

Federal Court



Cour fédérale

Date: 20200219

Docket: IMM-3312-19

Citation: 2020 FC 265

Toronto, Ontario, February 19, 2020

PRESENT: Madam Justice Simpson

BETWEEN:

SYED IMRAN WAHEED

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

(Delivered orally from the Bench in Toronto on February 17, 2020)

[1] This application is for judicial review of a decision of a Migration Officer [the Officer] in the High Commission of Canada in London, U.K., dated April 3, 2019 [the Decision], in which the Officer denied the Applicant's application for permanent residence and found the Applicant inadmissible for misrepresentation because he could not verify the Applicant's employment. This application was brought pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the IRPA].

[2] The Applicant is a 32-year-old male citizen of Pakistan. He applied for permanent residence in Canada under the Federal Skilled Worker Program in August 2014.

[3] As part of his application the Applicant provided an employment letter dated June 10, 2014 from Ali Nadeem, CEO of Mezzi Marketing. It stated that the Applicant had been employed with the company from August 7, 2007 to October 30, 2009 as a Business Software Consultant [the First Employment Letter]. The business address listed on this letter was “8-F Gulberg II Lahore”. The company’s web address was also provided.

[4] On October 7, 2015, members of the Anti-Fraud Unit of the High Commission of Canada in Islamabad visited the address of Mezzi Marketing which had been provided in the First Employment Letter. They were unable to find evidence that Mezzi marketing operated at this location. An individual greeted them, and said that he had been operating a catering business there for 2-3 years. He said he had no knowledge of any other business at that address and had not heard of Mezzi Marketing. The Anti-Fraud Unit also called the two telephone numbers listed on the First Employment Letter. Neither was functional. They also tried two other possible phone numbers. One was answered by a woman who said they had the wrong number, and the other was not in service.

[5] On October 28, 2015, the Officer sent the Applicant a procedural fairness letter [the First PF Letter]. The relevant passage read as follows:

An investigation held by the anti-fraud department of the High Commission of Canada in Islamabad has concluded that the evidence you have provided in support of your work experience was falsified, and that you have misrepresented and possibly

colluded with others in this regard. I have concerns that you have misrepresented yourself. You have 30 days to respond to address my concerns. Any further evidence related to your employment with Mezzi Marketing will be considered.

[6] On October 29, 2015, the Applicant asked for clarification of the First PF Letter.

[7] On November 2, 2015, the visa office provided the following clarification, “You are required to provide evidence of your work experience with Mezzi Marketing” [the Clarification].

[8] On November 4, 2015, the Applicant provided a further letter from Ali Nadeem, CEO of Mezzi Marketing. This letter confirmed the Applicant’s employment and indicated that “due to ongoing construction in the surrounding area, our landlines are out of order most of the time”. This letter gave the same address as the initial employment letter. It was “8-F Gulberg II Lahore”. It added a cell phone number and stated “I am willing to provide any sort of additional confirmation on call/email or you can send your representative with an appointment”.

[9] On June 16, 2017, the Officer sent a second procedural fairness letter [the Second PF Letter]. The material portion of the letter was identical to the passage described above in paragraph 5.

[10] On June 27, 2017, the Applicant responded, stating “...I would like to re-emphasize that my work experience is genuine and this can be verified from my Ex-CEO Mr. Ali Nadeem...”. Contact information for Mr. Nadeem which had appeared on the Second Employment Letter was repeated.

The Decision

[11] On April 3, 2019, the Officer wrote to the Applicant saying that he found that the Applicant had misrepresented or withheld material facts, and therefore found him inadmissible to Canada for a period of five years. He also refused his application for permanent residence. He then mentioned for the first time that the employer was not operating from the address given in the First and Second Employment Letters [the Refusal].

The Issue

Did the Officer breach procedural fairness by not informing the Applicant that the concern was that Mezzi Marketing was not found at the location described in the First and Second Employment Letters?

Discussion

[12] In my view the purpose of a Procedural Fairness Letter is to provide a recipient with information that enables him or her to, if possible, dispel an officer's concerns. My view is reinforced by the decision of the Federal Court of Appeal in *Sapru v. Canada (Minister of Citizenship & Immigration)*, 2011 FCA 35 at paragraph 31. There the Court says:

The Judge's conclusion was premised on the basis that the Fairness Letter gives an applicant "a fair opportunity" to respond to any concerns. This requires the Fairness Letter to set out clearly all of the relevant concerns so that an applicant knows the case to be met and has a true opportunity to meaningfully respond to all of the concerns of the medical officer.

[13] In this case the Applicant was given only the Officer's conclusion that the evidence he provided in support of his work experience had been falsified.

[14] What the Applicant was entitled to in my view was an understanding of the underlying concern or problem that caused the Officer to reach that conclusion. The concern was that Mezzi Marketing was not located at the address given in the First and Second Employment Letters and that it therefore did not exist. This was not mentioned in the First or Second Procedural Fairness Letters or in the Clarification.

Conclusions

[15] Since this information was not provided, neither of the Procedural Fairness Letters served their intended purpose and this meant that a breach of procedural fairness occurred.

JUDGMENT in IMM-3312-19

THIS COURT'S JUDGMENT is that:

1. The decision is set aside.
2. The matter is to be reconsidered.
3. A fairness letter is to be sent in conformity with these reasons.

“Sandra J. Simpson”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3312-19

STYLE OF CAUSE: SYED IMRAN WAHEED v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

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