

Federal Court



Cour fédérale

Date: 20151119

Docket: IMM-1600-15

Citation: 2015 FC 1289

Ottawa, Ontario, November 19, 2015

PRESENT: The Honourable Mr. Justice Annis

BETWEEN:

AMIR RASHID WARAICH

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] This is an application for judicial review pursuant to section 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA or the Act] challenging a decision by an Immigration Officer from the Immigration and Medical Services Division of the High Commission of Canada in London, U.K. [the Officer] refusing the Applicant's skilled worker

permanent resident visa application. The Applicant is seeking an order setting aside the Officer's decision and referring the matter back for reconsideration.

[1] For the reasons that follow, the application is allowed.

II. Background

[2] The Applicant, Amir Rashid Waraich, is a citizen of Pakistan and has resided with his family in the United Arab Emirates since 2002. On May 18, 2010, the Applicant applied for a permanent resident visa as skilled worker under the Information Systems Manager (NOC 0231) occupation. The Applicant's spouse and three minor children were included in the application.

[3] On April 5, 2012, the Applicant's application was refused on the basis that he was accredited a total of 63 points, which did not meet the minimum requirement of 67 points. Due to a lack of supporting documents, no points were awarded for the Applicant's spouse's education.

[4] On April 26, 2012, the Applicant's representative, by way of letter, advised the Immigration and Medical Services Division of the High Commission of Canada that a clerical error was made as the spouse's degree was not included with the application.

[5] On May 4, 2012, the High Commission informed the Applicant that he would have to reapply, as newly submitted information would not be considered as the file was closed.

[6] On May 17, 2012, the Applicant filed to have the May 4, 2012 decision judicially reviewed by the Federal Court of Canada. An Order granting leave was issued on September 20, 2012.

[7] On September 24, 2012, the Applicant discontinued his judicial review application following a settlement agreement. The file was sent to another officer for redetermination and it is this decision that is the subject of these proceedings.

III. Impugned Decision

[8] The Applicant's file was reopened on October 16, 2012, but was once again refused on March 6, 2015 on the grounds that the Applicant and his spouse were not awarded the required minimum 67 points.

[9] On October 26, 2012, the Officer accepted the certified copy of the Applicant's spouse's transcript and informed the Applicant of this decision.

[10] On January 29, 2014, the Officer requested that the Applicant's spouse's document and diploma be sent to the Anti-Fraud Unit to verify their authenticity, which were confirmed to be a match with the issuing institution's records on November 11, 2014.

[11] On December 8, 2014, the Officer reviewed the file and found that there was insufficient evidence regarding the Applicant's employment as an Information Systems Manager with Al Muheeb Computer Devices Trading [Al Muheeb]. The Officer found the Applicant's

documentation lacking in details regarding the company's specific business. After performing an online research and assessing the evidence, the Officer found it strange that a company that employs an Information Systems Manager had no website and concluded that Al Muheeb was likely a small computer repair and sales company.

[12] As a result, the Officer requested that a procedural fairness letter be sent to the Applicant allowing him 30 days to remedy the Officer's insufficient evidence finding. The letter was sent to the Applicant indicated the following: "[p]lease submit any additional evidence that you wish to have considered in support of your employment in this capacity."

[13] The Applicant then submitted a new employment reference letter from Al Muheeb listing his responsibilities, as well as new documentation regarding his previous employment at Cool Industries from 1994 to 2002 as a computer programmer and Information Systems Manager.

[14] The Officer awarded the Applicant 2 years' worth of work experience for his employment at Cool Industries because the company had a legitimate web presence and the new evidence included a job description document and a reference letter.

[15] The Officer found that the Applicant's work experience evidence at Al Muheeb continued to be insufficient as the new employment letter was riddled with spelling and grammatical errors, and the document was of low print quality. The Officer indicated that it was unlikely that a company that employed an Information Systems Manager would not have its own

website. The Officer thus concluded that the Applicant had worked at this company but not as an Information Systems Manager and awarded no points for this employment.

[16] The Officer awarded the Applicant and his spouse a total of 66 points, assigned as follows: 10 points for age, 17 points for 2 years' worth of work experience, 25 points for more than 17 years' worth of education, 10 points for language, and 4 points for adaptability based on the Applicant's spouse's university degree.

IV. Issues

[17] The following issues were brought forth by the Applicant:

1. Did the Respondent err in law in finding that the Applicant did not meet the requirement of an Information Systems Manager (NOC 0213)?
2. Was the Applicant denied procedural fairness because the Respondent did not provide the Applicant with a reasonable opportunity to address the Respondent's concerns?

V. Standard of Review

[18] A visa officer's decision to refuse permanent residence based on a finding that the Applicant does not meet employment requirements is reviewable on a standard of

reasonableness: *Quin v Canada (Minister of Citizenship and Immigration)*, 2013 FCA 263 at para 25.

[19] A breach of procedural fairness, however, is reviewable on a standard of correctness: *Mission Institution v Khela*, 2014 SCC 24 at para 79.

VI. Analysis

A. *Did the Respondent err in law in finding that the Applicant did not meet the requirement of an Information Systems Manager?*

[20] The Applicant submits that he was denied procedural fairness because the Officer did not provide him with a reasonable opportunity to address the Officer's concerns.

[21] The gravamen of the Applicant's case can best be demonstrated by comparing the Officer's concerns as described in the Global Case Management System [GCMS], with those in the fairness letter sent the Applicant.

[22] The Officer expressed his concerns as described in the GCMS as follows:

On documentation provided, the company's specific business is not described in any detail ... His employer does not have a website, which is strange for a company that employs an information systems manager. Online research indicates that the limited web presence for the company shows that it is a wholesale/used computer sales company. ... Although he may be employed at this company in some way, the evidence suggests that this company is a small computer repair and sales company. L.M. please prepare procedural fairness letter to applicant advising that

... I am not satisfied with the evidence submitted to date that he has worked as an Information Systems Manager since 2003.

[23] The fairness letter stated as follows:

At this time there is insufficient evidence before me to satisfy me that you have been employed as an Information Systems Manager. Please submit any additional evidence in support of your employment in this capacity. I would like to provide you with the opportunity to respond to this information.

[24] The Officer rejected the Applicant's application stating as follows:

I have awarded two years' worth of work experience for your stated employment with Cool Industries in Pakistan (2000-2002). However, after reviewing your new submissions in support of your employment with Al Muheeb, when viewed in conjunction with the already existing evidence, this continues to be insufficient to satisfy me that you have been employed at Al Muheeb as an Information Systems Manager since 2003.

[25] I agree with the Applicant's submission that although the Applicant appears to have been given a reasonable opportunity to address the Officer's concerns, he was not. The letter the Applicant received did not indicate the Officer's real concern that the Applicant was claiming to occupy a nonexistent position. Accordingly, the Applicant was unaware that the "insufficiency" he had to address was whether his position actually existed, as opposed to his work experience in relation to the position.

[26] More importantly, as I interpret the Officer's notes, I am satisfied that the Officer did not find that the Applicant was credible. While the Respondent argues that this is a matter of insufficiency of evidence, I find it clear from the GCMS notes that the Officer did not believe the Applicant's employer maintained a position of Information Systems Manager for various reasons. By that observation I find that the Officer was concerned that the Applicant was intentionally misrepresenting his position.

[27] While the dividing line between insufficiency and credibility is not always clear, when the declared fact is of the nature that it cannot be misstated without a likely intention to do so, it is usually a matter of credibility.

[28] The Applicant's statement that he was occupying a position that the Officer did not believe existed is an example of a misrepresentation that most likely was deliberate. It is difficult to make a mistake as to whether a position like that of Information Systems Manager exists in a company. The factors referred to by the Officer, (no website, small wholesale/used computer sales company) demonstrate that he did not think that this was the type of business which would have the position of Information Systems Manager, meaning that the Applicant was deliberately misstating his employment.

[29] In such circumstances, the Applicant must be provided with sufficient details to identify the credibility concerns such that he knows the case he has to meet and can reasonably respond to it: *Nauman v Canada (Minister of Citizenship and Immigration)*, 2013 FC 964 at para 16.

[30] This obligation was not met by the fairness letter, and as such, the Court finds that the Applicant was denied a reasonable opportunity to address the Officer's credibility concerns about his statement that he held the position of Information Systems Manager.

VII. Conclusion

[31] The application is allowed and the matter is directed to be sent back for redetermination by another officer. No questions are certified for appeal.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The application is allowed and the matter will be sent back for redetermination by another officer; and
2. No questions are certified for appeal.

"Peter Annis"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-1600-15

STYLE OF CAUSE: AMIR RASHID WARAICH v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: VANCOUVER, ONTARIO

DATE OF HEARING: SEPTEMBER 24, 2015

JUDGMENT AND REASONS: ANNIS J.

DATED: NOVEMBER 19, 2015

APPEARANCES:

Richard Kurland FOR THE APPLICANT

Helen Park FOR THE RESPONDENT

SOLICITORS OF RECORD:

Richard Kurland FOR THE APPLICANT
Barrister and Solicitor
Vancouver, British Columbia

William F. Pentney FOR THE RESPONDENT
Deputy Attorney General of
Canada
Toronto, Ontario