimate expectation does not apply.

[16] Applying quasi-contract/contract principles, the Respondent made an offer which was not accepted and further was withdrawn under reasonable circumstances.

[17] Justice Campbell's decision in *Martins v Canada (Minister of Citizenship and Immigration)*, 2002 FCT 189, 112 ACWS (3d) 556, is of no assistance to the Applicant. In that decision there was a representation; accepted and never withdrawn or otherwise limited by terms.

## IV. CONCLUSION

[18] Therefore, this judicial review will be dismissed. There is no question for certification.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that** the application for judicial review is dismissed.

"Michael L. Phelan"

Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

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| **DOCKET:** | IMM-1458-13 |
| **STYLE OF CAUSE:** | DALJIT SINGH GREWAL v THE MINISTER OF CITIZENSHIP AND IMMIGRATION |
| **PLACE OF HEARING:** | TORONTO, ONTARIO |
| **DATE OF HEARING:** | MARCH 26, 2014 |
| **JUDGMENT AND REASONS:** | PHELAN J. |
| **DATED:** | MAY 12, 2014 |

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