

Federal Court



Cour fédérale

Date: 20140717

Docket: IMM-1184-13

Citation: 2014 FC 712

Calgary, Alberta, July 17, 2014

PRESENT: The Honourable Mr. Justice Hughes

Docket: IMM-1184-13

BETWEEN:

**NIRMAL SINGH MALHI
AND SUKHDEEP SINGH MALHI**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is a judicial review of a decision of an Immigration Officer of the High Commission of Canada to India dated 10 December, 2012, wherein Sukhdeep Singh was deleted from the Applicants' application for permanent residence in Canada on the basis that this person was not a "dependant child" as defined in Section 2 of the *Immigration and Refugee Protection Regulations*.

[2] Sukhdeep Singh at the relevant time had attained the age of 22 years. He was enrolled in a Diploma course in Information Technology at a Polytechnic College (ITI) in India. The Officer found that the institute attended by Sukhdeep was part of a group of institutes referred to as ITI. The Officer found that ITI were premier vocational institutes set up by the Government of India and its regulatory authorities for the primary purpose of formal education for specific career preparation like trade certification of technical trades.

[3] The Officer, however, concluded that the ITI were created as Vocational Institutes for students who did not complete their secondary studies to get them trained in fields to become employment ready.

[4] The Officer noted that the *Immigration and Refugee Protection Act* does not define “post-secondary” institution. Counsel agreed that neither do the *Regulations* define “post-secondary” and that there is no case law that defines “post-secondary”. The Officer concluded that “post-secondary” meant education that was pursued after completion of high school, that is, after the completion of grade 12. The Officer noted that ITI required only completion of grade 10.

[5] The Officer’s conclusion is consistent with the definition of “*post-secondary*” as found in the Canadian Oxford dictionary, 2nd ed:

Of or relating to education occurring after the completion of high school.

[6] If the matter were to end there, then the Court would conclude that the Officer’s definition was reasonable.

[7] The matter does not end there. The *Immigration and Refugee Protection Regulations*, section 2 defines “dependent child” as including:

“Dependent child”, in respect of a parent, means a child who

- (a) *has one of the following relationships with the parent, namely,*
 - (i) *is the biological child of the parent, if the child has not been adopted by a person other than the spouse or common-law partner of the parent, or*
 - (ii) *is the adopted child of the parent; and*
- (b) *is in one of the following situations of dependency, namely,*
 - (i) *...*
 - (ii) *has depended substantially on the financial support of the parent since before the age of 22 – or if the child became a spouse or common-law partner at the age of 22, since becoming a spouse or common-law partner – and, since before the age of 22 or since becoming a spouse or common-law partner, as the case may be, has been a student*
 - (A) *continuously enrolled in and attending a post-secondary institution that is accredited by the relevant government authority, and*
 - (B) *actively pursuing a course of academic, professional or vocational training on a full-time basis.*

[8] Thus a “dependent child,” to qualify under the regulation, includes a person who since becoming the age of 22 is continuously enrolled in a post-secondary institution and is actively

pursuing a course of academic, professional or **vocational** training (emphasis added) on a full time basis.

[9] With this definition a vocational school can be a post-secondary school. It is well-known in Canada that certain students can terminate their high school at the grade 10 level and enter vocational school. There is nothing in the *Regulations* or elsewhere that says that a “post-secondary” student means a person having completed grade 12 or its equivalent.

[10] Citizenship and Immigration Canada has issued guidelines (soft law as Justice Evans of the Federal Court of Appeal has called it) respecting “Post Secondary Institutions” in OP 2. I repeat part of that:

14.3 Post secondary institution

An institution must be accredited by a relevant authority. Officers should normally accept a state-recognised institution as an educational institution. In countries with licensed schools, officers may require evidence of licensing or state recognition.

If there is no such authority or if accreditation is in question, officers should use the following guidelines to assess an educational institution.

...

14.4 Institutions that are not “educational institutions”

Examples of institutions that are not educational institutions under this Regulation include:

- Centres providing on the job training, for example a hairdresser’s salon or garage.*
- Institutions offering only correspondence courses.*
- Institutions that enrol students to enable them to qualify as a dependent son or daughter under Canadian Immigration Regulations.*

- Private training establishments offering specialized courses not leading to a diploma or a vocational certificate, for example, those offering courses such as computer orientation, internet training, amateur painting, sculpting, sewing etc.

[11] In the present case the Officer has found that ITI is a state-recognized institution, recognized as an educational institution. The IRPA Regulations as quoted above include “academic professional or vocational training” as within such education. The Officer therefore was in error in excluding ITI on the basis that it was vocational.

[12] The matter must be returned for redetermination by a different Officer who must be mindful that the definition of “post-secondary” includes “vocational” when referring to a particular evaluation.

[13] No party requested a certified question.

JUDGMENT

FOR THE REASONS PROVIDED THE COURT ADJUDGES that:

1. The Application is allowed;
2. The matter is to be re-determined by a different Officer mindful that a post-secondary evaluation includes a vocational institution;
3. No question is certified; and
4. No Order as to costs.

"Roger T. Hughes"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-1184-13

STYLE OF CAUSE: NIRMAL SINGH MALHI AND SUKHDEEP SINGH
MALHI v THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

PLACE OF HEARING: CALGARY, ALBERTA

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AND JUDGMENT:** HUGHES J.

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APPEARANCES:

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